



ภาคผนวก ข

เจ้าหน้าที่หอสมุด

Interpretation

1. (1) In this Act,

"anniversary date", when referring to a **mining** claim, means the date that occurs at annual intervals after the recording of a **mining** claim, or such other date as results from the application of subsection 67 (4); ("date anniversaire")

"Commissioner" means the **Mining and Lands Commissioner** appointed under the *Ministry of Natural Resources Act*; ("commissaire")

"Crown" means Crown in right of **Ontario**; ("Couronne")

"Crown land" does not include,

(a) land, the surface rights, **mining** rights or the **mining** and surface rights of which are under lease or licence of occupation from the Crown,

(b) land in the actual use or occupation of the Crown, the Crown in right of Canada, or of a department of the Government of Canada or a ministry of the Government of **Ontario**,

(c) land the use of which is withdrawn or set apart or appropriated for a public purpose, or

(d) land held by a ministry of the Government of **Ontario**; ("terre de la Couronne")

"Deputy Minister" means the **Deputy Minister of Northern Development and Mines**; ("sous-ministre")

"holder", when referring to the holder of an unpatented **mining** claim, a boring permit or a licence of occupation issued under this Act, means the holder of record; ("titulaire")



"in place", when used in reference to mineral, means in the place or position where originally formed in the solid rock, as distinguished from being in loose, fragmentary or broken rock, boulders, float, beds or deposits of gold or platinum-bearing sand, earth, clay, or gravel, or placer; ("en place")

"inspector" includes a geologist on the staff of the Ministry and any other officer or agent designated by the Minister to carry out an inspection or investigation of the mining industry; ("inspecteur")

"lease" means a leasehold patent; ("bail")

"lessee" means a person who holds a lease of mining rights, surface rights, or both, issued under this Act or any predecessor of this Act; ("preneur à bail")

"licensee" means a person holding a prospector's licence issued under this Act or a renewal thereof; ("titulaire de permis")

"machinery" includes steam and other engines, boilers, compressors, furnaces, milling and crushing apparatus, hoisting and pumping equipment, chains, trucks, tramways, tackle, blocks, ropes and tools, and all appliances used in or about or in connection with a mine or plant; ("machines")

"metal tag" means the metal tag supplied by the mining recorder or a substitute therefor supplied by the Ministry; ("étiquette métallique")

"mine", when used as a noun, includes,

(a) any opening or excavation in, or working of, the ground for the purpose of winning any mineral or mineral bearing substance,

(b) all ways, works, machinery, plant, buildings and premises below or above the ground relating to or used in connection with the activity referred to in clause (a),

(c) any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining or treating any mineral or mineral bearing substance, or conducting research on them,

(d) tailings, wasterock, stockpiles of ore or other material, or any other prescribed substances, or the lands related to any of them, and

(e) mines that have been temporarily suspended, rendered inactive, closed out or abandoned,

but does not include any prescribed classes of plant, premises or works; ("mine")

"mine", when used as a verb, means the performance of any work in or about a mine, as defined in its noun sense, except preliminary exploration; ("exploiter")

"mine hazard" means any feature of a mine, or any disturbance of the ground, that has not been rehabilitated to the prescribed standard; ("risque minier")

"minerals" means all naturally occurring metallic and non-metallic minerals, including natural gas, petroleum, coal, salt, quarry and pit material, gold, silver and all rare and precious minerals and metals, but does not include sand, gravel and peat; ("minéraux")

"mining claim" means a parcel of land, including land under water, that has been staked and recorded in accordance with this Act and the regulations; ("claim")

"mining lands" includes,

(a) the lands and mining rights patented or leased under or by authority of a statute, regulation or order in council, respecting mines, minerals or mining,

(b) lands or mining rights located, staked out, used or intended to be used for mining purposes, and

(c) surface rights granted solely for mining purposes; ("terrains miniers")

"mining rights" means the right to minerals on, in or under any land; ("droits miniers")

"Minister" means the Minister of Northern Development and Mines, except in Part IV where "Minister" means the Minister of Natural Resources; ("ministre")

"Ministry" means the Ministry of the Minister; ("ministère")

"owner", when used in Parts VII, IX and XI, includes,

(a) every current owner, lessee or occupier of all or part of a mine, mine hazard or mining lands,

(b) an agent of the current owner, lessee or occupier, or a person designated by the owner, lessee, occupier or agent as being responsible for the control, management and direction of all or part of a mine, mine hazard or mining lands, and

(c) subject to subsections (4) to (13), a secured lender who enters into possession of all or part of a mine, mine hazard or mining lands pursuant to the security it holds with respect to the mine, mine hazard or mining lands; ("propriétaire")

"patent" means a grant from the Crown in fee simple or for a less estate made under the Great Seal, and includes leasehold patents and freehold patents, but in sections 4, 27, 84, 87 to 95, 176, 179, 182 and 189 the meaning is limited to freehold patents; ("lettres patentes")

"prescribed" means prescribed by the regulations; ("prescrit")

"prospecting" means the investigating of, or searching for, minerals; ("prospection")

"recorder" means a provincial mining recorder appointed under section 6; ("registreur")

"regulations" means the regulations made under this Act; ("règlements")

"surface rights" means every right in land other than the mining rights; ("droits de surface")

"unpatented", when referring to land or mining rights, means land or mining rights for which a patent, lease, licence of occupation or any other form of Crown grant is not in effect; ("non concédé par lettres patentes")

"valuable mineral in place" means a vein, lode or deposit of mineral in place appearing at the time of discovery to be of such a nature and containing in the part thereof then exposed such kind and quantity of mineral or minerals in place, other than limestone, marble, clay, marl, peat or building stone, as to make it probable that the vein, lode or deposit is capable of being developed into a producing mine likely to be workable at a profit. ("minéral de valeur en place") R.S.O. 1990, c. M.14, s. 1; 1996, c. 1, Sched. O, s. 1; 1997, c. 40 s. 1; 1999, c. 12, Sched. O, s. 1 (1, 2); 2001, c. 9, Sched. L, s. 1 (1).

Deemed reference to Provincial Recording Office

(2) In this Act, a reference to "recorder's office" or "office of the recorder" shall be deemed to be a reference to the Provincial Recording Office. 1999, c. 12, Sched. O, s. 1 (3).

Interpretation of "owner"

(3) A person who receives only a royalty from all or part of a mine, mine hazard or mining lands is not an owner within the meaning of the definition of "owner" in subsection (1). 2001, c. 9, Sched. L, s. 1 (2).

Where secured lender not an "owner"

(4) A secured lender described in clause (c) of the definition of "owner" in subsection (1) is not an owner if the lender satisfies the Director of Mine Rehabilitation that the lender is in a family or other non-arm's length relationship with the current owner, lessee or occupier. 2001, c. 9, Sched. L, s. 1 (2).

Same

(5) A secured lender described in clause (c) of the definition of "owner" in subsection (1) is not an owner if the lender has entered into possession for the purpose of,

(a) conducting, completing or confirming an investigation of the environmental condition of all or part of the mine, mine hazard or mining lands or of the rehabilitative measures that would be required upon their closure;

(b) preserving or protecting the value of all or part of the mine, mine hazard or mining lands on an ongoing basis, including taking steps for,

(i) maintaining public utility services, heat, maintenance services, security and insurance,

(ii) paying taxes or collecting rents,

(iii) dealing with an immediate danger to public health or safety from a contaminant, pollutant or other hazardous substance or with a threat of such danger, or

(iv) preventing flooding; or

(c) repossessing or realizing upon any machinery or personal property with respect to which the lender is a lessor or over which the lender holds security if the Director of Mine Rehabilitation has given prior written approval and subject to any terms and conditions of such approval. 2001, c. 9, Sched. L, s. 1 (2).

Exception

(6) A secured lender who enters into possession under clause (5) (a) or (b) is nonetheless an owner if the lender creates, materially disturbs or adversely affects a mine hazard. 2001, c. 9, Sched. L, s. 1 (2).

Same, failure to carry out purpose properly

(7) A secured lender who enters into possession under clause (5) (b) is an owner despite that clause if, in the opinion of the Director of Mine Rehabilitation, the lender fails to properly preserve and protect the value of the mine, mine hazard or mining lands on an ongoing basis, unless, at the request of the lender made with at least six months notice, the Director relieves the lender of that responsibility in writing. 2001, c. 9, Sched. L, s. 1 (2).

Liability of secured lender

(8) A secured lender who has not been relieved of the responsibility referred to in subsection (7) is liable for damages caused by a failure to properly preserve and protect the value of the mine, mine hazard or mining lands on an ongoing basis. 2001, c. 9, Sched. L, s. 1 (2).

Notice

(9) Before giving an approval under clause (5) (c), the Director shall give at least 15 days notice to the current owner, lessee, occupier or other person known to have an interest in all or part of the mine, mine hazard or mining lands. 2001, c. 9, Sched. L, s. 1 (2).

Condition of approval

(10) The Director of Mine Rehabilitation may, as a condition of an approval under clause (5) (c), require that any machinery or personal property repossessed or realized upon be sold or otherwise disposed of by the lender and that all or part of the proceeds be directed to the preservation or protection of the values of all or part of the mine, mine hazard or mining lands. 2001, c. 9, Sched. L, s. 1 (2).

Refusal by Director

(11) The Director of Mine Rehabilitation may refuse to give an approval under clause (5) (c) if not satisfied that repossessing or realizing upon the machinery or personal property will not adversely affect the proper preservation and protection of the value of all or part of the mine, mine hazard or mining lands. 2001, c. 9, Sched. L, s. 1 (2).

Appeal to the Commissioner

(12) The secured lender or other interested party may appeal to the Commissioner,

(a) an approval given by the Director under clause (5) (c) or a refusal to give an approval under that clause; or

(b) any terms or conditions that the Director imposes on an approval given under clause (5) (c). 2001, c. 9, Sched. L, s. 1 (2).

Same

(13) Section 152 applies with necessary modifications to an appeal under subsection (12). 2001, c. 9, Sched. L, s. 1 (2).

Purpose

2. The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources and to minimize the impact of these activities on public health and safety and the environment through rehabilitation of mining lands in Ontario. 1996, c. 1, Sched. O, s. 2.

Application to sales, etc., for other purposes

3. Nothing in this Act affects the sale, lease or location, for agricultural or other purposes, of any land opened for sale or free grant under the *Public Lands Act* or otherwise. R.S.O. 1990, c. M.14, s. 3.

PART I ADMINISTRATION

Administrative matters

Public lands and regulations

4. (1) All public lands for mining purposes and for the purposes of the mineral industry and all regulations made with respect to mines or minerals or mining lands or mining rights or the mineral industry shall be administered by the Minister. R.S.O. 1990, c. M.14, s. 4 (1).

Execution of instruments

(2) All patents, leases, licences or other instruments of title and all agreements, contracts or other writings relating to mines or minerals or mining lands or mining rights or the mineral industry shall be signed and executed by the Minister or by the Deputy Minister. R.S.O. 1990, c. M.14, s. 4 (2).

Immunity for acts done in good faith

(3) No action or other proceeding for damages shall be instituted against the Minister, the Deputy Minister or any officer or employee of the Ministry or anyone acting under the authority of the Minister or Deputy Minister for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty. R.S.O. 1990, c. M.14, s. 4 (3).

Crown liability

(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (3) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (3) had not been enacted. R.S.O. 1990, c. M.14, s. 4 (4).

Delegation of Minister's powers, etc.

(5) Where under this Act a power or duty is granted to or vested in the Minister, the Minister may in writing delegate that power or duty to the Deputy Minister or to any officer or employee of the Ministry, subject to such limitations, conditions and requirements as the Minister sets out in the delegation. R.S.O. 1990, c. M.14, s. 4 (5).

Delegation of Deputy Minister's powers and duties

(5.1) Where under this Act a power or duty is granted to or vested in the Deputy Minister, the Deputy Minister may in writing delegate that power or duty to any officer or employee of the Ministry, subject to such limitations, conditions and requirements as the Deputy Minister sets out in the delegation. 1999, c. 12, Sched. O, s. 2 (1).

Exception

(5.2) Subsection (5.1) does not apply to the duty set out in subsection (2). 1999, c. 12, Sched. O, s. 2 (1).

Persons authorized to take affidavits

(6) The Minister may authorize officers or employees of the Ministry to administer oaths and to take or receive affidavits, declarations and affirmations authorized by law for the purposes of or incidental to the administration and enforcement of this Act. 1999, c. 12, Sched. O, s. 2 (2).

Powers of authorized persons

(7) An authorized person has all the powers of a commissioner for taking affidavits under the *Commissioners for taking Affidavits Act* in respect of the oaths, affidavits, declarations or affirmations mentioned in subsection (6). 1999, c. 12, Sched. O, s. 2 (2).

Officers and employees

5. The Minister may appoint officers or employees of the Ministry, and other persons, to exercise powers and perform duties under this Act, as specified in the appointment. 1999, c. 12, Sched. O, s. 3.

Provincial mining recorders

6. (1) The Minister may appoint as many provincial mining recorders as he or she considers advisable from among the officers or employees of the Ministry. 1999, c. 12, Sched. O, s. 3.

Jurisdiction of recorder

(2) A recorder has jurisdiction throughout Ontario. 1999, c. 12, Sched. O, s. 3.

Records

7. (1) A recorder shall keep records of mining claims, applications and other entries, in the form directed by the Minister, in the Provincial Recording Office. 1999, c. 12, Sched. O, s. 4.

Maps

(2) A recorder shall keep for inspection in the Provincial Recording Office maps on which the recorder shall mark all claims as they are recorded. 1999, c. 12, Sched. O, s. 4.

Right to inspect documents

8. Every document filed and recorded in the Provincial Recording Office may be inspected during office hours on payment of the required fee. 1999, c. 12, Sched. O, s. 5.

Evidence of records

9. (1) Every copy of or extract from a recorded entry or any document filed in the Provincial Recording Office, certified by a recorder to be a true copy or extract, shall be received in any court as proof, in the absence of evidence to the contrary, of the matter certified without proof of the recorder's appointment, authority or signature. 1999, c. 12, Sched. O, s. 6.

Computer print-out, etc., admissible evidence

(2) If an entry or document under subsection (1) is recorded or filed electronically or on a magnetic medium, any copy or extract produced from the record or medium that is in readily understandable form is admissible in evidence to the same extent as the original entry or document. 1999, c. 12, Sched. O, s. 6.

Same

(3) If a record in the Provincial Recording Office is recorded electronically or on a magnetic medium and there is no original written record corresponding to it, any writing produced from the record or medium that is in readily understandable form is admissible in evidence to the same extent as the record would be if it were an original written record. 1999, c. 12, Sched. O, s. 6.

Employment of experts, etc.

10. Despite anything in the *Public Service Act*, the Minister may employ any professor, instructor, or other person to investigate the mineral resources of Ontario, or for any work in connection with this Act, and may pay that person for such services at such rate as is agreed upon, out of the money that is appropriated by the Legislature for that purpose. R.S.O. 1990, c. M.14, s. 10.

Inspection of minerals

11. (1) An inspector may enter upon any lands for the purpose of gathering information respecting minerals or mineral rights and may enter any structure or works for the purpose of gathering information respecting ore and may take therefrom representative samples of minerals and ore sufficient for the purpose of testing or analysis. R.S.O. 1990, c. M.14, s. 11 (1).

Enforcement

(2) An inspector shall be deemed to be an officer appointed under this Act for the purposes of section 164. R.S.O. 1990, c. M.14, s. 11 (2).

Officers not to be interested in lands or claims

12. (1) No officer appointed under this Act shall directly or indirectly, by himself or herself or by any other person, purchase or become interested in any mining lands, mining rights or mining claims situate in Ontario. R.S.O. 1990, c. M.14, s. 12 (1).

Waiver by Deputy Minister

(2) Where the Deputy Minister is satisfied that an officer has in good faith acquired an interest referred to in subsection (1) for other than mining purposes, the Deputy Minister may in writing waive the application of subsection (1) to the officer. R.S.O. 1990, c. M.14, s. 12 (2).

Penalty

(3) Any officer contravening subsection (1) forfeits his or her office. R.S.O. 1990, c. M.14, s. 12 (3).

Recorders are commissioners

13. Every mining recorder is by virtue of his or her office a commissioner for taking affidavits in Ontario. R.S.O. 1990, c. M.14, s. 13.

14. Repealed: 1999, c. 12, Sched. O, s. 7.

Place for filing or recording instruments

15. (1) Unless this Act or a notice under subsection (2) provides otherwise, all applications, documents and other instruments required or permitted to be filed or recorded under this Act shall be filed or recorded in the Provincial Recording Office. 1999, c. 12, Sched. O, s. 8.

Other offices

(2) The Ministry may issue notices permitting or requiring the delivery of instruments specified in the notice at offices other than the Provincial Recording Office. 1999, c. 12, Sched. O, s. 8.

Deemed filing, recording on receipt

(3) Where an instrument is filed or recorded under subsection (1) or delivered in accordance with a notice under subsection (2), the instrument shall be deemed to have been filed or recorded on receipt. 1999, c. 12, Sched. O, s. 8.

Patented mining claims, application of Acts

(4) The *Land Titles Act* or the *Registry Act*, as the case may be, applies with respect to a mining claim once the mining claim has been patented. 1999, c. 12, Sched. O, s. 8.

Posting

16. A notice, order or document to be posted under this Act shall be posted in the Provincial Recording Office and may be posted in other Ministry offices. 1999, c. 12, Sched. O, s. 8.

17. Repealed: 1999, c. 12, Sched. O, s. 8.

Licence required

18. (1) No person shall prospect on Crown lands or stake out, record or apply to record the staking of a mining claim unless the person is the holder of a prospector's licence issued under this Act. R.S.O. 1990, c. M.14, s. 18 (1).

(2) Repealed: 1999, c. 12, Sched. O, s. 9.

Prospector's licences

19. (1) Any natural person who is of the age of eighteen years or over is entitled to obtain a prospector's licence upon application made in the prescribed form and upon payment of the required fee. R.S.O. 1990, c. M.14, s. 19 (1); 1997, c. 40, s. 7.

Date and term of licence

(2) A licence shall be dated on the day of its issue and expires at midnight on the day of the fifth anniversary of the licensee's birth date that follows the issue of the licence. R.S.O. 1990, c. M.14, s. 19 (2).

(3) Repealed: 2002, c. 18, Sched. M, s. 1.

Licence not transferable

(4) A licence is not transferable. R.S.O. 1990, c. M.14, s. 19 (4).

Who may issue

(5) A licence may be issued by any recorder. R.S.O. 1990, c. M.14, s. 19 (5).

Service

(6) Any notice or document relating to a licensee or holder is sufficiently served upon the licensee or holder if delivered or sent by prepaid first class mail to the address shown on the application for the prospector's licence or to the address given under subsection (8), if applicable. R.S.O. 1990, c. M.14, s. 19 (6); 1996, c. 1, Sched. O, s. 5 (1).

Idem

(7) Where service is made by prepaid first class mail under subsection (6) it shall be deemed to have been made on the fifth day after the day of mailing. R.S.O. 1990, c. M.14, s. 19 (7).

Notice of change of address

(8) A licensee or holder shall notify the recorder in writing of any change of address. 1999, c. 12, Sched. O, s. 10.

Numbering of licences

20. Every prospector's licence shall be numbered. 1999, c. 12, Sched. O, s. 11.

Renewal of licence

21. (1) A licensee is entitled to a renewal of the licence if the licensee applies for the renewal in the form established by the Minister and pays the required fee within 60 days before the expiry of the licence. 1999, c. 12, Sched. O, s. 12.

Notice of expiration of licence

(2) Notice of the expiration of a licence shall be given by the recorder to the holder of the licence not later than sixty days before the expiry date. R.S.O. 1990, c. M.14, s. 21 (2).

Who may renew

(3) A licence may be renewed by any recorder. R.S.O. 1990, c. M.14, s. 21 (3).

Date and term of renewal

(4) The renewal shall bear date on the day following the expiration of the licence or renewal of licence of which it is the renewal and shall take effect immediately upon the expiration of that licence, or renewal thereof, as the case may be. R.S.O. 1990, c. M.14, s. 21 (4).

Form

(5) The renewal shall bear the same number and letter as the original licence and, after it comes into effect, it shall be deemed to be the licence of the licensee and shall expire at 12 o'clock midnight on the day that is the fifth anniversary of the licensee's birth date following the effective date of the renewal. R.S.O. 1990, c. M.14, s. 21 (5).

Lifetime renewal by Minister

(6) The Minister shall renew without fee the licence of a person who has held a licence for twenty-five years and the licence shall remain in good standing during the lifetime of the licensee. R.S.O. 1990, c. M.14, s. 21 (6); 1996, c. 1, Sched. O, s. 6.

Idem

(7) The Minister may, at his or her discretion, renew the licence of a person without fee and order that the licence remain in good standing during the lifetime of the licensee. R.S.O. 1990, c. M.14, s. 21 (7).

Accidental destruction or loss of licence

22. (1) If a prospector's licence is accidentally destroyed or lost, the holder may,

- (a) upon proof by statutory declaration that the original has been destroyed or lost and setting out the circumstances thereof; and
- (b) upon payment of the required fee,

obtain a duplicate thereof from the office of the Minister, Deputy Minister or any recorder. R.S.O. 1990, c. M.14, s. 22 (1); 1997, c. 40, s. 7.

Substituted licence

(2) Every such duplicate shall be marked "substituted licence/permis de remplacement" and shall bear the same date and number as the original licence. R.S.O. 1990, c. M.14, s. 22 (2).

Limitation

23. (1) No person shall apply for or hold more than one prospector's licence. R.S.O. 1990, c. M.14, s. 23 (1).

Refund where more than one licence issued

(2) A contravention of this section is an offence against this Act, but, where the Minister is satisfied that there was no improper intent and upon surrender of the unnecessary licence or licences, the Minister may relieve from the penalty and may direct a refund of the fee or fees paid. R.S.O. 1990, c. M.14, s. 23 (2).

Production of licence

24. Every licensee shall upon demand produce and exhibit his or her licence to an inspector or a recorder. R.S.O. 1990, c. M.14, s. 24.

Application in recorder's absence

25. (1) An applicant may make an application for a licence while a recorder is absent from his or her office by leaving the application, along with the supporting documents and required fee, with the person in charge. 1996, c. 1, Sched. O, s. 7; 1997, c. 40, s. 7.

Licence effective

(2) A licence issued subsequent to an application being made as described in subsection (1) is as effective as if it had been issued on the day the application was made and shall bear that date. 1996, c. 1, Sched. O, s. 7.

Revocation, suspension and cancellation of claims, etc. of licence

26. (1) Where the Commissioner finds, after a hearing, that a licensee has been guilty of a wilful contravention of any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the Commissioner, revoke the licence of the licensee and a licence shall not thereafter be issued to such licensee without the authority of the Minister. R.S.O. 1990, c. M.14, s. 26 (1).

Idem

(2) Where a licence is revoked under subsection (1), the Minister shall determine and notify the holder of the licence revoked of the period of time during which a licence shall not be issued to him. R.S.O. 1990, c. M.14, s. 26 (2).

Suspension or revocation of licence

(3) Where a recorder finds, after a hearing, that a licensee has contravened any of the provisions of this Act or the regulations, the Minister may, upon the recommendation of the recorder, suspend or revoke the licence of the licensee. R.S.O. 1990, c. M.14, s. 26 (3); 2000, c. 26, Sched. M, s. 1.

Idem

(4) Where a licence is suspended under subsection (3), the Minister shall determine and notify the holder of the licence suspended of the period of time during which the licence is suspended. R.S.O. 1990, c. M.14, s. 26 (4).

Rights of licensee under suspension

(5) While a licence is suspended under subsection (3), the licensee may renew the licence but the licensee may not stake out or apply to record a mining claim. R.S.O. 1990, c. M.14, s. 26 (5).

Where holder of mining claim contravenes Act

(6) Where the recorder finds, after a hearing, that a holder of a mining claim has contravened any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the recorder, order that the holder may not acquire an unpatented mining claim or interest therein through transfer or obtain an extension of time in which to perform work or to apply for lease on any unpatented mining claim recorded in the name of the holder. R.S.O. 1990, c. M.14, s. 26 (6).

Cancellation of mining claims

(7) 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 this Act or the regulations, the Minister may, on the recommendation of the Commissioner, declare any mining claims of the holder to be cancelled and upon cancellation all rights of the holder in or to mining claim lands cease. R.S.O. 1990, c. M.14, s. 26 (7).

Order pending hearing

(8) Pending the holding of a hearing on any matter under this section, the Commissioner or the recorder, as the case may be, before whom the hearing will be held, may order that any mining claim of the licensee or holder whose conduct is in question shall not, before the conclusion of the hearing and final disposition of the matter, be transferred to any other person. R.S.O. 1990, c. M.14, s. 26 (8).

Prohibition against staking out claims, etc.

(9) Where mining claims are cancelled under subsection (7), the former holder of the mining claims may not stake out 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. R.S.O. 1990, c. M.14, s. 26 (9).

Appeal

(10) A finding by the Commissioner that a licensee or holder of a mining claim has wilfully contravened this Act or the regulations or by a recorder that a licensee or holder of a mining claim has contravened this Act or the regulations, as the case may be, may

be appealed in like manner as any decision of the Commissioner or recorder, respectively, and the Minister shall give effect to the decision on the appeal. R.S.O. 1990, c. M.14, s. 26 (10).

PART II MINING CLAIMS

Lands Open

Where licensee may prospect for minerals

27. Except where otherwise provided, the holder of a prospector's licence may prospect for minerals and stake out a mining claim on any,

(a) Crown lands, surveyed or unsurveyed;

(b) lands, the mines, minerals or mining rights whereof have been reserved by the Crown in the location, sale, patent or lease of such lands where they have been located, sold, patented or leased after the 6th day of May, 1913,

not at the time,

(c) on record as a mining claim that has not lapsed or been abandoned, cancelled or forfeited; or

(d) withdrawn by any Act, order in council, or other competent authority from prospecting, location or sale, or declared by any such authority to be not open to prospecting, staking out or sale as mining claims. R.S.O. 1990, c. M.14, s. 27; 1996, c. 1, Sched. O, s. 8.

Claim may be staked

28. (1) A licensee may stake out a mining claim on any land open for prospecting and, subject to the other provisions of this Act, may work such claim and transfer his or her interest therein to another person, but, where the surface rights in the land have been granted, sold, leased or located by the Crown, compensation must be made as provided by section 79. R.S.O. 1990, c. M.14, s. 28.

Application under other Act

(2) A licensee may stake out a mining claim with respect to any minerals or rights that no applicant is specifically requesting to acquire in an application accepted under the *Public Lands Act* or any other Act. 2000, c. 26, Sched. M, s. 2.

Priority of application

(3) If an applicant is specifically requesting to acquire minerals or rights in an application accepted under the *Public Lands Act* or any other Act, the application shall have priority over any mining claim staked during the time that the application is pending. 2000, c. 26, Sched. M, s. 2.

Addition to mining claim

(4) If the application lapses, is withdrawn or is not accepted or approved, a mining claim staked during the time that the application was pending shall be deemed to be amended to include the minerals and rights that were the subject of the application, as if the application had never existed. 2000, c. 26, Sched. M, s. 2.

Lands Not Open

Land not open for prospecting without consent

29. No mining claim shall be staked out or recorded upon any land transferred to or vested in the Ontario Northland Transportation Commission without the consent of the Commission nor, except with the consent of the Minister,

(a) upon any land reserved or set apart as a town site by the Crown;

(b) upon any land laid out into residential lots on a registered plan of subdivision; or

(c) upon any land forming the station grounds, switching grounds, yard or right of way of a railway. R.S.O. 1990, c. M.14, s. 29; 1996, c. 1, Sched. O, s. 9.

