

# New Mining Act – A Detailed Review



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# New Mining Act – Bill 43

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Bill 43, tabled in the National Assembly by the Minister of Natural Resources on May 29, 2013, proposes a new *Mining Act* that incorporates several provisions of the *Mining Act* currently in force in order to maintain Québec’s mineral tenure system and its general principles.

Nevertheless, Bill 43 would bring about significant amendments to rules applicable to the exploration, extraction and ore processing phases of mining projects, as well as to the rehabilitation and restoration of mining sites. It also puts forward new monitoring measures and restrictions in respect of mining activities and reinforces the penalty regime.

The provisions of the current *Mining Act* that pertain to petroleum, natural gas, brine and underground reservoirs will be maintained in force until the adoption of a new legislative scheme applicable to this area.

We present in this document a review of the main amendments proposed following the various stages of a mining project and compare these amendments to the provisions of the *Mining Act* currently in force. A table is presented at the beginning of each division summarizing the main amendments.

## Exploration Phase

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In respect of exploration rights and activities, the government proposes changes to the procedure for obtaining claims, the disclosure and reporting obligations of claim holders, restrictions to mining activities, including exploration, and the management of mining claims.

### PROCEDURE, DUTY TO DISCLOSE AND REPORTS

Current <i>Mining Act</i>	Bill 43
Claims may be obtained by staking or map designation	Adds a claims auction procedure
Map designation notice via Internet (GESTIM) or in person at a regional office	Map designation notice via GESTIM only
No duty to provide notice that a claim has been registered	<ul style="list-style-type: none"><li>■ Notice to land owner, to lessees of public land and to municipality when a claim is registered</li><li>■ Inform municipality of exploration work</li><li>■ Declare to MNR any uranium discoveries</li><li>■ Submit to MNR a plan of work to be performed annually</li><li>■ Submit to MNR a report of work performed annually</li></ul>
Duty to submit a report of exploration work necessary for renewal of claim	Duty to submit to MNR a report of all work performed on the claim

## Claims auctions

In addition to map designation and ground staking procedures, an auction mechanism would be implemented to allocate certain mining claims. The Minister would have discretion to determine whether to proceed by way of auction in any territory designated by him. However, the Minister will be required to resort to such process when the mineralization or the exploration target meets the criteria he determines. The Minister may temporarily suspend the right to stake or map designate a parcel of land in order to hold an auction. (39, 49 and 52)

## Map designation notice

All applications for map designations must be made through the mining title management site GESTIM. It shall no longer be possible to present such applications in person at an MNR regional office. (54)

## Claim registration notice

Claim holders must notify any owner of private lands, lessees of public land, holders of exclusive leases to mine surface mineral substances and the local municipality within 60 days following the registration of a claim. The details of this notification procedure are to be specified subsequently by regulation. In certain cases, however, it will likely be necessary to conduct searches in public registers to identify the owners of all lots affected as well as the lessees of any public land subject to the claim. (74 para. 3)

## Duty to notify exploration work

Claim holders will need to provide the local municipality with 90 days' prior notice of exploration work to be performed on its territory. (74 para. 4)

## Declaration of uranium discovery

Claim holders shall be required to declare to the Minister any discovery of mineral substances containing 0.05% or more of triuranium octaoxyde within 60 days following such discovery. These discoveries shall be made public by way of registration in the *Public Register of Real and Immovable Mining Rights*. (91 and 13)

## Planning and reporting of exploration work

A plan and report of exploration will have to be submitted annually to the Ministry of Natural Resources. Applicants will be required to append to their claim registration notice (staking notice or map designation notice) a plan of the work to be performed during the upcoming year and provide a new plan upon each anniversary date of the claim's registration. Furthermore, claim holders will be required to submit to the Ministry, every year, a report of planned work that has been performed over the course of the previous year. (81)

## Exploration work report

The current Act requires that a report of work performed be submitted 60 days prior to the expiry of the claim for such claim to be renewed. Claim holders may limit the scope of their reports to that work necessary to meet requirements related to minimum exploration expenses necessary to renew the claim. The Bill would require that the report disclose all work performed on the claim, including work for which an exploration allowance or a pre-production development allowance may be claimed under the *Mining Tax Act*. (82 para. 2)

