File No. MA 033-93

L. Kamerman	)	Friday, the 23rd day
Mining and Lands Commissioner	)	of December, 1994.

THE MINING ACT

IN THE MATTER OF

That portion of Mining Lease 103971 of the Ministry of Natural Resources, registered as Mining Lease 6866, dated March 29, 1984, registered July 23, 1984 and entered as Parcel 5482, Leasehold Timiskaming, in the Townships of Hearst and McVittie, situate in the Larder Lake Mining Division (hereinafter referred to as the "Raven River Mine Site");

AND IN THE MATTER OF

Mining Lease MGL-106806, dated April 12, 1994, registered May 11, 1994, comprising all those parcels or tracts of land and land under water in the Township of Larder Lake, in the Territorial District of Timiskaming and Province of Ontario, containing by admeasurement 22.800 hectares, be and the same more or less, composed of those parts of the geographic Townships of Hearst and McVittie, designated as parts 13, 14, 15 and 22 on a plan and field notes deposited in the Land Registry Office at Haileybury as Plan 54R-2570, comprising Mining Claims L-290033 and 290034;

AND IN THE MATTER OF

The Notice of the Director of Mine Rehabilitation (the "Director") pursuant to subsection 149(1) of the **Mining Act**, dated January 25, 1993 and amended on July 23, 1993, to Mr. R.A. MacGregor to file a Closure Plan;

AND IN THE MATTER OF

An appeal from the Notice of the Director, dated August 24, 1993.

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B E T W E E N:

R.A. MACGREGOR

Appellant

- and -

THE DIRECTOR OF MINE REHABILITATION
(the "Director")

Respondent

ORDER

WHEREAS the tribunal did receive a referral from the Director of the Notice requiring a hearing before the Commissioner on the 28th day of September, 1993;

UPON hearing from the parties and reading the documentation filed;

1. THIS TRIBUNAL ORDERS that the requirement of the Director that the requirement that R.A. MacGregor file a Closure Plan be altered, so that the date for filing be changed to the 21st day of March, 1995. In all other respects, the requirement of the Director is confirmed.

2. THIS TRIBUNAL FURTHER ORDERS that no costs be payable by either party to the appeal.

Reasons for this order are attached.

DATED this 23rd day of December, 1994.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

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B E T W E E N:

R.A. MACGREGOR

Appellant

- and -

THE DIRECTOR OF MINE REHABILITATION
(the "Director")

Respondent

REASONS

This matter was heard in the Commissioner's Court Room, 24th Floor, 700 Bay Street, Toronto, Ontario, on November 16 and 17, 1994.

Appearances:

J. Donald Nixon, Q.C.	Appearing on behalf of Robert MacGregor, the appellant
John Norwood	Appearing on behalf of the Director of Mine Rehabilitation, the respondent

Opening Remarks:

Mr. Nixon stated that the evidence and interpretation of relevant sections of the **Mining Act** would show that the requirement to file a closure plan contemplated by subsection 149(1) does not apply to Mr. MacGregor.

Mr. Norwood submitted that there are two issues which the Minister is seeking to have addressed in this appeal. The first is a determination under subsection 149(1) of the **Act** of who is responsible for abandoned mine sites. Pursuant to subsection 149(1), and the definitions found in section 1 and subsection 139(1), it is the position of the Director that Mr. MacGregor is responsible for the lands which are the subject matter of this appeal.

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The second issue, which is of greater concern to the Minister than the appellant, is comment on the scope of the discretion of the Director under subsection 149(1). In this regard, Mr. Norwood invited the tribunal's comment on a Draft Policy Statement which sets out a working protocol which has been followed by the Director and his staff.

Issues:

1. Is Mr. MacGregor the "proponent of a project the Director considers abandoned" within the meaning of subsection 149(1) of the **Mining Act**, R.S.O. 1990, c. M14 ("the **Act**") and therefore liable to submit and comply with a closure plan?

2. If the answer to question 1 is yes, did the Director properly exercise his discretion in requiring Mr. MacGregor to submit a closure plan?

3. Does the Draft Policy entitled **The Application of Section 149 of the Mining Act** reflect proper considerations to be used by the Director in exercising his discretion under section 149?

Facts:

Evidence presented by Robert A. MacGregor in support of his appeal and by Chretien (Chris) Norbert Ducharme, Christine Rosalie Dubeau and Dr. William Richard Cowan on behalf of the Minister in large part does not dispute the facts. The primary issue of this appeal is one of interpretation of the relevant portions of the legislation, along with comment on the use of the Director's discretion. Where appropriate, any dispute of the facts will be clearly articulated.

Robert MacGregor staked 21 mining claims in the Townships of McVittie and Hearst in November, 1970 which were ultimately brought to lease on March 29, 1984. It is Mr. MacGregor's evidence that he had applied for 21 separate leases, but was issued one lease, bearing Mining Lease 103971. He subsequently applied for, and was granted, two replacement leases, bearing Mining Lease MGL-106751 and MGL-106806 for nineteen and two mining claims respectively, commencing April 1, 1993. The appeal before the

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tribunal concerns Mining Lease MGL-106806, which contains former Mining Claim L-290034, upon which are located the mine hazards alleged by the Director, located at the Raven River mine site, hereinafter referred to as the "mine site".

The mine site was originally contained in a patent dated September 1, 1908 to the Harris Maxwell Larder Lake Gold Mining Company. There is evidence of mine production in the form of excerpts from several Bureau of Mines publications (Ex. 1, Tabs 27 through 36). A photocopy of the parcel register (Ex. 1, Tab 25) discloses succession of title through transfers, including to Raven River Mines Ltd. in 1934, from which the mine derived its name, up to October 2, 1970, when a Notice of Determination made pursuant to section 655 of the **Mining Act**, R.S.0. 1960, c. 241, was registered. The Notice of Determination (Ex. 1, Tab 26) dated September 11, 1970 sets out that the lands have been voluntarily surrendered to the Crown and revert to unpatented Crown lands.

The matter of a potential mine hazard at the mine site arose by virtue of a complaint received by the Ministry of Natural Resources ("MNR") from a private citizen. Staff of the Ministry was advised of the complaint by facsimile on August 6, 1992 by Ken Alexander, MNR, Kirkland Lake (Ex. 2, Tab 1).

