Mine? OURS.

Achieving the full benefits of Nova Scotia’s mineral resources.
Introduction

The Mineral Resources Act (MRA) states that “All minerals are reserved to the Crown and the Crown owns all minerals in or upon land in the Province and the right to explore for, work and remove those minerals.”

In other words, Nova Scotians collectively own the riches beneath their feet. Minerals are a shared resource and all Nova Scotians benefit when they are removed from the ground and used to create jobs, generate tax and royalty revenues, and provide the raw materials we need to support our modern society.

Minerals do not belong to individuals or even the companies that mine them. They are ours.

This principle – that all Nova Scotians own and benefit from our minerals – must be a central consideration in the review of the MRA. What is good for the industry is also good for Nova Scotians.

Despite the obvious benefits to all Nova Scotians of supporting the industry and helping it create jobs, particularly in the rural areas that are in such need of greater opportunity, Government of Nova Scotia policy is often more of a hindrance than a help to the industry. It does not sufficiently “support and promote” the industry as the MRA’s purpose says it should.

A wide range of policies – from high tax and royalty rates to an inflexible protected lands regime – are harming the industry and its ability to generate jobs and economic opportunity for the province. According to Natural Resources Canada data:

- From 2001-2011, Nova Scotia's mining industry shrank while the mining industry of every other province and territory grew dramatically (excluding PEI because PEI basically does not have a mining industry).¹

• Nova Scotia’s industry shrank over that ten year period from a value of $285 million to $247 million. That is a 14% decrease in output, which resulted in our national ranking dropping to last in the country (again, excluding PEI).

By comparison:

• Newfoundland’s mining industry grew 6 times larger over that ten year period.
• New Brunswick’s mining industry grew 1.6 times larger.
• Quebec’s mining industry grew 2.1 times larger.

According to 2013 research commissioned by Nova Scotia’s Department of Natural Resources (DNR), Nova Scotia’s mining and quarrying industry lost approximately 800 jobs in the past five years, and its economic output shrank by $80 million per year – again, while other provinces’ industries grew.²

The review of the Mineral Resources Act is an opportunity to start correcting this situation – to implement policy changes that will help the industry grow and create more jobs and economic opportunity, especially in rural areas. It is an opportunity to achieve the full benefits of our shared mineral resources.

Following are the Mining Association of Nova Scotia’s recommendations for helping the industry grow and create jobs for Nova Scotians. We respectfully request that they be taken into account as the Government reviews the Mineral Resources Act.

“Minerals do not belong to individuals or even the companies that mine them. They are ours.”

² Gardner Pinfold studies conducted in 2008 and 2013
# Table of Contents

Introduction................................................................. 1

Key Principles................................................................. 4

Prospecting and Exploration .......................................... 7

Ensuring Mines can move Forward ................................. 18

Reclamation................................................................. 22

Taxes and Royalties ..................................................... 25

Issues outside the purview of the MRA ......................... 28

List of Recommendations.............................................. 33
Key Principles

Mineral Rights are owned by the Crown

As discussed above, the principle that mineral rights are owned by the Crown must be a central consideration in the review of the Mineral Resources Act (MRA). Minerals are a shared resource and all Nova Scotians benefit when they are removed from the ground and used to create jobs, generate tax and royalty revenues, and provide the raw materials we need to support our modern society.

What is good for the industry is also good for Nova Scotians, and the review of the Act must focus on helping the industry grow and create jobs for the people of Nova Scotia.

Recommendation: Make Crown ownership of minerals a guiding principle of the review.

Purpose of the Act

The purpose of the MRA is, according to Section 1A, to “support and promote responsible mineral resource management.” We believe the Act’s purpose is the right one and we encourage the government to leave it unchanged. The Government and the Act must focus on supporting the industry and all policy decisions must flow from this fundamental goal.

The complete text of Section 1A is as follows:

1A The purpose of this Act is to support and promote responsible mineral resource management consistent with sustainable development while recognizing the following goals:

(a) providing a framework for efficient and effective mineral rights administration;
(b) encouraging, promoting and facilitating mineral exploration, development and production;
(c) providing a fair royalty regime; and
(d) improving the knowledge of mineral resources in the Province.

Recommendation: Leave section 1A, the “Purpose of Act,” unchanged.
Primacy of Provincial Jurisdiction

The provincial government must retain primary jurisdiction over the industry because it is in the best interests of all Nova Scotians that it does so.