## MINING RESTRICTIONS

Current <i>Mining Act</i>	Bill 43
<p>The Minister of Natural Resources may reserve to the State or withdraw lands from mining activities for reasons of public interest</p>	<p>Clarification of certain situations involving the public interest in connection with reserves to the State and withdrawal of lands from mining activities</p>
<ul style="list-style-type: none"> <li>■ The Minister of Natural Resources may designate urban territories and territories for recreation, tourism or plant-life and wildlife conservation purposes</li> <li>■ Municipalities have no power to restrict mining activities</li> </ul>	<ul style="list-style-type: none"> <li>■ Delimitation by RCMs of “mining incompatible territories” and “conditionally mining compatible territories” in the land use and development plan</li> <li>■ Minister of Natural Resources has authority to revise the delimitation of such territories by the RCMs</li> <li>■ In incompatible territories, not possible to renew a claim on a territory where no work has been performed</li> <li>■ Specific measures to be imposed in the event of uranium discovery</li> </ul>

### Reserve to the State and withdrawal from mining activities

The *Mining Act* allows the Minister to reserve to the State or withdraw from mining exploration and mining operations any mineral substance forming part of the domain of the State and necessary for any purpose the Minister considers to be in the public interest. The Act provides examples of works falling within such category. These include the development and use of water power or the creation of parks or protected areas. The new Act would specify that the public interest is indeed affected in the following situations: (i) plant-life and wildlife conservation; (ii) protection of eskers that may be a source of drinking water; and (iii) protection of rehabilitation and restoration work carried out in accumulation areas. Bill 14, which died on the Order Paper (tabled in 2011), would also have added the power to reserve to the State or withdraw from mining a territory in order to avoid conflicts with other uses of the territory, a provision that is not included in Bill 43. (250)

### Mining restrictions on municipal territories

Municipalities do not currently have the power to impose mining restrictions on municipal territories. In the current Act, the Minister of Natural Resources is charged with designating urban territories and delimiting territories for non-exclusive purposes of recreation, tourism, plant-life or wildlife conservation in which the Minister may refuse the registration of claims or impose conditions upon exploration. (32, 52 and 304 of current Act)

Under the Bill, this role will be somewhat delegated to regional county municipalities (RCMs). RCMs will be able to designate two categories of land to limit mining activities on their territory: the so-called “mining incompatible territories” and “conditionally mining compatible territories”. These territories will be delimited in the land use and development plan in accordance with *An Act Respecting Land Use Planning and Development*, to be amended in order to allow such designation.

However, the Minister of Natural Resources retains the power, as mentioned above, to create reserves to the State or to withdraw territories from mining activities for reasons in the public interest, such as the protection of wildlife and plant-life. (251 and 252)

Until such time as “mining incompatible territories” and “conditionally mining compatible territories” are delimited in the plans of RCMs, urban territories currently registered with the registrar shall be withdrawn from prospecting, mining exploration and mining operations. (304)

### Incompatible territories

On “mining incompatible territories”, mineral substances shall be withdrawn from prospecting, mining exploration and mining operations from the time the territory is drawn on the maps kept at the registrar’s office. A mining incompatible territory is defined as a territory in which the viability of activities would be compromised by the impacts of mining. However, the designation of such territories shall not affect mining titles, such as mining claims and leases, that are already in force at the time of the designation. (251)

### Conditionally mining compatible territories

On a “conditionally mining compatible territory”, mineral substances shall be reserved to the State from the time the territory is drawn on the maps kept at the registrar’s offices. Under the Bill, a “conditionally mining compatible territory” is a territory in which activities may be reconcilable with mining. It will be the responsibility of the Minister of Natural Resources to establish conditions and obligations that may be imposed upon mining rights holders on such territories. Such conditions and obligations may be set by regulation. However, the Minister may exempt a claim holder from complying with all or part of the conditions and obligations so provided in the regulation. (252)

### Review by Minister of Natural Resources

The Minister of Natural Resources will have the ability to provide a reasoned opinion to the Minister of Municipal Affairs that the delimitation proposed by an RCM of a “mining incompatible territory” or a “conditionally mining compatible territory” is inconsistent with government policy directions concerning the relevant territory. In such an event, the Minister of Municipal Affairs will in turn be required to indicate in its opinion on the by-law amending the land use and development plan that the proposed delimitation is not consistent with government policy directions. The RCM will then be required to amend the by-law in order to comply with government policy directions. (279 and 281)