Lands upon which claim may not be staked out

30. (1) No mining claim shall be staked out or recorded on any land,

(a) that, without reservation of the minerals, has been sold, located, leased or included in a licence of occupation; or

(b) for which an application brought in good faith is pending in the Ministry of Natural Resources under the *Public Lands Act* or any other Act, and in which the applicant may acquire the minerals that are included in the application; or

(c) where the surface rights have been subdivided, surveyed, sold or otherwise disposed of by the Ministry of Natural Resources for summer resort purposes, except where the Minister certifies in writing that in his or her opinion discovery of valuable mineral in place has been made; or

(d) where the Minister or the Minister of Transportation certifies that land is required for the development of water power or for a highway or for some other purpose in the public interest and the Minister is satisfied that a discovery of mineral in place has not been made thereon; or

(e) in an Indian reserve, except as provided by *The Indian Lands Act, 1924*; or

(f) while proceedings in respect thereto are pending before the Commissioner or a recorder or until those proceedings are finally determined; or

(g) until the proceeding has been finally determined, in the case of a proceeding that the Commissioner certifies is pending in a court in respect of the land. R.S.O. 1990, c. M.14, s. 30; 1994, c. 27, s. 134 (1); 2000, c. 26, Sched. M, s. 3 (1, 2).

Exclusion of time

(2) If a proceeding described in clause (1) (g) is pending in a court, the Commissioner, the recorder or the Minister may make an order for an exclusion of time with respect to the mining claim. 2000, c. 26, Sched. M, s. 3 (3).

Provincial parks

31. Prospecting or the staking out of mining claims or the development of mineral interests or the working of mines in provincial parks is prohibited except as provided by the regulations made under the *Provincial Parks Act*. R.S.O. 1990, c. M. 14, s. 31.

Lands used or occupied as gardens, etc.

32. (1) Although the mines or minerals therein have been reserved to the Crown, no person shall prospect for minerals or stake out a mining claim upon the part of a lot that is used as a garden, orchard, vineyard, nursery, plantation or pleasure ground, or upon which crops that may be damaged by such prospecting are growing, or on the part of a lot upon which is situated a spring, artificial reservoir, dam or waterworks, or a dwelling house, outhouse, manufactory, public building, church or cemetery, except with the consent of the owner, lessee, purchaser or locatee of the surface rights, or by order of the recorder or the Commissioner, and upon such terms as to the Commissioner seem just. R.S.O. 1990, c. M. 14, s. 32 (1).

Disputes as to lands exempt

(2) If a dispute arises between the intending prospector and the owner, lessee, purchaser or locatee as to land that is exempt from prospecting or staking out under subsection (1), the recorder or the Commissioner shall determine the extent of the land that is so exempt. R.S.O. 1990, c. M. 14, s. 32 (2).

Valuable water powers not included in claim

33. (1) A water power that lies within the limits of a mining claim and that is capable of producing 150 horsepower or more at low water mark in its natural condition shall not be deemed to be part of the claim for the use of the holder of the claim. 1999, c. 12, Sched. O, s. 13.

Road allowance

(2) A road allowance of 20 meters in width shall be reserved on both sides of the water, together with such additional area of land as a recorder or the Commissioner considers necessary for the development and utilization of the water power. 1999, c. 12, Sched. O, s. 13.

Surface operations near highway

34. Where a mining claim adjoins or is adjacent to a highway or road maintained by the Ministry of Transportation, no surface mining operations shall be carried out within 45 metres of the limits of the highway or road without the written consent of the Minister. 1999, c. 12, Sched. O, s. 13.

Withdrawal and reopening of lands

35. (1) The Minister may, by order signed by him or her,

(a) withdraw from prospecting, staking out, sale or lease, or any combination of them, any lands, mining rights or surface rights that are the property of the Crown; and

(b) reopen for prospecting, staking out, sale or lease, or any combination of them, any lands, mining rights or surface rights that have been withdrawn under this Act. 1996, c. 1, Sched. O, s. 10.

Copy of order sent to recorder

(2) Where the Minister makes an order under subsection (1), the Minister shall, within twenty-four hours of the date of the order, mail a copy of the order to the recorder. R.S.O. 1990, c. M.14, s. 35 (2).

Posting and filing copy

(3) On receiving the copy of the order, the recorder shall forthwith post and file it. 1999, c. 12, Sched. O, s. 14.

Lands withdrawn not to be prospected, etc.

(4) Lands, mining rights or surface rights withdrawn under this section, until re-opened by the Minister, shall remain withdrawn and shall not be prospected or staked out. R.S.O. 1990, c. M.14, s. 35 (4).

Working on behalf of Crown

(5) The Lieutenant Governor in Council may direct that the mines and minerals in lands, mining rights or surface rights, or in any part thereof, withdrawn under this section may be worked by or on behalf of the Crown. R.S.O. 1990, c. M.14, s. 35 (5).

Order not a regulation

(6) An order under subsection (1) shall be deemed not to be a regulation within the meaning of the *Regulations Act*. R.S.O. 1990, c. M.14, s. 35 (6).

Duty of officers of the Crown discovering mineral

36. (1) Every officer appointed or acting under this Act and every assistant of such officer who makes a discovery of valuable mineral upon any lands or mining rights open to prospecting and staking out as a mining claim shall stake out and record a parcel thereof of the size and form of a mining claim on behalf of the Crown, and no licence is required for that purpose. R.S.O. 1990, c. M.14, s. 36 (1).

Method

(2) No proceeding is necessary for staking out under subsection (1) except to plant posts and blaze lines as provided in respect to a mining claim, but the officer or assistant shall mark upon No. 1 post the words "Staked out for the Crown/Jalonné pour la Couronne", and within the time limited by this Act for recording the claim shall notify the recorder of the staking out, giving the date of staking out and the description of the property. R.S.O. 1990, c. M.14, s. 36 (2).

Recording

(3) The recorder, upon receiving such notice, shall enter the parcel of land upon his or her record book as staked out on behalf of the Crown, and shall mark it upon his or her map with the letter "C", and after such staking out the parcel is not open to staking out or recording. R.S.O. 1990, c. M.14, s. 36 (3).

Permit required

37. Before beginning or carrying on any prescribed assessment work on a mining claim, the holder thereof, in addition to any other requirement, shall obtain a written permit entitling the holder to do so as provided in the *Forest Fires Prevention Act* or the *Public Lands Act*. R.S.O. 1990, c. M.14, s. 37.

Size and Form of Mining Claims

Manner of staking mining claim

38. A mining claim shall be staked in such size, form and manner as is prescribed and may be staked on any day. R.S.O. 1990, c. M.14, s. 38.

Mining claims on agricultural lands

39. (1) Where the Minister certifies that land is suitable for disposition for agricultural purposes, a mining claim staked thereon does not give the staker any right, title or interest in or to the surface rights. R.S.O. 1990, c. M.14, s. 39 (1).

Where surface rights necessary for mining operations

(2) Where surface rights on any such land are necessary to the carrying on of mining operations, the Minister may determine the part of the surface rights so required and, if not previously disposed of, may sell or award the surface rights or such part thereof to the claim holder as the Minister considers essential to the efficient carrying on of mining operations, and he or she may require the claim holder to have such surveys made at the expense of the claim holder as he or she considers proper. R.S.O. 1990, c. M.14, s. 39 (2).

Crown reservation

40. (1) Where a mining claim includes land covered with water or bordering on water, the surface rights over a width of no more than 120 metres from the high water mark may be reserved for the Crown. 1999, c. 12, Sched. O, s. 15.

Same

(2) Where a highway or road constructed or maintained by the Ministry of Transportation crosses a mining claim, the surface rights over a width of no more than 90 metres, measured from the outside limits of the right of way of the highway or road along both sides of the highway or road, may be reserved for the Crown. 1999, c. 12, Sched. O, s. 15.

Application of Crown reservation to unpatented mining claims

(3) The reservations of surface rights authorized by subsections (1) and (2) shall be deemed to apply to and to have been made on all unpatented mining claims unless such reservation or reservations are waived by the Minister. R.S.O. 1990, c. M.14, s. 40 (3).

Licences of occupation

Annual rental

41. (1) Despite the provisions of a licence of occupation, there shall be paid, in advance, the prescribed annual rental for the licence of occupation. R.S.O. 1990, c. M.14, s. 41 (1).

When annual rental to be paid

(2) Where a licence of occupation does not specify a date for the payment of the annual rental, the annual rental shall be paid on the anniversary of the effective date of the licence. R.S.O. 1990, c. M.14, s. 41 (2).

Interest

(2.1) Where payment of the rental under any such licence is not paid within the required time, interest at the prescribed rate, compounded annually, shall forthwith be added to the amount owing in each year that the amount remains unpaid. 1999, c. 12, Sched. O, s. 16.

Reduction or waiver of interest owing

(2.2) The Minister may reduce or waive the amount of any interest added to rental payments under subsection (2.1). 2002, c. 18, Sched. M, s. 2.

Termination of licence of occupation

(3) Where payment of the rental under any such licence is in arrears for two years or more, the licence may be terminated by an instrument in writing, and all rights and powers therein contained as well as all rights and claims of the licensee, his or her successors or assigns, in or to the lands covered by the licence, cease, but the lands or mining rights contained therein are not open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, at least two weeks' notice of which shall be published in *The Ontario Gazette*. R.S.O. 1990, c. M.14, s. 41 (3).

Reinstatement

(4) Where there is no adverse interest, the Minister may, upon such terms as the Minister considers just, reinstate a licence terminated under subsection (3). R.S.O. 1990, c. M.14, s. 41 (4).

Licence challengeable only by Minister

(4.1) With the exception of the Minister, no person may, for any reason, challenge the validity of a licence of occupation. 2002, c. 18, Sched. M, s. 2.

When Minister may challenge

(4.2) The Minister may challenge the validity of a licence of occupation at any time. 2002, c. 18, Sched. M, s. 2.

Restriction on transfer etc.

(5) A licence or the term or terms that it creates shall not be transferred, mortgaged, charged, sublet or made subject to a debenture without the written consent of the Minister or an officer duly authorized by the Minister. 2000, c. 26, Sched. M, s. 4.

Lease may be issued under s. 81

(6) The holder of a licence of occupation, upon application in writing therefor and upon the surrender of the licence of occupation, may be issued a lease under section 81 and the rental for each year of the term thereof shall be that prescribed for the purposes of section 81 for years after the first year of a term. R.S.O. 1990, c. M.14, s. 41 (6).

Application

(7) This section applies only to a licence of occupation issued under section 52 of *The Mining Act*, being chapter 241 of the *Revised Statutes of Ontario*, 1960, or any predecessor thereof, and any licence of occupation heretofore issued without a provision for an annual payment. R.S.O. 1990, c. M.14, s. 41 (7).

Staking Out Claims**Staking claim in closed fire area**

42. The staking of a claim in a fire area while it is closed under the *Forest Fires Prevention Act* is invalid and of no effect unless the person who staked the claim, on applying to have it recorded, satisfies the recorder that the person entered the fire area before it was closed or pursuant to a special authorization of the Minister. 1999, c. 12, Sched. O, s. 17.

Substantial compliance with Act and regulations sufficient

43. (1) Substantial compliance as nearly as circumstances will reasonably permit with the requirements of this Act and the regulations as to the staking out of mining claims is sufficient. R.S.O. 1990, c. M.14, s. 43 (1); 2000, c. 26, Sched. M, s. 5.

Deemed substantial compliance

(2) The staking out of a mining claim shall be deemed to be in substantial compliance with the requirements of this Act and the regulations even if there is a failure to comply with a number of specific staking requirements if,

(a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity; and

(b) it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations. R.S.O. 1990, c. M.14, s. 43 (2).

Applications to Record

Application to record mining claim

44. (1) A licensee who has staked out a mining claim shall, not later than 31 days after the day on which the staking out was completed, make an application to record the claim to the recorder. 1996, c. 1, Sched. O, s. 12 (1); 1999, c. 12, Sched. O, s. 18 (1).

Application requirements

(1.1) The application shall be in the prescribed form and be accompanied by proof of payment of the required fee to any recorder and a sketch or plan showing the prescribed information. 1996, c. 1, Sched. O, s. 12 (1); 1997, c. 40, s. 7.

False statement

(1.2) The recorder or the Commissioner may, after a hearing, cancel the recording of a licensee or holder who knowingly made a false statement in the application to record the claim. 1996, c. 1, Sched. O, s. 12 (1).

Priority of completion prevails

(2) Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or a part of the same lands. R.S.O. 1990, c. M.14, s. 44 (2).

Notice to other licensee or licensees

(3) Where one of the applications made by two or more licensees to record the staking of a mining claim is entitled to priority under subsection (2), the recorder shall cancel the other application or applications and shall by mail sent not later than the following day notify the other licensee or licensees of the recorder's action and the reason therefor. R.S.O. 1990, c. M.14, s. 44 (3); 1999, c. 12, Sched. O, s. 18 (2).

Overlapping staking

(4) Despite subsection (3) and section 46, if the other application or applications to record a mining claim cover any land that is not part of the mining claim that is entitled to priority under subsection (2), the recorder may record a mining claim with respect to that part of the land and shall amend the application or applications with respect to the land covered by the previously completed claims. 1996, c. 1, Sched. O, s. 12 (2).

45. Repealed: 1999, c. 12, Sched. O, s. 19.

Recording a mining claim

46. (1) If, in the recorder's opinion, an application to record a mining claim complies with all the requirements for staking and recording the claim, the recorder shall record the claim and file it, along with the sketch or plan and certificate. 1999, c. 12, Sched. O, s. 20.

Not recording a mining claim

(2) If, in the recorder's opinion, an application to record a mining claim does not comply with all the requirements for staking and recording the claim, the recorder shall not record the claim and, in particular, the recorder shall not record a claim relating to land that is not open to staking. 1999, c. 12, Sched. O, s. 20.

Filing application

(3) If the recorder does not record a claim under subsection (2), the applicant may, on paying the required fee, require the recorder to file the application and any question involved may be determined in accordance with section 48 or 112. 1999, c. 12, Sched. O, s. 20.

Filing of application not a dispute

(4) The filing of an application under subsection (3) is not a dispute under section 48 unless the applicant complies with the requirements for filing a dispute set out in that section. 1999, c. 12, Sched. O, s. 20.

Invalidity of application

(5) An application filed under subsection (3) is invalid and of no effect 60 days after it is filed unless a dispute is filed under section 48 or an appeal is taken under section 112 or the Commissioner or recorder orders otherwise. 1999, c. 12, Sched. O, s. 20.

Cancellation of application under subs. (5)

(6) The recorder shall cancel an application that becomes invalid under subsection (5) or as a result of the determination of the dispute under section 48 or the appeal under section 112. 1999, c. 12, Sched. O, s. 20.

Metal tags

47. (1) Metal tags and duplicate tags shall be provided by the Ministry on payment of the required fee and may be used by any licensee in staking out claims in the prescribed manner and within the prescribed time. R.S.O. 1990, c. M.14, s. 47 (1); 1997, c. 40, s. 7.

Transfer of tags

(2) Metal tags and duplicate tags do not expire but may not be re-used. R.S.O. 1990, c. M.14, s. 47 (2).

Disputing Applications**Dispute of recorded claim**

48. (1) A dispute in the prescribed form, verified by a detailed statement of claim and a certificate, may be filed with the recorder by a person alleging that a recorded claim is illegal or invalid in whole or in part and, if the disputant or the person in whose behalf he or she is acting claims to be entitled to be recorded for or to be entitled to any right or interest in the lands or mining rights, or in any part thereof, comprised in the disputed claim, the dispute shall so state, giving particulars, and the recorder shall, upon

payment of the required fee, receive and file such dispute, and shall enter a note thereof upon the record of the disputed claim. R.S.O. 1990, c. M.14, s. 48 (1); 1997, c. 40, s. 7; 1999, c. 12, Sched. O, s. 21 (1).

Notice

(2) The recorder shall forthwith send a copy of the dispute, statement of claim and certificate to the recorded holder or holders of the mining claim who are affected by it. 1999, c. 12, Sched. O, s. 21 (2).

Address for service

(3) The dispute shall indicate the disputant's address for service in Ontario. 1999, c. 12, Sched. O, s. 21 (3).

Sufficient service

(3.1) Any notice or document relating to the dispute is sufficiently served on the disputant if it is left with an adult at the disputant's address or sent to the disputant at that address. 1999, c. 12, Sched. O, s. 21 (3).

Same

(4) If no address for service is given as required under subsection (3), any notice or document relating to the dispute may be served on the disputant by posting a copy of it. 1999, c. 12, Sched. O, s. 21 (3).

When not to be received

(5) A dispute shall not be received or entered against a claim,

(a) after one year from the recording of the claim;

(b) after the first prescribed unit of assessment work has been performed and filed and, where necessary, approved; or

(c) except by leave of the Commissioner,

(i) after the validity of the claim has been adjudicated upon by the recorder or by the Commissioner, or

(ii) after a dispute has already been entered against the claim. R.S.O. 1990, c. M.14, s. 48 (5); 2000, c. 26, Sched. M, s. 6.

Where assessment work subsequently approved

(6) Where a dispute is entered against a claim after the first prescribed unit of assessment work has been performed and filed but before the assessment work has been approved, where approval is necessary, the dispute shall be deemed to have been resolved in favour of the holder or holders of the claim if the assessment work is subsequently approved and the note of the dispute entered on the record of the claim shall be struck out by the recorder who shall by mail sent not later than the following day notify the disputant of the recorder's action and the reason therefor. R.S.O. 1990, c. M.14, s. 48 (6); 1999, c. 12, Sched. O, s. 21 (4).

Fee includes fee for filing order

(7) Where the required fee has been paid for filing a dispute under subsection (1), such fee shall be deemed to include the fee for filing any order or orders settling the dispute. R.S.O. 1990, c. M.14, s. 48 (7); 1997, c. 40, s. 7.

Restaking claim

(8) Despite clause 27 (c) and subsection 71 (1), if a dispute has not been filed against a mining claim, a transferee who has acquired the claim in good faith may at any time restake the claim or have it restaked. 1996, c. 1, Sched. O, s. 13 (1).

Recorder's order

(8.1) Upon the filing with the recorder of a notice of the restaking in the prescribed form, the recorder shall order that the restaked claim be deemed to have been recorded on the date of the recording of the original claim, after having given notice to all persons having a recorded interest in the original claim. 1996, c. 1, Sched. O, s. 13 (1).

Recording of orders against re-staked claims

(9) Where an order is made under subsection (8.1), orders, assessment work reports, instruments or other notations that have been recorded against the original claim shall be recorded in respect of the re-staked claim. 1999, c. 12, Sched. O, s. 21 (5).

Administrative Error

Relief from forfeiture

49. (1) A recorder may by order relieve an unpatented mining claim that is subject to forfeiture as a result of an administrative error on the part of the Crown from the forfeiture. R.S.O. 1990, c. M.14, s. 49 (1).

Previous staking

(2) If any part of a claim referred to in subsection (1) has been staked by another staker, the recorder shall refer the matter to the Commissioner. R.S.O. 1990, c. M.14, s. 49 (2).

Order by Commissioner

(3) On a reference under subsection (2), the Commissioner may make such order, subject to such conditions, as the Commissioner considers appropriate. R.S.O. 1990, c. M.14, s. 49 (3).

Extension of time

(4) An order under subsection (1) or (3) may grant an extension of time for performing and reporting any work required to be performed or for applying and paying for a lease in respect of the claim or provide for the payment of any fees in respect of the claim. R.S.O. 1990, c. M.14, s. 49 (4).

Rights of Licensee

Rights in claim

50. (1) The staking out or the filing of an application for or the recording of a mining claim, or the acquisition of any right or interest in a mining claim by any person or all or any of such acts, does not confer upon that person,

(a) any right, title, interest or claim in or to the mining claim other than the right to proceed as is in this Act provided to perform the prescribed assessment work or to obtain a lease from the Crown and, prior to the performance, filing and approval of the first prescribed unit of assessment work, the person is merely a licensee of the Crown and after that period and until he or she obtains a lease the person is a tenant at will of the Crown in respect of the mining claim; or

(b) any right to take, remove or otherwise dispose of any minerals found in, upon or under the mining claim. R.S.O. 1990, c. M.14, s. 50 (1).

Surface rights

(2) The holder of a mining claim does not have any right, title or claim to the surface rights of the claim other than the right to enter upon, use and occupy such part or parts thereof as are necessary for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights therein. R.S.O. 1990, c. M.14, s. 50 (2).

Taxation

(3) The holder of an unpatented mining claim is not liable to assessment or taxation for municipal or school purposes in respect of such unpatented mining claim. R.S.O. 1990, c. M.14, s. 50 (3).

Same

(4) The holder of a licence of occupation issued under this Act or any predecessor Act is not liable to assessment or taxation for municipal or school purposes in respect to the licence except with respect to improvements for which the holder would be liable to assessment or taxation if the lands were held under a patent. 1999, c. 12, Sched. O, s. 22.

Surface rights on unpatented mining claim

51. (1) Except as in this Act is otherwise provided, the holder of an unpatented mining claim has the right prior to any subsequent right to the user of the surface rights for prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights. R.S.O. 1990, c. M.14, s. 51 (1).

Disposition of surface rights

(2) Where the holder of an unpatented mining claim consents to the disposition of surface rights under the *Public Lands Act*, the recorder shall make an entry on the record of the claim respecting the consent, and thereupon the surface rights may be dealt with as provided in the *Public Lands Act*. R.S.O. 1990, c. M.14, s. 51 (2).

Survey of surface rights

(3) Where the holder of an unpatented mining claim consents to the disposition of surface rights under subsection (2), the Minister may require a survey of such surface rights, and the survey shall be provided at the expense of the person who has acquired the surface rights. R.S.O. 1990, c. M.14, s. 51 (3).

Where holder does not consent to disposition of surface rights

(4) Where an application is made for disposition under the *Public Lands Act* of surface rights on an unpatented mining claim and the holder of the unpatented mining claim does not consent to the disposition and provision for the reservation or exclusion of the surface rights is not otherwise provided for in this Act or any other Act, the Minister may refer the application to the Commissioner. R.S.O. 1990, c. M.14, s. 51 (4).

Where application referred to Commissioner

(5) Where an application under subsection (4) is referred to the Commissioner, he or she shall, upon giving all interested persons at least ninety days' notice and after hearing such interested persons as appear, make an order based on the merits of the application. R.S.O. 1990, c. M.14, s. 51 (5).

Where surface rights required for public use

(6) Where surface rights on an unpatented **mining** claim are required for the use of the Crown or other public use, this section applies with necessary modifications. R.S.O. 1990, c. M.14, s. 51 (6).

Permission to test mineral content

52. (1) The Minister may give written permission, subject to such conditions as are prescribed, to mine, mill and refine mineral bearing substance from an unpatented **mining** claim for the purpose of testing mineral content. R.S.O. 1990, c. M.14, s. 52 (1).

Conditions

(2) Permission granted under subsection (1) shall be for a specified time and shall cover a specified quantity of mineral bearing substance. R.S.O. 1990, c. M.14, s. 52 (2).

Sale of end product

(3) The end product of **mining**, milling and refining permitted under subsection (1), except as provided in subsection (4), shall not be sold or otherwise disposed of until the **mining** claim from which the minerals were taken is leased under this Act. R.S.O. 1990, c. M.14, s. 52 (3).

Disposition of proceeds

(4) Subsection (3) does not apply where the Minister gives written permission for the sale or disposition and where the Minister does so, the sale or disposition shall be in accordance with such terms as the Minister may impose. R.S.O. 1990, c. M.14, s. 52 (4).

Where claim, lands or rights abandoned, etc.

53. (1) Where the holder, licensee, lessee or owner of a **mining** claim, **mining** lands or **mining** rights abandons or surrenders the claim, lands or rights or where the **mining** claim, **mining** lands or **mining** rights are cancelled, forfeited or terminated under this Act or any other Act or the regulations thereunder, that person may take from the claim, lands or rights any buildings, structures, machinery, chattels, personal property and, except in the case of an unpatented **mining** claim, any ore or mineral belonging to and extracted from the claim, lands or rights by that person and any slimes or tailings not otherwise owned, within six months after the abandonment, surrender, cancellation, forfeiture or termination or within such further time as is fixed by the Minister, and, in default of doing so, all the buildings, structures, machinery, chattels, personal property, ore, mineral, slimes and tailings belong to the Crown unless the Minister directs otherwise within two years after the abandonment, surrender, cancellation, forfeiture or termination and may be sold or otherwise disposed of by the Minister upon such terms and conditions as he or she considers expedient. R.S.O. 1990, c. M.14, s. 53 (1); 1996, c. 1, Sched. O, s. 14.

Licensee has no rights in buildings, etc., acquired by Crown

(2) Unless ordered otherwise by the Minister, the staking or recording of a **mining** claim does not confer upon the licensee any right respecting buildings, structures, machinery, chattels, personal property, ore, mineral, slimes and tailings acquired by the Crown under subsection (1). R.S.O. 1990, c. M.14, s. 53 (2).

Improper use of land

54. (1) Where land is staked out and applied for as a **mining** claim and it appears that the land is being used other than as **mining** land or for a purpose other than that of the mineral industry, the Minister may direct the Commissioner to hold a hearing. R.S.O. 1990, c. M.14, s. 54 (1).

Cancellation

(2) If, after a hearing held on notice to all interested persons, the Commissioner is satisfied that the land is being used other than as **mining** land or for a purpose other than that of the mineral industry, he or she may make an order cancelling the claim. 1999, c. 12, Sched. O, s. 23.

Same

(3) An order cancelling a claim takes effect on being filed with the recorder. 1999, c. 12, Sched. O, s. 23.

Townsites on unpatented claims

55. (1) Where the Minister recommends the establishment or extension of a townsite on an unpatented mining claim, the Lieutenant Governor in Council may reserve the surface rights on any such claim or parts of any such claim as may be necessary for townsite purposes. R.S.O. 1990, c. M.14, s. 55 (1).

Regulations

(2) The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers necessary for the better carrying out of this section. R.S.O. 1990, c. M.14, s. 55 (2).

Address for Service**Address for service to be on application for claim, etc.**

56. (1) Every application for a mining claim and every other application and every transfer or assignment of a mining claim or of a right or interest acquired under this Act shall contain or have endorsed thereon the place of residence and post office address of the applicant, transferee or assignee, and also, when the applicant is not resident in Ontario, the name, residence and post office address of a person resident in Ontario upon whom service may be made. R.S.O. 1990, c. M.14, s. 56 (1).

Irregular documents not to be filed

(2) No such application, transfer or assignment shall be filed or recorded unless it conforms with subsection (1). R.S.O. 1990, c. M.14, s. 56 (2).

Substituting new agent for service

(3) Another person resident in Ontario may be substituted as the person upon whom service may be made by filing, in the office in which such an application, transfer or assignment is filed or recorded, a memorandum setting forth the name, residence and post office address of that other person, and such a substitution may be made from time to time as occasion requires. R.S.O. 1990, c. M.14, s. 56 (3).

Service upon agent to be sufficient

(4) Service upon the person named under subsection (1) or, in the case of a substitution under subsection (3) upon the person substituted, has the same effect as service upon the applicant, transferee or assignee referred to in subsection (1). R.S.O. 1990, c. M.14, s. 56 (4).

Application of subs. (4)

(5) Subsection (4) applies to every notice, demand or proceeding in any way relating to a mining claim or to mining rights or to any other right or interest that may be acquired under this Act. R.S.O. 1990, c. M.14, s. 56 (5).

Trusts, Agreements and Transfers**Claim "in trust"**

57. (1) Notice of a trust, express, implied or constructive, relating to an unpatented mining claim shall not be entered on the record or be received by a recorder. R.S.O. 1990, c. M.14, s. 57 (1).

Describing licensee as trustee, etc., effect of

(2) Describing the holder of the mining claim as a trustee, whether the beneficiary or object of the trust is mentioned or not, does not impose upon any person dealing with the holder the duty of making any inquiry as to the holder's power to deal therewith, but the holder may deal with the claim as if such description had not been inserted. R.S.O. 1990, c. M.14, s. 57 (2).

Saving of rights of others

(3) Nothing in this section relieves the holder of the mining claim who is in fact a trustee thereof or of any part or share thereof or interest therein from liability as between the holder and any person, mining partnership or company for whom the holder is a trustee, but such liability continues as if this section had not been enacted, and nothing in this Act relieves the holder from any personal liability or obligation. R.S.O. 1990, c. M.14, s. 57 (3).

Agreements and transfers, evidence of

58. (1) No person is entitled to enforce any claim, right or interest, contracted for or acquired before the staking out, to or in or under any staking out or recording of a mining claim or of any mining lands or mining rights done by another person unless the fact that the first-mentioned person is so entitled is made to appear by a writing signed by the holder of the claim or by the licensee by whom the staking out or recording was done or the evidence of the first-mentioned person is corroborated by some other material evidence, and, where a right or interest is so made to appear, the *Statute of Frauds* does not apply. R.S.O. 1990, c. M.14, s. 58 (1).

