

What We Heard

A summary of the feedback received from the public consultation process on the Mineral Act and Mining Act Review



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Newfoundland
& Labrador

Table of Contents

Introduction 1

Engagement Process..... 1

Participation..... 2

Mineral Act..... 2

 Purpose of the Act 2

 Claim Staking..... 3

 Fees and Security Deposits..... 3

 Assessment Requirements..... 4

 Compliance 5

 Mining Leases 6

 Mineral Licence Timeframe..... 6

 Core Maintenance..... 7

Mining Act 7

 Financial Assurance 7

 Prudent Resource Management 8

Additional Input..... 8

 Mineral Act..... 9

 Mining Act..... 9

 General Suggestions..... 9

Conclusion 10

Introduction

The Department of Industry, Energy, and Technology (IET) undertook consultations from July to November 2022 to seek input on ways to improve and modernize the **Mineral Act** and **Mining Act**, to provide a clear pathway for regulatory approval, and to ensure exploration for, and development of, the province's mineral resources occur in a manner that is responsible, timely, sustainable, competitive and supportive of private-sector investments and job growth.

The overall objective of the consultations was to provide all stakeholders an opportunity to:

- make suggestions and recommendations that would aid in the review of the **Mineral Act** and **Mining Act**, and
- guide the amendments of existing, or the development of new, legislation and regulations regarding mineral tenure, mineral exploration, and mining.

The engagement process sought specific input with respect to issues that stakeholders perceive or have experienced with respect to the Acts and corresponding Regulations. The process considered definitions, mineral tenure, resource management initiatives, enforcement, development, rehabilitation and closure requirements, and financial assurance.

A session was held with industry representatives as well as a series of public consultation sessions across the province. Written submission were also accepted.

This document will outline the process that was undertaken to seek input and will summarize “What we Heard”.

Engagement Process

The approach utilized to gather input into improving and modernizing the **Mineral Act** and the **Mining Act** was designed and implemented with the support of the Public Engagement and Planning Division (PEP). The PEP, with support of IET, facilitated the engagement sessions and captured comments from the discussion cycles.

An initial in-person session was held with industry representatives on July 21, 2022 to gain an understanding of their issues respecting mineral and mining legislation, and potential areas for consultation.

A landing page was posted to the engageNL online platform from September 14 to November 1, 2022 which included a Discussion Guide outlining the purpose of the consultations. The landing page outlined

the schedule and location of sessions, including in-person and virtual delivery. IET also invited input through written submissions.

Participants were asked to pre-register for consultation sessions in advance through a department email address associated with the project and assigned to IET.

IET and PEP hosted and supported three public in-person sessions and one virtual session from September-November 2022.

Three other scheduled sessions were cancelled due to low registration numbers. A virtual session was added to the scheduled to ensure those individuals that may have been affected by the cancellations were provided an opportunity to participate.

Participation

A total of 40 registrants participated in the engagement sessions that reviewed the **Mineral Act** and the **Mining Act**. An overview of participants can be found below.

Sessions	Description	Date	# of Participants
Stakeholder Session – St. John’s	In-Person	July 21, 2022	11
Public Session – Labrador West	In-Person	September 21, 2022	6
Public Session – Happy Valley/Goose Bay	In-Person	September 22, 2022	2
Public Session	Virtual	October 19, 2022	4
Public Session – St. John’s	In-Person	November 1, 2022	17

The following public sessions were cancelled due to lack of registrants:

- Corner Brook, October 4, 2022
- Springdale, October 5, 2022
- Marystown, October 6, 2022

Written submissions were received from 13 individuals, companies or organizations.

Mineral Act

Purpose of the Act

The purpose of legislation should be clearly understood by both the regulator and those undertaking regulated activities. The following is a summary of views received on what the purpose of the **Mineral Act** and the **Mining Act** should be:

- Several additional purposes for the Acts were suggested for consideration:
 - To reduce environmental impact including specific reference to climate change mitigation and resilience.
 - To increase availability of data to help the development of resources.
 - To reflect consideration of environmental, social and governance (ESG) matters.
- Section 4.1 of the **Mineral Act** on Labrador Inuit rights needs to remain unchanged.
- We heard that Indigenous rights must be considered, that the duty to consult should be referenced in the Acts, that well-being, health and economic interests of Indigenous communities must be protected, and that claims staked should not be issued until consultations have taken place.
- We heard both that the Acts should be combined and that they should remain separate.
- The revised Acts should be drafted in plain language and include legislated timelines to make decisions and issue approvals.

Claim Staking

The staking of claims or application for a mineral licence is a relatively routine process that is carried out using the Mineral Lands Administration Portal (MinLAP) system. The Act requires that such a system be provided. MinLAP guides the operator through the process, including payment.