### Powers of Minister of Natural Resources

The Minister of Natural Resources could also request amendments to a land use and development plan after its adoption in order to authorize mining on part of the territory. The RCM’s council will be obligated to comply with the request of the Minister by amending the plan in order to revise the delimitation of territories designated as “incompatible” or “conditionally compatible”. (280)

Although new responsibilities would be delegated to the municipal level, the Bill would grant the Minister of Natural Resources powers akin to a veto power with respect to the delimitation of territories upon which mining will be restricted. Former Bill 14 afforded municipalities greater independence with respect to the MNR and the government in exercising the power to restrict mining on their territories.

### Existing claims located on a territory designated as incompatible

The designation of a “mining incompatible territory” by RCMs shall not apply to claims that already exist at the time of such designation. The claim holder shall however be required to perform exploration work on the parcel to which the claim applies, failing which the claim holder will not be able to renew the claim at the end of its term, contrary to what is normally allowed by a number of mechanisms of the Act. However, the proposed provision is somewhat ambiguous in that it does not specify the amounts of work that shall be required to be performed on the claim.

If the claim cannot be renewed, then no further claims will be authorized on the territory in question, the restrictions previously mentioned being automatically applicable. This provision will probably extinguish a significant number of claims currently in force in territories that will be designated by RCMs as incompatible with mining. (71(4))

### Discovery or exploration for uranium

A holder of mining rights who discovers or extracts mineral substances containing 0.05% or more of triuranium octaoxide will be required to take specific safety measures prescribed by regulation and any other measure the Minister of Natural Resources may impose. Furthermore, drilling work to explore for mineral substances containing uranium will have to be authorized by the Minister and a hydrogeological study will be required. (176 and 177)

## MANAGEMENT OF MINING CLAIMS

Bill 43, like former Bill 14, aims to encourage exploration by proposing several amendments to the rules applicable to claims management, making it more difficult to renew claims if exploration work is not performed on the territory.

Current <i>Mining Act</i>	Bill 43
Provision for paying to the Minister an amount equal to the cost of the work that should have been performed in order to renew a claim	The amount that may be paid to the Minister shall be double the cost of the work that should have been performed
Work credits in excess of prescribed requirements may be carried forward indefinitely and applied towards any future renewal	Work credits in excess of prescribed requirements may be carried forward a maximum of 12 years
Transfers of credits from one claim to another allowed within 4.5 km radius	Transfers of credits only allowed within 3.5 km radius
Provision allowing the transfer of credits in respect of exploration work completed on a mining lease or mining concession to a claim	Transfers of exploration work credits completed in respect of a mining lease or mining concession to a claim prohibited
Provision for determining common claim expiry date	Determining common claim expiry date prohibited

### Payments for renewal

The legislation requires that exploration work in a minimum amount be completed and reported to the Minister to renew a claim upon expiry of its two-year term. However, it allows payment to the Minister, instead of the completion of the work, of an amount equal to the minimum cost of the work that should have been performed or equal to the difference between that minimum cost and the cost of the work actually performed. Under the Bill, amounts required to be paid instead of the performance of actual exploration work would be doubled. (83)

### Carry-forward period for work credits limited to 12 years

Excess work credits – namely exploration expenses in excess of minimum amounts of work required by regulation over the term of a claim – may no longer be carried forward indefinitely to subsequent terms of a claim, but only to the six following terms, or 12 years. This rule will also apply to any excess amounts existing on the date of coming into force of Bill 43. (85)

### Credit transfers between claims

Currently, rules governing renewals of claims allow a claim holder to apply excess amounts of work performed on a claim to another of its claims located within a 4.5 km radius and in respect of which the amounts disbursed for work would be insufficient to allow for its renewal. The Bill would reduce this radius to 3.5 km. (86)

### Credits for work on a mining lease or mining concession

It is currently possible to apply expenses made on work performed on a mining lease or mining concession to a claim located within a 4.5 km radius. The Bill will eliminate this possibility. (Repeal of 77 of current Act)

### Determination of common claim expiry date

There currently exists a procedure by which a common claim expiry date may be determined for several groups of claims held by the same claim holder in order to facilitate the management of renewals. This entire common claim expiry date determination procedure will be repealed by the Bill. According to the explanations provided by the Ministry of Natural Resources, this measure aims to avoid that the procedure be used for the sole purpose of delaying the expiry date of certain claims. (Repeal of 83.9 *et seq.* of current Act)

## Extraction Phase

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Bill 43 proposes new rules imposing additional conditions to the issuance of mining titles, whether these be environmental or social in nature, as well as new obligations for increased transparency.

