

**PRESENTATION TO
THE ONTARIO STANDING COMMITTEE ON GENERAL
GOVERNMENT**

Hearings on Bill 173, an Act to amend the Mining Act and
Bill 191, an Act with respect to land use planning and protection of the Far
North

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Thunder Bay

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President

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Good morning Chair Oraziotti and members of the committee.

My name is Chris Hodgson. I am the President of the Ontario Mining Association. With me today are John Blogg, Ontario Mining Association Secretary and Manager of Industrial Relations; Adele Faubert, Manager of Aboriginal Affairs at Goldcorp Canada's Musselwhite Mine; and Jerome Girard, who is the Mill Superintendent at the Musselwhite Mine.

We appreciate the opportunity to appear today to offer a presentation and answer your questions related to Bill 173 and 191. In addition, we will provide you with a full written submission before the September 4 deadline.

The Ontario Mining Association was established in 1920 and is one of the longest serving trade organizations in the country. Our members include operating mines, metallurgical plants, contractors, suppliers and engineering firms. They are located throughout Ontario, driving wealth creation and regional development, while significantly contributing to the province's tax base and balance of trade.

The Ontario Mining Association has a long history of working in concert with the government, communities of interest and the public to ensure that the mining industry in Ontario is competitive and serves to benefit everyone in the province. This *Ontario Mining Profile* will give you some indication of the extent of our contribution. You will notice that the handout contains more than just figures with dollar signs that illustrate the economic impact of mining. As an industry association, we realize that it's not enough just to provide economic benefit to communities. Our values have evolved along with our communities of interest and are driven by a commitment to continual improvement, as it relates to economic, environmental and social performance. We see fundamental value in operating in a responsible way to generate

prosperity today, without compromising the opportunities of future generations.

Because our members strive to be leaders in sustainable development and community building, they are supportive of the general intent and direction of Bills 173 and 191. The Ontario government should be commended for its intent to, in Minister Gravelle's words, "find a balance"* in developing legislation that reflects the changing needs and aspirations of a dynamic society, while supporting a vibrant, safe and environmentally sound industry. We believe that the government took the right approach by consulting widely on the Mining Act – even before the official introduction of the legislation. As a result, the scope of the changes to the legislation is reflective of the key areas of concern to the public. We are certainly grateful for the opportunity to take part in an ongoing multi-stakeholder dialogue – including through the Minister's Mining Act Advisory Committee – on issues that are of significant concern to our members, and to continue to have our views heard today and in the future.

* *Modernizing Ontario's Mining Act: Finding a Balance*, Discussion Paper, August 2009, p. 1

For the purposes of clarity in today's presentation, I will speak firstly about Bill 173 (Mining Act) and secondly about Bill 191 (Far North Act).

In its revision of the Mining Act, the government of Ontario laid the foundation for the continued success of the mining sector in the province by recognizing the need to preserve a mineral tenure regime that offers a level of confidentiality, security and certainty that will allow large and small companies to compete on a level playing field. While retaining competitive staking, the government nonetheless addressed the concerns of private land owners by removing the need to physically access land prior to claim acquisition through the introduction of an electronic map staking system. The Ontario Mining Association is supportive of this approach, as it makes it possible to avoid unnecessary disturbance to the land, inconvenience to the surface rights holders and/or potential infringement on Aboriginal or treaty rights. There are other advantages associated with map staking, which include greater efficiency, avoidance of unnecessary costs and the ability to channel resources to more value added activities, avoidance of safety risks, as well as a reduction in use of fossil fuels and, thus, lower emissions of greenhouse gasses. The Ontario Mining

Association commends the government for offering a workable and progressive solution that meets the needs of a variety of stakeholders and supports the provision of \$40 million to implement the changes to the Mining Act.

At the same time, the Ontario Mining Association does have some concerns with Bill 173 and would like to seek clarification on some aspects of the proposed legislation, ensuring that there are no ambiguities impairing the ability of mining to continue to play the major role it does in the economic and social development of Ontario.