While we do not always agree with the provincial government’s policy decisions related to mines, we nonetheless believe it is essential that the province’s authority over the industry be preserved, and the regulatory regime be kept as clear and straightforward as possible. The regulatory regime is stringent and comprehensive and additional regulation or involvement by municipalities, community groups or even individuals would be unworkable and cause significant harm to the industry.

We are very concerned that some municipalities have raised the possibility of attempting to block future mine, quarry and pit proposals and even somehow regulate their ongoing operations in ways that exceed municipal authority. As the 2002 Supreme Court of Nova Scotia case Hankinson/Dexter v. The Municipality of the County of Annapolis concluded, “…the legislature has not delegated authority over pits and quarries to the municipality but have retained jurisdiction to control and authorize such activities under laws of province-wide application.” This principle must be defended by the provincial government during the review of the MRA.

Also, the notion of “community rights,” as advocated by some activist groups, would potentially make it impossible to open and operate new mines, thus costing the province new jobs, tax and royalty revenues and investment. It is, and must remain, the province’s responsibility to decide what is in the best interests of communities and the entire province when it comes to approving and regulating new mines. Any move in the direction of allowing individual landowners or members of a community to block mine approvals would be disastrous for the industry and the province.

For example, if this notion existed in law, a mine proposal like DDV’s Touquoy gold mine in Moose River, which has been the subject of a Section 70 vesting order and...
subsequent court appeals, could potentially have been blocked by one landowner. While it is unfortunate that one landowner refused to sell a small portion of his property to DDV to facilitate the establishment of the mine, it is important to understand that:

- The community supports the project.
- 29 other landowners sold land to DDV in mutually-beneficial deals.
- The landowner in question was offered $300,000 for 7.2 acres of land, a tiny portion of the several hundred acres he owns in the area, and a price that far exceeds market value.
- The mine will create 300 jobs during the construction phase and 150 direct jobs during ongoing operations.
- The mine will have an annual payroll of over $13 million.
- The mine will generate millions of dollars in tax and royalty revenues for the province.
- The mine will provide gold that is vital to the global economy and which will be used, for example, in the creation of electronics such as computers, handheld devices and medical equipment.

All these benefits would be prevented if municipalities, groups or individuals were somehow given the ability to block new mines or impose additional regulatory burdens on them.

**Recommendation:** Ensure the provincial government retains primary jurisdiction over the mining industry to prevent incursions on provincial authority by municipalities, groups and individuals.
Prospecting and Exploration – Improving our Knowledge Base

It is in the interest of all Nova Scotians that we improve our knowledge of what mineral resources are hidden in the ground beneath our feet. Knowing what is there and whether there are commercially-viable deposits – improving our general knowledge base – is vital to both the industry and our modern society. We must therefore make it easier for prospectors and explorationists to get access to land and conduct the exploration activities that help us understand what mineral resources we have.

It is also important to understand that what we consider commercially-viable today will change in time. As prices and technology evolve, smaller deposits may become economically viable, the technology available to explore and extract minerals will become more efficient, and even what materials will be needed to support our society in future will change. For example, rare earth minerals were not a focus in decades past but today they are vital to manufacturing things like electronics. It is impossible to know what materials we will consider important in the future, so improving our knowledge of what minerals exist in the province is tremendously important.

For all these reasons, it is necessary that we continue to improve our understanding of Nova Scotia’s geology. Given this, we need to do a better job facilitating prospecting and exploration so we can determine what minerals are present and whether further exploration and development are warranted, both now and in future.

Landowner Permission for Prospecting

Nova Scotia’s requirement for landowner permission to walk over private land discourages early stage prospecting/exploration and unnecessarily consumes time and energy at a point when the odds are that investing time and energy in getting permission will not pay off. Landowner permission is generally not required in other jurisdictions at this early stage and Nova Scotia should facilitate land access for non-disturbance activities by simply allowing it as most other jurisdictions do.
It is worth noting that most Nova Scotians other than prospectors and explorationists are allowed to walk over private land without permission. For example, a hunter can walk over private land without the landowner’s permission on his/her way to a hunting area. Someone heading out to fish can walk over private property to get to a lake or pond, campers can walk over private land on their way to their camp site and hikers can walk through the bush unhindered. It does not make sense that prospectors and explorationists cannot walk over land for non-disturbance activities without first getting permission.