### AUTHORIZATION, CONSULTATION, ASSESSMENT, EXPROPRIATION

Current <i>Mining Act</i>	Bill 43
A mine rehabilitation and restoration plan required to be submitted prior to start of mining activities	<ul style="list-style-type: none"><li>■ The mine rehabilitation and restoration plan must be approved prior to granting of mining lease</li><li>■ Environmental authorization of the project must be received prior to granting of mining lease</li></ul>
Environmental impact assessment for certain large mining projects	Environmental impact assessment for all mining projects, except for mining of surface mineral substances
Mining lease subject to conditions prescribed by regulation	Additional conditions may be imposed by Minister in order to avoid conflicts with other uses of the territory

Current Mining Act	Bill 43
Local committee usually required in the government's order in council authorizing the mining project	For all mining projects, a local committee must be created including representatives from the municipal and economic sectors and a member of the public
	A mining lease may not be renewed if the royalties owed the government have not been paid
No public consultations for sand pits, gravel pits, peat bogs, etc.	A public consultation required for sand pit, gravel pit, peat bog and other surface mineral substance mining projects
	Power to refuse a lease for a gravel pit, sand pit or peat bog or other surface mineral substance mining projects, or to terminate such leases in the public interest
Expropriation possible, in principle, for mining exploration and extraction	<ul style="list-style-type: none"> <li>■ Expropriation only possible for mining extraction</li> <li>■ Financial support for expropriated parties by the mining operator for the negotiation of the acquisition of a family residence</li> </ul>

### Approvals and authorizations of authorities prior to grant of mining lease

The Bill imposes a new requirement to have the mine rehabilitation and restoration plan approved by the Minister prior to the grant of the mining lease. Moreover, the lease may not be awarded before the project is authorized following the environmental impact assessment procedure (Sections 31.5, 164 or 201 of the *Environment Quality Act*). (102 para. 2)

### Environmental assessment and public consultations

Under legislation currently in force, only uranium mining projects, metals mines with a capacity of 7,000 tons or more per day or other mines with a capacity of 500 tons or more per day are subject to Québec's environmental impact assessment procedure and to the potential holding of public hearings by the BAPE (*Bureau d'audiences publiques sur l'environnement*, Québec's environmental public hearings board). Under the Bill, this environmental impact assessment and public consultations procedure would be extended to all mining projects, except for surface mineral substance mining projects (sand, gravel, peat, etc.). For the latter, an independent public consultation by the project proponent shall be required.

The mine rehabilitation and restoration plan would be made public and registered in the *public register of real and immovable mining rights*, so as to inform and consult with the public in accordance with the environmental impact assessment procedure (283). The government thus prefers to rely on already existing institutions and processes rather than implementing an independent consultation process as proposed by former Bill 14, which died on the Order Paper.

### Resolving conflicting territory uses

The Minister may attach additional conditions to the mining lease to avoid conflicts with other uses of the territory in light of the public consultations, a power that does not exist under the legislation currently in force. (102 para. 7)

### Local committee

Although currently the government occasionally imposes as a condition to the certificate of authorization (the Order in Council) that a local committee be created to act as an interface between the mining corporation and members of the public, such a committee shall henceforth be required for all mines. No later than 30 days after the issuance of the mining lease, the mine

proponent will be required to establish an economic spinoff monitoring and maximization committee, mainly comprised of members independent from the mining corporation, including at least one representative of the municipal sector, one representative of the economic sector and one member of the public, all from the region. The committee will monitor the work under the mining lease and endeavour to maximize jobs, contracts and other economic spinoffs for local communities.