The mine site was described by intern mine rehabilitation inspector Christine Dubeau, who inspected on August 17, 1992 with Tom O'Connor and mine rehabilitation inspector Chris Ducharme, who inspected on July 7 and 15, 1993. The location of the mine site is near a horseshoe beach on Larder Lake. The site is located between two high outcroppings on the beach and a trailer park and campgrounds which are well frequented in the summer months. At the water's edge, an open adit was observed and photographed (Ex. 2, Tabs 2 and 19). Ms. Dubeau observed very recent and old garbage outside and inside the opening, although she did not enter the adit, knowing how dangerous it could be. At the top of one of the outcroppings, being the hill in which the mine site is located, immediately adjacent to a path leading from the trailer park, was the mine shaft which was open to the surface with surrounding fencing having deteriorated. Based upon one map filed with the resident geologist, it was suggested that the depth of the shaft could be up to 410 feet, although it could not be determined when this depth was reached. On one of the later inspection dates, children, estimated to be twelve years old, were observed on a rock near the site. In Mr. Ducharme's opinion, the mine site was a dangerous hazard.

Estimates for effecting closure of the mine site involve adequate fencing around the shaft, at a cost of $100 per linear foot, totalling perhaps $2,000 to $3,000 plus the cost of capping

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the shaft and adit, estimated at between $10,000 and $20,000. As a short-term measure, the fencing would have to be bolted to the rock at the adit. As a long term measure, the cap on the shaft would have to be bolted to the bedrock and the adit would have to be plugged, so that there would be no chance of any opening.

The Minister did nothing to secure the mine site or post warning signs, notwithstanding that there had been an inspection by MNR on June 9, 1988 (Ex. 5, Tab 20), setting out that the condition of the fence was poor, with an expected life of one year. The "Record of Action" attached to this inspection report lists the site as an "inactive mine site" and describes the degree of hazard as high. This inspection was not followed up by MNR or by the Director's staff. Both inspectors indicated the role of the Director and Branch was not to correct the hazard, but rather to ascertain who owned the property and work with that person to have the problem corrected, either formally or informally, through a closure plan.

Through inquiries Ms. Dubeau ascertained that Mr. MacGregor was the holder of a lease for the mining rights which included the mine site, and wrote him a letter on August 21, 1992 (Ex. 2, Tab 3) setting out that a public safety hazard existed. In the letter she requested that immediate temporary measures in the form of fencing and signs be undertaken, to be followed by permanent measures. In his response dated September 2, 1992 (Ex. 1, Tab 2 and Ex. 2, Tab 4) Mr. MacGregor denied responsibility for the hazard as he was not the owner of the mine site and set out that it was not identified in his lease.

Mr. MacGregor was again notified by letter dated September 21, 1993 from M.A. Klugman (Ex. 1, Tab 3 and Ex. 2, Tab 5), then Director, setting out that:

> ... as the lease holder of the mineral rights [Mr. MacGregor is] the owner, as defined in section 1 of the Mining Act, of the above mine and therefore responsible for all hazards associated including openings to surface.

No response was received from Mr. MacGregor.

On January 25, 1993, the Notice to Require a Closure Plan was sent to Mr. MacGregor by John B. Gammon, then Director, (Ex. 1, Tab 4 and Ex. 2, Tab 6) giving until April 30, 1993 to submit the plan or appeal within thirty days of receipt.

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Mr. MacGregor responded by filing a Notice to Require Hearing Under Part VII of the Mining Act (Ex. 1 and 2, Tabs 7) dated March 5, 1993 and received March 11, 1993, which was out of time. Mr. MacGregor was informed of his late filing by M.A. Klugman by letter dated March 31, 1993 (Ex. 1, Tab 8 and Ex. 2, Tab 9).

On April 29, 1993, Mr. MacGregor wrote to Mr. Gammon (Ex. 1, Tab 13 and Ex. 2, Tab 11) outlining that he had no knowledge of the nature of the underground workings and would be unable to answer the bulk of the questions required by the legislation, as the mining carried out had been done between 1906 and 1939, according to the Ministry's own records, being well before the "... patents were abandoned back to the Crown in 1970 ...". Mr. MacGregor questioned how he could be held responsible for something he did not create and outlined how he had been caught between the provisions of the old **Mining Act**, R.S.O. 1980, c. 268 which required that unpatented mining claims be brought to lease within eleven years after staking and the provisions of the new **Mining Act**, R.S.O. 1990, c. M.14, which, in addition to the new mine rehabilitation measures contained in Part VII which was being retroactively applied, provided that an unpatented mining claim could be kept in good standing indefinitely without needing to be brought to lease.

M.A. Klugman responded on May 21, 1993 (Ex. 1, Tab 16 and Ex. 2, Tab 12) setting out the Director's concern with immediate short-term remedies to existing hazards to be followed by a staging of long-term measures, pointing out that such measures are within Mr. MacGregor's expertise.

On June 21, 1993, Mr. MacGregor responded in writing (Ex. 1, Tab 17 and Ex. 2, Tab 14) setting out that he had examined the mine site and found an additional opening on the west side of the hill, and another large hole north of the shaft opening, but at lower elevation. He suggested that the adit was accessible via a narrow ledge beneath where there was a 20 foot drop. The mine shaft is also in close proximity to a vertical cliff 50 to 70 feet in height, such that:

> ... the natural hazards are as great, if not greater than that posed by the old workings. The best solution would probably be to fence the entire area.

Mr. MacGregor indicated that he had "... arranged for Keep Out and No Trespassing signs to be erected at all possible entrance points and at the actual workings." However, no liability was admitted by this action. The letter also asked for confirmation in writing that there had been no

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Ministry inspections between the 1939 and the 1992 inspection, primarily focusing on the 1970 surrender of the patent. Mr. MacGregor continues to deny liability for the closure plan, setting out that he **"... I have not abandoned this project, as I never started a project. .... [nor] operated a mine, nor advanced exploration."** The additional hazards described by Mr. MacGregor were confirmed upon inspection.

On July 23, 1993, W.R. Cowan advised Mr. MacGregor in writing (Ex. 1, Tab 18 and Ex. 2, Tab 15) setting out that the requirement for filing a closure plan had been extended to October 17, 1993 and that the right to appeal within 30 days had been resurrected. On August 20, 1993 Mr. MacGregor filed a Notice to Require Hearing Under Part VII (Ex. 1, Tab 19 and Ex. 2, Tab 16) appealing the Notice.

With public safety of primary concern, attempts were made to gain Mr. MacGregor's compliance without legal consequences, as evidenced by the letter of August 21, 1992 and the responsibility to progressively rehabilitate the site pursuant to section 143, outlined in the September 21, 1992 letter. When these attempts failed, the first Notice dated January 23, 1993 took into account the amount of time elapsed without adequate response. At all times, the Draft Procedure for section 149 (Ex. 5, Tab 25) was the basis for proceeding.