Input received on equitable administration of mineral rights, including the process for cancelling a mineral licence, and related to claim staking included:

- It was generally felt that there should be a grace period and discretion when canceling a licence. The process must result in a level playing field.
- There was a general feeling that automatic cancellation may result in licences being cancelled due to system issues or human errors.
- There was general agreement that a shorter period between cancellation and opening for staking would be appropriate and that a more modern method of notification that claims are open for staking is needed instead of Gazetting.
- It was stated that Newfoundland and Labrador's free entry system for claim staking should be modified / adjusted to protect Indigenous rights.
- For claim staking, a lottery system should be available at the Minister's discretion.
- It was suggested that a substitute to the Mineral Rights Adjudication Board be considered.

Fees and Security Deposits

There are financial investments required to obtain and maintain a mineral licence under the Act and Regulations. The upfront investment for staking claims requires the payment of a recording fee (\$15 per claim) along with a refundable security deposit (\$50 per claim). The licence, once issued, is also subject to assessment report requirements currently defined in the Regulations.

The following input was received regarding claim staking fees and security deposits:

- A broad range of opinions were expressed – from increasing, decreasing or eliminating the security deposit.
- Claim staking fees and security deposits should be structured in a way to ensure that on the ground exploration work takes place.
- A slight increase in cost to stake claims to bring Newfoundland and Labrador to the middle of the pack nationally was thought to be acceptable.
- It was generally felt that it was important that fees be competitive but that there is a need to discourage speculative staking, where staking takes place with the intent to strike deals with adjacent licence holders instead of the intent to undertake exploration.
- It was generally felt that refundable security deposits should be eliminated and included in the recording fee so that the overall cost of staking would not increase. Others saw value in the security deposit incentivizing exploration work.
- To help eliminate speculative staking, a minimum number of claims that may be staked should be set.
- It was acknowledged that a Genuine Prospector designation, with set and proper criteria for qualifying, would be a good thing. It was suggested that the number of licences that may be staked in a calendar year under the designation be lowered from five to one.

Assessment Requirements

A holder of a mineral licence must have a minimum amount of exploration work (assessment work) undertaken on each mineral licence each year, as set out in the Regulations. The value of the assessment work required increases over time. A report must be submitted on the assessment work done and the expenditures incurred in undertaking the assessment work.

With a view to how to increase exploration activity and encourage turnover of unworked licences, input was sought on the appropriate levels of assessment work required and what should constitute acceptable assessment credit:

- Competitiveness of the jurisdiction was emphasized. It was suggested that we complete a jurisdictional review and adjust assessment requirements so that the province is competitive with other jurisdictions.
- Some liked the approach of starting assessment requirements low and increasing over the first five years, and then increasing on five year increments. Others felt that the first five years should be at the same level.
- Several suggestions brought forward on assessment credits included using a two year cycle instead of one year, allowing sharing of credits with contiguous licences, and extending eligibility to carry over credits beyond nine years.

- There was consensus that individuals working their own licence be able to claim \$200 per day (up from \$100), but some suggested that presence on the licence be verified.
- Additional eligible expenses should include Indigenous and community consultations and reclamation costs. It was agreed that legislation be flexible in considering new technologies as legitimate expenditures.
- Assessment reporting should ensure that data is collected in appropriate digital format.
- With new technology and modeling techniques, it was felt that larger files are becoming the norm and these files should be able to be filed within the system.
- It was suggested that minimum acceptable standard for assessment reporting that is required for companies should be required for individuals.

Compliance

Mineral exploration requires an approval under the **Mineral Act** and such an approval will have conditions based on input from other regulatory agencies. Proper execution of the exploration work in compliance with these conditions is essential to maintaining public support for the mineral industry. Input received on how to best ensure compliance with exploration approval included:

- It was generally thought that self-reporting on exploration activities via a simple, standardized template with photos would aid in compliance monitoring and help companies track what is required.
- The importance of proper monitoring of exploration activity was emphasized. It was agreed that the knowledge and experience of the inspector is key to meaningful compliance enforcement.
- There was the view that graduated compliance mechanisms are appropriate starting with compliance orders with timelines, escalating to stop orders, fines and charges.
- It was agreed that there should be environmental and exploration approval compliance considerations when determining whether a licence is in good standing; however, this must be limited to compliance with the **Mineral Act**. There needs to be clear understanding of how this would be applied as this could impact companies' ability to finance.
- Use of environmental guidelines under the Act to outline best practices and requirements for exploration work was supported.
- It was agreed that standards for acceptable trench development is needed with graduated requirements for various sizes. Significant company resources are used to develop trenches and certain trenches should be preserved, with use of financial assurance suggested. It was noted that financial assurance cannot be too onerous as it could tie up money that could otherwise be used for exploration.
- If a licence is transferred, most agreed that liabilities should get transferred with the licence as both parties should undertake due diligence; however, if a licence is relinquished, the Provincial Government should ensure compliance and reclamation duties have been met.
- It was suggested that future licences should be withheld for non-compliant companies.