The committee may also bring to the attention of and submit recommendations to the Minister of Natural Resources concerning any matter relating to mining operations that calls for government action.

The committee must be maintained until all work set out in the rehabilitation and restoration plan has been completed. (104)

Rules pertaining to the operation of the local committee, including with respect to information and documents the mine operator must provide to it and the nature of the committee's costs to be reimbursed by the mine operator are to be prescribed by regulation. (260(25))

### Conditions to renewal of mining lease

The holder of a mining lease, the initial term of which is 20 years, may not renew the mining lease if it has not complied with the provisions of the *Mining Tax Act* and, therefore, has not paid all royalties owed to the government. (108)

### Public consultations for sand pits, gravel pits and peat bogs

In respect of surface mineral substances (sand, gravel, peat, etc.), an applicant for a peat lease or for a lease that is necessary to carry on an industrial activity or to engage in commercial export must complete a public consultation in the concerned region prior to the securing of the mining lease. Conditions may be imposed on the mining operator in furtherance of the comments received during the public consultation. (131)

### Restrictions to the issuance of surface mineral substance mining leases

The Minister may, for reasons of public interest, refuse to grant, terminate, or decrease the area of a lease to mine surface mineral substances. The Minister may also refuse an application for a lease to mine sand and gravel to avoid conflicts with other uses of the territory. (135 and 136)

### Power to expropriate

The power to expropriate will be reserved to mining rights holders performing extraction work. This measure will no longer be available for exploration work, although in practice this legislative amendment only reflects current government practice: expropriation for exploration purposes has not been authorized for several decades now. (198)

Moreover, section 236 of the current *Mining Act* allows, on land other than land subject to mining rights, the acquisition, by agreement or by expropriation, of (1) any parcel of land intended for the storage of tailings; (2) a right of way to construct, use or maintain roads, cableways, railways, pipelines, electric transmission lines required for his mining activities and the conduits used to supply the water required for the operation of the mine. The Bill proposes to repeal this power. (Repeal of 236 of current Act).

### Purchase of a family residence

Mining companies who need to negotiate the purchase of a family residence to conduct their mining operations will be required to provide the owner with financial support for the negotiation of the purchase agreement, up to a maximum of 10% of the property's value. (198)

## TRANSPARENCY

Current <i>Mining Act</i>	Bill 43
The Minister may require documents establishing the existence of a deposit	The Minister may require all documents and information in connection with the mining project
No obligation to provide agreements with communities	<ul style="list-style-type: none"> <li>■ Obligation to provide all agreements with communities</li> <li>■ Agreements are to be made public</li> </ul>
No obligation to provide quantities/values of ore extracted	<ul style="list-style-type: none"> <li>■ Obligation to provide a report on the quantity/value of ore extracted</li> <li>■ This information is to be made public</li> </ul>

### Request for documents and information

Currently the Ministry may only request, in connection with an application for a mining lease, any document useful for the determination of the presence of a workable deposit. The Bill will allow the Ministry to request “any document and any information relating to the mining project.” Hence, the powers of the Ministry are considerably increased with respect to the collection of information respecting the mining project. (102 para. 6)

### Providing Ministry with agreements with communities

The Bill would require the mining operator to send to the Ministry any agreement entered into with a community and the Ministry would make such agreements public. This obligation may conflict with current practice. Indeed, agreements entered into with communities, notably with Native groups, are usually kept confidential. (163)

### Report on quantities and value of extracted substances

On each anniversary date of a mining lease or mining concession, the mining corporation will be required to send the Ministry a report showing the quantity of ore extracted during the previous year, its value and any other information determined by regulation. (123)

### Publishing of information on mining rights holders

All documents and information obtained from rights holders will be considered public. For instance, all plans and documents of a mining operator concerning a deposit and the mining operations thereon, as well as exploration reports that are required to be submitted to the Ministry will be available to the public. (163 and repeal of 228 of current Act)

The quantity and value of ore extracted as well as royalties paid during the previous year shall be made public annually. Agreements entered into with communities, the mine rehabilitation and restoration plan and the total amount of the financial guarantee required would also be made public. (163)

# Ore Processing Phase and Economic Spinoffs

Contrary to previous mining bills, Bill 43 includes provisions aimed at stimulating economic development and ore processing within Québec.