Sales or transfers after staking out

(2) No person is entitled to enforce any contract, made after the staking out, for sale or transfer of a mining claim or any mining lands or mining rights, or any interest in or concerning the same, unless the agreement or some note or memorandum thereof is in writing signed by the person against whom it is sought to enforce the contract or by that person's lawfully authorized agent. R.S.O. 1990, c. M.14, s. 58 (2).

Transfer, form of

59. A transfer of an unpatented mining claim or of an interest therein shall be in the prescribed form and shall be signed by the transferor or by the transferor's agent authorized by instrument in writing. R.S.O. 1990, c. M.14, s. 59.

Transfer of claim with Minister's consent

59.1 Without the Minister's written consent, a mining claim is not transferable after an application for lease has been made with respect to the mining claim. 1996, c. 1, Sched. O, s. 15.

Recording Documents

Recording instruments

60. (1) Except as in this Act is otherwise expressly provided, no transfer or assignment of or agreement or other instrument affecting a mining claim or a recorded right or interest acquired under this Act shall be entered on the record or received by a recorder unless it purports to be signed by the recorded holder of the claim or right or interest affected or by the holder's agent authorized by recorded instrument in writing. R.S.O. 1990, c. M.14, s. 60 (1).

Corporations

(2) An instrument mentioned in subsection (1) that is executed by a corporation shall not be recorded unless an authorized person has signed the instrument and,

(a) the corporation's seal is affixed to the instrument; or

(b) the instrument contains a statement by the person that he or she has authority to bind the corporation. 2001, c. 9, Sched. L, s. 2.

(3) Repealed: 2001, c. 9, Sched. L, s. 2.

Priority

61. After a mining claim or other right or interest acquired under this Act has been recorded, every instrument other than a will affecting the claim or an interest therein is void as against a subsequent purchaser or transferee for valuable consideration without actual notice unless the instrument is recorded before the recording of the instrument under which the subsequent purchaser or transferee claims. R.S.O. 1990, c. M.14, s. 61.

Recording to be notice

62. The recording under this Act of an instrument relating to a mining claim constitutes notice of the instrument to all persons claiming an interest in the claim after the instrument is recorded even if there is a defect in the requirements for recording. 1999, c. 12, Sched. O, s. 24.

Where actual notice prevails

63. (1) Priority of recording prevails unless before the prior recording there has been actual notice of the prior instrument by the party claiming under the prior recording. R.S.O. 1990, c. M.14, s. 63 (1).

Deemed recording

(2) If a transfer or other instrument meets all the requirements for recording, it shall be deemed to have been recorded on receipt in the proper office, even if it was not recorded immediately. 1999, c. 12, Sched. O, s. 25.

Recording orders, judgments, certificates, writs

64. (1) The recorder shall enter upon the record of any unpatented mining claim or other recorded right or interest a note of any order or decision made by him or her affecting the same, giving its date and effect and the date of the entry, and he or she shall, upon receiving with the required fee an order or decision of the Commissioner, or an order, judgment or certificate in an appeal

from the Commissioner, or a certified or sworn copy thereof, file the same and enter a note thereof upon the record of the claim or right or interest affected thereby. R.S.O. 1990, c. M.14, s. 64 (1); 1997, c. 40, s. 7.

Recording certificate of pending proceeding

(2) In a proceeding calling in question an interest in an unpatented mining claim or other recorded right or interest, the Commissioner or recorder may issue a certificate in the prescribed form and, upon receipt thereof and payment of the required fee, the recorder shall file and note it as above directed. R.S.O. 1990, c. M.14, s. 64 (2); 1997, c. 40, s. 7.

Not to constitute notice until filed

(3) The certificate is of no effect and does not constitute notice to any person of the proceeding until it is filed. R.S.O. 1990, c. M.14, s. 64 (3).

Duration of certificate

(4) The certificate and the filing and noting thereof are of no effect for any purpose whatever after the expiration of ten days from the date of filing unless within that time an order continuing the certificate is obtained from the Commissioner or the recorder, and any person interested may at any time apply to the Commissioner for an order vacating the certificate. R.S.O. 1990, c. M.14, s. 64 (4).

Notification of continuance or vacating of certificate

(5) On receiving such an order, the recorder shall forthwith send a copy of it to every recorded holder of an interest in the mining claim. 1999, c. 12, Sched. O, s. 26 (1).

Filing of certified writ with recorder

(6) A copy of a writ of seizure and sale may be filed with the recorder if it has been certified by the sheriff for the area or a bailiff of the division of the Small Claims Court to be a true copy of the writ. 1999, c. 12, Sched. O, s. 26 (2).

Recording of writ

(7) The recorder shall record the writ on each claim held by the judgment debtor or in which the judgment debtor has an interest on being given the number or a description of the claim involved and receiving the required fee. 1999, c. 12, Sched. O, s. 26 (3).

Effect of recording writ

(8) On being recorded on the claim, the writ binds the judgment debtor's interest in the claim and the sheriff or bailiff may treat the interest as if it were goods and chattels subject to a writ of seizure and sale. 1999, c. 12, Sched. O, s. 26 (3).

Recording of transfer

(9) If the judgment debtor's interest in the claim is sold under subsection (8), the transfer to the purchaser may be recorded in the same manner as if the transfer had been made by the judgment debtor and the effect of such transfer is the same. 1999, c. 12, Sched. O, s. 26 (3).

Certified copy, fee

(10) A certified copy of the writ of seizure and sale may be obtained from the sheriff or bailiff on payment of any required fee and the fee, together with the fee paid for recording the writ, shall be added to the judgment debt. 1999, c. 12, Sched. O, s. 26 (4).

Keeping claim in good standing

(11) Once the writ has been recorded on a claim, the sheriff, bailiff or judgment creditor may do anything that the judgment debtor could have done to keep the claim or interest in good standing, and the cost of doing so shall be added to the judgment debt. 1999, c. 12, Sched. O, s. 26 (4).

Discharge of writ

(12) A writ may be discharged,

- (a) by recording a certificate obtained from the sheriff or bailiff indicating that the judgment debt has been satisfied;
- (b) by recording a release obtained from the judgment creditor; or
- (c) by filing an order obtained from the Commissioner directing the removal of the record of the writ from each claim in which the judgment debtor has an interest. 1999, c. 12, Sched. O, s. 26 (4).

Fee for filing order

(13) Payment of the required fee under subsection (2) constitutes payment of the fee for filing any order of the Commissioner under subsection (1). 1999, c. 12, Sched. O, s. 26 (4).

Assessment Work

Assessment work

65. (1) The holder of a mining claim shall, following the recording of the claim, perform or cause to be performed such annual units of assessment work as are prescribed. R.S.O. 1990, c. M.14, s. 65 (1); 1999, c. 12, Sched. O, s. 27.

Report

(2) Subject to subsection (3), every mining claim holder shall, not later than the anniversary date, file in the office of the recorder or such other location as the Minister directs a report in the prescribed form of the assessment work done for the purpose of complying with subsection (1), together with such other information as may be prescribed. R.S.O. 1990, c. M.14, s. 65 (2); 1996, c. 1, Sched. O, s. 16.

Idem

(3) The report mentioned in subsection (2) shall, in respect of any specified type of assessment work, be filed not later than such date earlier than the anniversary date as may be prescribed for that type of assessment work. R.S.O. 1990, c. M.14, s. 65 (3).

Credits measured in dollars spent

(4) For the purpose of subsection (1), assessment work credits shall be measured in terms of dollars spent. R.S.O. 1990, c. M.14, s. 65 (4).

No dispute

(5) The recorder shall not receive and file, or record against a mining claim, any dispute relating to the validity of any assessment work, for which a report has been filed under subsection (2) and that was performed on the claim or on mining lands that are contiguous to the claim or that the dispute alleges are not contiguous to the claim. 2000, c. 26, Sched. M, s. 7.

Types of work eligible for credits, etc.

66. (1) The types of work that are eligible for assessment work credits, the method of calculating and approving the credits for work performed and the distribution of credits for work performed to mining claims shall be determined in such manner as is prescribed. R.S.O. 1990, c. M.14, s. 66 (1).

Prospecting and regional surveys

(2) Prospecting and regional surveys performed on Crown lands before the recording of a mining claim are eligible for assessment work credits in such manner as is prescribed. R.S.O. 1990, c. M.14, s. 66 (2); 1996, c. 1, Sched. O, s. 17.

Work on mining lands

(3) Exploration work performed on mining lands may be allocated as assessment work to contiguous unpatented mining claims in the prescribed manner. 1994, c. 27, s. 134 (3).

Decision

(4) The Minister shall determine the amount of assessment work credits. 1999, c. 12, Sched. O, s. 28.

No appeal

(5) A decision under subsection (4) is final and is not subject to appeal. 1999, c. 12, Sched. O, s. 28.

Computation of time for performance of assessment work

67. (1) If the holder provides the recorder or the Commissioner with satisfactory evidence of a refusal, prohibition, deferral or delay referred to in this section, the following periods of time may be excluded in computing the time within which work on a mining claim must be performed or reported, or both, or within which application and payment for a lease may be made:

1. The time during which a permit under the *Forest Fires Prevention Act* or the *Public Lands Act* that is necessary for the beginning or carrying on of work under this Act is refused.
2. The time during which the performance of work under this Act is prohibited under the Acts referred to in paragraph 1 or any other Act.
3. The time during which the holder defers the start of work under this Act or is delayed in performing it at the Crown's request or by the Crown's actions. 1996, c. 1, Sched. O, s. 18.

Same

(2) The time during which a proceeding in respect of a mining claim is pending before the recorder, the Commissioner or the Superior Court of Justice may be excluded in computing the time within which work on a mining claim must be performed or reported, or both, or within which an application and payment for a lease may be made, if the recorder or Commissioner is satisfied that any delay in settling the proceeding is not the holder's fault. 1996, c. 1, Sched. O, s. 18; 2000, c. 26, Sched. M, s. 17.

Order

(3) In computing time under subsection (1) or (2), the recorder or Commissioner may make an order fixing the date or dates by which the next or any prescribed units of work must be performed or reported, or both, or by which an application and payment for lease may be made. 1996, c. 1, Sched. O, s. 18.

Anniversary date changed

(4) Where the time for doing something under this Act is excluded, the next anniversary date after the exclusion in respect of the mining claim involved may be a date that falls after the anniversary date that would have occurred, except for this provision, by up to the number of days that equals the number of days of the exclusion, and all subsequent anniversary dates shall be adjusted accordingly. 1996, c. 1, Sched. O, s. 18.

Special circumstances

(5) Despite anything in this Act, if the Minister is of the opinion that special circumstances exist, the Minister may, by order,

(a) exclude the time or extend the time within which work on a mining claim must be performed or reported, or both, or within which application and payment for lease may be made; and

(b) fix the anniversary date or dates by which the next or any subsequent periods of work must be performed or reported, or both, or by which application and payment for lease may be made. 2000, c. 26, Sched. M, s. 8.

Proportionate contribution by co-owners

68. Where two or more persons are the holders of an unpatented mining claim, they shall contribute proportionately to their respective interests, or as they otherwise agree between themselves, to the work required to be done thereon or to a survey, patent or the first year's rental of a lease, and, in case of default by any holder, the Commissioner, upon the application of any other holder and upon notice to and after hearing all persons interested or such of them as appear, may make an order vesting the interest of the defaulter in the other co-owners or in any of them upon such terms and conditions and in such proportions as he or she considers just. R.S.O. 1990, c. M.14, s. 68.

Charge of person doing work on mining claim

69. Where the holder of an interest in a mining claim has made default in payment for work performed thereon by a person not the holder of an interest in the mining claim, the Commissioner, upon the application of such person and upon notice to and after hearing all persons interested or such of them as appear, may make an order vesting the interest in the mining claim of the holder in default, or any part of such interest, in the applicant. R.S.O. 1990, c. M.14, s. 69.

Abandonment

Abandoning a mining claim

Right to abandon claim

70. (1) The holder of a mining claim may abandon the claim at any time by filing a notice of abandonment in the prescribed form with the recorder. R.S.O. 1990, c. M.14, s. 70 (1).

Abandonment of part of claim

(2) The holder of a mining claim may abandon any part of the claim at any time on such conditions as are prescribed, by filing a notice of partial abandonment in the prescribed form with the recorder. R.S.O. 1990, c. M.14, s. 70 (2).

Notice of abandonment

(3) The recorder shall record the abandonment and the date of receipt of the notice of abandonment, and forthwith post a notice of the abandonment, together with a sketch of the abandoned claim or part to be abandoned. 1999, c. 12, Sched. O, s. 29.

Order by recorder

(4) Where part of a claim has been abandoned under subsection (2), the recorder shall issue an order directing the moving of posts or tags, the erection of new posts and the identification of new boundary lines and stating the time within which the work is to be completed. R.S.O. 1990, c. M.14, s. 70 (4).

Compliance with order

(5) A mining claim holder who is affected by an order issued under subsection (4) shall notify the recorder of that fact in writing within the time set out in the order. 1999, c. 12, Sched. O, s. 29.

Posting of notice

(5.1) The recorder shall post the notice, with the date of its posting. 1999, c. 12, Sched. O, s. 29.

Extension of time or order for abandonment

(6) The recorder may extend the time for completing work that has not been completed within the time set out in an order under subsection (4) or order that the portion of the claim on which the work was to be done be abandoned. 1999, c. 12, Sched. O, s. 29.

Notice of order

(6.1) If the recorder makes an order of abandonment under subsection (6), he or she shall forthwith,

(a) notify the holder of the order and the reasons for it; and

(b) post the order. 1999, c. 12, Sched. O, s. 29.

When claim open for staking

(7) Where part of a mining claim is abandoned under subsection (2) and an order of the recorder is made under subsection (6), the mining claim abandoned is open for staking from 8 a.m. standard time on the eleventh day after the posting of the order of the recorder made under subsection (6). R.S.O. 1990, c. M.14, s. 70 (7); 1996, c. 1, Sched. O, s. 19 (1).

Idem, abandonment of whole claim

(8) Every mining claim abandoned under subsection (1) is open for staking from 8 a.m. standard time on the eleventh day after the notice of abandonment is filed. R.S.O. 1990, c. M.14, s. 70 (8); 1996, c. 1, Sched. O, s. 19 (2).

Idem, abandonment of part of claim

(9) Where part of a mining claim is abandoned under subsection (2) and no order is made by the recorder under subsection (6), that part of the claim is open for staking from 8 a.m. standard time on the eleventh day after the posting of the notice under subsection (5.1). R.S.O. 1990, c. M.14, s. 70 (9); 1996, c. 1, Sched. O, s. 19 (3); 2001, c. 9, Sched. L, s. 3.

Deemed abandonment of claim

71. (1) Non-compliance by the licensee or holder of a mining claim with any requirement of this Act or the regulations as to the time or manner of the staking out and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefor, shall be deemed to be an abandonment, and the claim shall, without any declaration, entry or act on the part of the Crown or by any officer, unless otherwise ordered by the Commissioner, be forthwith opened to prospecting and staking out. R.S.O. 1990, c. M.14, s. 71 (1).

Saving

(2) Despite subsection (1), where in respect of a **mining claim**, no dispute is on file and,

(a) one year has elapsed since the day of the recording of the claim; or

(b) the first prescribed unit of assessment work has been performed and filed and, where necessary, approved,

the **mining claim** shall be conclusively deemed to have been staked out and recorded in compliance with the requirements of this Act and the regulations. R.S.O. 1990, c. M.14, s. 71 (2).

Forfeiture

Forfeiture of mining claim

72. (1) Except as provided by section 73, all the interest of the holder of a **mining claim** before a lease has issued ceases without any declaration, entry or act on the part of the Crown or by any officer, and the claim is open for prospecting and staking out,

(a) if, without the consent in writing of the recorder or Commissioner, or for any purpose of fraud or deception or other improper purpose the holder removes or causes or procures to be removed any stake or post forming part of the staking out of such **mining claim**, or for any such purpose changes or effaces or causes to be changed or effaced any writing or marking upon any such stake or post;

(b) if the prescribed work is not duly performed and reported as required by section 65 unless an application and payment for a lease of the **mining claim** is made under section 81. R.S.O. 1990, c. M.14, s. 72 (1).

Proceedings as to forfeiture

(2) No person, other than the Minister or an officer of the Ministry or a person interested in the property affected, is entitled to raise any question of forfeiture except by leave of the Commissioner, and proceedings raising questions of forfeiture shall not be deemed to be or be entered as disputes under section 48. R.S.O. 1990, c. M.14, s. 72 (2).

Re-opening after forfeiture

Notice of re-opening

72.1 (1) The recorder shall forthwith record the words "Cancelled/Annulé" with respect to a **mining claim** affected by forfeiture or loss of rights and post a notice of re-opening. 2000, c. 26, Sched. M, s. 9.

Re-staking

(2) Unless they have been withdrawn from prospecting or staking, lands, **mining rights** or **mining claims** affected by a forfeiture or a loss of rights are open for staking from 8 a.m. standard time on the day after the posting of the notice of re-opening. 2000, c. 26, Sched. M, s. 9.

Extension of time

73. (1) A recorder may order an extension of time for performing assessment work or filing a report on such work if an application for the extension is made within 30 days before the time for filing the report expires and the prescribed conditions for an extension are met. 1999, c. 12, Sched. O, s. 31.

When order takes effect

(2) If an order granting an extension is made, it shall be deemed to have been recorded on receipt of the application and the order takes effect at that time. 1999, c. 12, Sched. O, s. 31.

Death of licensee or holder

74. Where a licensee in whose name a **mining claim** has been staked out dies before the claim is recorded or where the holder of a claim dies before issue of the lease for the claim, no other person is, without leave of the Commissioner, entitled to stake out or record a **mining claim** upon any part of the same lands or to acquire any right, privilege or interest in respect thereof within twelve

months after the death of the licensee or holder, and the Commissioner may at any time make such order as the Commissioner considers just for vesting the claim in the representative of such holder and extending the time for performing the work or applying for lease, despite any lapse, abandonment, cancellation, forfeiture or loss of rights under any provision of this Act. R.S.O. 1990, c. M.14, s. 74.

Inspection of Claims

Inspection by Commissioner, recorder or inspector

75. (1) The Commissioner or the recorder may inspect or order an inspection of, and an inspector or other officer appointed by the Minister may inspect, a mining claim at any time with or without notice to the holder for the purpose of ascertaining whether this Act has been complied with, but after one year from the recording of the claim, or after the first prescribed unit of assessment work has been performed, filed and approved, no such inspection shall, unless ordered by the Minister under subsection 76 (5), be made for the purpose of ascertaining whether the claim has been staked out in the prescribed manner. R.S.O. 1990, c. M.14, s. 75 (1).

Notice

(2) A notice under subsection (1) shall be given personally or sent to the holder at the holder's address in the records of the Provincial Recording Office. 1999, c. 12, Sched. O, s. 32.

Reinspection

(2.1) If no notice, or less than seven clear days notice, is given to the holder before the inspection is carried out, the holder may apply to the recorder or the Commissioner for a reinspection within 15 days of the recording of the decision or within a further period of not more than 15 days as is allowed by the Commissioner. 1999, c. 12, Sched. O, s. 32.

Duty to grant reinspection

(2.2) If it appears that the holder has been prejudiced by the failure to give notice or to give sufficient notice, the application for a reinspection shall be granted. 1999, c. 12, Sched. O, s. 32.

View or inspection in disputes, appeals, etc.

(3) The Commissioner or recorder may in any dispute, appeal or other proceeding before him or her make or order, with or without notice, a view or inspection of any mining claim or of any lands or other property. R.S.O. 1990, c. M.14, s. 75 (3).

Inspection report and subsequent cancellation of claim

Filing and entry of report

76. (1) A report of each inspection, except when made merely for the purpose of a dispute, appeal or other proceeding, shall be made in writing by the inspecting officer and shall be filed in the office of the recorder, who shall forthwith enter upon the record of the claim a note stating the effect of the report and the date of the entry. R.S.O. 1990, c. M.14, s. 76 (1).

Cancelling claim upon report

(2) If the recorder is of opinion that upon the report the claim should be cancelled, he or she shall mark the record of the claim "Cancelled/Annulé" and affix his or her signature or initials and shall by mail sent not later than the next day notify the holder of the claim and the disputant and other interested parties, if any, of the receipt and effect of the report, and where the claim is cancelled in consequence of the report, the notice shall so state. R.S.O. 1990, c. M.14, s. 76 (2); 1999, c. 12, Sched. O, s. 33 (1).

Appeal from cancellation

(3) An appeal from the cancellation of the claim may be taken to the Commissioner by the holder of the claim or by the disputant or other interested party, within the time and in the manner provided by section 112. R.S.O. 1990, c. M.14, s. 76 (3).

Notice of re-opening

(4) When a claim is cancelled under this section, the recorder shall forthwith post a notice of re-opening and, unless they have been withdrawn from prospecting or staking, the land or mining rights are open for prospecting and staking from 8 a.m. standard time on the day after the posting of the notice. 2000, c. 26, Sched. M, s. 10.

Effect of appeal

(4.1) Any staking carried out on land opened under subsection (4) is subject to the decision on an appeal under subsection (3). 1999, c. 12, Sched. O, s. 33 (2).

Inspection ordered by Minister

(5) Despite subsections 48 (5) and 71 (2), the Minister may challenge the validity of a mining claim at any time during the life of the claim and may direct the recorder or any other person to inspect the claim in accordance with section 75. R.S.O. 1990, c. M.14, s. 76 (5); 1999, c. 12, Sched. O, s. 33 (3).

Right of holder to copy of report

77. The holder of a mining claim or the disputant or other person interested is entitled on payment of the required fee to receive from the recorder a certified copy of any report of inspection of the claim filed with the recorder. R.S.O. 1990, c. M.14, s. 77; 1997, c. 40, s. 7.

Surface Rights Compensation

Ground assessment work

Notice of intention to perform assessment work

78. (1) A holder of a mining claim who first proposes to do ground assessment work on all or part of the land comprising a mining claim shall give notice of that intention in the prescribed form to the owner, if any, of the surface rights of the part of the land to be affected by the work. 1996, c. 1, Sched. O, s. 21.

Entry on land to perform work

(2) A person who has given notice under this section may enter on the land and perform the work at any time immediately following the day the notice is given. R.S.O. 1990, c. M.14, s. 78 (2).

Where work not to be recorded

(3) The Minister shall not record ground assessment work referred to in subsection (1) unless,

(a) the holder files with the Minister a certificate in the prescribed form and all further evidence that the Minister may require as evidence that the holder gave the required notice;

(b) the Minister determines that it is not feasible in the circumstances to give notice to the owner of the surface rights; or

(c) the owner of the surface rights gives written consent to the performance of the work after it has been performed. 2002, c. 18, Sched. M, s. 3.

Surface rights compensation

Definition

79. (1) In this section and in section 78,

"owner of the surface rights" means a person to whom the surface rights of land have been granted, sold, leased or located. R.S.O. 1990, c. M.14, s. 79 (1).

Right to compensation

(2) Where there is an owner of surface rights of land or where land is occupied by a person who has made improvements thereon that, in the opinion of the Minister, entitles that person to compensation, a person who,

- (a) prospects, stakes out or causes to be staked out a mining claim or an area of land for a boring permit;
- (b) formerly held a mining claim or an area of land for a boring permit that has been cancelled, abandoned or forfeited;
- (c) is the holder of a mining claim or an area of land for a boring permit and who performs assessment work; or
- (d) is the lessee or owner of mining lands and who carries on mining operations,

on such land, shall compensate the owner of the surface rights or the occupant of the lands, as the case may be, for damages sustained to the surface rights by such prospecting, staking out, assessment work or operations. R.S.O. 1990, c. M.14, s. 79 (2).

Right of holder of mining claim, etc., to compensation

(3) Every person who damages mineral exploration workings or claim posts, line posts, tags or surveyed boundary markers delineating mining lands shall compensate the holder of the mining claim or the owner or lessee of the mining lands, as the case may be, for damages sustained. R.S.O. 1990, c. M.14, s. 79 (3).

Determination of compensation by Commissioner

(4) In default of agreement and upon application made in the prescribed form by either party, the amount and the time and manner of payment of compensation under subsection (2) or (3) shall be determined by the Commissioner after a hearing and, subject to appeal to the Divisional Court where the amount claimed exceeds \$1,000, the Commissioner's order is final. R.S.O. 1990, c. M.14, s. 79 (4).

Prohibiting work pending settlement

(5) The Commissioner may order the giving of security for payment of the compensation and may prohibit, pending the determination of the proceeding or until the compensation is paid or secured, further prospecting, staking out or working by any person. R.S.O. 1990, c. M.14, s. 79 (5).

Lien for compensation

(6) The compensation is a special lien upon any mining claim or mining lands, as the case may be, and no further prospecting, staking out or performing of work, except by leave of the Commissioner, shall be done by any person after the time fixed for the payment or securing of the compensation, unless the compensation has been paid or secured as directed. R.S.O. 1990, c. M.14, s. 79 (6).

Power of Commissioner to vary, etc., order

(7) The Commissioner, on notice to all interested parties and for good cause shown, on such terms as seem just, may by subsequent order or award at any time change, supplement, alter, vary or rescind any order made under this section. R.S.O. 1990, c. M.14, s. 79 (7).

Priorities

(8) In a hearing under subsection (4), the Commissioner shall take into account which of the rights was applied for first and, except where injustice would result, shall give the holder of those rights due priority in the consideration of the dispute between the parties. R.S.O. 1990, c. M.14, s. 79 (8).

Filing of agreement or order in office of recorder

(9) Where unpatented mining claims are affected by an agreement entered into in respect of the compensation referred to in subsection (2), or by an order made under subsection (4), the agreement or a certified copy of the order, as the case may be, may

be filed by the person to whom the compensation is payable in the office of the recorder upon payment of the required fee. R.S.O. 1990, c. M.14, s. 79 (9); 1997, c. 40, s. 7.

Registration of order or agreement

(10) Where an unpatented mining claim is subsequently leased, the Minister shall cause any agreement or order filed in the recorder's office under subsection (9) that affects the leased lands to be registered against the lands in the proper land registry office and the person to whom the compensation is payable is entitled to enforce the terms of the agreement or order against the lessee and, subject to the *Registry Act* and the *Land Titles Act*, against any subsequent lessee of the land. R.S.O. 1990, c. M.14, s. 79 (10).

Reduction in area of claim

80. (1) The Commissioner or the recorder may reduce the area of a mining claim staked out where the surface rights have been granted, sold, leased or located, if in his or her opinion an area less than the prescribed area is sufficient for working the mines and minerals therein. R.S.O. 1990, c. M.14, s. 80 (1).

Exclusion of part of surface rights

(2) The Commissioner or the recorder may exclude from any mining claim such part of the surface rights as may be necessary for the occupation and utilization of buildings or improvements erected or made thereon prior to the time the claim was staked out. R.S.O. 1990, c. M.14, s. 80 (2).

Issue of Patent or Lease for Mining Claim

Lease of mining claim

Right to lease of claim

81. (1) Upon compliance with this Act and the regulations and upon payment of the rent for the first year, the holder of a mining claim is entitled to a lease of the claim. R.S.O. 1990, c. M.14, s. 81 (1).

Application for lease

(2) The application and payment for a lease may be made to the recorder at any time after the first prescribed unit of assessment work on a mining claim is performed, filed and, if necessary, approved, and the application shall be accompanied by,

(a) Repealed: 1999, c. 12, Sched. O, s. 35 (1).

(b) if a survey is required under section 95 or 96, a plan of survey approved by the Surveyor General;

(c) an agreement or an order of the Commissioner indicating that surface rights compensation, if any, has been paid, secured or settled; and

(d) the required fee. R.S.O. 1990, c. M.14, s. 81 (2); 1994, c. 27, s. 134 (4); 1997, c. 40, s. 7; 1999, c. 12, Sched. O, s. 35 (1).

Resolution of disputes over encumbrances on mining claim

(2.1) For the purpose of expediting the issuing of a lease under this section, the Commissioner may, upon notice to all interested parties, determine any issues relating to interests or claims affecting an unpatented claim. 1999, c. 12, Sched. O, s. 35 (2).