Mr. Ducharme stated that, in arriving at the recommendation that Mr. MacGregor be given another opportunity to file the closure plan, it was determined that allowing him to appeal would provide a good opportunity to determine the issue of ownership and have the Ministry's Draft Procedure reviewed and commented on by the tribunal. Other possibilities which were considered but not pursued were the laying of charges under section 167 for non-compliance with a Notice of the Director under section 149 or prosecution for failure to progressively rehabilitate a mine, as set out in section 143. The decision by Dr. Cowan to extend the time for the filing of the closure plan was due in part to Mr. MacGregor being forthcoming and describing additional hazards in his letter of June 21, 1993 as well as to provide a further opportunity of appeal.

Dr. Cowan stated that the working protocol of the Mine Site Rehabilitation Section of the Mining and Lands Management Branch ("the Branch") sets out that the primary concern is one of safety and the process laid out reflects the manner in which the Branch has proceeded since 1991 or 1992. Dr. Cowan agreed that the considerations set out in the Draft Policy (the text of which is reproduced in Schedule 1 to these Reasons) amount to a legal test upon which basis the Director exercises his discretion.

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Dr. Cowan gave evidence on his Branch's current interpretation of various sections of the **Act** as it applies to the case of Mr. MacGregor. The Director has the power under subsection 149(1) to require the proponent to submit a closure plan if he is satisfied of certain conditions. In making the determination of whether Mr. MacGregor is a proponent, Dr. Cowan relied on the definition of "proponent" under subsection 139(1), which includes the definition of "owner" in section 1. Referring to Ex. 5, Tab 23, he quoted:

> ... WE, hereinafter referred to as the "Lessor", by these Presents do demise and lease unto Robert A. MacGREGOR, hereinafter called the "Lessee" ... the mines, ores, minerals and mining rights in, upon and under ALL those Parcels or Tracts of Land more particularly described ...

Based upon this, Dr. Cowan concluded that as "the immediate ... lessee ... of ... land ... leased as mining land ...", Mr. MacGregor is the owner of the mine.

An "owner" within the meaning of the **Act** is immediate, so that while there may have been prior owners of the patent before its surrender, these are not considered for purposes of mine rehabilitation. Subsections (1) of each of sections 7 and 8 of the **Environmental Protection Act**, R.S.O. 1990, c. E.19 (the "**EPA**") (Ex. 5, Tab 25) were contrasted with this, where under the **EPA**, the Director may issue a control order or stop order to all past and present owners (ss. 7(1) and 8(1) are reproduced in Schedule 2 to these reasons).

The owner of the surface rights is also specifically excluded in the definition of "owner". (All relevant definitions contained in the **Mining Act** are reproduced in Schedule 2 to these Reasons).

Referring to the definition of "mine", Dr. Cowan stated that it included the types of works found on the mine site and includes shafts, open holes, open pits, openings to surface and adits.

Under cross-examination, regarding the definition of "abandoned", whereby the cessation or suspension of either advanced exploration, mining or mine production is required, Dr. Cowan was asked when Mr. MacGregor had ceased one of these activities. Dr. Cowan responded that Mr. MacGregor had done some mining on the mine site according to the definitions when he

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did the mechanical work which was recorded on the abstracts (Ex. 2, Tab 19). The details of this work, however, are not specified on the abstracts and the Director did not have documents at the hearing to further describe the work done or their location.

Reference was also made to subsection 2(2) of Ontario Regulation 114/91, which enumerates types of work included in "advanced exploration", which includes extraction of in excess of 500 tonnes of material, surface stripping or displacement of material in excess of 10,000 cubic metres or in excess of 2,500 cubic metres, if the activity takes place within 100 metres from a body of water. Advanced exploration can be distinct from mining or part of it, according to Dr. Cowan, in accordance with the definitions and the flexibility which illustrates that certain activities can be done differently at different points in time.

Dr. Cowan reiterated that there is a mine on the subject site, according to the **Act** and in his opinion, Mr. MacGregor was engaged in mining. While chipping at rocks or drilling small cores may not be mining, if these activities are done in the vicinity of a mine, as defined, they are considered mining according to the definitions contained in the **Act**.

Dr. Cowan stated that in 1939, it was not Mr. MacGregor who ceased or indefinitely suspended mining. However, the Ministry regarded his recent work as mining. Dr. Cowan indicated that it had been assumed that mining had been done, in the form of required assessment work, in order to bring the property to lease. The question was asked as to whether the Director should have known the extent of work done or not done before issuing the Notice to require the filing of a closure plan. Dr. Cowan indicated that a historical review of the site was done to determine ownership as public safety was at issue. As the Director, he was satisfied that the proponent had ceased or suspended the required activity, in this case mining, which includes by definition, mining activities around the mine. The differences between grass roots exploration and advanced exploration were discussed, with Dr. Cowan suggesting that even grass roots exploration in or around a mine constituted mining. Mr. Nixon suggested that the legal maxim "the law is not concerned with trifles" should apply to a series of drill holes ten or twenty feet in length.

Under re-examination, Dr. Cowan agreed that Mr. MacGregor appears to have suspended indefinitely, rather than ceased entirely, his mining activities, thereby coming within the definition of "abandoned". The mining activity would include different types of assessment work, such as mechanical stripping or drilling.

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Mr. MacGregor provided rebuttal evidence in the form of delineating the type of assessment work carried out on the unpatented mining claims before they were brought to lease. He stated that he did geophysical surveys covering an extensive area, up to a couple of miles away. He did some mechanical work, involving a plugger, while drilling holes from one to two feet in depth. The work was characterized as exploration, the purpose of which is to freshen old rock surfaces to see what is there, as rock in the bush can be weathered up to a depth of six inches. Hammering the rock is insufficient for this purpose, as insufficient rock is chipped away.

Mr. MacGregor stated that all assessment work done on the mining claims was recorded, as he struggled to find enough assessment work to keep the claims in good standing.

Under cross-examination, Mr. MacGregor was asked to explain the 20 days of power stripping noted on the abstract. He could not recall what the work had been, but agreed that power stripping is often done by bulldozers or washing off with a hose, although he had never used machinery other than a plugger for one day on the subject site.

Sudbury Contact, which had an option on the mining claims and eventually arranged for them to be brought to lease in Mr. MacGregor's name, recorded 59 days of diamond drilling. Extensive work was done 1/2 mile to the east, out on the lake, recorded on the nineteen mining claims. Mr. MacGregor did not know how many holes were drilled. No work has been done since 1984.

Asked whether the best place to find a new mine is near an old mine, Mr. MacGregor stated that mines are concentrated within a certain area, depending on geological factors, so that one would look for similar geology, be it within a half mile or within 100 miles. As far as the Raven River mine site is concerned, areas within a ten mile radius are of interest.