Current Mining Act	Bill 43
No obligation to conduct ore processing feasibility study	Obligation to conduct a study on the feasibility of processing ore in Québec
No obligation to enter into agreements with Ministry	Minister may require that an agreement be entered into for the purpose of maximizing economic spinoffs
Environmental impact assessment required for certain ore processing plant projects	Environmental impact assessment mandatory for all ore processing plant projects

## Processing feasibility study

In order to secure a mining lease, the proponent will be required to file a study on the feasibility of processing ore in Québec, no doubt to enable the government to assess whether it would be adequate to require or encourage ore processing projects based in Québec. In order to renew a mining lease, at the end of its 20-year term or subsequent 10-year terms, the holder of the lease will also have to provide such a feasibility study. It seems however that the holders of mining leases already in force at the time the Bill comes into force would not be required to provide a feasibility study before it needs to be renewed. (102 para. 4 and 108)

In respect of mining concessions, an ore processing feasibility study would have to be sent to the Minister before mining operations begin and every 20 years thereafter. If mining operations have already begun on the date the Bill comes into force, the holder of the concession will need to provide such a feasibility study within 3 years of that date and every 20 years thereafter. (122 and 300)

## Agreement in respect of maximizing economic spinoffs

As an ancillary power to the obligation to provide an ore processing feasibility study, the Minister will have the power to require, at the time the lease is entered into, that an agreement be signed with the mining rights holder in order to maximize economic spinoffs of the mining operations in Québec. For mining concessions, the Minister may, before the beginning of mining operations and at the expiry of this 20-year period, require that such an agreement be entered into. (103 and 122)

The mining lease or the concession may be revoked if their holder does not comply with the terms of the agreement for maximizing economic spinoffs. (229(5))

## Environmental impact assessments of processing plants

An amendment is proposed to the *Regulation respecting environmental impact assessment and review* requiring mineral processing plant construction and operation projects to undergo an environmental impact assessment. Currently, only those mineral processing plant construction projects for (i) metalliferous ore or asbestos ore, where the processing capacity of the plant is 7,000 metric tons or more per day; (ii) uranium ore; and (iii) any other ore, where the processing capacity of the plant is 500 metric tons or more per day are subject to this procedure. (283)

# Rehabilitation and Restoration Phase

The presence of former mining sites and breaches of rehabilitation and restoration obligations in respect of mining sites led the Auditor General to make recommendations to the government in its 2008-2009 report. New rules pertaining to financial guarantees were proposed in previous bills, which were not passed due to the end of the legislative session. Note that the terms of the financial guarantees are currently set out in regulations rather than in the *Mining Act*. However, Bill 43 would incorporate these rules in the *Mining Act*.

Current <i>Mining Act</i>	Bill 43
	New regulatory power to impose contribution to be paid by mining operators to assist in restoring abandoned mining sites
Mine rehabilitation and restoration plan to be submitted prior to start of mining operations	Approval of mine rehabilitation and restoration plan prior to issuance of mining lease
	Mine rehabilitation and restoration work to begin within three years following end of mining operations
To be released from its obligations, mining operator must demonstrate that there is no risk of acid mine drainage	<ul style="list-style-type: none"> <li>To release mining operator from its obligations, there must be no risk for the environment or for human health and safety</li> <li>A favourable opinion from the Ministry of the Environment will be required</li> </ul>
Financial guarantee covering 70% of rehabilitation of accumulation areas	Financial guarantee covering 100% of all rehabilitation costs of the site
Payment of guarantee over period of 15 years	Payment of guarantee within 2 years following the approval of the plan

## Contribution for abandoned sites

The Bill contemplates the creation of a new regulatory power enabling the government to prescribe by regulation the amount of the contribution of mining lease holders (but not mining concession holders) towards the restoration of abandoned mining sites. This regulatory power is not based on any substantive provision of the Bill and it is not clear how the government would use this new power to collect such a contribution. Mining corporations could thus be required to contribute to alleviate the financial burden inherited by the province of Québec owing to the abandonment of mining sites over the years. Note that this would be a contribution separate from the financial guarantee required to be provided by mining operators to guarantee the restoration of their own mining sites. (260(48))