It is important to remember that the private properties we are referring to are not residential backyards in urban or suburban areas where strangers walking on the property could disturb landowners. The properties we are referring to are generally in the bush, far from homes and other buildings, where a prospector walking through the woods has no impact on the land or its owner.

**Recommendation:** Allow prospectors/explorationists to walk over private land, for non-disturbance activities, without landowner permission.

**Crown Land Permission for Exploration**

Requiring a permit to explore on Crown land is also unnecessarily cumbersome and discourages prospecting and exploration at the early stages. Holders of exploration licenses should automatically be given access to Crown lands for non-disturbance activities as they are in many other provinces.

In addition to being able to walk over private land without permission, most other Nova Scotians, such as hunters, fishermen, campers and hikers, can also walk over Crown land without permission. It does not make sense that prospectors and explorationists are specifically prevented from walking over Crown land for non-disturbance activities without DNR approval when almost anyone else can do so.

“Nova Scotians collectively own the riches beneath their feet. Minerals are a shared resource and all Nova Scotians benefit when they are removed from the ground and used to create jobs, generate tax and royalty revenues, and provide the raw materials we need to support our modern society.”
The Government should also establish a deadline of fifteen days for approving initial permit applications and five days for approving revised permit applications for disturbance activities on Crown lands to ensure they are processed within a reasonable timeframe.

**Recommendation**: Allow non-disturbance exploration on Crown lands without a permit.

**Recommendation**: Establish a deadline of fifteen days for approving initial permit applications and five days for approving revised permit applications for disturbance activities on Crown lands.

**Inability to Contact Landowners**

Despite best efforts, it is sometimes impossible to locate and contact landowners to get permission to access land for prospecting and exploration. Sometimes landowners live out-of-province and cannot be found. Sometimes historical records are unclear or in dispute, and the landowner cannot be determined. This prevents prospecting and exploration from taking place and harms the province’s economy.

In cases where contacting a landowner is not possible after 60 days of legitimate efforts to do so, automatic access to land should be granted to ensure exploration can continue to be moved forward in these relatively unusual cases.

**Recommendation**: Allow automatic access to land for prospecting and exploration after 60 days in cases where the landowner cannot be contacted.

**Inability to Negotiate Land Access**

While it is always the industry’s preference to negotiate private, mutually-beneficial agreements with landowners to gain access to land and permission to explore, there are infrequent cases where this is simply not possible. In these unusual cases, it is necessary that the industry have a mechanism for obtaining land access in order to ensure that we continue adding to our knowledge base about the province’s geology and identify commercially-viable deposits.

Currently, the Mineral Resources Act’s Section 100 is the mechanism for addressing this issue. Under Section 100, prospectors and explorationists can seek the Minister’s approval for a surface rights permit which grants access to land and permission to conduct exploration activities. However, Section 100 applications can take years to
resolve and grind exploration to a halt in the meantime. They are also very burdensome for all parties involved – the industry, the landowner and the Government – and can make exploration impractical in many cases.

A better solution is New Brunswick’s policy of allowing automatic land access after 60 days of legitimate but unsuccessful efforts to negotiate permission with a landowner. If adopted by the Government of Nova Scotia, this policy would ensure we can continue adding to our knowledge base about the province’s mineral resources, and it would help expedite the mining cycle and ultimately the creation of new mines and jobs.

New Brunswick’s policy requires prospectors/explorationists to post a bond with the mining recorder’s office to ensure that the landowner’s property is properly reclaimed, a requirement with which we agree.

We recommend that the Government adopt New Brunswick’s 60 days policy to ensure that Nova Scotians can, indeed, benefit from our shared mineral resources and that exploration and job creation are not unreasonably blocked by individual landowners.

If the Government chooses not to adopt this policy, it would be essential that the Government, at the very least, maintain the Act’s Section 100 as a “last resort” that helps the industry gain access to land when all other efforts to do so are unsuccessful. While New Brunswick’s 60 day policy would be preferable, maintaining Section 100 would continue to give prospectors and explorationists a mechanism they can use to try to access land when necessary. It is an acceptable if less desirable alternative to the 60 day policy.