Submissions:

Mr. Nixon submitted that the entire appeal revolves around a reading of subsection 149(1) of the **Act**, which requires that a project be abandoned. He submitted that the Director is bound by the definitions in the **Act**, and if he is to find that a project has been abandoned, he must

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find that the proponent has ceased or suspended indefinitely one of the enumerated activities on the site. Dr. Cowan has been honest in stating that it was not advanced exploration nor mine production which was abandoned, but rather, mining.

As applied to the facts of this case, mining must be taken to mean the operation of the plugger by Mr. MacGregor to remove material from the rock surface and other minor bits of work. Dr. Cowan was frank enough to admit that what Mr. MacGregor had done was grass roots exploration. Mr. Nixon submitted that what Mr. MacGregor did cannot be construed as mining, nor advanced exploration.

Mr. Nixon submitted that the situation is peculiar in that the result of the interpretation by the Director, for purposes of section 149, is that the project has not been abandoned.

Mr. Nixon submitted that it is disturbing that the Director issued the requirement to file without information on the cessation or suspension by the proponent of any of the categories within the definition of abandonment. If an activity has never been suspended, how can it be abandoned? The requirement that there be a required activity by Mr. MacGregor for there to be a suspension has never been met. Therefore, in accordance with the legislation, the mine was not abandoned, and the Director was not within his right to issue the requirement.

Mr. Nixon submitted that the Director should be bound by the definitions and act accordingly. The notice requiring the filing of a closure plan should not have been sent and the tribunal should make its order accordingly.

Mr. Norwood submitted that the issue to be determined is who, under Part VII of the **Act** is responsible for this type of mine hazard problem. From the evidence given by two inspectors that hazards exist which are dangerous to the public in the immediate vicinity, being users of the beach and trailer park. Upon conducting an investigation, the inspectors and the Branch came to the conclusion that Mr. MacGregor is responsible, although Mr. Nixon had suggested, through the questions asked of the inspectors, that it is the Crown which is responsible. There is no legal responsibility assigned to the Crown under the **Act**. In the past the Crown did nothing, but it is not legally responsible for this site. Although unable to answer for other Ministries who, in the past have been involved, clearly the involvement of this Ministry is only seven years old, with the environmental responsibility being three years old. Mr. Norwood suggested that the environmental mandate is a difficult responsibility indeed.

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The Branch involvement during the past three years in addressing environmental concerns has entailed attempting to get Mr. MacGregor and individuals like him to undertake their legal responsibility. Part VII of the **Act** is the only tool available to the Branch.

The intent of the legislation is clear, having mandated that it is the responsibility of the industry, namely the private sector, to assume responsibility for new, old and abandoned mines. Looking to the wording of the legislation which specifies the immediate owner, it is clearly distinct from the **EPA**, which captures all owners, past and present.

Returning to the wording of subsection 149(1), the Director has discretion, denoted by the use of the word, "may". Further, it is not a project which is abandoned, but rather one which the Director considers abandoned.

The definitions used capture the current owner, being the immediate lessee of the mining rights. The intent of the legislation is clear.

The tribunal was invited to consider the definition of the word "project" as being disjunctive so that it means either one of the activities listed (advanced exploration, mining or mine production) or a mine, so that there is no requirement that any one of the activities actually has ceased or been temporarily suspended, if there is a mine, which encompasses the physical working of a mine, even where the mine is not currently being worked. Mr. Norwood submitted that an old mine site hazard includes the Raven River site.

Mr. Norwood pointed out that the definitions used in the **Act**, particularly in reference to Part VII, are unique and differ from what is used in common parlance in the industry. He submitted that these words must be given the meaning intended by the legislature.

Mr. Norwood also submitted that "abandoned" as defined is not a question of fact, but rather relates to what the Director considers to be abandoned. Dr. Cowan gave evidence on what this must mean. The definitions of the **Act** require him to give meaning to "abandoned" such that if work has been done on or about a mine, and the work is no longer going on, it must be considered as abandoned. Work is understood to mean assessment work as required by the **Act**.

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Referring to the abstracts, there is clear evidence that extensive work has been done by Mr. MacGregor and Sudbury Contact which constitutes work in or about a mine. This is the view taken by the Director, and if the tribunal were to disagree, the Minister would seek to judicially review the decision.

Concerning the means by which the Director has exercised his discretion, Mr. Norwood submitted that where the Director comes to a conclusion and exercises his discretion on a reasonable basis, his actions should not be overturned by the tribunal. Factually there is a reasonable basis for finding that a hazard exists, namely the portal, shaft and adit. These are of hazardous concern and constitute a danger to the public observed in the area acting in a recreational mood. There is evidence in the documentation that the shaft may be up to 410 feet deep, and the Ministry is deeply concerned about having this hazard made safe so that for example, a child does not fall in.

The Director is concerned that this matter be addressed and has determined that there is adequate factual basis upon which to proceed. Mr. Norwood invited the tribunal to comment on the Draft Policy in this regard.

Mr. Nixon replied that Mr. MacGregor does not have the resources of the large mining companies to deal with this situation and others like it. He suggested that if all small operators were treated this way, the mining industry will suffer.

If the Director is concerned for public safety, surely he is equally bound by the definitions, which require that the site be one which he considers abandoned. Dr. Cowan has said that he is bound by the legislation. Therefore, he cannot call something abandoned unless it meets the definition. If a project is not abandoned, the Director cannot label it so on a whim.

Findings:

Preliminary Issue - Jurisdiction of the Tribunal on Appeal

Upon hearing an appeal pursuant to Part VII of the **Act**, the tribunal may "confirm, alter or revoke the action of the Director that is the subject matter of the hearing" pursuant to subsection 152(5). Subsection 152(6) sets out which sections of Part VI of the **Act** apply to these proceedings.

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It is interesting that section 113 is not included; it states:

> **113.** The Commissioner shall determine,
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> (a) an appeal from a recorder, after a hearing by way of a new hearing; and
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> (b) a dispute referred to in section 48 or a claim, question, dispute or other matter within his or her jurisdiction after a hearing,
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> pursuant to an appointment fixing the time and place for the hearing.

In the case of **Parres et al. v. Baylore Resources Inc. et al.** 7 M.C.C. 8 (Div. Ct.) the Court determined that clause (b) is properly a hearing **de novo** as the matters enumerated therein come to the tribunal at first instance, whereas those under (a) are appeals following an initial hearing.

Subsection 152(1) includes the words, "the proponent may appeal the Director's requirement, order or declaration to the Commissioner... requiring a hearing before the Commissioner..." and "... the Director shall refer the matter to the Commissioner for the hearing.".