## Approval of the mine rehabilitation and restoration plan

As mentioned above, a mining lease applicant's mine rehabilitation and restoration plan must be approved by the Ministry prior to the mining lease being issued. Where exploration work is concerned to which the regulations apply, the plan must be approved before the start of operations. (179)

In the case of an open-pit mine, the mine rehabilitation and restoration plan must include a backfill feasibility study. (181(5))

### Start of rehabilitation work

Rehabilitation and restoration work must begin within three years after mining activities cease. However, the Minister may exceptionally require that the work begin within a shorter period, or authorize one or more extensions. (189)

### Certificate of release

The Bill will impose more stringent criteria on the government when releasing a mine operator of its rehabilitation and restoration obligations in respect of a mining site. On one hand, before releasing an operator the Minister must obtain a favourable opinion from the Ministry of Sustainable Development, Environment, Wildlife and Parks. On the other hand, the mining operator must henceforward ensure that the lands used for mining no longer pose any risk for the environment or the health and safety of persons, a concept broader in scope than the provisions currently in force (which only relate to the risk of acid mine drainage). (192)

### Financial guarantee

The current regime requires the provision of a financial guarantee covering 70% of the anticipated rehabilitation costs for accumulation areas of mine tailings and other deposits.

The financial guarantee will be required to cover 100% of the cost of the work for rehabilitating and restoring the mining or exploration site in its entirety, as opposed to costs for the rehabilitation of accumulation areas only. (182)

Under rules currently in force, payments of the financial guarantee are spread out over a maximum period of 15 years. The payment schedule would be made more restrictive, for both new and existing mines (see table below). (184 and 306)

The new rules would also require that 100% of the financial guarantee be provided before the start of **exploration work**. However, the rules currently in force – whereby the guarantee must be provided annually for work anticipated in the year – continue to apply to **exploration work** for which a rehabilitation and restoration plan is filed before the coming into force of the regulation, until the review of the plan. (184 and 305)

	1st payment Guarantee of 50 %	2nd payment Guarantee of 25 %	3rd payment Guarantee of 25 %
New Mine	<b>90 days</b> following acceptance of rehabilitation and restoration plan	<b>1 year</b> following acceptance of rehabilitation and restoration plan	<b>2 years</b> following acceptance of rehabilitation and restoration plan
Existing Mine	<b>1 year</b> after coming into force of new regulation	<b>2 years</b> after coming into force of new regulation	<b>3 years</b> after coming into force of new regulation

## Consultation with Native Groups

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Section 3 of the Act sets out that the *Mining Act* must be construed in a manner consistent with the obligation to consult Native communities and that the Minister must consult Native communities separately. That said, the obligation to consult is a constitutional obligation existing independently of any such

references in a statute. It will be interesting to follow the government's practice as far as consultation is concerned, for instance in connection with the issuance of mining titles, in light of the inclusion of such a provision in the *Mining Act*. (3)

## Penalty Regime

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Finally, penalties under the Bill would be much harsher. In several cases of breach of the Act, the amount of fines imposed on corporations will vary, according to the provision breached, from \$3,000 to \$600,000, from \$7,500 to \$1,500,000, from \$15,000 to \$3,000,000 and from \$30,000 to \$6,000,000, representing significant increases of the penalties set out in the current Act.

The Minister may also revoke a mining right when the holder of the right has, in the preceding five years, been found guilty of an offence under the *Mining Act* or any act or regulation applying to the holder's mining activities. (229(6))

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## About Heenan Blaikie

Heenan Blaikie is recognized as one of Canada's leading law firms. We focus on six practice areas: business law, labour and employment, taxation, litigation, intellectual property and entertainment law. We deliver comprehensive legal advice and innovative business solutions to clients across Canada and abroad from our nine offices in Alberta, British Columbia, Ontario and Quebec, as well as our Paris office.

Today, the firm is over 550 lawyers and professionals strong and still growing. We strive to become partners in our clients' businesses, ensuring that our legal advice addresses their preoccupations and priorities. We seek to constantly adjust the scope of our services to better serve our clients' legal needs.

Our clients range in size and sophistication from start-ups to the largest public companies, as well as health care and social services institutions, schools and universities, and numerous government entities. We also represent international clients seeking to protect and expand their interests in Canada.

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