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Change is a Comin' New Legislation for the Mining Sector

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Government legislation in Ontario and a federal Private Member's Bill may bring significant changes for the Canadian mining industry, both domestically and internationally.

Ontario's Bill 173 – Restrictions on Exploration, Requirements for Consultation

On April 30, 2009, the Ontario government introduced Bill 173, the Mining Amendment Act. The Bill grew from Ontario's 2006 Mineral Development Strategy and the Comprehensive Engagement Process for the Development of More Effective Aboriginal Consultation that commenced in February of 2007. Bill 173 is intended to "modernize" the mineral development process in Ontario. Much of the operational detail will be set out in regulations to be developed through 2009.

The main elements of Bill 173 are:

- the introduction of map-staking;
- a "graduated" approach to the regulation of exploration activity under which exploration activity impacts would require plans, while impacts with greater activity would require permits, the details of which will be set out by regulation;
- the express recognition of Aboriginal and treaty rights (a first in mining legislation in Canada);
- introduction of notification and consultation requirements with Aboriginal communities in accordance with a graduated regulatory system;
- a dispute resolution mechanism for Aboriginal-related mining issues;
- the withdrawal of mineral interests from staking in Southern Ontario and the ability of owners in Northern Ontario to apply to the Minister for an order of withdrawal (with grandfathering of existing rights);
- a moratorium on the opening of new mines in the Far North until adoption of a community-based land use plan; and
- increased fines and penalties for noncompliance with rehabilitation requirements.

It is difficult to assay the full effect of Bill 173, since much of the implementation is to be accomplished by way of regulation. The regulatory development process, which will involve input from interested parties, will continue throughout 2009, with a view to coming into effect in phases through 2010.

If history is any indication, as Ontario goes so are other Provinces and Territories likely to follow.

Federal Bill 300 – Extraterritorial Legislation Rallies NGOs and Opposition

Born in a less conventional manner as a Private Members' Bill introduced by Liberal MP John McKay, Bill 300, the Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act, seeks to extend the longish arm of Canadian lawmakers into the realm of regulating the activities of Canadian mining companies in developing nations. Bill 300 has attracted the support of a host of NGOs ranging from Mining Watch and Amnesty International, to the Canadian Catholic Organization for Development. It has also attracted the support of the federal NDP.

Bill 300 is intended to apply to Canadian corporations carrying on mining or oil and gas development activities in any country eligible for Canadian development assistance. Its express purpose is to “ensure that corporations engaged in mining, oil or gas activities and receiving support from the Government of Canada act in a manner consistent with international environmental best practices and with Canada’s commitments to international human rights standards”.

Bill 300 establishes a complaints mechanism under which any Canadian citizen or permanent residence or resident or citizen of a developing country may lodge complaints against corporations that contravene the guidelines for environmental and social behavior referenced in the Bill. The Bill provides that the guidelines are to incorporate the World Bank International Finance Corporation’s Policy on Social & Environmental Sustainability, Performance Standards on Social & Environmental Stability and Environmental, Health and Safety General Guidelines as well as the Voluntary Principles on Security and Human Rights. There is also somewhat vague reference to the incorporation of other international human rights standards.

Bill 300 requires the ministers responsible to file a report to Parliament based on the investigation of the complaints received. The Bill contains consequential amendments to the Export Development Act, the Department of Foreign Affairs and International Trade Act, the Canada Pension Plan Investment Board Act, and the Special Economic Measures Act, requiring government to ensure that its actions are consistent with guidelines established under Bill 300.

The Canadian Chambers of Commerce, for one, has expressed opposition to Bill 300 as an unnecessary action that duplicates and supplants any response by the Government to the recommendations of the Advisory Group Report on the National Roundtables on Corporate Social Responsibility (CSR) and the Extractive Industry In Developing Countries. The Chambers also indicate that the Bill has the effect of establishing standards without regard to the rules and regulations, and the sovereignty of the countries in which the mineral development activities are to be undertaken. It is also suggested that it will create a disincentive for mining and oil and gas companies to continue to be based in Canada.

In the words of Robert C. Gallagher, “Change is inevitable – – except from a vending machine.” So be prepared.

This article appeared in Mid-Canada Forestry and Mining magazine.

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