A hearing before the tribunal under Part VII is the first hearing of these issues. Nothing in Part VII requires the Director to hold a hearing, nor are his actions governed by the **Statutory Powers Procedure Act**, R.S.O. 1990, c. S.22. There was no discussion of the burden of proof or the nature of inquiry to be conducted by the tribunal on an appeal from the Director.

The decision of Bouck J. of the British Columbia Supreme Court in **Re Andres Wines (B.C.) Ltd. et al. and British Columbia Marketing Board et al.** [1947] 41 D.L.R. (4th) 368 considered a similar issue in his review of a decision of the British Columbia Marketing Board. At page 370 relevant portions of section 11 of the **Natural Products Marketing (BC) Act** are set out and while comparable to those of Part VII of the **Mining Act**, of particular interest is the nature

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of the relief which may be granted and the treatment given by the Court:

> 11(1) Where a person is aggrieved or dissatisfied by an order, decision or determination of a marketing board or commission, he may appeal the order, decision or determination to the Provincial board by serving on it, not more than 30 days after he has notice of the order, decision or determination, written notice of his appeal.
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> . . . . .
>
> (7) The Provincial board may, on an appeal under this section, dismiss the appeal, or confirm or vary the order, decision or other determination of the marketing board or commission on the terms and conditions it considers appropriate.
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> (9) Where a person is aggrieved or dissatisfied by an order, decision or determination of the Provincial board, he may, within 30 days after the order, decision or determination of the Provincial board is served on him, appeal the order, decision or determination to the Supreme Court on a question of law.

Bouck J. continues on page 371:

> Because the Grape Board reaches a decision without having to justify it before an independent tribunal and because grape growers are protected from competition by a monopolistic or **quasi**-monopolistic scheme, it is important that the Provincial Board follow a procedure which allows the wine producers and any other interested parties to whom the legislation gives standing, an opportunity to examine witnesses and make presentations. It is self-evident that the Grape Board will always be the respondent since it will not likely appeal its own decision to the Provincial Board.

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> ...In my view, the initial burden should always be on the Grape Board and not the Wine Council. It is a hearing **de novo** because in reality there will have been no previous "hearing". I reach this result for the following reasons:
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> (1) The price fixed by the Grape Board is not the result of a hearing by an impartial tribunal. It is a determination made by one of the two interested parties. Therefore, the Grape Board should have to justify its conclusions.
>
> (2) Usually there will be only two parties to the appeal; the Grape Board and the Wine Council. The Grape Board will seek the highest reasonable price for the product while the Wine Council wants the lowest. The Provincial Board is supposed to select a price that is not only fair to both, but also fair to the ultimate consumer since it is the public which will eventually pay. Thus, the Grape Board must begin by showing its schedule of prices is not excessive.
>
> (3) The Grape Board is the entity possessed of all the facts and figures which go into the cost of producing grapes since it is composed of the grape growers themselves. **It should be required to prove these costs are reasonable and that any profit figure above these costs is not excessive** [emphasis added].

Although the Court in the **Andres** case described the appropriate procedure as a hearing **de novo**, the test prescribed by the Court was one of reasonableness, which properly reflects appeal jurisdiction. This is reflected in the reasoning, which found that there was no error of law in failing to make new findings on the evidence presented. Rather, the Court found that the Provincial Board properly considered whether the decision of the Grape Board was reasonable.

Applying the principle of **Andres** to Part VII appeals, the tribunal finds that appeals from an order, declaration or requirement of the Director are appeals **de novo**. Hearings will involve a thorough canvassing of evidence before the Director, opportunity for examination and cross-examination of witnesses and the right to make submissions. The test, however, will be that of an appeal, namely, whether the Director's order, decision or requirement is reasonable and can be

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supported on the facts and evidence of the case. This review of the actions of the Director will result in one of the determinations provided for in subsection 152(5), that the actions of the Director should be allowed to stand ("confirm"), be struck down ("revoke") or changed ("alter").

In addition to the nature of relief outlined in subsection 152(5), the reference to a hearing in subsection 152(1), the only direction which appears to be available to the tribunal in terms of the nature of the appeal under Part VII is the reference to section 121 contained in subsection 152(6), which states:

> **121.** The Commissioner shall give a decision on the real merits and substantial justice of the case.

This section has historically been held as giving the tribunal, "... the power to provide equitable remedies as well as common law remedies and the statutory remedies expressly created in the Act." (**Evans v. Smith**, 6 M.C.C. 292 at p. 302). With the greatest respect to my predecessors, I believe that, in addition to the powers referred to, the tribunal is required to consider the substantive basis of the proceeding and has considerable discretion in so doing. [See **Reference Re Residential Tenancies Act**, (1980) 26 2 O.R. (2d) 609 at page 636, and upon appeal to the Supreme Court of Canada at [1981] 1 S.C.R. 714 at page 744, regarding that legislation containing similar wording].

The tribunal finds that, for purposes of Part VII appeals, it must review the evidence which was originally before the Director and determine whether there was adequate substantive basis for reaching the requirement, order or declaration appealed from and in so doing, must use its discretion to place itself in the shoes of the Director in determining whether any discretion exercised was reasonable. The tribunal finds that it must also consider the statutory interpretation of sections applied to the facts, as presented by the Director, and make findings as to whether they have been interpreted reasonably and correctly.

<u>The Meaning of Subsection 149(1)</u>

Much of the hearing revolved around each of the witnesses giving their interpretation of the definitions of words used in subsection 149(1). The tribunal has not provided detailed accounts of each witnesses' opinion, as it is that of the Director which governs and must be examined for accuracy. Subsection 149(1) and various definitions

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contained in the **Act** have been reproduced and are contained in Schedule B attached to these Reasons. As stated above, the issue is whether the meaning to be attached to each of the defined words in the phrase, "**proponent** of a **project** the Director considers **abandoned**" will apply to the fact situation in Mr. MacGregor's case.

The definition of "proponent" for purposes of this appeal refers back to the definition of "owner" which includes the "immediate ... lessee ... of any land ... leased as mining land ...". Based upon the ordinary meaning of the words contained in the definition, the tribunal finds that Mr. MacGregor is a "proponent" in respect of the mining lands contained in lease MGL-106806 (Ex. 5, Tab 23).

A great deal of evidence was heard as to whether the definition of "project" applies to one of Mr. MacGregor's general involvement or activities on the mining lands or specifically to his leasehold interest in the mine site. The tribunal finds that it is satisfied, on the evidence, that Mr. MacGregor was not involved in advanced exploration, but rather conducted grass roots exploration on the mining lands covered by his lease. Also, there is no evidence that Mr. MacGregor was engaged in mine production.

