

Blakes Bulletin

Mining

Bill 79 – An Act to Amend the Mining Act: Future Regulatory Framework of Mining in Quebec Still Uncertain

VIORELIA GUZUN AND ANDRÉANE BOISCLAIR (STUDENT-AT-LAW)

On October 21, 2010, after several days of debate and postponement, the principle of Bill 79, entitled *An Act to Amend the Mining Act*, has been adopted by the National Assembly of Québec. The parliamentary debate and the public hearings that preceded the debate have given rise to vivid discussions – a testimony to the economic and social challenges that the Quebec mining industry is facing today – and, more importantly, have revealed that there is no social and political consensus regarding many changes proposed by Bill 79 in its current form. Moreover, several participants have requested more drastic changes and even a major reform of the *Mining Act*. The Bill will now be studied provision by provision in the Committee on Agriculture, Fisheries, Energy and Natural Resources of the National Assembly of Quebec (the Committee).

The following is an overview of the comments and concerns expressed by various participants during the public hearings related to Bill 79. In total, the public hearings included 11 hearing sessions, 78 factums filed, and more than 60 groups, mining companies and citizens heard by the Committee. See our April 2010 *Blakes Bulletin on Mining: Quebec Announces Public Hearings in Regards to Bill 79 – An Act to Amend the Mining Act* for a discussion on the amendments proposed by Bill 79.

CLAIMS: EXPLORATION WORK

Bill 79 proposes a series of measures aimed at fighting the so-called “dormant claims”. In particular, it is proposed that a payment in lieu of exploration work be permitted only with respect to the work required during the first two years of the term of the claim, that any excess amount disbursed during a term for exploration work on a claim be eligible for four subsequent terms of the same claim only and that the radius circle of adjoining claims between which the reallocation of excess amounts of work performed is permitted be

reduced. Some mining companies are concerned with the consequences of such new restrictions. They fear that hasty work, of lower quality and carried out with the only purpose of keeping the claim active, will lower the quality of exploration work and the value of investments. Also, some mining companies emphasize the need to take into account the delay required for the geological understanding of a site and for the necessary exploration work to be carried out prior to the exploitation of a mining claim. Otherwise, the proposed measures may result in the frequent change of ownership of the claims, which could jeopardize the investments already incurred in connection with the claims.

NOTICE OF CLAIM ACQUISITION

In Bill 79, the Minister proposes that, where a claim is acquired on land owned or rented by another mining rights holder or a third party, any person acquiring such a claim will be required to notify the landholder of the claim acquired within 60 days following the registration of the claim. The majority of all participants seem to favour such an amendment. However, citizen associations and municipalities suggested that the time period for notification of the acquisition of the claim should be 30 days and think that such notice should be given not only to land owners and lessees, but also to municipalities and native communities. In order to facilitate compliance with these obligations, some mining companies suggested that a list of land rights should be given to the mining rights holder when a claim is awarded. It has also been proposed that the notices be issued by the government rather than the mining rights holder, given that the government has all the information needed to comply with such obligations.

PUBLIC CONSULTATION FOR MINING AND PEAT LEASES

Much has been written on the topic since the Minister proposed, firstly, to reduce from 7,000 tonnes to 3,000 tonnes the extraction threshold that would give rise to a consultation by the *Bureau d'audiences publiques sur l'environnement* (BAPE), and, secondly, to introduce

CONT'D ON PAGE 2

CONT'D FROM PAGE 1

a mandatory public consultation managed by the mining operator for all other mining projects. Some participants see such an amendment as a hesitant step in the right direction, while others are adverse to such formalities. The majority of participants representing citizen associations, municipalities and environmental groups are in favour of the proposed amendments, but also demand that every project should be subjected to a BAPE consultation, regardless of the extraction volume. According to the Minister, the reduction of the extraction threshold from 7,000 tonnes to 3,000 tonnes constitutes an environmental progress that falls within the recommendations of the Auditor General of Quebec. Some mining companies support these modifications. However, industry participants are not unanimous. Some of them believe that such an amendment will excessively constrain mining exploitation by extending the exploitation delays, already critical, and thus will reduce the competitiveness of the industry. Moreover, many participants think that the awarding of a lease should not depend upon public consultation since, at this stage in a project, a lot of time and money has already been invested. Also, information necessary to an effective consultation could be unavailable at that very moment, or, on the contrary, could be confidential or strategic, and hence could not be disclosed in a public consultation. Some participants have also noted that several consultation forums already exist, and that such forums should be harmonized in order to avoid redundancy.