Term of lease

(3) A lease under this section shall be for a term of twenty-one years at the prescribed rental, payable in advance, for the first year and at the prescribed rate for each subsequent year. R.S.O. 1990, c. M.14, s. 81 (3).

Lease of mining rights

(4) The holder of a mining claim may elect to apply for a lease of the mining rights only. R.S.O. 1990, c. M.14, s. 81 (4).

Rental

(5) Where a lease under this section is for mining rights only, the rental shall be at the prescribed rate for such a lease. R.S.O. 1990, c. M.14, s. 81 (5).

Renewal of lease

(6) Subject to subsections (8), (9) and (10), a lease under this section is renewable for further terms of 21 years. 1999, c. 12, Sched. O, s. 35 (3).

Application

(6.1) Application for a renewal shall be made in the 90-day period before the expiry of the lease or such further period as the Minister considers appropriate. 1999, c. 12, Sched. O, s. 35 (3).

Date of renewal

(6.2) A lease that is renewed shall date from the day after the expiry of the lease. 1999, c. 12, Sched. O, s. 35 (3).

Renewal lease rental

(7) The annual rental for a renewal lease is the prescribed amount, payable in advance. R.S.O. 1990, c. M.14, s. 81 (7).

Refusal to renew lease

(8) The Minister shall refuse to renew a lease unless,

- (a) the production of minerals has occurred continuously for more than one year since the issuance or last renewal of the lease; or
- (b) the lessee has demonstrated to the satisfaction of the Minister a reasonable effort to bring the property into production. R.S.O. 1990, c. M.14, s. 81 (8).

Application referred to Commissioner

(9) The Minister may refer an application for renewal of a lease to the Commissioner, who shall, upon notice to all interested persons and after hearing such of them as appear, report to the Minister thereon with his or her recommendations. R.S.O. 1990, c. M.14, s. 81 (9).

Interest

(9.1) Where payment of the rental under a lease is not paid within the required time, interest at the prescribed rate, compounded annually, shall forthwith be added to the amount owing in each year that the amount remains unpaid. 1999, c. 12, Sched. O, s. 35 (4).

Reduction or waiver of interest owing

(9.2) The Minister may reduce or waive the amount of any interest added to rental payments under subsection (9.1). 2002, c. 18, Sched. M, s. 4.

Termination of lease for arrears of rent

(10) Where payment of the rental under any such lease is in arrears for two years or more, the lease may be terminated by an instrument in writing. R.S.O. 1990, c. M.14, s. 81 (10).

Notice of termination of lease

(11) Where application for renewal of a lease is not made within the time set out in subsection (6) or where a renewal of a lease is refused under subsection (8) or where a lease has been terminated under subsection (10), the Minister may cause a notice of termination to be registered in the proper land registry office, and the land registrar shall, upon receipt of the notice, duly register it, and thereupon all the interests of the lessee, the lessee's heirs, executors, administrators and assigns shall be deemed to have ceased and determined, and the lands included in such lease are revested in the Crown freed and discharged from every claim. R.S.O. 1990, c. M.14, s. 81 (11).

Registration of notice of termination

(12) Upon registration of the notice in the proper land registry office, the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the lands, and the land registrar shall note that fact in the register. R.S.O. 1990, c. M.14, s. 81 (12); 1999, c. 12, Sched. O, s. 35 (5).

Lands vested in Crown on termination of lease

(13) When a lease is terminated under this section, the lease and all rights and powers therein contained, as well as all rights and claims of the lessee, the lessee's heirs, executors, administrators or assigns in or to the lands covered by the lease, cease, and the lands are vested in the Crown, freed and discharged from every claim and are not open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks' notice of which shall be published in *The Ontario Gazette*. R.S.O. 1990, c. M.14, s. 81 (13).

Restriction on transfer etc.

(14) A lease, a renewal of lease or the term or terms that a lease creates shall not be transferred, mortgaged, charged, sublet or made subject to a debenture without the written consent of the Minister or an officer duly authorized by the Minister. 2000, c. 26, Sched. M, s. 12.

Disposition of surface rights

(15) Any surface rights reserved in a lease or renewal thereof may be dealt with under the *Aggregate Resources Act*, or under the *Public Lands Act* or the regulations made under those Acts. R.S.O. 1990, c. M.14, s. 81 (15).

Additional work where area of claim exceeds prescribed size

(16) Where the area of the mining claim exceeds by more than 15 per cent the prescribed size for a mining claim and the claim is not reduced in size under section 97, there shall be performed additional assessment work or moneys paid in lieu thereof as prescribed for the excess area. R.S.O. 1990, c. M.14, s. 81 (16).

Non-application of subs. (16)

(17) The Minister may direct that subsection (16) does not apply where the average area of each claim in a group of contiguous claims held in the name of one or more claim holders does not exceed the size prescribed for a mining claim by more than 15 per cent. 1999, c. 12, Sched. O, s. 35 (6).

Where additional work required

(18) Where additional work is required under subsection (16), the Minister may direct the time within which the work is to be performed and reported. R.S.O. 1990, c. M.14, s. 81 (18).

Leases issued under particular provisions

Definition

82. (1) In this section,

"lease" means a lease, or the renewal of a lease, of mining rights or of surface rights, or of both mining rights and surface rights, issued under,

(a) section 47, 52 or 100 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or a predecessor thereof, or

(b) subsection 176 (3) of this Act, or a predecessor thereof. 1999, c. 12, Sched. O, s. 36 (1).

Amount of rent

(2) Despite any rental that may be provided for in a lease, the annual rental for the lease is as prescribed. 1999, c. 12, Sched. O, s. 36 (1).

Renewal of lease

(3) A lease of mining rights under clause (a) of the definition of "lease" in subsection (1) is renewable for further terms of 10 years. 1999, c. 12, Sched. O, s. 36 (1).

Application

(4) Application for a renewal shall be made in the 90-day period before the expiry of the lease or such further period as the Minister considers appropriate. 1999, c. 12, Sched. O, s. 36 (1).

Date of renewal

(4.1) A lease that is renewed shall date from the day after the expiry of the lease. 1999, c. 12, Sched. O, s. 36 (1).

Interest

(4.2) Where payment of the rental under a lease is not paid within the required time, interest at the prescribed rate, compounded annually, shall forthwith be added to the amount owing in each year that the amount remains unpaid. 1999, c. 12, Sched. O, s. 36 (1).

Reduction or waiver of interest owing

(4.3) The Minister may reduce or waive the amount of any interest added to rental payments under subsection (4.2). 2002, c. 18, Sched. M, s. 5.

Termination of lease for arrears of rent

(5) Where payment of the rental under a lease is in arrears for two years or more, the lease may be terminated by an instrument in writing. R.S.O. 1990, c. M.14, s. 82 (5).

Notice of termination of lease

(6) Where application for renewal of a lease is not made within the time set out in subsection (4) or where a lease has been terminated under subsection (5), the Minister may cause a notice of termination to be registered in the proper land registry office, and the land registrar shall, upon receipt of the notice, duly register it, and thereupon all the interests of the lessee, the lessee's heirs, executors, administrators, successors and assigns shall be deemed to have ceased and determined, and the land included in such lease is revested in the Crown, freed and discharged from every claim. R.S.O. 1990, c. M.14, s. 82 (6); 1996, c. 1, Sched. O, s. 22.

Certain Acts not to apply to forfeited lands

(7) Upon registration of the notice under subsection (5) in the land registry office, the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the lands, and the land registrar shall note that fact in his or her register. R.S.O. 1990, c. M.14, s. 82 (7); 1999, c. 12, Sched. O, s. 36 (2).

Lands vested in Crown on termination of lease

(8) When a lease is terminated under this section, the lease and all rights and powers therein contained, as well as all rights and claims of the lessee, the lessee's heirs, executors, administrators or assigns in or to the lands covered by the lease, cease, and

such lands are vested in the Crown, freed and discharged from every claim and are not open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks' notice of which shall be published in *The Ontario Gazette*. R.S.O. 1990, c. M.14, s. 82 (8).

Lease may be issued under s. 81

(9) The holder of a lease, upon application in writing therefor and upon the surrender of the lease and upon meeting the conditions set out in subsection 81 (8), may be issued a lease under section 81 for a term of twenty-one years and the rental for each year of the term thereof shall be that prescribed for the purposes of section 81 for years after the first year of a term. R.S.O. 1990, c. M.14, s. 82 (9).

Restriction on transfer etc.

(10) A lease, a renewal of lease or the term or terms that a lease creates shall not be transferred, mortgaged, charged, sublet or made subject to a debenture without the written consent of the Minister or an officer duly authorized by the Minister. 2000, c. 26, Sched. M, s. 13.

Exchange of lease

83. (1) The holder of a lease issued under this Act, upon application in the prescribed form to the Minister, accompanied by the required fee, and upon the surrender of the lease, may be issued in exchange for that lease, on such terms and conditions as the Minister considers appropriate, two or more replacement leases. R.S.O. 1990, c. M.14, s. 83 (1); 1997, c. 40, s. 7.

Terms of replacement leases

(2) Replacement leases issued under subsection (1) may be for a different tenure than that of the original lease but they shall,

(a) cover together the same area of land as the surrendered lease covered;

(b) be for a term equal to the balance of the surrendered lease; and

(c) be at the applicable rental rate per hectare, as prescribed. 1996, c. 1, Sched. O, s. 23.

Consolidation of leases

(3) The holder of two or more leases of the same tenure may apply to the Minister to consolidate them into a single lease. 1999, c. 12, Sched. O, s. 37.

Lease of surface rights

84. (1) Upon application by a lessee or owner of mining rights or a holder of a mining licence of occupation, the Minister may lease any available surface rights inside or outside the lands covered by the lease, patent or licence of occupation required by the applicant for any purpose essential to mining or mining exploration, including for constructing a shaft or buildings or disposing of tailings or other waste material. 1999, c. 12, Sched. O, s. 38 (1).

Application for lease of surface rights

(2) An application for a lease of surface rights shall be made in the prescribed form, contain the required fee and provide such details as the Minister requires, including,

(a) the specific purposes for which the surface rights are required;

(b) an adequate description and plan or sketch of the area where the applied for surface rights are located;

(c) the first year's rental; and

(d) proof of ownership of, or of being the holder of the licence of occupation for, the mining lands or mining rights that are the basis of the application. 1999, c. 12, Sched. O, s. 38 (1).

Survey

(3) The Minister may require the applicant to furnish a survey prepared by an Ontario land surveyor and approved by the Surveyor General, and the cost of the survey shall be borne by the applicant. R.S.O. 1990, c. M.14, s. 84 (3); 1994, c. 27, s. 134 (5).

Amount of rent

(4) The annual rental of a lease or renewal under this section is the prescribed amount, payable in advance. R.S.O. 1990, c. M.14, s. 84 (4).

Interest

(4.1) Where payment of the rental under a lease is not paid within the required time, interest at the prescribed rate, compounded annually, shall forthwith be added to the amount owing in each year that the amount remains unpaid. 1999, c. 12, Sched. O, s. 38 (2).

Reduction or waiver of interest owing

(4.2) The Minister may reduce or waive the amount of any interest added to rental payments under subsection (4.1). 2002, c. 18, Sched. M, s. 6.

Term of lease

(5) A lease issued under this section shall be for a term of twenty-one years, but, where the mining lands or mining rights that are the basis of the application are held under a mining lease, the term shall be coterminous with the mining lease. R.S.O. 1990, c. M.14, s. 84 (5).

Application of s. 81 (6, 8-14)

(6) Subsections 81 (6), (8), (9), (9.1), (10), (11), (12), (13) and (14) apply with necessary modifications to leases issued under this section, but, where the mining lands or mining rights that are the basis of the application are held under a mining lease, the renewal term shall be coterminous with the mining lease. R.S.O. 1990, c. M.14, s. 84 (6); 1999, c. 12, Sched. O, s. 38 (3).

Termination of lease where lands forfeited

(7) Where the mining lands or mining rights that are the basis for a lease issued under this section are revested in or are forfeited or revert to the Crown, the lease is forfeited, and subsections 81 (11), (12) and (13) apply. R.S.O. 1990, c. M.14, s. 84 (7).

Holder of lease and holder of land to be same person

(8) Where the holder of a lease issued under this section ceases to be the holder of the lands or mining rights in respect of which the lease was issued, the lease is forfeited, and subsections 81 (11), (12) and (13) apply. R.S.O. 1990, c. M.14, s. 84 (8).

Lease void where lands used other than for mining industry

85. The lands, surface rights or mining rights held under a lease that has been or will be issued under this Act shall be used solely for the purposes of the mining industry, and, in default thereof and on the recommendation of the Commissioner, the Lieutenant Governor in Council may declare the lease void, and subsections 81 (11), (12) and (13) apply. R.S.O. 1990, c. M.14, s. 85.

Reservations, etc., in leases

86. (1) Every lease issued under this Act shall contain the following reservations or provisions:

Reservation for roads

1. Provided that nothing whatsoever herein contained shall prevent or interfere with the free user of any public or travelled road or highway crossing the hereinbefore described premises.

Reservation for power, petroleum, etc.

2. Reserving unto Us, Our Heirs and Successors such use of the land hereby demised for all such works as may be necessary for the development of water power and the development, transmission and distribution of electrical power, natural gas, petroleum and petroleum products, including the construction, maintenance and operation of roads, railroads, transmission lines and stations, flumes, pipelines, dams, power houses and other works and structures without any liability by Us to the Lessee.

Reservation for railways

3. Reserving the right to grant without compensation to any person or corporation the right-of-way necessary for the construction and operation of one or more railways over or across the lands herein leased without let or hindrance from the Lessee where such railway or railways shall not manifestly or materially interfere with the mining operations carried on upon the said premises.

Reservation for navigable waters

4. Saving, Excepting and Reserving unto Us, Our Heirs and Successors the free use, passage and enjoyment of, in, over and upon all navigable waters which shall or may hereafter be found on or under or to be flowing through or upon any part of the said parcel or tract of land hereby demised as aforesaid and reserving also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons, together with the right to use so much of the banks thereof not exceeding one chain in depth from the highwater mark as may be necessary for fishery or public purposes.

Provided that, should the premises herein described or any part thereof be covered by navigable waters, this lease shall be subject to the provisions of the *Navigable Waters Protection Act* (Canada), the *Beds of Navigable Waters Act* and the *Lakes and Rivers Improvement Act*.

Reservation for fishing

5. Provided that nothing herein contained shall in any manner restrict fishing or fishing rights in any navigable waters covering the premises hereby demised and that the Lessee shall not do any act resulting in damage to fishing or the fishing industry in the waters or to nets or other appliances used in fishing in the waters.

Reservation for land under navigable waters

6. Provided that these presents shall not vest in the Lessee any right, claim or title to the land under navigable waters which may be included within the limits of the herein described premises, but the Lessee shall have the exclusive right to extract the minerals therefrom during the term of these presents. R.S.O. 1990, c. M.14, s. 86 (1).

Where item 2 of subs. (1) does not apply

(2) Item 2 of subsection (1) does not apply to a lease of the mining rights only. R.S.O. 1990, c. M.14, s. 86 (2).

Other reservations

(3) The Minister may direct the inclusion of other reservations or provisions provided for in this Act or not inconsistent with the intent of this Act. R.S.O. 1990, c. M.14, s. 86 (3).

Omission of reservations, etc.

(4) The Minister may omit reservations or provisions contained in subsection (1) from a lease issued under section 84 where such reservations or provisions are contrary to the purpose of the lease. R.S.O. 1990, c. M.14, s. 86 (4).

Reservation for roads

87. (1) Every patent or lease issued under this Act shall contain a reservation for road purposes of 10 per cent of the surface rights of the land granted or leased, as the case may be, and the Crown or its officers or agents may lay out and construct roads where considered proper on the lands so granted or leased. R.S.O. 1990, c. M.14, s. 87 (1).

Reservation of surface rights

(2) Every patent or lease issued under this Act shall contain a reservation of the surface rights on and over any public or colonization road or any highway crossing the land granted or leased at the date of issue of the patent or lease. R.S.O. 1990, c. M.14, s. 87 (2).

Exception

(3) Subsections (1) and (2) do not apply to patents or leases of the mining rights only. R.S.O. 1990, c. M.14, s. 87 (3).

Reservation of land to read as reservation of surface rights

(4) Where a patent or lease has been issued under this Act or any predecessor thereof containing a reservation for road purposes of 5 per cent or of 10 per cent of the lands granted, and the Crown or its officers or agents did not occupy lands under such reservation, prior to the 1st day of May, 1963, for laying out and constructing roads, such reservation shall now read as a reservation of 5 per cent of the surface rights or 10 per cent of the surface rights, as the case may be. R.S.O. 1990, c. M.14, s. 87 (4).

Form of patent

88. Every patent of Crown lands or mining rights by which it is intended to vest in the patentee the mines and minerals therein or a part thereof or any rights in connection therewith shall state that it was issued under this Act or the former Act under which it was issued. R.S.O. 1990, c. M.14, s. 88.

Disposal of surface rights

89. (1) In a patent or lease of a mining claim, the Minister shall reserve all surface rights and other rights excluded by or withdrawn under this Act or that have otherwise been alienated by the Crown. R.S.O. 1990, c. M.14, s. 89 (1).

Disposition of surface rights

(2) Any surface rights reserved under this section may be dealt with under the *Aggregate Resources Act* or under the *Public Lands Act* or the regulations made under those Acts. R.S.O. 1990, c. M.14, s. 89 (2).

Patents issued under this Act to vest minerals

90. (1) Every patent of Crown lands that purports to be issued under this Act, unless it is otherwise expressly stated, vests in the patentee of the estate thereby granted all title of the Crown in such lands and all mines and minerals therein. R.S.O. 1990, c. M.14, s. 90 (1).

Application of Conveyancing and Law of Property Act

(2) Despite section 19 of the *Conveyancing and Law of Property Act*, where a patent or lease of a mining claim was or is issued under this Act on or after the 1st day of July, 1914, and the patent or lease reserves the surface rights, section 16 of the *Conveyancing and Law of Property Act* applies if the surface rights were the property of the Crown and were not applied for or occupied at the time that the mining claim was staked out and recorded. R.S.O. 1990, c. M.14, s. 90 (2).

Condition of patent ores to be treated in Canada

91. (1) All lands, claims or mining rights patented, leased or otherwise disposed of under this or any other Act or by any authority whatsoever are subject to the condition that all ores or minerals raised or removed therefrom shall be treated and refined in Canada so as to yield refined metal or other product suitable for direct use in the arts without further treatment, in default whereof the Lieutenant Governor in Council may declare the lease, patent or other form of title of such lands, claims or mining rights to be void, and the order in council so declaring shall be registered in the proper land registry office, or in the case of a licence of occupation, filed in the Minister's office, whereupon such lands, claims or mining rights revert to and become vested in Her Majesty, Her heirs and successors, freed and discharged of any interest or claim of any other person. R.S.O. 1990, c. M.14, s. 91 (1).

Idem

(2) For the purposes of subsection (1), the Minister may determine the stage of refinement at which any mineral substance is refined metal or other product suitable for direct use in the arts without further treatment. R.S.O. 1990, c. M.14, s. 91 (2).

Exemptions

(3) The Lieutenant Governor in Council may exempt any lands, claims or mining rights from the operation of this section for such period of time as seems proper. R.S.O. 1990, c. M.14, s. 91 (3).

Where conflict, section prevails

(4) Where there is any conflict between the provisions of this section and the provisions of any general or special Act, the provisions of this section prevail. R.S.O. 1990, c. M.14, s. 91 (4).

Reservation of trees and right of entry

92. (1) Every patent or lease of Crown lands issued under this Act shall contain a reservation to the Crown of all timber and trees standing, being or hereafter found growing upon the lands thereby granted or leased, and of the right to enter upon such lands to carry on forestry, to cut and remove any timber or trees thereon, and to make necessary roads for such purposes. R.S.O. 1990, c. M.14, s. 92 (1).

Exercise of rights reserved

(2) The rights reserved in subsection (1) may be exercised by any person holding a licence or permit from the Crown when authorized to do so by the Minister. R.S.O. 1990, c. M.14, s. 92 (2).

Ownership of trees remains in Crown

(3) All timber and trees on Crown lands that have been staked out and recorded under this Act remain the property of the Crown, and the Crown may enter upon such lands to carry on forestry, to cut and remove any timber or trees thereon, and to make necessary roads for such purpose. R.S.O. 1990, c. M.14, s. 92 (3).

Conditions under which holder, owner or lessee may cut trees

(4) Despite subsections (1) and (3) and subject to subsections (5) and (6), the recorded holder of a mining claim staked on Crown lands or the owner or lessee of lands acquired under this Act may cut such trees on the lands so staked or acquired as may be necessary for building, fencing or fuel purposes or for any other purpose necessary for the development or working of the minerals thereon. R.S.O. 1990, c. M.14, s. 92 (4).

Idem

(5) Where a licence or permit from the Crown to cut timber on the land has not been granted, the recorded holder, owner or lessee may, on application to the Minister, be granted permission to cut and use the trees for the purposes mentioned in subsection (4) either without payment or on such terms and conditions as the Minister imposes. R.S.O. 1990, c. M.14, s. 92 (5).

Idem

(6) Where a licence or permit from the Crown to cut timber on the lands has been granted, the recorded holder, owner or lessee shall compensate the timber licensee or permittee for the trees cut or used by the holder, owner or lessee. R.S.O. 1990, c. M.14, s. 92 (6).

Determination of disputes

(7) Where a dispute arises between the recorded holder, owner or lessee and the timber licensee or permittee as to the value or quantity of the trees cut or used under subsection (6), the Minister shall determine the dispute and his or her decision is final. R.S.O. 1990, c. M.14, s. 92 (7).

Holder, etc., of mining rights not to cut trees

(8) This section does not confer upon the recorded holder, owner or lessee of the mining rights any right to cut trees upon the lands on which the holder, owner or lessee has staked or acquired only the mining rights. R.S.O. 1990, c. M.14, s. 92 (8).

Cancellation of erroneous patents

93. Where letters patent, leases, licences or other instruments of title have been issued to or in the name of the wrong person through mistake, or contain any clerical error or misnomer, or a wrong description of the land intended to be granted, the Deputy Minister, if there is no adverse claim and whether or not the land has been registered under the *Land Titles Act* or the *Registry Act*, may direct the defective instrument to be cancelled and a correct one to be issued in its stead and the corrected instrument shall relate back to the date of the one so cancelled and has the same effect as if issued on the date of the cancelled instrument. R.S.O. 1990, c. M.14, s. 93.

Surveys under annulments

94. Where patents, leases, licences or other instruments of title have been issued under this Act for any land or mining rights affected by an annulment under subsection 7 (1) of the *Public Lands Act*, the Deputy Minister, whether or not the land has been registered under the *Land Titles Act* or the *Registry Act*, may cause such instrument of title to be cancelled and an instrument containing a revised description of the land or mining rights to be issued in its stead, and the corrected instrument shall relate back to the date of the one so cancelled and has the same effect as if issued on the date of the cancelled instrument. R.S.O. 1990, c. M.14, s. 94.

Survey of Claim

Surveys

When survey required in unsurveyed territory

95. (1) Before a lease or licence of occupation of a mining claim in unsurveyed territory is applied for, the claim shall be surveyed by an Ontario land surveyor at the expense of the applicant, but no survey of a mining claim, except a perimeter survey consented to by the Minister under subsection (3), shall be made without the written consent of the recorder. R.S.O. 1990, c. M.14, s. 95 (1).

Prescribed methods of surveying

(2) Subject to the *Surveys Act*, the prescribed methods and procedures shall be followed in the surveying of mining claims unless the Minister orders otherwise. R.S.O. 1990, c. M.14, s. 95 (2); 2001, c. 9, Sched. L, s. 4.

Perimeter survey

(3) Where two or more mining claims in unsurveyed territory are contiguous and are recorded in the same name, the Minister may, in special circumstances and upon application therefor, consent to a perimeter survey being made of the circumference of the contiguous claims in lieu of a survey under subsection (1). R.S.O. 1990, c. M.14, s. 95 (3).

Minister to issue written instructions

(4) Where the Minister consents to a perimeter survey being made under subsection (3), he or she shall issue written instructions prescribing its conduct and filing. R.S.O. 1990, c. M.14, s. 95 (4).

Additional work where area exceeds prescribed size

(5) Where a perimeter survey is made under subsection (3), the rental shall be computed on the total area of the claims within the perimeter survey and, where the average area of the claims within the perimeter survey exceeds by more than 15 per cent the prescribed size for a mining claim, there shall be performed additional assessment work or money paid in lieu thereof as prescribed for the excess area. R.S.O. 1990, c. M.14, s. 95 (5).

Where additional work required

(6) Where additional work is required under subsection (5), the Minister may set out in an order the time within which such work is to be performed and recorded. R.S.O. 1990, c. M.14, s. 95 (6).

Inspection before perimeter survey made

(7) Before a perimeter survey is made, the Minister may order the inspection of the mining claims proposed to be included in the perimeter survey and an inspector or other officer of the Ministry shall prepare and submit to the Minister a report and plan according to the instructions provided by the Minister and the survey shall not be directed to be made unless the Minister is satisfied that the requirements of this Act have been complied with. R.S.O. 1990, c. M.14, s. 95 (7).

Fee

(8) The fee for an inspection under subsection (7) is the amount set by the Minister, payable in advance, and the Minister may require the applicant to provide the inspector with suitable transportation to the location of the claims. R.S.O. 1990, c. M.14, s. 95 (8); 1997, c. 40, s. 2.

Cancellation of work

(9) Where, after a perimeter survey has been made, one or more of the claims within the perimeter survey is cancelled for any reason or where the holder of a recorded interest ceases to be the holder of an undivided interest in the whole, the survey is void, and thereupon the recorder shall cancel the entry on the record and he or she shall also cancel the work recorded on account of the survey. R.S.O. 1990, c. M.14, s. 95 (9).

Minister may direct survey of claim in surveyed territory

96. Where, upon an application for a lease or licence of occupation of a mining claim in surveyed territory, the Minister is of opinion that a survey is necessary, he or she may direct that a survey thereof be made at the expense of the applicant, and the survey, unless otherwise ordered, shall comply with the same requirements as a survey of a mining claim or the perimeter survey of mining claims in unsurveyed territory. R.S.O. 1990, c. M.14, s. 96.

Reduction of area of claim

97. (1) If it is found upon a survey required or authorized by this Act that the area of a mining claim exceeds the prescribed size, the Minister may reduce the area to the prescribed size or thereabouts in any way he or she sees fit. R.S.O. 1990, c. M.14, s. 97 (1).

Lands accidentally omitted, disposition of gores and fractions

(2) Where two or more mining claims in unsurveyed territory are contiguous and constitute a group recorded in the name of one holder and it was the manifest intention of the applicant or applicants, as shown by the sketch or sketches accompanying the application or applications for the same, to include as part of such mining claims all lands and lands under water within the limits of such group, and a survey shows that certain of the lands or lands under water are not so included, such lands or lands under water shall nevertheless be deemed to be part and parcel of the claim or claims in which it was the manifest intention that they should be included, and where two or more mining claims are contiguous and are recorded in the name or names of more than one holder, any fraction or gore shown or created by a survey is not open for staking out until the Minister so directs, and the Minister, on the report of the Surveyor General, may award such fraction or gore, or part thereof, to the recorded holder or holders of either or both of the contiguous claims, or may sell, lease, or otherwise dispose of the same as he or she sees fit without requiring such fraction or gore to be staked out as a mining claim. R.S.O. 1990, c. M.14, s. 97 (2).

PART III (s. 98) Repealed: 1997, c. 40, s. 3.

PART IV OIL, GAS AND UNDERGROUND STORAGE

Application

99. This Part applies to Crown land lying north of the 51st parallel of latitude and to Crown land lying south and east of the Mattawa River, Lake Nipissing and the French River. 1998, c. 18, Sched. I, s. 40.

Exploration licences

100. The Minister may issue exploration licences for the purposes of exploring and drilling for oil and gas on Crown land. 1998, c. 18, Sched. I, s. 40.

Production leases

101. The Minister may issue production leases for the drilling for and production of oil and gas from Crown land. 1998, c. 18, Sched. I, s. 40.

Storage leases

101.1 (1) The Minister may issue storage leases for the temporary storage of hydrocarbons and other prescribed substances in underground formations on Crown land. 2000, c. 26, Sched. L, s. 6 (2).