Mining Leases

The Act sets out requirements that holders of mineral licences must meet if they wish to obtain a mining lease. These include conducting a land survey of the area to be covered by the lease, identification of a mineral resource that is potentially of economic value, and payment of an annual rental. The Department sought input on whether mining leases should be issued to align with the staking grid and be able to be converted back to mineral licences included and heard the following:

- There was general support for aligning mining leases with the staking grid. It was noted that this will result in larger mining leases which could affect rental fees paid and municipal taxation. Measures are needed to ensure no unintended impacts.
- There was support for allowing conversion of mining leases back to mineral licences; however, care must be taken to ensure this isn't allowed as a means of avoiding working a property.
- It was agreed that mining leases should be able to be split.
- Aligning with grid could eliminate the need for legal surveying which was supported.
- It was noted that current mining leases would need to be grandfathered.

Mineral Licence Timeframe

The Act currently sets out a maximum of 30 years for mineral licences. A licence that reaches the 30 year anniversary automatically expires and the mineral rights return to the Crown. Input received on whether a longer licence term should be considered, and, if so, what that may look like, included:

- It was generally agreed that mining licence timeframe should be extended with increased assessment requirements. Some did suggest that licences should not extend beyond 30 years.
- There was general agreement that the Minister should have discretion to extend mineral licences beyond 30 years in special cases. Several suggestions were made on how to accomplish:
 - revert licence back to first year on payment of substantial fee;
 - require significant advancement of potential for development to ensure licence doesn't remain stagnant
 - Allow when significant discovery in the last 10 years.
 - Special category of mineral licence to retain property in the long term
 - Maybe have rental fee,
 - Demonstrate / support you have a discovery even if it is not in realm to be economically productive today.
 - Increase assessment requirements for extended licences but cap at mining lease rental rates.
- The requirement to reduce licence size after 20 years was questioned. It was indicated that there should be consistent requirements regardless of licence age.
- Renewal terms from other Canadian jurisdictions which typically allow renewals and extensions beyond 30 years should be reviewed to determine the appropriate framework to continue attracting

exploration investments while providing operators with stability and scalability of their mining operations.

Core Maintenance

Retention and preservation of drill core within the province is governed by the Regulations. Input on whether these requirements are appropriate and what changes to the requirements might be beneficial, included:

- There was discussion of the value of the core versus the value of the core-related data (assays, photos, locations, sample pulps, etc.) and whether the core needs to be kept. Some highlighted the need to weigh the costs to the people of the Province versus the benefits of preserving all of our drill core.
- It was generally felt that core should be preserved at the same level or greater than currently. It was recognized that more investment in regional core storage facilities is necessary. It was thought that should core expenditures / infrastructure remain the same, criteria must be developed around what is to be kept versus what can be discarded to ensure only high value core is kept.
- It was generally felt that the Act should encourage good core maintenance and best practices through guidelines, allowing assessment credits and ensuring compliance.
- It was suggested that assessment credit should be given for the establishment of large-scale core storage facilities or for proper storage at the exploration site.
- More durable high end core boxes for long term storage was discussed for relatively high value core but these are costly for companies.

Mining Act

Financial Assurance

The **Mining Act** requires that a mine operator submit a satisfactory rehabilitation and closure plan (RCP) and provide sufficient financial assurance to rehabilitate the project. Financial Assurance is required so that the province is not exposed to rehabilitation liabilities. The financial assurance amount is determined through the closure cost estimate that is part of the rehabilitation and closure plan that must reflect third party costs and must be verified by a Qualified Person as reasonable. The Department received input on the appropriateness of the current system along with several suggestions for improvement, as follows:

- It was generally agreed that current practice for financial assurance is appropriate and efficient.
- It was suggested by several participants that a pool of funding to cover unanticipated liabilities should be considered. Using a portion of the mine tax and contributions from companies were suggested as funding options.
- It was stated that current practice for relinquishment should be modified to allow relinquishment with provision of funding by the company for ongoing long term monitoring.