The definition of "project" includes the word "mine" used in this context as a noun, so that, applied to this fact situation, would mean an "opening or excavation in, or working of the ground". There is no doubt that Mr. MacGregor's interest in the mining lands defined in lease MGL-106806 encompasses the old mine site (subject site). Also included in the definition of "project" is the activity of mining. The Director was of the opinion that Mr. MacGregor was engaged in "mining" through his assessment work activities, such as power stripping and plugging. It was also considered by him, through proximity to the existing mine workings only without any direct evidence that Mr. MacGregor's activities were conducted on the exact same locations where the adits, shaft and other workings were found and are the subject matter of the requirement to file a closure plan, that Mr. MacGregor was engaged in mining, and therefore, the "proponent of a project".

Semantically speaking, there may be two projects located on the mining lands covered by Mr. MacGregor's lease, that of the subject site and that of Mr. MacGregor's grass roots exploration. But in considering the latter, the tribunal notes that Mr. MacGregor's interest in exploration of this particular land is directly linked to that which has gone on before, namely a producing mine. He gave evidence that his interest in geological formations could result in his interest in land up to a hundred miles away from the original mine site, but nonetheless, he has

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chosen to bring the land encompassed in MGL-106806 to lease. This proximity and history leads the tribunal to find that the determination of the Director that Mr. MacGregor's otherwise grass roots exploration activity, being located within the same unit of land as the mine site, amounts to mining is reasonable and supported by the facts.

If words used in the various definitions are used to replace the actual wording of subsection 149(1), the result for purposes of this appeal might be, "The Director may ... require the owner, being the immediate lessee of land leased as mining land..., " upon which is located an "opening or excavation in", "or who has conducted work of the ground...". This reading clearly applies to Mr. MacGregor's leasehold interest and the tribunal finds that the determination of the Director that Mr. MacGregor is the "proponent of a project" within the meaning of subsection 149(1) is reasonable and correct, being supported by the facts.

The definition of "abandoned" as applied to this fact situation involves a determination of whether the individual who has an immediate interest in the land must be the same individual who has ceased or suspended the activity "on the site" which is being sought to be rehabilitated, or whether, as suggested by the Director, it is enough that the individual be involved in any activity on the mining lands which is considered mining as defined. If it is found to be the former, the tribunal would revoke the requirement of the Director. If it is found to be the latter, the tribunal would need to evaluate whether, in making the requirement, the Director properly exercised his discretion.

The definition of "abandoned" refers to specific mining related activities, namely advanced exploration, mining or mine production "on the site". In subsection 139(1),"'site' means the land or lands on which a project is located". The reference back to "project" once again encompasses that definition, which includes both a mine and the activity of mining.

The tribunal has found above that Mr. MacGregor has conducted mining on the lands covered by his lease, and that he is the proponent of a project. Evidence presented at the hearing supports the fact that he is no longer actively conducting his activities, so that the tribunal finds that his mining has been temporarily suspended if not ceased altogether.

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Being cognizant of the fact that this interpretation of the phrase "proponent of a project the Director considers abandoned" seems to be a broad application of the definitions in the **Act**, the tribunal will consider the general intent of Part VII as a whole to ascertain the intent and scheme contained therein.

Sections 141 and 142 provide that no proponent shall commence or recommence advanced exploration or mine production without notifying the Director, giving notice to the public, submitting a closure plan and having written acceptance of the plan.

Section 143 requires that a proponent take all reasonable steps to progressively rehabilitate a mine.

Section 144 deals with the ongoing activities associated with a closure plan. Section 145 deals with financial assurance.

Subsection 146(1) provides that for the purpose of monitoring the closure of projects, including mines that have been abandoned, rehabilitation inspectors are designated.

Clause 146(2)(b) allows the inspector to enter onto any mining land associated with a project or abandoned mine.

Subsection 147(1) requires that every proponent of a producing mine or mine which is temporarily suspended, notify the Director, whereupon the Director gives a time within which a closure plan must be submitted.

Subsection 148(1) refers to what could be considered active abandonment, whereupon a proponent, taking steps to abandon a project on either an indefinite or permanent basis, must give notice to the Director and steps must be taken to rehabilitate the site, failing which under subsection 148(2), the Director may order the proponent to rehabilitate the site.

Section 150 allows the Director to refuse the surrender of lands and recommend that the Minister deny consent to transfer a lease or licence of occupation or mining claim, where the site has not been rehabilitated.

The remaining subsections in 149 are also relevant for determining the intent of sub-

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section 149(1). Subsections (2) and (3) deal with the general administration of the section, allowing the Director to request changes and requiring completion of the outlined rehabilitation. Subsection (4) allows the Director to declare the project abandoned, whereupon an agent of the Crown may rehabilitate the site, with subsection (5) requiring proper notice be given to a proponent before this may take place. Subsection (6) follows from (4), permitting the Lieutenant Governor in Council to declare the lease void, upon recommendation of the Minister. Subsection (7) requires that before such declaration may take place, the Director must give notice to the proponent of his intention to recommend this course of action to the Minister.

From this brief review, the question which immediately arises is, which mining lands are not covered by Part VII? The definition of "rehabilitate" answers this question more than other definitions referred to in the course of the hearing:

> "rehabilitate" means measures taken in accordance with the prescribed standards to treat the land or lands on which advanced exploration, mining or mine production has occurred so that the use or condition of the land or lands,
>
> (a) is restored to its former use or condition, or
>
> (b) is made suitable for a use that the Director sees fit,
>
> and includes taking protective measures;

This definition refers only to the land and the mining-related activities which are to be rehabilitated. The absence of reference to a "proponent" indicates that all mining land which has been degraded through mining-related activities may be liable to rehabilitation, whether the impugned activities occurred in the present, recent past or distant past.

The tribunal finds that through application of the defined terms contained in the **Act** as well as its findings concerning the intent and scheme of the **Act**, that the requirement to rehabilitate or submit and execute a closure plan applies to all aspects of mining-related activities on land no matter how it is held and more particularly, to a proponent who has not conducted the particular mining related activity which gives rise to the requirement to file a closure plan.

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This being the case, the tribunal finds that it accepts and adopts the reasoning used by the Director as being reasonable and correct in considering that Mr. MacGregor is a "proponent of a project the Director considers abandoned" within the meaning of subsection 149(1).

While not relevant to the tribunal's findings, it is interesting to note that the definition of "proponent" includes the holder of an unpatented mining claim, so that Mr. MacGregor's belief that, had he not been required under the unamended **Mining Act** to take his mining claims to lease, he might not be involved in these proceedings appears to be without merit. Similarly, section 150 does not allow any proponent to relieve himself of his interest in the mining property without the permission of the Minister, which generally is dependent on prior rehabilitation of the site.