Same

(2) A storage lease does not authorize the permanent disposal of any substance. 2000, c. 26, Sched. L, s. 6 (2).

Overlapping licences and leases

101.2 Despite the definition of "Crown land" in section 1, the Minister may issue an exploration licence, production lease or storage lease under this Part in respect of land that is already subject to a licence or lease under this Part. 2000, c. 26, Sched. L, s. 6 (2).

Licence and lease regulations

102. (1) The Minister may make regulations,

- (a) prescribing other substances for the purpose of section 101.1;
- (b) respecting the tendering of exploration licence and storage lease rights;
- (c) respecting the application for and issuance of exploration licences, production leases and storage leases;
- (d) respecting the terms and conditions of exploration licences, production leases and storage leases;
- (e) respecting exploration licence, production lease and storage lease rentals, royalties and other payments;
- (f) respecting minimum exploration licence work requirements;
- (g) respecting the transfer, assignment, surrender and termination of exploration licences, production leases and storage leases;
- (h) respecting the disposition or tendering of exploration licence, production lease and storage lease rights on cancellation or termination of an exploration licence, production lease or storage lease. 2000, c. 26, Sched. L, s. 6 (3).

Previous regulations

(2) The regulations made by the Lieutenant Governor in Council under this section, as it read immediately before this subsection came into force, shall be deemed to have been made by the Minister under subsection (1). 2000, c. 26, Sched. L, s. 6 (3).

PART V**COMMENCEMENT OF SURFACE MINING OF NON-METALLIC MINERALS****Commencement of surface mining**

103. (1) A person who proposes to commence the surface mining on Crown land of non-metallic minerals, excluding natural gas, petroleum and aggregate as defined in the *Aggregate Resources Act*, shall proceed by complying with the requirements of Part II of this Act. 1994, c. 27, s. 134 (6).

Same

(2) A person who proposes to commence the surface mining on Crown land of aggregate as defined in the *Aggregate Resources Act* shall proceed by applying for and obtaining an aggregate permit or a licence under the *Aggregate Resources Act* and may also obtain a lease from the Crown for the lands affected by complying with the provisions of Part II of this Act. 1994, c. 27, s. 134 (6).

Staking out of mining claim

104. Although an aggregate permit or a licence has been obtained under the *Aggregate Resources Act*, any licensee under this Act may stake out a mining claim or claims on Crown land affected by the permit or licence, in which case the provisions of this

Act apply and any question of property damage shall be determined in the manner set out in section 79. R.S.O. 1990, c. M.14, s. 104.

PART VI MINING AND LANDS COMMISSIONER

Jurisdiction

105. Except as provided by section 171, no action lies and no other proceeding shall be taken in any court as to any matter or thing concerning any right, privilege or interest conferred by or under the authority of this Act, but, except as in this Act otherwise provided, every claim, question and dispute in respect of the matter or thing shall be determined by the Commissioner, and in the exercise of the power conferred by this section the Commissioner may make such order or give such directions as he or she considers necessary to make effectual and enforce compliance with his or her decision. R.S.O. 1990, c. M.14, s. 105.

Crown patents

106. (1) The Commissioner has no power or authority to declare forfeited or void or to cancel or annul any Crown patent issued for lands, mining land, mining claims or mining rights, but every action and every proceeding to declare forfeited or void or to cancel or annul any such Crown patent may be brought or taken in the Superior Court of Justice. R.S.O. 1990, c. M.14, s. 106 (1); 2000, c. 26, Sched. M, s. 17.

Where cancellations permitted

(2) Subsection (1) does not apply to cancellations or forfeitures provided for in this Act or in the patent. R.S.O. 1990, c. M.14, s. 106 (2).

Transfer of proceeding to Superior Court of Justice

107. A party to a proceeding under this Act brought before the Commissioner and involving any right, privilege or interest or in connection with any patented lands, mining lands, mining claims or mining rights, may, at any stage of the proceeding, apply to the Superior Court of Justice for an order transferring the proceeding to that court. R.S.O. 1990, c. M.14, s. 107; 2000, c. 26, Sched. M, s. 17.

Reference from court to Commissioner

108. Where in the opinion of the court in which an action is brought the proceeding may be more conveniently dealt with or disposed of by the Commissioner, the court may, upon the application of a party or otherwise and at any stage of the proceeding, refer the action or any question therein to the Commissioner as a referee on such terms as to the court seems just and the Commissioner shall thereafter give directions for the continuance of the proceeding before him or her, and, subject to the order of reference, all costs are in his or her discretion. R.S.O. 1990, c. M.14, s. 108.

Transfer from court to Commissioner

109. Where a proceeding that should have been taken before the Commissioner is brought in a court, the court may, upon the application of a party or otherwise and at any stage of the proceeding, transfer it to the Commissioner. R.S.O. 1990, c. M.14, s. 109.

Disputes

110. (1) A recorder may hear and, subject to the right of appeal provided in section 112, determine disputes between persons with respect to unpatented mining claims. 1999, c. 12, Sched. O, s. 39 (1).

Same

(2) If a dispute relates to whether the provisions of this Act regarding mining claims have been complied with, the recorder shall hear and determine the dispute unless,

(a) the Commissioner orders otherwise; or

(b) the Commissioner agrees to hear and determine the question pursuant to a request made by the recorder. 1999, c. 12, Sched. O, s. 39 (1).

Note of decision

(3) The recorder shall forthwith,

(a) record a detailed note of all decisions that he or she makes; and

(b) notify all persons affected by a decision. 1999, c. 12, Sched. O, s. 39 (1).

(4) Repealed: 1999, c. 12, Sched. O, s. 39 (2).

Finality of decision

(5) The decision of the recorder is final and binding unless appealed from as provided in section 112. R.S.O. 1990, c. M.14, s. 110 (5).

Recorder may order the removal of witness posts, etc.

(6) The recorder may make an order directing a holder,

(a) to move, remove or alter corner posts, line posts or witness posts and the writing or inscribing thereon;

(b) to blaze, re-blaze, move or alter existing or missing claim lines;

(c) to place or replace metal tags that are missing or have been removed or destroyed after having been affixed to any posts; or

(d) to place or replace missing or defective posts and to affix tags to such posts.

and the recorder shall set out in the order the time within which the work shall be completed and reported to the recorder. R.S.O. 1990, c. M.14, s. 110 (6).

(7) Repealed: 1999, c. 12, Sched. O, s. 39 (3).

Recorder may extend time or cancel claim

(8) Where the work set out in an order under subsection (6) has not been completed within the time set out in the order, the recorder may extend the time for completing the work or may cancel the claim or claims on which the work was to have been done and shall, in the case of cancellation, by mail sent not later than the next day after the cancellation, notify the holder of the recorder's action and the reason therefor. R.S.O. 1990, c. M.14, s. 110 (8); 1999, c. 12, Sched. O, s. 39 (4).

Application

(9) This section applies to the manner in which the metal tags have been affixed to the corner posts although the time prescribed for affixing the tags has not expired. R.S.O. 1990, c. M.14, s. 110 (9).

Application of subss. (6), (8) and (9)

(10) Subsections (6), (8) and (9) apply whether there is a dispute under this section or not. 1999, c. 12, Sched. O, s. 39 (5).

Proceedings before recorder

Directions as to conduct of proceedings

111. (1) The recorder may give directions for the conduct and carrying on of proceedings before him or her, and in so doing the cheapest and simplest methods of determining the questions arising that afford to all interested parties an adequate opportunity of

knowing the issues in the proceedings and of presenting material and making representations on their behalf shall be adopted. R.S.O. 1990, c. M.14, s. 111 (1).

Reasons for decision

(2) The recorder shall give reasons for any decision made in proceedings before him or her. R.S.O. 1990, c. M.14, s. 111 (2).

Enforcement of decision

(3) A copy of the final decision of a recorder may be filed with the Superior Court of Justice under section 19 of the *Statutory Powers Procedure Act*, which applies thereto. R.S.O. 1990, c. M.14, s. 111 (3); 2000, c. 26, Sched. M, s. 17.

Application of *Statutory Powers Procedure Act*

(4) Except as provided in subsection (3), the *Statutory Powers Procedure Act* does not apply to proceedings before the recorder. R.S.O. 1990, c. M.14, s. 111 (4).

Appeal to Commissioner

112. (1) A person affected by a decision of or by any act or thing, whether ministerial, administrative or judicial, done, or refused or neglected to be done by a recorder may appeal to the Commissioner. R.S.O. 1990, c. M.14, s. 112 (1).

Where public interest affected

(2) Where, in the opinion of the Minister, the public interest is affected by a decision, act or thing mentioned in subsection (1), an officer or employee of the Ministry designated by the Minister for that purpose may,

(a) be added as a party to an appeal taken under subsection (1); or

(b) take an appeal under subsection (1), in which case no fee in respect of the appeal is payable. R.S.O. 1990, c. M.14, s. 112 (2).

Appeal

(3) An appeal to the Commissioner shall be by notice of appeal in the prescribed form. 1999, c. 12, Sched. O, s. 40.

Service and filing of appeal

(4) The appellant shall file the notice of appeal with the Commissioner and serve it on the recorder and all other affected parties within 30 days after the recording of the decision or the doing of the other act or thing that is the subject of the appeal. 1999, c. 12, Sched. O, s. 40.

Extension of time for service

(5) If an appeal has been properly filed but service has not been effected in accordance with subsection (4) despite reasonable efforts to do so and the Commissioner is otherwise satisfied that the case is a proper one for appeal, the Commissioner may extend the time for service and may make such order for substitutional or other service as he or she considers just. 1999, c. 12, Sched. O, s. 40.

Appeal by affected person

(6) The Commissioner may allow a person other than the appellant to appeal the decision, act or thing if the person,

(a) is affected by the decision, act or thing;

(b) has not been notified as provided under section 76 or 110;

(c) has apparently suffered substantial injustice; and

(d) has not caused undue delay. 1999, c. 12, Sched. O, s. 40.

Service

(7) The notice of appeal shall indicate an address in Ontario at which the appellant may be served with any notice or document relating to the appeal. 1999, c. 12, Sched. O, s. 40.

Sufficient service

(8) A notice or document is sufficiently served on the appellant if it is left with an adult at that address or if it is sent to the appellant at that address. 1999, c. 12, Sched. O, s. 40.

Same

(9) If no address for service is given as required under subsection (7), any notice or document relating to the appeal may be served on the appellant by posting a copy of it. 1999, c. 12, Sched. O, s. 40.

Hearing

113. The Commissioner shall determine,

(a) an appeal from a recorder, after a hearing by way of a new hearing; and

(b) a dispute referred to in section 48 or a claim, question, dispute or other matter within his or her jurisdiction after a hearing,

pursuant to an appointment fixing the time and place for the hearing. R.S.O. 1990, c. M.14, s. 113.

Application for appointment for hearing

114. (1) Application to the Commissioner for an appointment for a hearing may be made in writing by any party to the proceeding upon such notice and to such persons as the Commissioner directs and shall be accompanied by the required fee for recording any order made by the Commissioner in the matter. R.S.O. 1990, c. M.14, s. 114 (1); 1997, c. 40, s. 7.

Time for hearing

(2) The Commissioner may fix such time for a hearing as will permit the matter to be disposed of as promptly as possible, allowing adequate time to the parties to prepare their cases but, unless all parties consent thereto, the hearing shall be held not less than ten days after service of the appointment for the hearing on the parties. R.S.O. 1990, c. M.14, s. 114 (2).

Place for a hearing

(3) The Commissioner shall select as the place for a hearing such place as he or she considers most convenient for the parties in the district, upper-tier municipality or local municipality or in one of them in which the lands or mining rights affected are situate unless it appears to the Commissioner desirable that the hearing should be in some other municipality or district. 2002, c. 17, Sched. F, Table.

Leave for hearing

(4) In any matter or proceeding, other than an appeal, in any case where leave to take the proceeding is necessary, the Commissioner may give leave upon such terms as to security for costs or otherwise as the Commissioner considers just. R.S.O. 1990, c. M.14, s. 114 (4).

Service of appointment for hearing

115. (1) The Commissioner shall cause a copy of an appointment for a hearing before him to be served upon all parties, which shall, except in the case of an appeal or a dispute under section 48, state briefly the particulars of the right or question in issue or of the dispute. R.S.O. 1990, c. M.14, s. 115 (1).

Hearing may proceed in absence of party

(2) The appointment shall state that if a person has been served and does not attend the hearing, the Commissioner may proceed in that person's absence and that person is not entitled to notice of any further proceedings. R.S.O. 1990, c. M.14, s. 115 (2).

Statutory Powers Procedure Act

(3) Service of the appointment by mail constitutes reasonable notice for the purpose of subsection 6 (1) of the *Statutory Powers Procedure Act*, 1999, c. 12, Sched. O, s. 41.

Powers of Commissioner re proceedings

116. (1) Sections 114 and 115 apply despite the *Statutory Powers Procedure Act* and, subject to that Act, the Commissioner may,

- (a) give directions for having any matter or proceeding heard and decided without unnecessary formality;
- (b) order the filing or serving of statements, particulars, objections or answers, the production of documents and things, under oath or otherwise, and the making of amendments;
- (c) give such other directions respecting the procedure and hearing as he or she considers proper;
- (d) make any appointment, notice or other proceeding returnable forthwith or at such time as he or she considers proper;
- (e) order or allow such substituted or other service as he or she considers proper;
- (f) upon the application of a party to the proceedings, order the examination of any other party before an official examiner appointed under the *Courts of Justice Act*; and

(g) order any party to the proceedings who intends to present evidence at the hearing to file with the Commissioner and serve on each of the other parties, prior to the appearance of any witness and within such time as the Commissioner directs, a statement indicating the evidence intended to be relied upon. R.S.O. 1990, c. M.14, s. 116 (1).

Taking of evidence

(2) The Commissioner may take or order the evidence of any witness to be taken at any place in or out of Ontario. R.S.O. 1990, c. M.14, s. 116 (2).

Decision of Commissioner

117. Despite the *Statutory Powers Procedure Act*, the Commissioner may hear and dispose of any application not involving the final determination of the matter or proceeding, either on or without notice, at any place he or she considers convenient, and his or her decision upon any such application is final and is not subject to appeal but, where the Commissioner makes his or her decision without notice, he or she may later reconsider and amend such decision. R.S.O. 1990, c. M.14, s. 117.

Expert assistance

118. The Commissioner may obtain the assistance of engineers, surveyors or other scientific persons who may under his or her order view and examine the property in question, and in giving a decision the Commissioner may give such weight to their opinion or report as he or she considers proper. R.S.O. 1990, c. M.14, s. 118.

Commissioner may call for evidence and view property

119. (1) The Commissioner, in addition to hearing the evidence adduced by the parties, may require and receive such other evidence as he or she considers proper, and may view and examine the property in question and give a decision upon such evidence or view and examination, or may appoint a person to make an inspection of the property, and may receive as evidence and act upon the report of the person so appointed. R.S.O. 1990, c. M.14, s. 119 (1).

Statement of view or special knowledge

(2) Where the Commissioner proceeds partly on a view or on any special knowledge or skill possessed by himself or herself, he or she shall put in writing a statement of the same sufficiently full to enable a judgment to be formed of the weight that should be given thereto. R.S.O. 1990, c. M.14, s. 119 (2).

View only

(3) Where the parties consent in writing, the Commissioner may proceed wholly upon a view, and in such case his or her decision is final and is not subject to appeal. R.S.O. 1990, c. M.14, s. 119 (3).

Disclosure of evidence to parties

120. Where the Commissioner receives any opinion, report or evidence under section 118 or 119 in any proceeding before him or her, the opinion, report or evidence shall be disclosed to the parties to the proceeding who, if they so request, shall be afforded an opportunity of cross-examining the person expressing the opinion, making the report or giving the evidence. R.S.O. 1990, c. M.14, s. 120.

Decision on the merits

121. The Commissioner shall give a decision upon the real merits and substantial justice of the case. R.S.O. 1990, c. M.14, s. 121.

Security for costs

122. Where the Commissioner considers the matter or proceeding vexatious or where it is brought by a person residing out of Ontario, the Commissioner may order that such security for costs as he or she considers proper be given and that in default of such security being given within the time limited or in default of speedy prosecution the matter or proceeding be dismissed. R.S.O. 1990, c. M.14, s. 122.

Use of court rooms, etc.

123. Where the hearing is to be held at a place where a court house is situate, the Commissioner has the right to use the court room, and where the hearing is to take place in a municipality in which there is a hall belonging to the municipality, but no court room, the Commissioner has the right to use the hall. R.S.O. 1990, c. M.14, s. 123.

Sheriffs, etc., to assist

124. Sheriffs, deputy sheriffs, constables and other peace officers shall aid, assist and obey the Commissioner in the exercise of the powers conferred on the Commissioner by this Act whenever required to do so and shall upon the certificate of the Commissioner be paid the same fees as for similar services in carrying out the orders of a judge of the Superior Court of Justice. R.S.O. 1990, c. M.14, s. 124; 2000, c. 26, Sched. M, s. 17.

Recording of evidence

125. The evidence taken before the Commissioner shall be recorded and, if required, copies or a transcript thereof shall be furnished upon the same terms as in the Superior Court of Justice. R.S.O. 1990, c. M.14, s. 125; 2000, c. 26, Sched. M, s. 17.

Costs

126. The Commissioner may in his or her discretion award costs to any party, and may direct that such costs be assessed by an assessment officer or may order that a lump sum be paid in lieu of assessed costs. R.S.O. 1990, c. M.14, s. 126.

Scale of costs

127. (1) The costs and disbursements payable upon proceedings before the Commissioner shall be according to the tariff of the Superior Court of Justice. R.S.O. 1990, c. M.14, s. 127 (1); 2000, c. 26, Sched. M, s. 17.

Counsel fees

(2) The Commissioner has the same powers as an assessment officer of the Superior Court of Justice with respect to counsel fees. R.S.O. 1990, c. M.14, s. 127 (2); 2000, c. 26, Sched. M, s. 17.

Witness fees

128. The fee and attendance money to be paid to a witness before the Commissioner or recorder shall be according to the Superior Court of Justice scale. R.S.O. 1990, c. M.14, s. 128; 2000, c. 26, Sched. M, s. 17.

Decision of Commissioner

Form of decision

129. (1) Except where inapplicable, the decision of the Commissioner shall be in the form of an order or judgment, but need not show upon its face that any proceeding or notice was had or given or that any circumstance existed necessary to give jurisdiction to make the order or judgment. R.S.O. 1990, c. M.14, s. 129 (1).

When order of Commissioner takes effect

(2) Every order or judgment of the Commissioner shall take effect immediately upon its signing, subject to any express provision therein. R.S.O. 1990, c. M.14, s. 129 (2).

Oral reasons

(3) Despite section 17 of the *Statutory Powers Procedure Act*, the reasons for a decision of the Commissioner may be delivered orally. R.S.O. 1990, c. M.14, s. 129 (3).

Order sent to recorder

(4) The Commissioner shall forward a copy of each order or judgment to the recorder who shall amend the records in the Provincial Recording Office as necessary. 1999, c. 12, Sched. O, s. 42 (1).

Notice of amendment to records

(5) As soon as possible after amending the records in accordance with subsection (4), the recorder shall give notice in writing of the amendment of the records to the parties to the hearing before the Commissioner. 1999, c. 12, Sched. O, s. 42 (2).

(6) Repealed: 1994, c. 27, s. 130.

(7) Repealed: 1999, c. 12, Sched. O, s. 42 (3).

Final order or judgment

130. The Commissioner shall send to the parties an order or judgment of the Commissioner that finally disposes of any matter at issue. 1999, c. 12, Sched. O, s. 43.

Certified copy of order or judgment

131. Any party to a proceeding is entitled on payment of the required fee to a certified copy of any order or judgment. R.S.O. 1990, c. M.14, s. 131; 1997, c. 40, s. 7.

Stay of proceedings

132. Where a certified copy of a final decision of a recorder has been filed with the Superior Court of Justice under section 19 of the *Statutory Powers Procedure Act*, the Commissioner or the court may stay proceedings therein if an appeal from the decision is brought until final disposition of the appeal. R.S.O. 1990, c. M.14, s. 132; 2000, c. 26, Sched. M, s. 17.

Appeal to Divisional Court

133. Where not otherwise provided, an appeal lies to the Divisional Court from any decision of the Commissioner, including an order dismissing a matter or proceeding under section 122. R.S.O. 1990, c. M.14, s. 133.

Appeal procedures

Time for appeal

134. (1) Except in the case of a reference under section 108 or the *Arbitrations Act*, an order or judgment of the Commissioner is final and conclusive unless, where an appeal may be brought, it is brought within 30 days after notice of the order or judgment is sent under section 130. 1999, c. 12, Sched. O, s. 44 (1).

Notice of appeal

(2) The appeal shall be brought by filing a notice of appeal with the Divisional Court and the appellant shall send a copy of the notice of appeal to the Commissioner, the recorder and the parties to the hearing before the Commissioner. 1999, c. 12, Sched. O, s. 44 (2).

Transmission of documents

(3) On receiving a copy of the notice of appeal, the Commissioner shall send the order or judgment appealed from to the Divisional Court, along with the exhibits, papers and other documents filed on the hearing before the Commissioner. 1999, c. 12, Sched. O, s. 44 (2).

(4) Repealed: 1999, c. 12, Sched. O, s. 44 (3).

Practice

(5) The practice and procedure on an appeal including the form of notice of appeal, service of the notice of appeal on the parties, and the disposition of costs on an appeal, shall be governed by the rules of court. R.S.O. 1990, c. M.14, s. 134 (5).

Judicial review

135. (1) No application for judicial review and no other proceeding may be brought to call into question,

(a) any decision of a recorder more than 30 days after the recording of the decision;

(b) any order or judgment of the Commissioner more than 30 days after notice of the order or judgment is sent under section 130; or

(c) the validity of anything done by a recorder or any other officer appointed under this Act more than 30 days after it was done. 1999, c. 12, Sched. O, s. 45.

Other proceedings

(1.1) Despite subsection (1), a proceeding may be brought calling into question any of the matters mentioned in subsection (1) more than 30 days after the recording, notice or other action mentioned in that subsection where this Act specifically permits the proceeding to be brought within a greater period of time. 1999, c. 12, Sched. O, s. 45.

No extension of time

(2) Despite anything in the *Judicial Review Procedure Act*, no court may extend any limitation of time fixed in subsection (1). R.S.O. 1990, c. M.14, s. 135 (2).

Defects in form

136. Where the validity of a proceeding before the Commissioner or a recorder is called into question in any court on the ground of any defect of form or substance or failure to comply with this Act or the regulations, although the defect or failure is established, the court shall not, if no substantial wrong or injustice has been thereby done or occasioned, invalidate the proceeding by reason

thereof, but shall confirm the proceeding, and, upon such confirmation, the proceeding shall be and be deemed to have been valid and effective from the time when it would otherwise have been effective but for such defect or failure. R.S.O. 1990, c. M.14, s. 136.

Power to extend time

137. Where power is conferred by this Act to extend the time for doing an act or taking a proceeding, unless otherwise expressly provided, the power may be exercised as well after as before the expiration of the time allowed or prescribed for doing the act or taking the proceeding. R.S.O. 1990, c. M.14, s. 137.

Time expiring on a Saturday, etc.

138. Where the time limited for any proceeding or for the doing of anything in an office of a mining recorder or an office of the Commissioner or an office of the Minister or Deputy Minister expires or falls upon a Saturday, Sunday, holiday or any other day on which the relevant office is closed, the time so limited extends to and the thing may be done on the day next following that is not a Saturday, Sunday, holiday or other day on which the relevant office is closed. R.S.O. 1990, c. M.14, s. 138; 1996, c. 1, Sched. O, s. 25.

PART VII REHABILITATION OF MINING LANDS

Definitions and application of Part

Definitions

139. (1) In this Part,

"advanced exploration" means the excavation of an exploratory shaft, adit or decline, the extraction of prescribed material in excess of the prescribed quantity, whether the extraction involves the disturbance or movement of prescribed material located above or below the surface of the ground, the installation of a mill for test purposes or any other prescribed work; ("exploration avancée")

"adverse effect" means,

- (a) injury or damage to property,
- (b) harm or material discomfort to any person,
- (c) a detrimental effect on any person's health,
- (d) impairment of any person's safety,
- (e) a severe detrimental effect on the environment; ("conséquence préjudiciable")

"closed out" means that the final stage of closure has been reached and that all the requirements of a closure plan have been complied with; ("fermé")

"closure" means the temporary suspension, inactivity or close out of advanced exploration, mining or mine production; ("fermeture")

"closure plan" means a plan to rehabilitate a site or mine hazard that has been prepared in the prescribed manner and filed in accordance with this Act and that includes provision in the prescribed manner of financial assurance to the Crown for the performance of the closure plan requirements; ("plan de fermeture")

"Director" means a Director of Mine Rehabilitation appointed under subsection 153 (2); ("directeur")

"inactivity" means the indefinite suspension of a project in accordance with a filed closure plan where protective measures are in place but the site is not being continuously monitored by the proponent; ("inactivité")

"mine production" means mining that is producing any mineral or mineral-bearing substance for immediate sale or stockpiling for future sale, and includes the development of a mine for such purposes; ("production minière")

"progressive rehabilitation" means rehabilitation done continually and sequentially during the entire period that a project or mine hazard exists; ("réhabilitation progressive")

"project" means a mine or the activity of advanced exploration, mining or mine production; ("projet")

"proponent" means the holder of an unpatented mining claim or licence of occupation or an owner as defined in section 1; ("promoteur")

"protective measures" means steps taken in accordance with the prescribed standards to protect public health and safety, property and the environment; ("mesures de protection")

"rehabilitate" means measures, including protective measures, taken in accordance with the prescribed standards to treat a site or mine hazard so that the use or condition of the site,

(a) is restored to its former use or condition, or

(b) is made suitable for a use that the Director sees fit; ("réhabiliter")

"site" means the land or lands on which a project or mine hazard is located; ("lieu")

"temporary suspension" means the planned or unplanned suspension of a project in accordance with a filed closure plan where protective measures are in place and the site is being monitored continuously by the proponent. ("suspension temporaire") 1996, c. 1, Sched. O, s. 26.

Application of Part

(2) Without restricting the scope of this Part, this Part applies to projects including,

(a) the underground mining of minerals, excluding natural gas, petroleum and salt by brining method;

(b) the surface mining of metallic minerals;

(c) the surface mining of non-metallic minerals, excluding natural gas, petroleum and aggregate as defined in the *Aggregate Resources Act*, on land that is not Crown land;

(d) advanced exploration on mining lands, 1996, c. 1, Sched. O, s. 26.

Progressive Rehabilitation

Progressive rehabilitation

139.1 (1) A proponent shall take all reasonable steps to progressively rehabilitate a site whether or not closure has commenced or a closure plan has been filed. 1996, c. 1, Sched. O, s. 26.

Report required

(2) A proponent who undertakes progressive rehabilitation of a site without being subject to a closure plan shall complete the rehabilitation work to the appropriate prescribed standard and submit to the Director a report prepared in the prescribed form within 60 days of the completion of the work. 1996, c. 1, Sched. O, s. 26.

Advanced Exploration And Mine Production

Advanced exploration

140. (1) No proponent other than a proponent who is subject to a closure plan shall commence or recommence advanced exploration without,

(a) giving notice to the Director in the prescribed form and manner;

- (b) giving public notice under subsection (2) at the prescribed time and in the prescribed form and manner, if required by the Director;
- (c) filing a certified closure plan with the Director as required under subsection (3); and
- (d) receiving a written acknowledgment of receipt for the certified closure plan from the Director. 1996, c. 1, Sched. O, s. 26.

Public notice

- (2) Within 45 days after the receipt of the notice under clause (1) (a), the Director may require the proponent to give public notice of the advanced exploration project at the prescribed time and in the prescribed form and manner. 1996, c. 1, Sched. O, s. 26.

Closure plan

- (3) The proponent of an advanced exploration project shall file with the Director a closure plan certified in the prescribed form and manner certifying that the plan complies with the prescribed requirements and, if the proponent has been required to give public notice, the proponent shall file the closure plan after giving the public notice. 1996, c. 1, Sched. O, s. 26.