- It was stated that climate change issues, protection of health of nearby communities and good environmental quality should be accounted for in closure cost estimates.
- It was stated that the intent of financial assurance should be defined. Public transparency is important and there needs to be a balance between protecting the province from paying for reclamation versus making financial assurance requirements so risk adverse that it deters development.
- It was acknowledged that should government have to step in and undertake rehabilitation, it would be at a greater cost than if the company had done it.
- It was thought that current estimation is conservative and has a built-in contingency. It was suggested that a detailed review of costs take place post construction and at time intervals to be determined (five years).
- It was stated that there is a lot of value in mining assets, especially early in an operation and that salvage values should be able to be used to offset financial assurance requirements.
- It was suggested that a jurisdictional scan is needed to see how others address this issue.
- It was stated that dams are now designed and constructed to a high standard and it is becoming increasingly cost prohibitive for companies to develop projects. There needs to be a balance if the province wants to encourage and facilitate future development.
- It was stated that trying to have companies cover all possible future catastrophic events is unrealistic.

Prudent Resource Management

The **Mining Act** requires that development plans demonstrate that a project “conforms to prudent resource management”. This means that the development of mineral resources are realized to their full potential. The Department sought input on what level of technical and economic study is needed to demonstrate prudent resource management and heard the following:

- It was generally agreed that these studies are needed to understand and derisk a project and that privately held companies should be held to the same standard as publicly traded companies for submission requirements under the **Mining Act**.
- It was generally agreed that in determining the level of study required, the Acts should consider the size / type / scale of the mine in question and whether it is for a new development or expansion / continuation of an existing development.

Additional Input

Throughout the consultation process, the Department welcomed input on the **Mineral Act** and the **Mining Act** covering topics outside of those in the Discussion Document. We also welcomed general input on the work done by the Department. The following is a summary of that input:

Mineral Act

- It was suggested that a two-year timeframe be used for exploration approvals and assessment reporting cycles.
- We heard several suggestions that mineral licences that are contiguous or part of a defined project should be able to be packaged with same renewal date to allow for more efficient management and assessment reporting.
- It was suggested that low impact exploration work (soil sampling, mapping, prospecting) resulting in minimal or no ground disturbance should receive automatic exploration approval.
- We heard that exploration on a producing mining lease should not require exploration approval.
- The Mineral Rights Adjudication Board (MRAB) should have the authority to hold virtual hearings. Both non-barrister members of the board should be experienced in mining. MRAB should have the jurisdiction to order equitable and declaratory relief that are vital to modern administrative tribunals.
- The manual registry process established by Section 17 of the **Mineral Act** should be updated in the context of reasonable expectation of online publicly accessible rights registries.
- To ensure clarity and predictability, it was recommended that use of the terms renewal and extension should be examined, particularly the reference in 31(6) of the **Mineral Act**.
- It was recommended that Section 31(6) of the **Mineral Act** should be modified to permit the extension or renewal of the leases during the planned period for a remediation and closure plan.
- It was recommended that Section 36 of the **Mineral Act** should be amended to recognize it doesn't apply if remediation processes are underway, and/or to have the operation at the option of the Provincial Government (perhaps on notice) as opposed to being automatic.
- It was suggested that the **Mineral Act** should expressly acknowledge that the approvals granted for security over a licence, transition automatically with the security without a need for additional approval if the interest transitions to a lease.
- The wording of section 12(2) of the **Mineral Act** should make clear as to whether it concerns minerals not vested in the Crown or land not vested in the Crown.

Mining Act

- It was suggested that the requirements for development plans, operational plans and rehabilitation and closure plans should be articulated and entrenched in the Regulations as opposed to in guidelines.
- It was suggested that environmental protection should be a mandatory feature of every development plan, operational plan and rehabilitation and closure plan mandated by the Mining Regulations.

General Suggestions

- It was suggested that the mineral tenure layer of the Resource Atlas should have the same functionality as the mineral licence layer.

- It was broadly felt that technical support for prospectors, such as the Matty Mitchell room and the financial support for prospectors to attend mining conferences, should continue.
- It was suggested that a one-day forum should be held with local mineral licence holders to discuss potential solutions for core storage.
- All exempt mineral lands being held indefinitely in that status need immediate review as many represent the most prospective development opportunities in the province and have the potential to have a near-term material impact on the provincial economy.
- The Department should consider a help desk staffed by a knowledgeable person familiar with the **Mineral Act** and mineral exploration in general to deflect as many questions as possible away from key personnel.
- A common theme expressed at each engagement session was that the Mines Branch requires more resources to properly carry out its mandate.

Conclusion

The Department of Industry, Energy and Technology would like to extend a sincere thanks to all who participated in the engagement sessions or provided written input. Individuals from all aspects of the mineral industry and members of the public offered important insights that will be of invaluable help to the Provincial Government in its review of the **Mineral Act** and **Mining Act** and in considering new legislation. The information gathered through this process will aid the department in its consideration of ways to improve and modernize the **Mineral Act** and **Mining Act**, to provide a clear pathway for regulatory approval, and to ensure exploration for, and development of, the province's mineral resources occur in a manner that is responsible, timely, sustainable, competitive and supportive of private-sector investments and job growth.