Does the Draft Policy Reflect Proper Considerations to be used in the Exercise of Discretion?

Despite the fact that this is listed as the third issue to be determined on this appeal, a general consideration of the policy by the tribunal must first be made.

Although the incumbent legislation is different, the principle of the following case describes the requirements of a tribunal reviewing a decision made through the statutory exercise of discretion. The Court in **Segal v. The General Manager, The Ontario Health Insurance Plan** (Gen. Div., Div. Ct.) unreported, 347/94, November 24, 1994, Hartt, Saunders and Moldaver JJ., considered an appeal from a decision of the Health Services Appeal Board set out at page 3:

> On an appeal to the Board from the General Manager, the Board may direct the General Manager to take such action as the Board considers he should take in accordance with the Act and regulations, and for such purposes the Board may substitute its opinion for that of the General Manager (s. 21(1) of the Act). Where, as here, the General Manager had adopted a policy as the basis for exercising his discretion, the Board, in our opinion, is bound to consider that policy and not follow it if it considers it to be unreasonable. Once it has considered and adopted a general policy with respect to hospital services in general, the Board need not reconsider the policy in each subsequent case unless there are excep-

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> tional circumstances. However, we think it is still the duty of the Board in each case to consider whether the application of the policy is reasonable in the circumstances before it. The Board in a number of cases has found inapplicable some of the conditions in Appendix C in certain situations.
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> In its reasons for dismissing her appeal, the Board stated that the appellant must meet the conditions laid down in Appendix C. In our opinion that was a misdirection so far as hospital services were concerned. In our view the Board, having found that certain Appendix C conditions had not been complied with, should then have gone on to consider whether the imposition of those conditions as part of the policy was reasonable in the circumstances. This is what the Board has done in other cases. In this case the Board should have considered whether it was reasonable to require a referral to a New York physician, and whether prior approval to the procedure was also required.

From **Segal** the following steps can be derived in reviewing this and any other policy applied by the Director and considered on an appeal:

1. Consider the policy and determine whether generally it will be adopted or rejected by the tribunal.

2. If adopted, it need not be reconsidered, unless a party pleads exceptional circumstances.

3. If rejected, the tribunal will give reasons.

4. If adopted, consider whether it is reasonable to apply the policy in the circumstances.

The first and third points involve the third issue to be determined on this appeal. The second is not applicable, as this is the first time this policy has been considered by the tribunal.

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The fourth point, and the second in the event that the policy is rejected, involve the second issue to be determined.

The Draft Policy outlines a procedure by which mine hazards may be identified and assessed. It is prescribes a course of action in dealing with them. The last four words under "Purpose" on the first page are "and limit Crown liability". The tribunal has not heard reasons why this should be a proper purpose under the policy and its comments will be limited to the rest of the Draft Policy.

On page two, the three items listed as causing the initiation of an inspection, namely a high hazard rating determined through application of AMHAZ, a dangerous hazard identified in a consultant's study associated with the program or a complaint, are considered by the tribunal to be reasonable to give rise to an inspection. While this list is not directly relevant to the exercise of discretion by the Director, it is important to place members of the public who may have an interest in mining lands which may become subject to inspections on the list to inform them of the reasons why this may occur. This list does not appear to be exhaustive and may be subject to future augmentation.

The three listed issues of concern, being serious health or safety concerns, actual or potential environmental impairment or other significant "adverse effects" as listed, again provide information and advance notice to those with an interest in mining lands of the areas of concern which may, as a result of an inspection, give rise to action by the Director.

Although all of the steps listed under "Implementation" are not carried out by the Director, those steps which do involve the Director outline a fair procedure of notification and opportunity for response before a Notice Requiring Closure Plan is issued. The tribunal finds that it will adopt the Draft Policy as fair and a reasonable use of the Director's discretion.

One comment, however, concerns situations where there may have been discussions or correspondence between a prospective proponent and the Director's staff as to which lands may be properly included in the discussions or closure plan. Proponents should be made aware, through this Draft Policy, that the time for appealing all or any portion of the Director's Notice Requiring a Closure Plan is within the thirty day limit provided under subsection 152(1). It is important that proponents not be lulled into a false sense of complacency that denials of liability for a portion of the property for which a closure plan is required do not amount to an appeal without institution of an appeal through the filing of the prescribed form.

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Proper Exercise of the Director's Discretion

The proper exercise of discretion of any body empowered to make decisions which affect an individual's rights entails evidence that the person exercising the discretion did more than apply the policy. The Director must prove that he did not use his discretion arbitrarily, but applied it to the facts of this case. In other words, the policy must be considered on a case by case basis, so that there are always room for exceptions based on the facts or alternatively, room to broaden the policy and create new considerations.

In this case, the tribunal is satisfied that the Director has demonstrated that he has not blindly or arbitrarily applied the policy to the facts concerning Mr. MacGregor's situation. Consideration was given to other alternatives, including the laying of charges under section 167 for non-compliance with a Notice of the Director under section 149 or prosecution for failure to progressively rehabilitate a mine, as set out in section 143. By reacting to the new information provided by Mr. MacGregor concerning additional workings, Dr. Cowan demonstrated perhaps the most situation-specific use of his discretion, by extending time for the filing of a closure plan. This is significant as Mr. MacGregor had attempted to appeal earlier, but was late in filing. Dr. Cowan stated at the hearing that in deciding to provide this extension of time to Mr. MacGregor, he believed that the interests of all parties concerned would best be served by resurrecting the right of appeal. The tribunal finds this reasonable in the circumstances and should therefore not be interfered with.

Conclusions:

Pursuant to subsection 152(5), having found that the Director made reasonable findings in connection with the issues which set out the findings in detail, the tribunal finds that the requirement that Mr. MacGregor file a Closure Plan must stand. However, as the date for filing has passed, the tribunal finds that it will alter the requirement, providing Mr. MacGregor with ninety days from the date of the making of this order, being comparable to the length of time allowed by the Director's letter extending time.

No submissions were made on the issue of costs. Therefore, no order as to costs will be made.

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SCHEDULE 1

DRAFT PROCEDURE ON SECTION 149

PURPOSE: The purpose of this procedure is to outline a course of action with respect to the Ministry's duties and responsibilities under Section 149 of the **Mining Act** by:

a) determining the presence and identifying the severity of hazards on mining properties considered abandoned, but with responsibility (ownership) lying with the private sector; and

b) to identify a course of action to follow when determining that a closure Plan is to be required under Section 149 of the **Mining Act**.

in order to provide a method to regulate rehabilitation activities and limit Crown liability.

Note: This procedure is not meant to apply to emergency situations which will be covered under the Ministry's emergency response plan.