Acknowledgment of receipt

- (4) Within 45 days after the filing of the certified closure plan, the Director shall,
 - (a) acknowledge receipt, in writing, of the closure plan to the proponent; or
 - (b) return the closure plan for refiling if it does not sufficiently address all of the prescribed reporting requirements for a certified closure plan. 1996, c. 1, Sched. O, s. 26.

Effect of acknowledgment

- (5) The certified closure plan of a proponent who receives a written acknowledgment of receipt under clause (4) (a) is considered filed as of the date indicated on the written acknowledgment of receipt. 1996, c. 1, Sched. O, s. 26.

Mine production

- 141. (1) No proponent other than a proponent who is subject to a closure plan shall commence or recommence mine production without,

- (a) giving notice to the Director in the prescribed form and manner;
- (b) giving public notice at the prescribed time and in the prescribed form and manner;
- (c) filing a certified closure plan with the Director as required under subsection (2); and
- (d) receiving a written acknowledgment of receipt for the certified closure plan from the Director. 1996, c. 1, Sched. O, s. 26.

Closure plan

- (2) After public notice has been given under clause (1) (b), the proponent shall file with the Director a closure plan certified in the prescribed form and manner certifying that the plan complies with the prescribed requirements. 1996, c. 1, Sched. O, s. 26.

Acknowledgment of receipt

- (3) Within 45 days after the filing of the certified closure plan, the Director shall,
 - (a) acknowledge receipt, in writing, of the closure plan to the proponent; or
 - (b) return the closure plan for refiling if it does not sufficiently address all of the prescribed reporting requirements for a certified closure plan. 1996, c. 1, Sched. O, s. 26.

Effect of acknowledgment

(4) The certified closure plan of a proponent who receives a written acknowledgement of receipt under clause (3) (a) is considered filed as of the date indicated on the written acknowledgment of receipt. 1996, c. 1, Sched. O, s. 26.

Approval of closure plan

142. (1) Instead of filing a certified closure plan under subsection 140 (3), 141 (2) or 147 (1), a proponent may submit a proposed closure plan in the prescribed form and manner to the Director for approval. 1996, c. 1, Sched. O, s. 26.

Project not to proceed

(2) A project for which the proponent has submitted a proposed closure plan for approval shall not proceed until the Director has approved the closure plan in writing and any public notice required under subsection 140 (2) or 141 (1) has been given. 1996, c. 1, Sched. O, s. 26.

Amendments to be approved

(3) Subject to subsection (5), if a closure plan is approved under this section and amendments to the approved closure plan are submitted by the proponent under subsection 143 (2), voluntarily or because they have been required by the Director, the amendments also require the Director's approval. 1996, c. 1, Sched. O, s. 26.

Proponent to pay for approvals

(4) The proponent who submits a proposed closure plan or amendments to an approved closure plan shall pay in advance the amount estimated by the Director to be required for considering the closure plan or the amendments for approval. 1996, c. 1, Sched. O, s. 26.

Change from approval to certification and filing

(5) A proponent whose closure plan has been approved by the Director under this section may at any time file with the Director amendments to the closure plan that have been certified in the prescribed form and manner. 1996, c. 1, Sched. O, s. 26.

Change from certification and filing to approval

(6) A proponent whose certified closure plan has been filed with the Director under section 140, 141 or 147 may at any time submit the closure plan for approval by the Director under subsection (1) and, if the closure plan is approved, may at any time submit desired amendments for approval. 1996, c. 1, Sched. O, s. 26.

Application of this Part

(7) Subject to this section, the provisions of this Part that apply with respect to closure plans filed under section 140, 141 or 147 apply with respect to closure plans approved under this section. 1996, c. 1, Sched. O, s. 26.

Closure Plans**Compliance with certified closure plan**

143. (1) A proponent who has filed a certified closure plan under this Part shall comply with the closure plan. 1996, c. 1, Sched. O, s. 26.

Amendments

(2) The proponent may file, or the Director may at any time, by order, require that the proponent file, within the time specified in the order, amendments to the certified closure plan that have been certified in the prescribed form and manner, including amendments respecting an increase in the amount of financial assurance. 1996, c. 1, Sched. O, s. 26.

Required changes

(3) The Director may at any time, by order, require changes to a filed closure plan or to amendments to a closure plan filed under subsection (2). 1996, c. 1, Sched. O, s. 26.

Same, mine hazard under subs. 147 (1)

(3.1) If a change ordered under subsection (3) is to a closure plan filed with respect to a mine hazard under subsection 147 (1) or to amendments to such a closure plan and the order requires that a new schedule for completing the rehabilitation of the mine hazard be filed, the person affected by the order shall file the new schedule immediately. 2002, c. 18, Sched. M, s. 7.

Exception

(3.2) An order for a change to a closure plan filed with respect to a mine hazard under subsection 147 (1) or to amendments to such a closure plan that requires that a new schedule for completing the rehabilitation of the mine hazard be filed may not,

(a) despite subsection (4), be referred to an independent third party under that subsection; or

(b) despite clause 152 (1) (b), be appealed under that clause. 2002, c. 18, Sched. M, s. 7.

Same

(3.3) If an order under subsection (3.2) requiring the filing of a new schedule for completing the rehabilitation of the mine hazard orders other changes as well, those other changes may be referred to an independent third party under subsection (4) or be appealed under clause 152 (1) (b). 2002, c. 18, Sched. M, s. 7.

Referral to independent third party

(4) If changes are required under subsection (3), in addition to appealing any of them to the Commissioner under clause 152 (1) (b), the proponent may, within 30 days after receiving the order requiring changes, notify the Director of the desire to have any of

them that are not appealed to the Commissioner referred for a decision to an independent third party agreed upon by the proponent and the Director. 1996, c. 1, Sched. O, s. 26.

No agreement on third party

(5) If the proponent and the Director are unable to agree on an independent third party within 45 days after the Director receives the notice of referral under subsection (4), the proponent who wishes to dispute the changes may appeal to the Commissioner any of the changes that the proponent desired to have referred, despite the 30 day period provided for appeal in subsection 152 (2), within 75 days after sending the notice of referral, failing which the changes that are not appealed shall be deemed to be accepted by the proponent. 1996, c. 1, Sched. O, s. 26.

Costs

(6) All costs incurred by an independent third party in connection with any work performed pursuant to a referral shall be borne by the proponent. 1996, c. 1, Sched. O, s. 26.

Decision final

(7) The decision of an independent third party is final and binds the proponent and the Director, and the closure plan shall be deemed to have been amended accordingly. 1996, c. 1, Sched. O, s. 26.

Effect of filing of amendments

(8) Upon receipt of the Director's written notice that amendments have been filed, the project shall operate subject to the certified closure plan as amended. 1996, c. 1, Sched. O, s. 26.

Notices required

Notice closure has begun

144. (1) A proponent shall forthwith notify the Director in the prescribed form and manner of the commencement of closure and of any change in the stage of closure reached. 1996, c. 1, Sched. O, s. 26.

Notice of material changes

(2) A proponent shall forthwith notify the Director in the prescribed form and manner if,

- (a)** an expansion or alteration of the project is planned;
- (b)** the ownership, occupancy, management or control of the project has changed; or
- (c)** any other material change has occurred that could reasonably be expected to have a material effect on the adequacy of the closure plan. 1996, c. 1, Sched. O, s. 26.

Financial Assurance

Form and amount of financial assurance

145. (1) The financial assurance required as part of a closure plan shall be in one of the following forms and shall be in the amount specified in the closure plan filed with the Director or any amendment to it:

- 1. Cash.
- 2. A letter of credit from a bank named in Schedule I to the *Bank Act* (Canada).
- 3. A bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance.
- 4. A mining reclamation trust as defined in the *Income Tax Act* (Canada).

5. Compliance with a corporate financial test in the prescribed manner.

6. Any other form of security or any other guarantee or protection, including a pledge of assets, a sinking fund or royalties per tonne, that is acceptable to the Director. 1996, c. 1, Sched. O, s. 26; 1997, c. 19, s. 36.

Director's order

(2) If the Director has reasonable and probable grounds for believing that a rehabilitation measure required by a filed closure plan in respect of which financial assurance was given has not been or will not be carried out in accordance with the plan, he or she may, by order, provide for the performance of the rehabilitation measure in the manner set out in subsection (5). 1996, c. 1, Sched. O, s. 26.

Notice

(3) The Director shall give the proponent written notice of his or her intention to issue the order referred to in subsection (2) at least 15 days prior to the date the order is to be issued. 1996, c. 1, Sched. O, s. 26.

Parties affected

(4) Both the notice and the order referred to in this section shall be directed,

- (a)** to the proponent who filed the closure plan or to their successor; and
- (b)** to any person who, to the Director's knowledge, provided the financial assurance for or on behalf of the proponent or to that person's successor or assignee. 1996, c. 1, Sched. O, s. 26.

Realization of security

(5) Upon the issuance of an order by the Director under subsection (2), the Crown may use any cash, realize any letter of credit or bond or enforce any other security, guarantee or protection provided or obtained as financial assurance for the performance of the rehabilitation measures and may carry out those measures, or appoint an agent to do so, as the Director considers necessary. 1996, c. 1, Sched. O, s. 26.

Change of financial assurance

(6) If the financial assurance provided under subsection (1) is in a form other than cash, a letter of credit, a bond or a mining reclamation trust or if the proponent fails to comply in the prescribed manner with a corporate financial test, the Director may require, in the prescribed manner, that the proponent forthwith provide cash, a letter of credit, a bond or other security, guarantee or protection acceptable to the Director or that the proponent make provision for a mining reclamation trust. 1996, c. 1, Sched. O, s. 26.

Application for reduction in financial assurance

(7) A proponent may apply to the Director for a reduction of the required financial assurance to an amount consistent with the financial requirements of the rehabilitation measures left to be completed if,

- (a) rehabilitation work has been performed in accordance with a filed closure plan; or
- (b) a reduction in the required financial assurance is justified in a notice submitted under subsection 144 (2). 1996, c. 1, Sched. O, s. 26.

Special purpose account

(8) The amount of any cash provided as financial assurance under subsection (1) shall be paid into a special purpose account. 1996, c. 1, Sched. O, s. 26.

Payments out of account

(9) The cost of any rehabilitation measures performed by the Crown or an agent of the Crown under this Part with respect to a filed closure plan and the amount of any reduction paid in cash under subsection (7) shall be paid by the Minister of Finance out of the special purpose account. 1996, c. 1, Sched. O, s. 26.

Confidentiality

(10) The Director or any person who works for the Director's office shall preserve confidentiality with respect to all financial and commercial information relating to the establishment of a proponent's financial assurance. 1996, c. 1, Sched. O, s. 26.

F.O.I. Act

(11) Subsection (10) prevails over the *Freedom of Information and Protection of Privacy Act*. 1996, c. 1, Sched. O, s. 26.

Rehabilitation Inspectors

Rehabilitation inspections

146. (1) For the purposes of the administration of this Part, the Minister may designate in writing any person, including a person who is not an employee of the Ministry, as a rehabilitation inspector. 1996, c. 1, Sched. O, s. 26.

Inspections

(2) For the purpose of carrying out his or her powers and duties under this Part, a rehabilitation inspector may, without a warrant, at any reasonable time and with any reasonable assistance, including the assistance of a member of a police force, make inspections, and in the exercise of that authority may,

- (a) enter into or onto any place, mining lands or other lands or premises connected or associated with any project, abandoned mine or mine hazard, other than a room or place actually used as a dwelling,

- (b) make such inspections, examinations, inquiries or tests considered necessary in order to determine the nature and extent of any existing or potential mine hazards on mining lands;
- (c) in any inspection, examination, inquiry or test, be accompanied and assisted by any person having special, expert or professional knowledge of any matter relevant to the inspection, examination, inquiry or test;
- (d) request the production of any drawings, specifications, licence, document, record or report;
- (e) on giving a receipt therefor, remove any drawing, specifications, licence, document, record or report produced in response to a request under clause (d) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced them;
- (f) inspect any work related to rehabilitation necessary to complete a report to the Director; and
- (g) make reasonable inquiries of any person, orally or in writing. 1996, c. 1, Sched. O, s. 26.

Inspection to be permitted

- (3) A proponent shall forthwith on request permit a rehabilitation inspector to carry out any inspection of any place, other than any room actually used as a dwelling, under subsection (2). 1996, c. 1, Sched. O, s. 26.

Obstruction prohibited

- (4) No person shall hinder or obstruct a rehabilitation inspector in the lawful performance of his or her duties or furnish the rehabilitation inspector with false information or refuse to furnish information required for the purposes of this Part and the regulations made under this Part. 1996, c. 1, Sched. O, s. 26.

Inspection warrant

- (5) If a provincial judge or justice of the peace is satisfied on the evidence upon oath of a rehabilitation inspector that there are reasonable grounds for believing that it is appropriate for the administration of this Part or the regulations made thereunder for the rehabilitation inspector to do anything set out in subsection (2), and that the rehabilitation inspector may not be able to effectively carry out the duties assigned without a warrant under this section because,

- (a) a person has prevented the rehabilitation inspector from doing anything set out in subsection (2);
- (b) there are reasonable grounds for believing that a person may prevent a rehabilitation inspector from doing anything set out in subsection (2); or
- (c) it is impractical due to the remoteness of the place to be inspected or any other reason for the rehabilitation inspector to obtain a warrant under this section without delay if access is denied,

the judge or justice may issue or renew a warrant in the prescribed form authorizing the rehabilitation inspector named in the warrant to do anything set out in subsection (2) and specified in the warrant for the period of time set out in the warrant. 1996, c. 1, Sched. O, s. 26.

Search warrant

- (6) If a provincial judge or justice of the peace is satisfied on the evidence upon oath of a rehabilitation inspector that there are reasonable and probable grounds for believing that,

- (a) an offence under this Part has been committed; and
- (b) the entry into and search of a place actually used as a dwelling will afford evidence as to the commission of the offence,

the judge or justice may issue or renew a warrant in the prescribed form authorizing the rehabilitation inspector named in the warrant to enter and search the room or place with such reasonable assistance as may be necessary and, upon giving a receipt therefor, to remove from the room or place any document or thing that may afford evidence of the offence for the purpose of making

copies thereof or extracts therefrom and shall promptly return them to the room or place from which they were removed. 1996, c. 1, Sched. O, s. 26.

When to be executed and expiry

(7) A warrant under subsection (5) or (6) shall be executed at reasonable times as specified in the warrant and shall state the date upon which it expires, which shall be not later than 15 days after the warrant is issued. 1996, c. 1, Sched. O, s. 26.

Admissibility of copies

(8) Copies of, or extracts from, documents or things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts. 1996, c. 1, Sched. O, s. 26.

Identification

(9) Upon request, a rehabilitation inspector who exercises a power set out in subsection (2) shall identify himself or herself as a rehabilitation inspector either by the production of a copy of the rehabilitation inspector's designation or in some other manner and shall explain the purpose of the inspection. 1996, c. 1, Sched. O, s. 26.

Police

(10) A rehabilitation inspector may require a member of a police force to assist him or her for the purpose of carrying out his or her powers and duties under this Part if he or she is obstructed in doing so. 1996, c. 1, Sched. O, s. 26.

Mine Hazards

Mine hazards, closure plan

147. (1) The Director may, in writing, order any proponent of any lands on which a mine hazard exists or any prior holder of an unpatented mining claim on any 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, as the case may be, since the staking of the claim, to file within the time specified in the order a certified closure plan to rehabilitate the mine hazard, and the proponent or prior holder shall file the certified closure plan within that time or any extension of time granted by the Director. 1996, c. 1, Sched. O, s. 26.

Crown intervention

(2) If the proponent or prior holder of an unpatented mining claim does not comply with an order of the Director under subsection (1), the Director may, after having given notice to the proponent or prior holder in the prescribed time and manner, have the Crown or an agent of the Crown enter the lands to rehabilitate the mine hazard. 1996, c. 1, Sched. O, s. 26.

Recommendation that lease be voided

(3) If the proponent does not comply with the Director's order under subsection (1) and is a lessee of the lands on which the mine hazard exists, the Director may recommend to the Minister that the lease be declared void on condition that the Director indicate in the notice referred to in subsection (2) the intention to make such a recommendation. 1996, c. 1, Sched. O, s. 26.

Declaration that lease void

(4) On the recommendation of the Minister, the Lieutenant Governor in Council may declare the lease void, in which case subsections 81 (11), (12) and (13) apply with necessary modifications. 1996, c. 1, Sched. O, s. 26.

Offence

(5) Failure to comply with an order under subsection (1) constitutes an offence that continues for each day during which the failure continues. 1996, c. 1, Sched. O, s. 26.

Emergency Powers

Emergencies**Duty to act**

148. (1) Subject to subsection (9), the proponent of a mine hazard that causes or is likely to cause an immediate and dangerous adverse effect shall forthwith do everything practicable to prevent, eliminate and ameliorate it. 1996, c. 1, Sched. O, s. 26.

Order to rehabilitate site

(2) If the Minister has reasonable grounds for believing that a mine hazard is causing or is likely to cause an immediate and dangerous adverse effect, the Minister may order the proponent to rehabilitate the mine hazard upon such terms as he or she may specify. 1996, c. 1, Sched. O, s. 26.

Minister's directions

(3) If the Minister has reasonable grounds for believing that a mine hazard is causing or is likely to cause an immediate and dangerous adverse effect, the Minister may, in the circumstances specified in subsection (4), give directions in accordance with subsection (5) to the employees and agents of the Ministry. 1996, c. 1, Sched. O, s. 26.

Where Minister may give directions

(4) The Minister may give directions in accordance with subsection (5) if he or she is of the opinion that it is in the public interest to do so and,

(a) he or she is of the opinion that the proponent will not carry out promptly the work required to prevent, eliminate and ameliorate the adverse effect;

(b) he or she is of the opinion that the proponent cannot be readily identified or located and that as a result the duty imposed by subsection (1) will not be carried out promptly; or

(c) the proponent of the mine hazard requests the Minister's assistance in order to carry out the duty imposed by subsection (1). 1996, c. 1, Sched. O, s. 26.

Contents of directions

(5) Under this section, the Minister may direct the employees and agents of the Ministry to do everything practicable, or to do such work and take such action as may be specified in the directions, in respect of the prevention, elimination and amelioration of the adverse effect. 1996, c. 1, Sched. O, s. 26.

Employees and agents

(6) No Act, regulation, by-law, order, permit, closure plan, approval or licence bars the employees and agents of the Ministry from acting in accordance with the directions given by the Minister under this section. 1996, c. 1, Sched. O, s. 26.

Hearing

(7) The Minister need not hold, or afford to any person an opportunity for, a hearing before giving directions under this section. 1996, c. 1, Sched. O, s. 26.

Continuing offence

(8) Failure to comply with an order under subsection (2) constitutes an offence that continues for each day during which the failure continues. 1996, c. 1, Sched. O, s. 26.

Where section does not apply

(9) Nothing in this section applies to a 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 holder of the unpatented mining claim since the staking of the claim. 1996, c. 1, Sched. O, s. 26.

Surrender

Refusal of voluntary surrender

149. The Minister may refuse to accept a voluntary surrender of mining lands or mining rights under section 183 if he or she has reasonable grounds for believing that a proponent has failed to rehabilitate the site in accordance with a filed closure plan or, if no closure plan has been filed, in accordance with the prescribed standards for site rehabilitation. 1996, c. 1, Sched. O, s. 26.

Surrender by agreement

149.1 (1) The Minister may accept a surrender of mining lands from a proponent on the conditions specified by the Minister if,

- (a) the project relating to the mining lands is closed out; or
- (b) the project relating to the mining lands is not closed out only because it is subject to long-term maintenance and monitoring by the proponent. 2001, c. 9, Sched. L, s. 5.

Special purpose account

(2) Money received from the proponent of a project as part of an agreement for the surrender of mining lands shall be placed in a special purpose account for use in the rehabilitation of mining lands generally. 1996, c. 1, Sched. O, s. 26.

Payments out of account

(3) The cost of any work performed by the Crown or an agent of the Crown under this section shall be paid by the Minister of Finance out of the special purpose account. 1996, c. 1, Sched. O, s. 26.

No liability

(4) Despite subsections 7 (1) and 8 (1) and sections 17, 18, 43 and 44 of the *Environmental Protection Act*, a proponent who surrenders mining lands under this section is not liable under those provisions. 1996, c. 1, Sched. O, s. 26.

Voluntary Surrender

Surrender of lease

150. (1) If a proponent was, for at least 10 years, a beneficial owner of an unpatented mining claim on which a mine hazard was created by others prior to the proponent's staking of the claim, and that claim was converted to a mining lease before June 3, 1991, the proponent may, upon application to the Director within 12 months after the coming into force of this section and upon payment of the required fee,

(a) surrender the lease to the Crown if the proponent has not created a mine hazard on the site, or materially disturbed or affected a mine hazard created by others, that has not been rehabilitated to the prescribed standard; or

(b) retain an interest in the lands or part of the lands in the form of unpatented mining claims. 1996, c. 1, Sched. O, s. 27.

No liability

(2) The proponent who acts in accordance with subsection (1) is not liable for anything that arises after the date of the surrender or retention as unpatented mining claims as a result of the existence of a mine hazard created by others before the proponent staked the lands on which the proponent previously held the lease. 1996, c. 1, Sched. O, s. 27.

Cost of Work Completed

Where cost debt due to Crown

151. (1) If the Crown or an agent of the Crown carries out rehabilitation measures under subsection 147 (2) or does any work under subsection 148 (5), the resulting cost to the Crown is a debt due to the Crown by the proponent that,

(a) forms a lien and a 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

(b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected. 1996, c. 1, Sched. O, s. 28.

Same

(2) The cost to the Crown of carrying out the rehabilitation measures under clause 153.2 (4) (b) is a debt due to the Crown by the proponent recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected. 1996, c. 1, Sched. O, s. 28.

Same

(3) If the Crown or an agent of the Crown carries out rehabilitation measures under subsection 145 (5) and the financial assurance held by the Crown is insufficient to cover the total cost incurred by the Crown in completing the rehabilitation measures, the extra cost not covered by the financial assurance is a debt due to the Crown by the proponent that,

(a) forms a lien and a charge on the site in favour of the Crown realizable by action for sale of any part or all of the land or lands comprising the site subject to the lien, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands; and

(b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected. 1996, c. 1, Sched. O, s. 28.

Registration as charge

(4) Notice of the debt described in subsections (1) and (3) may be registered as a charge, in the prescribed form, in the proper land registry office and no transfer of or other dealing with the site shall take place until the debt is paid and the notice is cancelled. 1996, c. 1, Sched. O, s. 28.

Cessation of charge

(5) The Director may have a cessation of charge in the prescribed form registered in the proper land registry office on such terms as he or she considers acceptable, including payment, and on such a cessation of charge being registered, the lien and charge in subsections (1) and (3) is void and of no effect. 1996, c. 1, Sched. O, s. 28.

Hearings and Appeals**Appeals****Appeal to Commissioner**

152. (1) A proponent may appeal to the Commissioner,

(a) an order requiring the filing of a certified closure plan under subsection 147 (1);

(b) an order requiring changes to a certified closure plan or to amendments to a certified closure plan under subsection 143 (3);

(c) an order for the performance of rehabilitation measures under subsection 145 (2); or

(d) an action of the Director on an application made under subsection 150 (1). 1996, c. 1, Sched. O, s. 28.

Notice

(2) The proponent may appeal an order or action under subsection (1) if, within 30 days after receiving the Director's order or being informed of the Director's action, the proponent serves the Director with the prescribed notice requiring a hearing before the Commissioner. 1996, c. 1, Sched. O, s. 28.

Hearing

(3) The Director shall refer the matter to the Commissioner for a hearing within 30 days after being served. 1996, c. 1, Sched. O, s. 28.

Automatic stay unless removed

(4) Upon service on the Director of the notice under subsection (2), the Director's order is stayed until the Commissioner disposes of the appeal unless the Director applies, upon notice, for a removal of the stay. 1996, c. 1, Sched. O, s. 28.

Grounds for removal of stay

(5) The Commissioner may remove the stay if the matter being appealed relates to changes to a closure plan or to amendments to a closure plan, or to the performance of rehabilitation measures. 1996, c. 1, Sched. O, s. 28.

Refusal by Commissioner

(6) Despite subsection (4), the Commissioner shall refuse to hear an appeal of an order for changes to a closure plan or to amendments to a closure plan that require an increased amount of financial assurance unless the proponent has provided the Director, along with the notice of appeal, with the increased amount of financial assurance required, which amount shall be held by the Crown pending the outcome of the appeal. 1996, c. 1, Sched. O, s. 28.

Waiver

(7) The Commissioner upon application with notice by the proponent may waive the requirement under subsection (6) if the Commissioner considers it just to do so. 1996, c. 1, Sched. O, s. 28.

Power of Commissioner on appeal

(8) Upon hearing the proponent's appeal, the Commissioner may confirm, alter or revoke the Director's order or action that is the subject-matter of the appeal. 1996, c. 1, Sched. O, s. 28.

Procedure

(9) Sections 114, 115, 116 and 118 to 131 of this Act apply to appeals under this section with necessary modifications. 1996, c. 1, Sched. O, s. 28.

Appeal to Divisional Court

(10) An appeal lies to the Divisional Court on a question of law from any decision of the Commissioner under subsection (8) in accordance with the rules of court. 1996, c. 1, Sched. O, s. 28.

Appeal to Minister

(11) A party to a hearing before the Commissioner may, within 30 days after receipt of the Commissioner's decision or within 30 days after final disposition of an appeal, if any, under subsection (10), appeal in writing to the Minister on any matter other than a question of law, and the Minister shall confirm, alter or revoke the decision of the Commissioner as to the matter in appeal as the Minister considers to be in the public interest. 1996, c. 1, Sched. O, s. 28.

Parties

(12) The person requiring the hearing, the Director and any other person specified by the Commissioner are parties to the hearing. 1996, c. 1, Sched. O, s. 28.

Miscellaneous

Officers and directors

Mineral development officers

153. (1) The Minister may appoint as mineral development officers such employees of the Ministry as the Minister considers necessary to co-ordinate and expedite communication between the mining industry, the public and affected ministries and agencies of the Government of Ontario. 1996, c. 1, Sched. O, s. 28.

Directors

(2) The Minister may appoint one or more officers or employees of the Ministry as Directors of Mine Rehabilitation. 1996, c. 1, Sched. O, s. 28.

Immunity

153.1 Despite subsection 4 (4), no action or other proceeding shall be brought against the Crown, the Minister or an employee or agent of the Crown for any act or omission arising out of or in relation to the filing, approval, review or acceptance of a closure plan or amendments to a closure plan under this Part or its predecessor. 1996, c. 1, Sched. O, s. 28.

Director's powers regarding transfers, etc.

153.2 (1) If a proponent is subject to a court order or an order of the Director, the Commissioner or the Minister under this Part, the Director may,

(a) register the order against the land or lands comprising the site in the proper land registry office prohibiting any person with an interest in the land from dealing with it without the Director's consent; and

(b) may apply to a judge of the Superior Court of Justice for an injunction preventing the sale of the land or lands comprising the site, including any buildings, structures, machinery, chattels or personal property on the site. 1996, c. 1, Sched. O, s. 28; 2000, c. 26, Sched. M, s. 17.

Transfer of lease, licence

(2) If the proponent who is subject to an order referred to in subsection (1) is a lessee or the holder of a licence of occupation, the Director may recommend that the Minister not consent to the transfer of the lease or licence. 1996, c. 1, Sched. O, s. 28.

No abandonment of mining claim

(3) Despite section 70, if the proponent is the holder of a mining claim on which a mine hazard has been created by the proponent or a mine hazard created by others prior to the staking of the claim has been materially disturbed or affected by the proponent after the staking of the claim, and the Director has reasonable grounds for believing that the proponent has failed to rehabilitate such a mine hazard in accordance with a closure plan or, where no closure plan has been filed, with the prescribed standards for rehabilitation, the Director may order the proponent to comply with the closure plan or to rehabilitate such a mine hazard in accordance with the prescribed standards, as applicable, and the proponent shall not abandon the mining claim. 1996, c. 1, Sched. O, s. 28.

Realization of security

(4) If a proponent fails to comply with an order referred to in subsection (3), the Director may,

(a) realize on the financial assurance under section 145 if the proponent is subject to a closure plan;

(b) have the Crown or an agent of the Crown carry out rehabilitation measures in accordance with the prescribed standards if the proponent is not subject to a closure plan. 1996, c. 1, Sched. O, s. 28.