A basic foundation of mining success in Ontario – the thing that sets us apart and gives us an advantage over some other jurisdictions with significant mineral potential – is rule of law and certainty of title. For that reason, the Aboriginal consultation provisions in Bill 173 need to be clear, transparent and consistent with current case law, which states that government has the primary duty, with some exceptions, to consult with Aboriginal communities. “Duty to consult”, as presented in the Bill, seems to demand consultation by a proponent far beyond the requirements of case law, an ambiguity that may be reflective of the current general practice in the province, which sees

proponents –including our members – engage almost exclusively in consultation, both in the interest of relationship building and also in furthering results to meet business timelines and objectives. There is no doubt that relationship building from the outset is essential and has, indeed, become common practice among OMA members. However, when it comes to ensuring transparency and the supremacy of the rule of law, the duty to consult is placed unequivocally with the Crown. This means that the Act should make explicit reference to government-appointed Mineral Development Officers bearing full responsibility not just for the approval, but for the actual conduct of consultation, thus fulfilling the government’s duty to consult. Given these clear provisions, and recognizing that they would constitute appropriate consideration of community interests, the industry would be prepared to accept the added regulatory burden of exploration plans and permits, the reintroduction of which runs counter to the government’s overriding Open for Business Policy. Needless to say, we expect that the government will work within the spirit of the Open for Business Policy by putting in place administrative measures that will ensure fixed timelines and an efficient process associated with any new regulatory measures.

Having stated our general concern around the duty to consult, allow me to hone in on another area of the Act that may need to be clarified. Under Section 143(2) of the current Mining Act, a proponent is required to file a Notice of Material Changes to a certified closure plan whenever such changes occur. The amendment proposed in Bill 173 adds the provision that such changes require “authorization” and that the amended certified closure plan needs to be filed with MNDM prior to undertaking the changes described in the submitted Notice of Material Changes.

The proposed Section 141(2) in Bill 173, to have the amended certified closure plan “filed” before commencing the work, is a significant change to the Act. The most onerous aspect of this change is the obligation on the proponent to conduct Aboriginal consultation on the amendment, to the satisfaction of the Director. Let me recount a “real life” story to illustrate what this change might mean to a mining operation:

Company A, a leading mineral producer and employer in a Northern Ontario Community, was the proponent of a certified closure plan for XYZ Mine, which was filed with MNDM four years ago. Subsequently, the company submitted a Notice of Material

Change that reflected significant changes to the mining project, as described in the original closure plan. In response, MNDM requested an amended closure plan, which Company A duly submitted, and which was approved by the ministry several months later.

Meanwhile, Company A embarked on a consultation on the changes to the closure plan with the neighbouring AB First Nation. After a cordial first meeting with the community leadership, plans were made for a follow up meeting. Despite numerous letters and phone calls from Company A, the follow up meeting date was not set until six months later, at which time it fell through due to the last minute unavailability of Chief and Council. Given an offer by the legal council of AB First Nation to arrange for a meeting, Company A complied with his request to send in a copy of the Notice of Material Change previously submitted to MNDM. Since that time, 17 months have passed and, despite active efforts on the part of Company A to arrange a meeting with AB First Nation, no further discussion about the notice and the proposed closure plan amendment has taken place. In conversation with the MNDM Director, Company A learned that its attempts to consult with AB First Nation would not be considered sufficient for their

closure plan amendment to be accepted for filing. Therefore, if the requirement to have an amended certified plan filed with MNM prior to undertaking the changes had been in force, XYZ mine would have been closed for over a year and remained shut down indefinitely, while Company A pursued its attempts to consult with AB First Nation.

I am sure that you will agree that his level of uncertainty for mining proponents is not acceptable in a province that is facing dire economic circumstances and making efforts to be “open for business”. To be sure, the Revised Mining Act will probably not be implemented this way and will probably follow the present way we amend closure plans on existing operations. However, it would help if this was clarified or this part of the amendment was deleted.