LAND REHABILITATION AND RESTORATION AND FINANCIAL GUARANTEE

The majority of participants, from all groups, seem to favour the measures providing for the submission of a rehabilitation and restoration plan prior to the exploitation stage and the obligation to deposit a financial guarantee covering 100% of the value of the implementation of this plan. Some participants proposed that, should the mining activities terminate, the amounts paid in excess be reimbursed at their actual value at the time of reimbursement. Others proposed that the current regulations regarding the restoration method should be maintained in order to let the operator choose its method on the basis of the parameters of each project. The few participants that were unfavourable to this amendment suggested to the Minister that the

preparation of such a plan would likely increase the production delays, which are already relatively long. These latter participants also advanced that for a deposit having a longevity of 40 years, for example, it would be too expensive to pay 100% of the restoration plan costs within the first years of exploitation. In this respect, it has also been proposed that the payments should be spread over a period of time and calculated by taking into account the estimated longevity of the mine.

URANIUM DISCOVERIES

Bill 79 recommends the imposition of a number of measures regarding the research, the discovery and the exploitation of uranium. Those measures, however, seem to have disappointed more than one participant. According to one of the participants, the obligation to disclose to the Minister any discovery of a mineral substance which contains 0.05% of uranium would not benefit the population, but instead would create many administrative inconveniences. Others submitted that uranium falls under federal jurisdiction and that a twofold legislation would be too burdensome upon the operators and would bias the public opinion by giving the impression that there is an imminent danger. On the contrary, some other participants, mainly from environmental groups, reiterate their request to impose a permanent moratorium on uranium exploitation. They also propose that all fortuitous uranium discoveries should automatically entail the termination of the exploitation work and the restoration of the site.

MINING REGISTER, REGISTRATION OF MINING TITLES AND LAND REGISTER

The majority of participants were in favour of a harmonization of the Mining and Land Registers.

TERMINATION OF A LEASE TO MINE SURFACE MINERAL SUBSTANCES ON PUBLIC INTEREST GROUNDS

Bill 79 gives to the Minister a new power allowing him to terminate a lease to mine surface mineral substances at any time on public interest grounds. In such a case, the Minister will grant the leaseholder a lease for another parcel of land, failing which the Minister would compensate the holder for the loss suffered. Participants from environmental groups and municipalities seemed in favour of this amendment. Mining companies,

CONT'D ON PAGE 3

CONT'D FROM PAGE 2

however, are concerned with the consequences of such an amendment. They also advanced that if this modification come into effect, it should also provide for compensation payable to the mining rights holder in case of relocation of its lease, since such mining rights holder would also incur a significant financial loss. The Minister, being aware of the impact that such an amendment may have, reiterated that this power would be used exceptionally, and only after consulting parties of primary interest.

OTHER MODIFICATIONS SUGGESTED BY PARTICIPANTS

Participants from different sectors have taken advantage of this forum to suggest amendments to the *Mining Act* that had not been addressed by the Minister. For example, with regards to the expropriation of surface landowners and the private agreements between them and the mining companies, some participants asked the Minister to restrain the expropriation power of mining rights holders and to allow such private agreements only after the Minister has agreed to them. In exchange, some mining companies suggested that landowners be compensated based on the number of hectares and that a mediation system be set up in order to facilitate negotiations.

Participants from municipal groups have all suggested to increase the role of towns and regional county municipalities in the mining rights allocation process. They have all asked for the reinforcement of municipal prerogatives by allowing the towns to withdraw parts of their territory from mining activities. Industry participants were responsive to the involvement of municipalities, but some of them pointed out the importance of the provincial government remaining the only administrator of natural resources.

Many participants also suggested that the government should invest more in the research and development of the mineral industry and in the second and third transformation sectors with the funds from the Mining Heritage Fund.

Bill 79 will now be studied in the Committee. In light of the variety of opinions expressed and the economic and social challenges that the mining industry in Quebec currently faces, more debate and amendments to Bill 79 are expected. Bill 79 must pass the Committee stage before it can follow its course to adoption by the National Assembly.

For further information, please contact:

<u>Viorelia Guzun</u>	514-982-4087
<u>Howard Levine</u>	514-982-4005
<u>James Papadimitriou</u>	514-982-4002
<u>Denis Boudreault</u>	514-982-4004
<u>Jean Marc Gagnon</u>	514-982-5025
<u>John Leopardi</u>	514-982-5030
<u>Philippe Décary</u>	514-982-4074
<u>Katia Opalka</u>	514-982-5047
<u>Patrick Menda</u>	514-982-5051

or any other member of our Mining Group.

Go to blakes.com/english/subscribe.asp to subscribe to other Blakes Bulletins.

NEW YORK	MONTRÉAL	OTTAWA	TORONTO	CALGARY	VANCOUVER			
CHICAGO	LONDON	BAHRAIN	AL-KHOBAR*	BEIJING	SHANGHAI*			blakes.com
* Associated Office								