Continuing offence

(5) Failure to comply with an order of the Director, Commissioner or Minister constitutes an offence that continues for each day during which the failure continues. 1996, c. 1, Sched. O, s. 28.

No assignment of closure plan

(6) A closure plan filed under this Part is binding on the heirs, assigns and successors of the proponent who filed it and may not be assigned without the Director's consent. 1996, c. 1, Sched. O, s. 28.

Liability of lessee, patentee concerning mine hazards

153.3 (1) A lessee or patentee of mining rights is, unless a contrary intention is shown, liable in respect of the rehabilitation under this Part of all mine hazards on, in or under the lands, regardless of when and by whom the mine hazards were created. 1996, c. 1, Sched. O, s. 28.

When lease expires

(2) This Part continues to apply with respect to a proponent who is a lessee until the earlier of,

(a) the day that is two years after the expiry of the lease; and

(b) the date of re-opening or other disposition of the land under this Act. 1996, c. 1, Sched. O, s. 28.

Method of service

153.4 (1) If, under this Part, a notice must be given or an order served, they are sufficiently given or served if they are,

(a) delivered personally;

(b) sent by mail;

(c) sent by courier;

(d) sent by facsimile transmission if the original is sent within 15 days of the date on which the facsimile transmission was sent; or

(e) given or served in the prescribed manner. 1996, c. 1, Sched. O, s. 28; 1999, c. 12, Sched. O, s. 49 (1).

Deemed service

(2) Delivery or service by mail or courier shall be deemed to be made on the fifth day after the day of mailing unless the intended recipient establishes that, acting in good faith, they did not receive the notice or order until a later date for reasons beyond their control. 1996, c. 1, Sched. O, s. 28; 1999, c. 12, Sched. O, s. 49 (2).

Where delivery or service made by Ministry

(3) A notice to be given or an order to be served by the Ministry shall be addressed to the intended recipient at the recipient's last address for service on the Ministry's records except if facsimile transmission is chosen, in which case the notice or order must be successfully sent to the recipient's last known facsimile telephone number on the Ministry's records. 1996, c. 1, Sched. O, s. 28.

Note: The following transitional provisions, enacted as section 39 of Schedule O to the *Savings and Restructuring Act*, 1996, were proclaimed into force on June 30, 2000.

Transition, existing projects

39. (1) A closure plan accepted by the Director before June 30, 2000 under Part VII of the Act, as it read immediately before that day, shall be deemed to have been filed as a certified closure plan under Part VII of the Act, as amended by Schedule O of the *Savings and Restructuring Act, 1996*. 2000, c. 26, Sched. M, s. 18 (1).

Same

(2) If, before June 30, 2000, a proponent submitted a proposed closure plan to the Director under Part VII of the Act as it read immediately before that day and if, before the later of April 1, 1996 and the day this section comes into force,

(a) the proponent's proposal with respect to the form and amount of the financial assurance to be provided under the closure plan has been accepted by the Director, the proposed closure plan shall be deemed to have been filed as a certified closure plan under Part VII of the Act, as amended by Schedule O of the *Savings and Restructuring Act, 1996*;

(b) the proponent's proposal with respect to the form and amount of the financial assurance to be provided under the closure plan has not been accepted by the Director, the proponent shall file a certified closure plan under Part VII of the Act, as amended by Schedule O of the *Savings and Restructuring Act, 1996*. 1996, c. 1, Sched. O, s. 39 (2); 2000, c. 26, Sched. M, s. 18 (2).

Same

(2.1) Despite Part VII of the Act, as it read immediately before June 30, 2000, if, under clause (2) (a), the Director accepts the proponent's proposal with respect to the form and amount of the financial assurance, the proponent shall, within 90 days of June 30, 2000,

(a) deliver the financial assurance to the Director; or

(b) file with the Director a certified amendment of compliance with the corporate financial test mentioned in paragraph 5 of subsection 145 (1) of the Act, as re-enacted by Schedule O of the *Savings and Restructuring Act, 1996*. 2000, c. 26, Sched. M, s. 18 (3).

Same

(3) If, before June 30, 2000, a proponent has been notified of the date by which the proponent must submit a proposed closure plan under subsection 147 (3) of the Act as it read immediately before the day this section comes into force, the proponent shall, on or before the date for submission indicated in the notice, file a certified closure plan with the Director under Part VII of the Act, as amended by Schedule O of the *Savings and Restructuring Act, 1996*. 1996, c. 1, Sched. O, s. 39 (3).

See: 1996, c. 1, Sched. O, ss. 39, 40 (2); 2000, c. 26, Sched. M, s. 18.

PART VIII (s. 154) Repealed: 1996, c. 30, s. 71.

PART IX STATISTICAL RETURNS

Reports

Annual report

155. (1) For the purposes of tabulation, every owner of a mine shall, on or before the 31st day of March in each year, send to the Minister on the forms provided a report of activities for the preceding year ending on the 31st day of December showing,

(a) the nature of the work performed and the sums spent on mining and exploration;

(b) the sums allocated for capital expenditures and repairs;

(c) the current state of ore reserves;

(d) the quantity and value of mineral production;

(e) the number of employees; and

(f) the revenues and expenses entailed in mining and exploration activities,

and the report shall be accompanied by such other information, plans and documents as the Minister requires, including, without limiting the scope of the requirement, information, plans and documents respecting,

(g) inventory;

(h) fuel and electricity consumed;

(i) mining supplies and materials used;

(j) non-mining supplies and materials used;

(k) mining products, shipments and destinations;

(l) non-mining products;

(m) production details; and

(n) wastes produced. R.S.O. 1990, c. M.14, s. 155 (1).

Monthly or quarterly report

(2) The Minister may require an owner to send monthly or quarterly reports within such times as the Minister specifies. R.S.O. 1990, c. M.14, s. 155 (2).

Bankruptcy, etc.

(3) In the event of the bankruptcy or winding-up of an owner, the trustee or liquidator shall, at the request of the Minister, send the report to the Minister. R.S.O. 1990, c. M.14, s. 155 (3).

Pit or quarry operations

(4) The Minister may require a licensee or permittee operating a pit or quarry under the *Aggregate Resources Act* to send information to the Minister in accordance with this section, and, where the Minister does so, subsections (1), (2) and (3) apply with necessary modifications. R.S.O. 1990, c. M.14, s. 155 (4).

PART X (ss. 156-163) Repealed: 1997, c. 38, s. 1 (1).

PART XI OFFENCES, PENALTIES AND PROSECUTIONS

Offences

164. (1) Every person who,

(a) prospects, occupies or works any Crown lands or mining rights for minerals otherwise than in accordance with this Act;

(b) performs or causes to be performed on any Crown lands, or on any lands where the mining rights are in the Crown, any boring by diamond or other core drill for the purpose of locating valuable mineral in place, except where such Crown lands or mining rights have been staked out and recorded as a mining claim in accordance with this Act;

(c) defaces, alters, removes or disturbs any post, stake, picket, boundary line, figure, writing or other mark lawfully placed, standing or made under this Act;

(d) pulls down, injures or defaces any rules or notices posted up by the owner or manager of a mine or plant;

(e) obstructs the Commissioner or any officer appointed under this Act in the execution of his or her duty;

(f) being the owner of a mine, refuses or neglects to furnish to the Commissioner or to any person appointed by him or her or to any officer appointed under this Act the means necessary for making an entry, inspection, examination or inquiry in relation to a mine under this Act, other than Part VII;

(g) unlawfully marks or stakes out in whole or in part a mining claim or an area for a boring permit;

(h) acts in contravention of this Act, other than Part VII, in any particular not hereinbefore set forth;

(i) contravenes any provision of this Act or any regulation for the contravention of which no other penalty is provided;

(j) makes any material change in the wording or numbering of a prospector's licence after its issue; or

(k) attempts to do any of the acts mentioned in the foregoing clauses,

is guilty of an offence against this Act and on conviction is liable to a fine of not more than \$10,000. R.S.O. 1990, c. M.14, s. 164 (1); 1996, c. 1, Sched. O, s. 29; 1997, c. 38, s. 1 (2); 1997, c. 40, s. 4.

False statements

(2) Every person who knowingly makes a false statement in an application, certificate, report, statement or other document filed or made as required by or under this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. R.S.O. 1990, c. M.14, s. 164 (2).

Smelters

165. (1) No person shall construct or cause to be constructed a plant for the smelting, roasting, refining or other treatment of ores or minerals that may result in the escape or release into the open air of sulphur, arsenic or other fumes in quantities that may injure

trees or other vegetation unless and until the site of the plant has been approved by the Lieutenant Governor in Council. R.S.O. 1990, c. M.14, s. 165 (1).

Offence

(2) Every person who constructs or causes to be constructed a plant for the smelting, roasting, refining or other treatment of ores or minerals without the approval of the Lieutenant Governor in Council and sulphur, arsenic or other fumes escape or are released therefrom into the open air and injure trees or other vegetation is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for every day upon which such fumes escape or are released therefrom into the open air. R.S.O. 1990, c. M.14, s. 165 (2).

Disobeying order or award of Commissioner

166. Every person who wilfully neglects or refuses to obey any order or award of the Commissioner, except for the payment of money, is, in addition to any other liability, liable to a fine of not more than \$10,000. R.S.O. 1990, c. M.14, s. 166.

Penalty for offence against Part VII

167. (1) Every person who contravenes any provision of Part VII or the regulations made in respect thereto 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. R.S.O. 1990, c. M.14, s. 167 (1).

Failure to comply with order of Director, Commissioner or Minister

(2) Every person who is subject to a Director's, Commissioner's or Minister's order under Part VII and who fails to take all 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. R.S.O. 1990, c. M.14, s. 167 (2); 1996, c. 1, Sched. O, s. 30 (1).

Application for restraining order

(3) The Director may apply at any time to a judge of the Superior Court of Justice for an order prohibiting advanced exploration, mining or mine production on a site if any person fails to,

(a) comply with section 140 or 141 before commencing or recommencing a project;

(b) comply with a filed closure plan as required under subsection 143 (1); or

(c) submit a material change notice required under subsection 144 (2). 1996, c. 1, Sched. O, s. 30 (2); 2000, c. 26, Sched. M, s. 17.

Destruction, etc., of rehabilitation works

(4) Every person who alters, destroys, removes or impairs any rehabilitation work made in accordance with Part VII or a filed closure plan without the written consent of the Minister is guilty of an offence and on conviction is liable to a fine of not more than \$30,000. R.S.O. 1990, c. M.14, s. 167 (4); 1996, c. 1, Sched. O, s. 30 (3).

Duty of directors and officers

(5) Every director or officer of a corporation that engages in a project under Part VII has a duty to take all reasonable care to ensure that the corporation complies with the requirements of that Part. R.S.O. 1990, c. M.14, s. 167 (5).

Offence

(6) Every person who has a duty under subsection (5) and who fails to carry out that duty is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. R.S.O. 1990, c. M.14, s. 167 (6).

Liability of directors and officers

(7) A director or officer of a corporation is liable to conviction under subsection (6) whether or not the corporation has been prosecuted and convicted. R.S.O. 1990, c. M.14, s. 167 (7).

Increase in fine equal to monetary benefit

(8) The court that convicts a person of an offence under Part VII, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of monetary benefit acquired by, or that accrued to, the person as a result of the commission of the offence, despite the imposition of the maximum fine provided for that offence. R.S.O. 1990, c. M.14, s. 167 (8).

Offence

168. Every owner of a mine and every licensee or permittee operating a pit or quarry under the *Aggregate Resources Act*, who contravenes section 155, or who makes a report under that section that is, to the owner's, licensee's or permittee's knowledge, false in any particular, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for each day on which the offence occurs or is continued. R.S.O. 1990, c. M.14, s. 168.

Instituting prosecutions for offences

169. (1) No prosecution shall be instituted for an offence against Part VII or any regulation made in pursuance thereof except,

(a) by a rehabilitation inspector;

(b) by direction of the county or district Crown attorney; or

(c) by the leave in writing of the Attorney General,

or for an offence against any other provision of this Act or of any regulation made in pursuance thereof except,

(d) by or by leave of the Commissioner or a recorder;

(e) by direction of the county or district Crown attorney; or

(f) by leave of the Attorney General. R.S.O. 1990, c. M.14, s. 169 (1); 1997, c. 38, s. 1 (3).

When person not actual offender not liable

(2) No person not being the actual offender is liable in respect of such offence if that person proves that he or she did not participate in the contravention of the provision for a breach of which he or she is charged and that he or she was not to blame for the breach and that according to his or her position and authority he or she took all reasonable means in his or her power to prevent the breach and to secure compliance with Part VII. R.S.O. 1990, c. M.14, s. 169 (2); 1997, c. 38, s. 1 (4).

Limitation

(3) No proceeding for an offence under Part VII or under any regulation made under that Part shall be commenced later than two years after the later of,

(a) the day on which the offence was committed; and

(b) the day on which evidence of the offence first came to the attention of the Director or a rehabilitation inspector designated under section 146. 1996, c. 1, Sched. O, s. 31.

Procedure on prosecutions

170. Except as to offences against section 12, every prosecution for an offence against or for the recovery of a penalty imposed by or under the authority of this Act shall take place before the Ontario Court of Justice or before the Commissioner, and, save as is herein otherwise provided, the *Provincial Offences Act* applies to every such prosecution. R.S.O. 1990, c. M.14, s. 170; 2000, c. 26, Sched. M, s. 14.

**PART XII
GENERAL PROVISIONS**

Lien for Wages

Application of Construction Lien Act

171. (1) Except as provided in this Act, the *Construction Lien Act* applies to mines, mining claims, mining lands and works connected therewith. R.S.O. 1990, c. M.14, s. 171 (1).

Registration of lien

(2) Where the lands and mining rights have not been patented, the registration provided for in the *Construction Lien Act* shall be in the office of the recorder. R.S.O. 1990, c. M.14, s. 171 (2).

Lien where claim for wages

(3) When the claim is for wages in connection with a mine, mining claim, mining lands or works connected therewith, in addition to the rights and remedies afforded by the *Construction Lien Act*, the claimant has a lien upon any other property of the owner in or on such mine, mining claim, mining land or works for a sum not exceeding thirty days wages, and this claim may be enforced under that Act. R.S.O. 1990, c. M.14, s. 171 (3).

Cancellation of claim

(4) When the Commissioner is satisfied that a claim for lien recorded as provided in this section is not made in good faith or is made for some improper purpose or where the owner is unduly embarrassed thereby, the Commissioner may make an order cancelling the lien upon such terms as to security or otherwise as he or she deems proper. R.S.O. 1990, c. M.14, s. 171 (4).

Lien on unpatented lands

(5) A lien upon unpatented land does not affect the rights of the Crown. R.S.O. 1990, c. M.14, s. 171 (5).

172. Repealed: 1999, c. 12, Sched. O, s. 50.

Exploratory Drilling

173. Repealed: 1999, c. 12, Sched. O, s. 50.

Assaying and testing laboratories

174. The Minister, out of the money that is appropriated by the Legislature for the purpose, may establish, maintain and operate assaying and testing laboratories for sampling, assaying, testing, analysing or determining rocks, ores, minerals and other substances. R.S.O. 1990, c. M.14, s. 174.

Rights and Easements

Rights over other lands that may be conferred by Commissioner

175. (1) Where required for or in connection with the proper working of a mine, mill for treating ore or quarry, the owner, lessee or holder of it or the person entitled to work it may, subject as hereinafter provided, obtain and have vested in him, her or it by order of the Commissioner, made after hearing such parties interested as appear or on appeal from the Commissioner,

(a) the right to open, construct, put in, maintain and use ditches, tunnels, adits, pipes, conduits, flumes and other works through, over or upon any land for the drainage, conveyance or passage of water;

(b) the right to discharge water upon any land or by, through or into any existing means of drainage whether natural or artificial;

(c) the right to drain off, lower or divert the water of any lake, pond, river, stream or watercourse, or any other water, although the water or part thereof may be on the land of or owned by any other person or that any other person may have rights or interests in or to such water or the use thereof;

(d) the right to collect and dam back water, although it may overflow other land;

(e) the right to take or divert and use for or in connection with the working of his, her or its own mine or quarry and bring thereto for such use any specified water, and to construct and maintain dams and other works and do all other things necessary or convenient therefor;

(f) rights of way or passage through or over any land or water, and the right to construct, improve, maintain and use suitable roads, tramways, aerial tramways, channels, waterways, passages and other means of transit and transportation upon, through or over any land or water, together with such other rights of entry upon and use of land and water as may be necessary or convenient therefor;

(g) the right to transmit electricity or any other kind of power, or have it transmitted, through or over any land or water in any form or manner and to do everything necessary or convenient therefor;

(h) the right to enter upon and use for or in connection with the working of his own mine or quarry a specified area of other land;

(i) the right to deposit tailings, slimes or other waste products upon any land, or to discharge the same into any water, the effects of such deposit or discharge not being injurious to life or health. R.S.O. 1990, c. M.14, s. 175 (1).

Compensation

(2) No such right shall be granted unless any injury or damage caused to any other person thereby can be adequately compensated for and unless in all the circumstances it seems reasonable and fitting to grant the right, and it shall not be granted until, in the case where injury or damage has already been suffered, compensation has been determined by the Commissioner, and the amount thereof paid, and in the exercise of any right so granted no unnecessary injury or damage shall be done to the land, property, rights or interests of other persons, and all injury and damage that may be caused to any person by the granting and exercise of any right obtained under this section shall be fully compensated for. R.S.O. 1990, c. M.14, s. 175 (2).

How fixed

(3) The order granting the right shall fix such compensation, or shall provide for the ascertainment thereof, and shall contain any provisions that are considered proper for securing the same and for protecting the rights and interests of any person whose land, property, rights or interests are affected or endangered, and, if considered proper, may require the applicant to make grants or concessions to or construct works or do any other thing for, or for the benefit of, that person or that person's land or property, and such order may in all cases be upon such terms, and may grant the right upon such conditions and for such time as are considered proper. R.S.O. 1990, c. M.14, s. 175 (3).

Material to be filed on application

(4) In every application for such an order, the applicant, in addition to anything else required or directed, shall file in duplicate with the Commissioner a clear and precise statement of the right or rights being applied for, of the land or property affected and the owner or owners thereof so far as they can be ascertained, a map or plan of the locality showing the land and water involved, and definite and detailed plans and specifications of the works or things proposed to be constructed or done and, for the purpose of preparing the same, the Commissioner may authorize the applicant, and the applicant's engineers and assistants to enter upon the land of any other person and make such examinations and measurements as may be necessary, and such statement, map or plan and plans and specifications may, by order, be amended or altered or modified at any stage of the proceedings and the Commissioner may give directions as to the notice to be given to the parties interested, the time and manner of service and the particulars to be furnished to such parties respectively. R.S.O. 1990, c. M.14, s. 175 (4).

Definition

(5) This section applies to and against all patented and unpatented lands and the word "lands" in this section includes any right or interest in lands. R.S.O. 1990, c. M.14, s. 175 (5).

Idem

(6) Subject to any change therein or rescission thereof by subsequent order of the Commissioner, all rights and benefits created by any order of the Commissioner heretofore or hereafter made under this section run with and are appurtenant and incident to the lands thereby benefited and all burdens and obligations created or imposed by any such order run with and are binding on all lands in respect of which they were created or imposed and such order continues valid and binding in respect of all lands thereby affected

despite forfeiture thereof by the Crown or sale thereof because of unpaid taxes, it being expressly declared that the Crown or any municipality or any person acquiring such land is bound by such order in the same manner and to the same extent as the owner thereof at the time such order was made. R.S.O. 1990, c. M.14, s. 175 (6).

Idem

(7) Every such order shall contain proper descriptions of the lands thereby benefited and of all other lands thereby affected sufficient for purposes of registration, and there shall be attached thereto a plan or plans showing clearly the lands thereby benefited and all other lands thereby affected. R.S.O. 1990, c. M.14, s. 175 (7).

Notice

(8) Notice of hearing of all applications under this section shall be given to the Minister in the same manner as notice to any other interested person. R.S.O. 1990, c. M.14, s. 175 (8).

Copy to be filed

(9) A copy of every order made under this section, certified to be a true copy under the hand and seal of the Commissioner, shall be immediately filed by the applicant in the Provincial Recording Office, and, if any patented lands are thereby affected, a copy of such order so certified shall be filed in the land registry office for the district in which the lands are situate. R.S.O. 1990, c. M.14, s. 175 (9); 1999, c. 12, Sched. O, s. 51.

Particulars to be entered

(10) The recorder or land registrar, as the case may be, shall enter particulars of such order against the titles of the lands thereby affected. R.S.O. 1990, c. M.14, s. 175 (10).

Where Ministry to send copy

(11) Where unpatented mining claims affected by any such order are subsequently patented or leased, a copy of such order so certified shall be sent to the proper land registry office by the Ministry with the grant or lease. R.S.O. 1990, c. M.14, s. 175 (11).

Failure to file

(12) Unless such order is so filed in the land registry office for the district in which the lands are situate, a purchaser for value without notice of patented lands affected by any such order is not bound thereby. R.S.O. 1990, c. M.14, s. 175 (12).

Commissioner may change order or award

(13) The Commissioner, for good cause shown and on such terms as seem just, may by subsequent order or award at any time change, supplement, alter, vary or rescind any order made under the authority of this section. R.S.O. 1990, c. M.14, s. 175 (13).

Rights not to be exercised until after expiration of time for appeal

(14) Rights granted under this section shall not be exercised until the time for appealing from the order granting the rights has expired or, where an appeal is entered, until the appeal is disposed of, but from and after such time, subject to any restriction or postponement provided for in the order, the person to whom any such right is granted may enter upon any land or property and exercise the right so granted, and any person who after such time obstructs the exercise of any such right or wilfully neglects or refuses to obey any order made under this section is guilty of an offence against this Act and, in addition to any other liability, is liable on conviction to a fine of not more than \$250 for each day such obstruction, neglect or refusal continues. R.S.O. 1990, c. M.14, s. 175 (14).

Regulations

Regulations

176. (1) The Lieutenant Governor in Council may make regulations generally,

1. governing the opening, construction, maintenance and use of roads to, through or over mining claims, mining locations or lands sold or leased as mining lands or recorded as mining claims or locations under this Act or a predecessor thereof, and for the opening, construction or maintenance and use of ditches, aqueducts or raceways through, over or upon such claims, locations or lands for the conveying and passage of water for mining purposes;
2. prescribing the form of any application, notice, report, log, record, dispute, certificate, permit, statement or other document required, permitted or provided for, by or under this Act;
3. Repealed: 1997, c. 40, s. 5 (1).
4. prescribing the manner of staking and the size and form of mining claims and the time and manner of affixing tags in respect thereto;
5. prescribing the annual rental for a licence of occupation;
6. prescribing the information to be shown on a sketch or plan accompanying an application to record a mining claim;
7. prescribing, for the purposes of subsection 52 (1), the conditions on which permission may be given to mine, mill and refine mineral substance from an unpatented mining claim;
8. prescribing the annual units of assessment work to be performed by the holder of a mining claim;
9. prescribing, for the purposes of subsection 65 (2), locations, other than the office of the recorder, in which may be filed assessment work reports and prescribing the date reports in respect of specified types of assessment work shall be filed;
10. prescribing the types of work eligible for assessment work credits, the method of calculating and approving credits for work performed and the manner of distribution of credits to mining claims;

11. prescribing the manner in which prospecting and regional surveys performed before recording are eligible for assessment work credits;
12. prescribing the manner in which exploration work performed on mining lands may be allocated to contiguous unpatented mining claims;
13. prescribing the conditions on which an extension of time for the performing of and filing a report on assessment work may be allowed by a recorder;
14. prescribing the annual rental for the first year for a lease of a mining claim, the rate for each subsequent year and the annual rental for a renewal lease;
15. prescribing the rental rate for the mining rights only in respect of a mining claim;
16. prescribing the additional assessment work to be performed in respect of any excess area of a mining claim or in respect of excess average area of mining claims within a perimeter survey;
17. prescribing, for the purposes of subsection 70 (2), the conditions on which the holder of a mining claim may abandon part of the claim;
18. prescribing the annual rental of a lease referred to in section 82;
19. prescribing the annual rental of a lease or renewal lease of surface rights referred to in section 84;
- 19.1 where a rental is to be prescribed under this Act, prescribing a minimum rent or a method of calculating rent;
20. prescribing the methods and procedures to be followed in the surveying of mining claims;
21. prescribing rates of interest for the purposes of this Act;

22. prescribing, for the purposes of subsection 183 (3), the size, form, manner and time of staking out and recording mining claims on land in which an interest is retained after surrender;
23. prescribing, for the purposes of section 187, the amount of tax to be paid for each hectare and prescribing a minimum tax or a method of calculating tax;
24. prescribing classes of instruments and documents that may be filed through transmission by electronic means in such manner as is prescribed;
25. defining any word or expression for the purposes of this Act and the regulations that has not already been expressly defined in this Act;
26. prescribing anything that by this Act is to be or may be prescribed, R.S.O. 1990, c. M.14, s. 176 (1); 1994, c. 27, s. 134 (11); 1996, c. 1, Sched. O, s. 32 (1); 1997, c. 40, s. 5 (1); 1999, c. 12, Sched. O, s. 52 (1-3).

Idem

(2) The Lieutenant Governor in Council may make regulations relating to Part VII,

1. prescribing the manner of preparing closure plans, their form and content, including their certification and reporting requirements, and the information, particulars, maps and plans to be included therein;
2. prescribing standards for rehabilitation;
3. prescribing standards for the protective measures to be taken in respect of the closure of a mine;
4. prescribing the form and manner and time of giving public notice;
5. prescribing the form and manner in which notice is to be given to the Director and to the proponent;

6. prescribing the form of a report under subsection 139.1 (2);
7. prescribing corporate financial tests for the purposes of section 145;
- 7.1 prescribing the manner in which the Director may require other forms of financial assurance under subsection 145 (6);
8. prescribing, for the purposes of subsection 146 (5), the form of a warrant to enter and inspect and, for the purposes of subsection 146 (6), the form of a warrant to enter and search;
9. Repealed: 1996, c. 1, Sched. O, s. 32 (4).
10. prescribing material and quantities of material extracted, and other types of work that are to be classified as advanced exploration work;
11. prescribing time periods within which duties under Part VII shall be complied with;
12. prescribing anything that by Part VII is to be or may be prescribed;
13. authorizing a person specified in the regulations to exempt a proponent from complying with any standard, procedure or requirement in a regulation respecting closure plans if the specified person determines that the closure plan meets or exceeds the objectives of the provision;
14. prescribing other circumstances under which a proponent, or project, or any class thereof, need not comply with a regulation, or a provision thereof, made under this subsection. R.S.O. 1990, c. M.14, s. 176 (2); 1994, c. 27, s. 134 (12); 1996, c. 1, Sched. O, s. 32 (2-5); 1997, c. 40, s. 5 (2).

Same

(2.1) A regulation made under paragraph 6, 7 or 7.1 of subsection (2) shall not come into force unless,

- (a) the regulation was published in *The Ontario Gazette* at least four weeks before the regulation comes into force; or
- (b) the Minister states that the regulation must come into force before clause (a) can be complied with and gives reasons for that statement. 1996, c. 1, Sched. O, s. 32 (6).

Regulations may be general or particular

(2.2) A regulation made under subsection (1) or (2) may be general or particular in application, may be limited as to time or place or both and may provide that it applies only to the area or areas designated by the Minister. 1997, c. 40, s. 5 (3).

Minister's designations

(2.3) The *Regulations Act* does not apply to a Minister's designation that is permitted by subsection (2.2). 1997, c. 40, s. 5 (3).

Minister may issue or validate licence, lease or patent

(3) Despite anything in this Act, in special circumstances the Minister may, subject to the approval of the Lieutenant Governor in Council, issue or validate unpatented mining claims, or a licence of occupation, lease or patent of any mining lands or mining rights on such terms and conditions as the Minister considers appropriate. R.S.O. 1990, c. M.14, s. 176 (3); 1996, c. 1, Sched. O, s. 32 (7); 1999, c. 12, Sched. O, s. 52 (4).