ISSUE: Consultant's studies under the Abandoned Mines Program, complaints from the public, and inspections carried out by government personnel have all led to the identification of a number of sites for which ownership and responsibility lies with the private sector and that have not been rehabilitated to the standards prescribed under the **Mining Act**. The government is now aware of many of these sites and has the statutory authority to require protection of the public and the environment.

MINING ACT: The Director of Mine Rehabilitation may, by written notice, require the proponent of an abandoned mine site to submit, within a specified period of time, a Closure Plan to Rehabilitate the site. (Section 149 of the **Mining Act**.)

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DETERMINING CRITERIA:

A) Initiation of Inspection

A concern initiated by any of the following situations will normally require an inspection of the Abandoned Mine Site by a designated Rehabilitation Inspector:

1. **A high hazard rating for the site determined by MNDM's Abandoned Mine Hazard Rating System (AMHAZ) - currently under development;**

2. **A dangerous hazard identified in an Abandoned Mines Program consultant's study;**

3. **A public government, or other agency complaint.**

B) Issues of Concern

The inspector will determine the extent to which any of the following conditions exist:

1. **Serious public health or safety concerns;**

2. **Actual or imminent environmental impairment;**

3. **Any other significant "adverse effect" such as those defined in Subsection 1.-(1) of the Environmental Protection Act. (Refer to the attached Schedule A)**

IMPLEMENTATION:

If the Rehabilitation Inspector determines that any of the previous conditions exist on the site, the following steps will be taken by the Inspection and Compliance office.

RESPONSIBILITY:

REHABILITATION INSPECTOR

1. Maintain a list of features identified as having high priority

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hazards and perform a title search to determine land tenure and, if necessary, to identify directors and officers of the company.

2. Advise proponent of responsibilities under the **Mining Act** and potential liability under other legislation, e.g. **Occupiers Liability Act**. Inform proponent of other Ministry's/Agency's jurisdiction and involvement in the mine rehabilitation process.

3. Write to the proponent asking for their intentions for remedying the situation according to regulatory requirements. Hazards relating to public health and safety must be addressed within a short period of time.

PROPONENT

4. The time frame for the response will generally be one month.

DIRECTOR OF MINE REHABILITATION

5. The Director of Mine Rehabilitation (hereinafter referred to as "the Director") may not require the formal process of Section 149 of the **Mining Act** if the proponent is cooperative, but a proposal and schedule of remedial action must be provided by the proponent. However, the Director may require a Closure Plan at a future date.

6. Issue a second reminder letter with a required response date, signed by the Director, if no response is received to the initial letter or subsequent information indicates that remedial work has not been carried out in a timely fashion.

7. The Director may formally require the submission of a Closure Plan pursuant to Subsection 149.-(1) of the **Mining Act**, or may declare the site abandoned pursuant to Subsection 149.-(4), if no adequate response is received following the second request.

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SCHEDULE A

Definition of Adverse Effect" as per Subsection 1. - (1) of the Environmental Protection Act

"**Adverse Effect**" means one or more of,

(a) impairment of the quality of the natural environment for any use that can be made of it,

(b) injury or damage to property or to plant or animal life,

(c) harm or material discomfort to any person,

(d) an adverse effect on the health of any person,

(e) impairment of the safety of any person,

(f) rendering any property or plant or animal life unfit for human use,

(g) loss of enjoyment of normal use of property, and

(h) interference with the normal conduct of business.

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SCHEDULE 2

Mining Act, R.S.O. 1990, c. M.14

1. In this Act,

"mine", when used as a noun, means any opening or excavation in, or working of the ground, for the purpose of winning any mineral or mineral bearing substance, and all ways, works, machinery, plant, buildings and premises below or above the ground belonging to or used in connection with such activity, and any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any of such substances and includes mines that have been **temporarily suspended**, rendered **inactive**, **closed out**, or **abandoned** as well as lands where tailings, or wasterock, or both, or any other prescribed substances from any opening or excavation or working of the ground have been deposited;

"mine", when used as a verb, means the performance of any work in or about a mine, as defined in its noun sense;

"owner", when used in Parts VII, IX and XI, includes every person, being the immediate proprietor, lessee or occupier of a mine, or a part thereof, or of any land located, patented or leased as **mining land** and includes an agent, or a person designated by the owner or agent as responsible for the control, management and direction of a mine, or a part thereof, but does not include a person receiving merely a royalty from a mine, or mining lands, or the owner of the surface rights only;

139. - (1) In this Part,

"abandoned" means the proponent has ceased or suspended indefinitely **advanced exploration**, **mining**, or **mine production** on the site, without rehabilitating the site;

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"advanced exploration" means the excavation of an exploratory shaft, adit, or decline, the extraction of material in excess of the prescribed quantity, the installation of a mill for test purposes or any other prescribed work;

"closed out" means that all the requirements of an accepted closure plan have been complied with and is the final stage of closure;

"inactivity" means that advanced exploration, mine production and mining operations on a site have been suspended indefinitely in accordance with a closure plan, and although protective measures are in place on the site, the site is no longer being monitored by the proponent on a continuous basis;

"mine production" means **mining** that is producing any mineral or mineral-bearing substance either for immediate sale or for stockpiling for ultimate sale;

"project" means a **mine** or the activity of **advanced exploration**, **mining** or **mine production**;

"proponent" means the holder of an unpatented mining claim or licence of occupation or an **owner** as defined in section 1;

"temporary suspension" means **advanced exploration**, **mining** or **mine production** have been suspended, in accordance with an accepted closure plan, on either a planned or unplanned basis, but the site is being monitored on a continuous basis by the proponent and protective measures are in place.

149. - (1) The Director may by written notice require the proponent of a project the Director considers abandoned on the day this Part comes into force to submit within a specified period of time a proposed closure plan to rehabilitate the site.

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Environmental Protection Act, R.S.O. 1990, c. E.19

7. - (1) When the report of a provincial officer contains a finding that a contaminant discharged into the natural environment is a contaminant the use of which is prohibited by the regulations or is being discharged in contravention of section 14 or the regulations, the Director may issue a control order directed to,

(a) an owner or previous owner of the source of contaminant;

(b) a person who is or was in occupation of the source of contaminant; or

(c) a person who has or had the charge, management or control of the source of contaminant.

8. - (1) When the Director, upon reasonable and probable grounds, is of the opinion that a source of contaminant is discharging into the natural environment any contaminant that constitutes, or the amount, concentration or level of which constitutes, an immediate danger to human life, the health of any persons, or to property, the Director may issue a stop order directed to,

(a) an owner or previous owner of the source of contaminant;

(b) a person who is or was in occupation of the source of contaminant; or

(c) a person who has or had the charge, management or control of the source of contaminant.