In terms of promoting fair and balanced development, the government has taken the right approach in proposing improvements to the dispute resolution process by introducing the notion of a tribunal. We would like to take this opportunity to stress that a truly robust process needs to be unambiguous, fair and transparent. Therefore, in addition to being experienced mediators, tribunal members must understand the issues and the

law. In defining tribunal nomination criteria, the government should consider the need to engage individuals with local expertise, including Aboriginal representatives. As with the consultation process, clear timelines must be associated with the dispute resolution process, to ensure security of investment and business continuity, taking into account factors such as timing of flow-through share funding and the seasonal nature of work in the North (with access to some sites being restricted by the availability of winter roads).

I would like to switch now to Bill 191 and make comments on land use planning and protection in the Far North.

Once again, we are appreciative of the government's efforts to foster a multi-stakeholder dialogue and build consensus through the Far North Advisory Council, which I had the privilege to be a part of and whose recommendations we support.

The Ontario Mining Association is supportive of the government's stated intent to involve Aboriginal communities in the land use planning process. We also strongly agree with the goal "to strike the right balance between conservation and development", which was set out in the Premier's July 14, 2008 announcement. This is

why we are concerned that the wording of subsequent communication on this initiative, as well as the Bill itself, is strong on conservation targets, but nonexistent on development targets. If we are to respect the integrity of the Premier's words, and ensure the wellbeing of Far North communities, development targets need to be included in the legislation. Why not a target of 10 new mines in the next 10 years? A recent University of Toronto study concluded that the contribution of even a single representative mine can have an impressive effect on local employment and economic output [copies of this study are available here]. At the same time, the actual footprint of a mine on the landscape is very small. The only two mines in the Far North are examples of this. Victor Mine in Attawapiskat, which brought in a one billion dollar investment by De Beers to the province and the Musselwhite Mine, which brings considerable benefits to a remote area of Ontario. Both mines rely heavily on the local Aboriginal work force.

While operating mines occupy a very small area, they are rare and very difficult to find, especially in a vast remote area like the Far North, where the geology is largely unknown. Because geological survey work would be ongoing over an extensive period of time,

the Far North Act needs to make provisions for regular review of the land use plans – perhaps every five years. New mineral discoveries, new science, the changing needs of Northern residents, technological changes and shifting circumstances may all trigger reviews of land use plans. As with our comments on the Mining Act, we would like to stress that the review process in this case also needs to be objective, fair and transparent.

Given the level of effort involved in land use planning and review, including the need to conduct comprehensive, long range data collection and geological mapping, a key determining factor in the success of the government's land use planning initiative is the sustained availability of adequate resources, both financial and human. Proposals for land use planning in the Far North place a large responsibility and scope of work on First Nations, local authorities and companies alike. The legislation cannot achieve its goals unless greater governmental resources are dedicated to enhance the capacity for land use planning in the Far North. The government has allocated \$40 million to implement the Mining Act and it will require much more – hundreds of millions of dollars – to achieve the goals set out in the Far North Act. In embarking on the monumental task of land use planning in the Far North, the

government needs to ensure that the necessary funding mechanisms are in place.

In conclusion, I would like to point out that mining companies function in a fiercely competitive and increasingly mobile global market. Ontario needs to remain open for mining business. Recent turbulence in the economy has had a negative impact on our industry, but there are steps that the government can take to ensure that Ontario is in an optimal position to take advantage of the next upswing in commodity prices. Sustained success of mining as part of Ontario's economy requires the following:

- Certainty of the rule of law and land title
- Land access for mineral exploration
- Investments in training, infrastructure and technology
- Regulatory efficiency and certainty

We believe that in developing the proposed legislature there is an opportunity to foster an environment that promotes fair and balanced development that benefits all Ontarians and ensures all of us a healthy and prosperous future. We look forward to continued cooperation with the government and appreciate your consideration of our input, both today and in the written

submission that will follow. We will now be pleased to take any of your questions.