Transmission of electricity and entering on lands without consent of owner

177. With the consent of the Lieutenant Governor in Council and on such terms as the Lieutenant Governor in Council sees fit, any company authorized to supply electrical power or energy or compressed air, or both, may from time to time construct, maintain and operate transmission lines, air pipe lines, substations and other conveniences for the transmission of electrical power or energy or compressed air, or both, and for any of such purposes may enter upon, take and use any mining lands or any privilege or easement required by such company for such purposes without the consent of the owner thereof, but subject to the payment of such compensation or annual rent for the privilege or easement required and authorized as is determined by the Lieutenant

Governor in Council, and the Lieutenant Governor in Council may from time to time revoke or vary the terms upon which any right conferred under this section may be exercised. R.S.O. 1990, c. M.14, s. 177; 1999, c. 12, Sched. O, s. 53.

Fees

Fees

177.1 The Minister may set the amount of any fee required to be paid to the Minister, the Ministry, the Commissioner or a recorder under this Act. 1997, c. 40, s. 6.

No fee to record order upon direction of Commissioner

178. Where an order is made by the Commissioner or on appeal from his or her decision, and it is in the public interest that the order be recorded, and the order would not otherwise be recorded, the Commissioner may direct the mining recorder to record the order without fee. R.S.O. 1990, c. M.14, s. 178.

Cancellation of Patents

Lands and mining rights to be withdrawn from exploration on repeal of patent or lease at instance of Crown

179. (1) Where a patent or lease of mining lands or mining rights is by proceedings in the Superior Court of Justice at the instance of the Crown repealed or avoided, the lands and mining rights thereupon become and are withdrawn from exploration, discovery, staking out, lease or sale, and every discovery upon and claim to the lands or mining rights and to the mines or minerals on, in or under such lands made or existing at any time before the repeal or avoidance of the patent or lease become and are void, and the lands, mining rights, mines and minerals are thenceforth vested in the Crown freed and discharged of and from every claim. R.S.O. 1990, c. M.14, s. 179 (1); 2000, c. 26, Sched. M, s. 17.

Registration of order

(2) The land registrar of the land titles or registry division in which any lands or rights mentioned in a court order made under subsection (1) are situate shall, upon receipt of the order, register it and the order is absolute and conclusive proof of the vesting in the Crown of the lands or rights affected by the order and the vesting in the Crown is not open to attack in any court by reason of the omission of any act or thing leading up to the order repealing or avoiding the patent or lease. R.S.O. 1990, c. M.14, s. 179 (2).

Non-application of certain Acts

(3) Upon registration of the court order in the land registry office, the *Registry Act* or the *Land Titles Act*, as the case may be, ceases to apply to the lands or rights affected by the order, and the land registrar shall note that fact in the register. R.S.O. 1990, c. M.14, s. 179 (3); 2002, c. 18, Sched. M, s. 8.

Opening lands for prospecting, etc.

(4) The lands and mining rights vested in the Crown under this section are not open for prospecting, staking out or lease under this Act until a date fixed by the Deputy Minister, two weeks' notice of which shall be published in *The Ontario Gazette*. R.S.O. 1990, c. M.14, s. 179 (4).

Reversion of Mining Lands to Crown

Reversion to Crown

180. Where a freehold or leasehold interest in mining lands or mining rights reverts, other than by transfer to the Crown, the land or rights may be dealt with as unpatented Crown land. R.S.O. 1990, c. M.14, s. 180.

Vesting of Mining Rights: Former Canada Company Lands

Vesting of Crown interest in mining rights in surface rights owners

180.1 Any interest of the Crown in the mining rights relating to the lands described in the indentures recited in *The Canada Company's Lands Act, 1922* is vested in the registered owners of the surface rights of those lands, subject to all registered encumbrances against the surface rights. 1997, c. 38, s. 1 (5).

Default of Co-Owners, etc.

Co-ownership

Definition

181. (1) In this section,

"co-owner" includes co-lessee and co-licensee, and a corporation with share capital and a shareholder thereof shall be deemed to be co-owners. R.S.O. 1990, c. M.14, s. 181 (1).

Procedure to enforce claim for payment of rents or expenditures by one co-owner against another

(2) Where lands or mining rights that are subject to rents or expenditures for development work are held by two or more co-owners and all such rents or expenditures have been paid by one or more of them and the other or others has or have neglected or refused to pay that other's or those others' proportion of the rents or expenditures for a period of four or more consecutive years, the Commissioner, upon the application of any co-owner or co-owners who has or have paid the rents or met the expenditures for the period of four or more consecutive years immediately prior to the date of the application and upon the receipt of such other information and particulars as he or she requires, may make an order requiring the delinquent co-owner or co-owners to pay, within three months of the date of the order or such further time as the Commissioner may fix, the delinquent owner's or co-owners' fair proportion of the rents or expenditures to the co-owner or co-owners who has or have paid all the rents or expenditures, together with interest at the prescribed percentage rate per year compounded yearly, and such costs of the application as are allowed by the Commissioner. R.S.O. 1990, c. M.14, s. 181 (2).

Service of order

(3) An order made under this section shall be served in such manner as the Commissioner directs. R.S.O. 1990, c. M.14, s. 181 (3).

Dispute as to liability

(4) If a co-owner upon whom an order made under subsection (2) has been served disputes his, her or its liability to another co-owner or otherwise to make any payment under the order or the amount thereof, the co-owner may, within the time limited by the order for making the payment, apply to the Commissioner for a hearing and the Commissioner shall, after a hearing, determine the dispute and may affirm, amend or rescind the order or make such other order as he or she considers just, and, if the Commissioner orders that a payment be made, he or she may fix the time for payment thereof. R.S.O. 1990, c. M.14, s. 181 (4); 1996, c. 1, Sched. O, s. 33.

Vesting order

(5) Where the time for payment fixed by an order made under subsection (2) has expired and no application for determination of a dispute has been made, or where the time fixed by an order made under subsection (4) has expired, and where such additional time, if any, as has been granted by the Commissioner has expired, if it is proved to the satisfaction of the Commissioner that the payment has not been made, he or she may make an order vesting the interest of the delinquent co-owner or co-owners in the lands or mining rights to which the payment relates in the co-owner or co-owners who has or have paid the rents or made the expenditure. R.S.O. 1990, c. M.14, s. 181 (5); 1996, c. 1, Sched. O, s. 33.

Death of delinquent

(6) Where a delinquent co-owner has died either before or after default in respect of that co-owner's portion and no person has taken out administration of the estate or has obtained probate of the will, any order made under this section may be directed to and served upon his or her heirs. R.S.O. 1990, c. M.14, s. 181 (6).

Order against corporation

(7) An order made under this section against a corporation shall be directed to the corporation only. R.S.O. 1990, c. M.14, s. 181 (7).

Fee

(8) An application under subsection (2) shall be accompanied by the required fee. R.S.O. 1990, c. M.14, s. 181 (8); 1997, c. 40, s. 7.

Mineral Rights Under Roads

Mineral rights under roads

182. (1) The corporation of any municipality in that part of Ontario lying south of the French River, Lake Nipissing and the Mattawa River, wherever minerals are found, may sell or lease, by public auction or otherwise, the right to take minerals found upon or under any roads over which the municipality has jurisdiction, if considered expedient to do so. 2002, c. 17, Sched. F, Table.

No sale or lease until after notice

(2) No such sale or lease shall take place until after due notice of the intended by-law has been posted up in six of the most public places in the immediate neighbourhood of such road for at least one month previous to the time fixed for considering the by-law. R.S.O. 1990, c. M.14, s. 182 (2).

Sale or lease not to interfere with public travel

(3) The deed conveyance or lease to the purchaser or lessee under the by-law shall contain a proviso protecting the road for public travel and preventing any user of the granted rights that would interfere with public travel. R.S.O. 1990, c. M.14, s. 182 (3).

In northern part of Province

(4) In the remaining parts of Ontario, the mines, minerals, and mining rights in, on or under all common and public highways and road allowances are vested in the Crown, and may be sold, leased or otherwise disposed of under this Act. R.S.O. 1990, c. M.14, s. 182 (4).

Rights of adjoining landowners

(5) Where a mining location or any mining lands adjoin a common and public highway or road allowance and the mineral vein or deposit thereon extends into or under the highway or road allowance, its owner has the right to lease the mines, minerals and mining rights in, on or under the same, subject to this Act, or where there are mining locations or mining lands on both sides of such highway or road allowance, such rights accrue to the owner or owners on both sides thereof as respects the half of such highway or road allowance adjoining the owner's or owners' lands. R.S.O. 1990, c. M.14, s. 182 (5).

Exception

(6) Subsections (4) and (5) do not apply to highways on lands granted before the 1st day of May, 1904 by the Crown under a predecessor of this Act, or in the grant whereof the mines and minerals were not reserved to the Crown. R.S.O. 1990, c. M.14, s. 182 (6).

Patent or lease to protect public travel

(7) The patent or lease of such mines, minerals and mining rights shall contain a proviso protecting the road for public travel and preventing any user of the granted rights that would interfere with public travel unless a road in lieu thereof has been provided and accepted by the municipal corporation having control of the road. R.S.O. 1990, c. M.14, s. 182 (7).

Previously acquired rights preserved

(8) Subsections (4) to (7) do not affect any rights acquired from or any agreement made or entered into with any municipal corporation under this section prior to the 1st day of May, 1904. R.S.O. 1990, c. M.14, s. 182 (8).

Surrender of Lands

Voluntary surrender of mining lands

183. (1) The owner, lessee or holder of any mining lands or mining rights granted under this Act or any other Act may surrender such lands or mining rights to the Crown only upon such terms as are acceptable to the Minister, and thereupon the Minister may cause a notice of determination to be filed in the proper land registry office. R.S.O. 1990, c. M.14, s. 183 (1); 1996, c. 1, Sched. O, s. 34.

Retention as unpatented mining claims

(2) An owner, lessee or holder who surrenders mining lands or mining rights under subsection (1) may file a notice in the prescribed form with the recorder indicating that such owner, lessee or holder wishes to retain an interest in the lands or part of the lands thereof, in the form of unpatented mining claims. R.S.O. 1990, c. M.14, s. 183 (2); 1996, c. 1, Sched. O, s. 34.

Staking out and recording of lands

(3) Where a notice has been filed under subsection (2), the owner, lessee or holder shall stake out or cause to be staked out and recorded in such size, form, manner and time as is prescribed, the lands in which an interest is to be retained. R.S.O. 1990, c. M.14, s. 183 (3); 1996, c. 1, Sched. O, s. 34.

Extension of time by recorder or order of surrender of lands

(4) Where mining claims have not been staked out and recorded under subsection (3) within the time prescribed, the recorder may extend the time for staking out and recording or may order that the mining lands or mining rights on which the staking out and recording is to be performed are surrendered and the recorder shall, in the case where an order of surrender is made, by mail sent not later than the next day after the making of the order, notify the owner, lessee or holder of the recorder's action and the reason therefor. R.S.O. 1990, c. M.14, s. 183 (4); 1996, c. 1, Sched. O, s. 34; 1999, c. 12, Sched. O, s. 55.

Prospecting, etc., on surrendered lands

(5) Mining lands or mining rights surrendered to the Crown under subsection (1) and which are not recorded as unpatented mining claims under subsection (3) shall not be open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, notice of which shall be published in *The Ontario Gazette* at least two weeks prior thereto. R.S.O. 1990, c. M.14, s. 183 (5).

Forfeited Lands

Lands forfeited, etc., to Crown

184. (1) Where mining lands or mining rights,

(a) are forfeited to the Crown under the *Corporations Act* or the *Business Corporations Act*, or any predecessor thereof or are forfeited to the Crown for any other cause; or

(b) have become the property of the Crown by reason of the person last seised thereof or entitled thereto having died intestate and without lawful heirs,

the Minister may cause to be registered in the proper land registry office a notice stating that forfeiture has been effected as mentioned in clause (a) or that the lands or mining rights have become the property of the Crown as mentioned in clause (b), as the case may be, and that by reason thereof the lands or mining rights and every interest therein are forfeited to and vested in, or have become the property of, the Crown, absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto, whether existing, arising or accruing before or after such forfeiture or becoming the property of the Crown, and, subject to subsection (2), such lands shall be dealt with under this Act. R.S.O. 1990, c. M.14, s. 184 (1).

Opening forfeited, etc., lands for prospecting, etc.

(2) Mining lands or mining rights except unpatented mining claims so forfeited or that have become the property of the Crown are not open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks' notice of which shall be published in *The Ontario Gazette*. R.S.O. 1990, c. M.14, s. 184 (2); 1996, c. 1, Sched. O, s. 35.

Mining lands and rights remain forfeited

(3) If a corporation's mining lands or mining rights are forfeited to the Crown under the *Business Corporations Act* or a predecessor of that Act upon the dissolution of the corporation and if a notice of forfeiture is registered under subsection (1),

(a) the mining lands and mining rights so forfeited are not available, after the third anniversary of the corporation's dissolution, to satisfy a judgment, order or decision against the corporation, despite clause 242 (1) (c) and subsection 244 (2) of the *Business Corporations Act*; and

(b) despite subsection 241 (5) of the *Business Corporations Act*, a revival of the corporation under that subsection after the third anniversary of its dissolution does not restore to the corporation the mining lands or mining rights that were forfeited to the Crown, and those mining lands and mining rights remain forfeited to the Crown despite the revival. 1994, c. 27, s. 134 (13).

Power of Minister to sell Crown interest

(4) If a co-owner's partial interest in mining lands or mining rights is forfeited to the Crown under subsection (1), any other co-owner of that interest may apply to the Minister for a transfer or conveyance of the forfeited interest to the co-owner, and the Minister may transfer or convey the interest if the co-owner pays the fair market value of the interest or the price per hectare established by the Ministry. 2001, c. 9, Sched. L, s. 6.

Same

(5) In addition to a co-owner, any other party having a partial interest in the mining lands or mining rights may apply to the Minister under subsection (4) if all co-owners have waived their right to apply, and the Minister may transfer or convey the interest if the party pays the fair market value of the interest or the price per hectare established by the Ministry. 2001, c. 9, Sched. L, s. 6.

Annulment of Forfeiture or Termination of Lease

Annulment of forfeiture, etc.

185. (1) The Minister may by order revoke, cancel or annul the forfeiture of any mining lands or mining rights under this Act or revoke, cancel or annul the termination of any lease of mining lands under this Act or relieve from forfeiture any unpatented mining claims on such terms and conditions as the Minister considers appropriate. R.S.O. 1990, c. M.14, s. 185 (1); 1996, c. 1, Sched. O, s. 36.

Filing order in recorder's office

(2) Where an order under subsection (1) concerns unpatented mining claims, such order shall be filed in the office of the mining recorder. R.S.O. 1990, c. M.14, s. 185 (2).

Registering order in land registry office

(3) Where an order under subsection (1) concerns leases or freehold patents, the Deputy Minister shall cause the order to be registered in the proper land registry office and thereupon the mining lands or mining rights revert in the owner or lessee of the mining lands or mining rights at the time of forfeiture or termination, the owner's or lessee's heirs, successors or assigns, subject to any lien, mortgage or charge entered or registered prior to the forfeiture or termination and still outstanding. R.S.O. 1990, c. M.14, s. 185 (3).

Withdrawal of lands from prospecting, etc.

(4) Where application is made for an order under subsection (1), the Minister may direct the mining lands or mining rights described in the application to be withdrawn from prospecting, staking out, sale or lease until the disposition of the application. R.S.O. 1990, c. M.14, s. 185 (4).

Fee

(5) The Minister may direct an application for an order under subsection (1) to be accompanied by the required fee. R.S.O. 1990, c. M.14, s. 185 (5); 1997, c. 40, s. 7.

PART XIII MINING LAND TAX

Definition

186. In this Part,

"tax" means a tax under this Part. R.S.O. 1990, c. M.14, s. 186; 2002, c. 17, Sched. F, Table.

Amount of tax

187. There shall be paid to the Crown in each year a tax in the prescribed amount for each hectare on any lands or mining rights to which this Part applies. R.S.O. 1990, c. M.14, s. 187.

Date of payment of tax

188. The tax imposed for each year is payable no later than 60 days from the date of the notice of tax payable. 2000, c. 26, Sched. M, s. 15.

Lands liable for tax

189. (1) Except as provided in this Part,

(a) all lands and mining rights in territory without municipal organization patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;

(b) all land in territory without municipal organization being held or used for mining purposes howsoever patented or alienated from the Crown;

(c) all mining rights in, upon or under lands in a municipality patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;

(d) all mining rights in, upon or under land in a municipality and being held or used for mining purposes howsoever patented or alienated from the Crown; and

(e) all mining rights howsoever patented or acquired which are severed from or held apart or separate from the surface rights, are liable for, and the owner or lessee thereof shall pay, the tax. R.S.O. 1990, c. M.14, s. 189 (1).

Exemption from tax

(2) No tax is payable in respect of mining lands or mining rights granted by the Crown by lease or renewal of lease. R.S.O. 1990, c. M.14, s. 189 (2).

Exemptions from tax by Minister

190. (1) The Minister may exempt lands or mining rights from the tax under this Part where,

(a) there is no severance of the surface and mining rights and the land has been subdivided,

(i) by a registered plan of subdivision,

(ii) by a reference plan into parts for city, town, village or summer resort purposes, or

(iii) by a reference plan into parts for local municipality purposes;

(b) land is being actually used for public park, educational, religious or cemetery purposes and there is no severance of the surface and mining rights;

(c) land is being used in good faith for farming or other agricultural purposes and there is no severance of the surface and mining rights; or

(d) the mining rights in, upon or under any land situated south of the French River, Lake Nipissing and the Mattawa River, including the Territorial District of Manitoulin, are being held, used or developed solely for the production of natural gas or petroleum, R.S.O. 1990, c. M.14, s. 190 (1); 2002, c. 17, Sched. F, Table.

Decision of Minister final

(2) The decision of the Minister as to the right of exemption under subsection (1) is final and conclusive. R.S.O. 1990, c. M.14, s. 190 (2).

Cases where mining rights taxable only

191. Where the Minister is satisfied that the surface rights in respect of a mining claim or mining location are being used for purposes other than that of mining or the mineral industry, this Part applies only to the mining rights. R.S.O. 1990, c. M.14, s. 191.

Preparation of tax roll

192. The Deputy Minister shall cause to be prepared each year a tax roll of the lands and mining rights and persons liable to the tax. R.S.O. 1990, c. M.14, s. 192.

Registration of notice of liability and forfeiture

193. The Deputy Minister may register in the proper land registry office a notice of liability to taxation and forfeiture, in the prescribed form, in respect of any lands or mining rights subject to the tax. R.S.O. 1990, c. M.14, s. 193.

Liability for tax though not on roll

194. Despite sections 192 and 193, every person and property liable to the tax is liable whether entered in the tax roll or not, and the tax is, without any notice or demand, payable at the time and in the manner provided in this Part. R.S.O. 1990, c. M.14, s. 194.

Commissioner may settle dispute

195. (1) Any person claiming an interest in any lands or mining rights entered on the tax roll or whose name has been entered on the tax roll, as being liable to the tax or who disputes the amount of the tax levied on any lands or mining rights in which that person has an interest may apply to the Commissioner to determine whether such lands and mining rights are or whether that person is liable to the tax and to be entered on the tax roll or the amount of the tax payable, and the Commissioner shall hear and determine such matter. R.S.O. 1990, c. M.14, s. 195 (1).

Minister to be party

(2) The Minister is a party to any proceedings before the Commissioner under this section. R.S.O. 1990, c. M.14, s. 195 (2).

Omissions from tax roll

(3) The Minister may refer to the Commissioner for hearing and adjudication any question or dispute as to whether any mining rights or lands have or any person has been wrongfully omitted from the tax roll. R.S.O. 1990, c. M.14, s. 195 (3).

Procedure to enforce claim for payment of taxes by one co-owner against another

196. (1) Where lands or mining rights liable for tax are held by two or more co-owners and all such tax has been paid by one or more of them and the other or others has or have neglected or refused to pay that other's or those others' proportion of the tax for a period of four or more consecutive years, the Commissioner, upon the application of any co-owner or co-owners who has or have paid the tax for the period of four or more consecutive years immediately prior to the date of the application and upon the receipt of such other information and particulars as he or she requires, may make an order requiring the delinquent co-owner or co-owners to

pay, within three months of the date of the order or such further time as the Commissioner may fix, the delinquent co-owner's or co-owners' fair proportion of the tax to the co-owner or co-owners who has or have paid all the tax, together with interest at the prescribed rate, compounded annually, and such costs of the application as are allowed by the Commissioner. R.S.O. 1990, c. M.14, s. 196 (1); 2002, c. 18, Sched. M, s. 9.

Fee

(2) An application under subsection (1) shall be accompanied by the required fee. R.S.O. 1990, c. M.14, s. 196 (2); 1997, c. 40, s. 7.

Service of order

(3) An order made under this section shall be served in such manner as the Commissioner may direct. R.S.O. 1990, c. M.14, s. 196 (3).

Disputes as to liability

(4) If a co-owner, upon whom an order made under subsection (1) has been served, disputes his, her or its liability to another co-owner or otherwise to make any payment under the order or the amount thereof, the co-owner may, within the time limited by the order for making the payment, apply to the Commissioner for a hearing and the Commissioner shall hear and determine the dispute and may affirm, amend or rescind the order or make such other order as he or she considers just, and, if the Commissioner orders that a payment be made, he or she may fix the time for payment thereof. R.S.O. 1990, c. M.14, s. 196 (4).

Vesting order

(5) Where the time for payment fixed by an order made under subsection (1) has expired and no application for determination of a dispute has been made, or where the time fixed by an order made under subsection (4) has expired, and where such additional time, if any, as has been granted by the Commissioner has expired, if it is proved to the satisfaction of the Commissioner that the payment has not been made, he or she may make an order vesting the interest of the delinquent co-owner or co-owners in the

lands or mining rights to which the payment relates in the co-owner or co-owners who has or have paid the taxes. R.S.O. 1990, c. M.14, s. 196 (5).

Service of order on company

(6) Any order made against an incorporated company under this section shall be directed to the company only. R.S.O. 1990, c. M.14, s. 196 (6).

Interpretation

(7) For the purpose of this section, two or more co-holders or co-lessees shall be deemed to be co-owners, and an incorporated company and a shareholder therein shall be deemed to be co-owners of the lands of the company. R.S.O. 1990, c. M.14, s. 196 (7).

Defaulters list and notice of forfeitures

197. (1) The Deputy Minister shall cause to be prepared between the 1st day of January and the 31st day of March in each year a list of all lands and mining rights in respect of which any tax is two years or more in arrears, and, not later than the 30th day of June next following, shall cause to be sent by mail or delivered by courier service a notice to the person appearing from search or inquiry at the land registry office to be the owner of the property in default and to every person appearing from that search or inquiry to have an interest therein, at the address or last known address of such person so far as he or she can reasonably ascertain it, stating that, unless the total amount of tax and penalties due and payable under this Part are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following, and to the amount so due and payable there shall in every case be added and paid as costs the sum of \$10 for each property. R.S.O. 1990, c. M.14, s. 197 (1).

Publication of list and notice

(2) Not later than the 15th day of July in each year, the Deputy Minister shall cause the list prepared under subsection (1) to be published in one issue of *The Ontario Gazette* and in one issue of a newspaper published in the district, upper-tier municipality or

local municipality in which the property is situate, giving notice that, unless the total amount of tax, penalties and costs shown therein are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following. R.S.O. 1990, c. M.14, s. 197 (2); 2002, c. 17, Sched. F, Table.

Declaration of forfeiture

(3) Where the total amount of tax, penalties and costs remain unpaid after the 31st day of December of the year of publication of the notice mentioned in subsection (2), the Minister by certificate, in the prescribed form, may, on or after the 1st day of January next following, declare the lands or mining rights, and every interest therein, forfeited to and vested in the Crown, and thereupon the lands or mining rights, and every interest therein, vest in the Crown absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto whether existing, arising or accruing before or after such forfeiture is declared. R.S.O. 1990, c. M.14, s. 197 (3).

Not open for staking

(4) Except as provided in subsection (7), lands and mining rights so forfeited are not open for prospecting, staking out, sale or lease under this Act. R.S.O. 1990, c. M.14, s. 197 (4).

Registration of certificate

(5) The land registrar of the land titles or registry division in which any land or right mentioned in a certificate of forfeiture made under subsection (3) is situate shall, upon receipt of the certificate, duly register it and it is absolute and conclusive evidence of the forfeiture to the Crown of the land or mining rights so certified to be forfeited and is not open to attack in any court by reason of the omission of any act or thing leading up to the forfeiture. R.S.O. 1990, c. M.14, s. 197 (5).

Certain Acts not to apply to forfeited lands

(6) Upon registration of the certificate of forfeiture in the land registry office, the *Registry Act* or the *Land Titles Act*, as the case may be, ceases to apply to the land forfeited, and the land registrar shall note that fact in the register. R.S.O. 1990, c. M.14, s. 197 (6); 1999, c. 12, Sched. O, s. 56.

Opening forfeited lands, etc., for prospecting

(7) The lands and mining rights forfeited to and vested in the Crown under this Part that are mentioned in a notice published in one issue of *The Ontario Gazette* during May of any year are open for prospecting, staking out, sale or lease under this Act at and after 8 a.m. standard time on the 1st day of June next following. R.S.O. 1990, c. M.14, s. 197 (7); 1996, c. 1, Sched. O, s. 37.

Right to search land registry office free of charge

198. Any person duly authorized by the Minister in writing may, for the purpose of ascertaining the names and addresses of owners or lessees of land or mining rights liable to taxation under this Part, search and inspect registry books, indexes and documents in land registry offices, and no charge is to be made by and no fee is payable to a land registrar for any such search or inspection. R.S.O. 1990, c. M.14, s. 198.

Interest

199. (1) Where the tax is not paid within the time required under section 188, interest at the prescribed rate, compounded annually, shall be added to the tax forthwith and in each subsequent year that the tax remains unpaid, and the increased amounts are the tax due and payable under this Part. 1999, c. 12, Sched. O, s. 57 (1).

Record of arrears to be kept

(2) The Deputy Minister, or such other person as is directed by the Minister, shall keep a record of all arrears of taxes with the increased amounts from time to time entered thereon. R.S.O. 1990, c. M.14, s. 199 (2).

Reduction or waiver of interest owing

(3) The Minister may reduce or waive the amount of any interest added to taxes under subsection (1). 1999, c. 12, Sched. O, s. 57 (2).

Special lien and priority of the tax

200. All taxes, penalties and costs payable under this Part constitute a special lien on the lands or mining rights against which the tax under this Part is levied in priority to every claim, privilege, lien or encumbrance of any person, whether the right or title of that person has accrued before, or accrues after, the attaching of the special lien, and its priority is not lost or impaired by any neglect, omission or error of any official, officer or person, or by want of registration, and the special lien may be realized by action for sale of any or all property subject to it. R.S.O. 1990, c. M.14, s. 200.

Right of action

201. If an owner or lessee of lands or mining rights fails to pay the tax on the lands or mining rights when due, the Minister may bring action in any court of competent jurisdiction for the recovery of the tax together with penalties and costs. R.S.O. 1990, c. M.14, s. 201.

Compromise of tax

202. (1) Where a doubt arises as to the liability of a person to pay a tax or any part of a tax, the Minister may,

- (a) compromise the matter by the acceptance of an amount that the Minister considers proper; and
- (b) if the tax imposed has been paid under protest, refund the tax or any part of it or give a tax credit to the person making the payment under protest. 2000, c. 26, Sched. M, s. 16.

Exemption from acreage tax

(2) Where land that was not subject to tax under this Part becomes subject to tax because the surface rights thereof have been severed from the mining rights for a public road, highway or public utility, the Minister may exempt the mining rights so severed from the tax during such term as he or she is satisfied that the mining rights are not being used or held for mining purposes. R.S.O. 1990, c. M.14, s. 202 (2).

Lands and easements revert to Crown

203. Where under this Part or section 91, 183 or 184 a dominant tenement reverts to and becomes vested in the Crown, any easement appurtenant thereto passes to the Crown and, where a servient tenement reverts to and becomes vested in the Crown, any easement to which the servient tenement is subject is not affected. R.S.O. 1990, c. M.14, s. 203.

PART XIV (ss. 204-207) Repealed: 1999, c. 12, Sched. O, s. 58.