If the Government chooses to maintain Section 100, we propose that the Government improve it by establishing a timeline for the Minister to render his/her decision on Section 100 applications. Section 100 applications can take years to resolve, which is not fair to either the landowner or prospectors. Establishing a reasonable time limit of 60 days is therefore advisable.

**Recommendation**: Allow automatic land access after 60 days of legitimate but unsuccessful efforts to negotiate permission with a landowner.
**Recommendation:** If the Government does not adopt the 60 day policy, maintain the Minister’s authority to grant surface rights permits under the Act’s Section 100. Also, add a deadline of 60 days to Section 100 to ensure surface rights permit decisions are made within a reasonable time frame.

**Staking Fee Hikes and Work Deposits**

The Government increased claim staking fees by 75% in August 2013. These huge fee increases will discourage exploration and be particularly hard on individual prospectors who simply cannot afford them. Many prospectors could be left with no choice but to abandon their claims since the fee hike, applied to significant numbers of claims, could increase fees by thousands of dollars.

The change puts Nova Scotia fees dramatically out of step with other Atlantic provinces. The new fees are, on average, 53% higher than New Brunswick’s and 621% higher than Newfoundland and Labrador’s.

We appreciate DNR’s concern that claims are sometimes staked and not proactively worked and moved forward. A better solution than the 75% fee hike would be to adopt New Brunswick’s and Newfoundland’s model of requiring a $50 work deposit which is refundable when a claim is worked, but is forfeited when a claim is not worked. Those provinces also allow up to 30 claims to be staked each year without requiring the deposit. This ensures the deposit does not force small-scale prospectors, who generally have no revenues and therefore no way of paying significant fees, are not harmed.

This policy is a better tool to encourage claims to be worked because it targets prospectors/explorationists who do not work their claims but avoids punishing those who do proactively move projects forward.

**Recommendation:** Reduce claim staking fees to what they were prior to the August 2013 increase.

**Recommendation:** Require a $50 work deposit which counts toward work requirements when a claim is worked, but is forfeited when a claim is not worked. Also, allow up to 30 claims to be staked each year without requiring this fee.
Grouping Claims

Nova Scotia limits the number of contiguous claims allowed to be grouped in a staking license to only 80. By comparison, Newfoundland and Labrador and New Brunswick both allow 256 claims to be grouped in a license.

These higher limits reduce the amount of administration and cost involved in staking. They are a simple, practical way to help encourage more prospecting and exploration and Nova Scotia should follow the example set by these other Atlantic provinces.

It is also worth noting that claims sizes are significantly larger in New Brunswick and Newfoundland, which further exacerbates this issue. Nova Scotia’s base claim size is 16.19 hectares, compared to an average of 22 hectares in New Brunswick and 25 hectares in Newfoundland.

The Government should also program NovaRoc to automatically include contiguous claims in the same license. This would be an easy but effective way to simplify the administration of contiguous claims.

**Recommendation:** Increase the number of contiguous claims allowed to be grouped in an exploration license to 256.

Regrouping Claims

The cost of regrouping contiguous claims in Nova Scotia can be very expensive, an issue that was exacerbated by the recent 75% hike in staking fees. The cost of regrouping claims is tied to the oldest of the claims being regrouped – the highest renewal fees, in other words – so regrouping contiguous claims can cost thousands of dollars depending on how long the claims have been held. Renewal fees are then added on top of the

**Recommendation:** Automatically include contiguous claims in the same license.
regrouping fees, giving claims holders a double whammy that makes regrouping claims unnecessarily expensive and, in many cases, simply not worth doing.

By comparison, New Brunswick allows claims to be regrouped for a simple administrative fee of $20.

We propose that the cost of regrouping claims should be the same as New Brunswick’s. Regrouping claims is a simple administrative matter, especially with NovaRoc in place, and the fee should reflect this.

**Recommendation:** Make the cost of regrouping claims a simple $20 administrative fee.

“What is good for the industry is also good for Nova Scotians.”

**DNR Processing of Claims Updates/Changes**

DNR is well behind in processing paperwork related to claim updates/changes – by months and even years in some cases. This creates significant challenges for claims holders and discourages exploration. For example, it makes it difficult for prospectors and explorationists to budget and plan future work programs because they often do not know what the status of their claims is, what work cost claims are accepted by DNR, what level of work requirement has to be met going forward, etc.

The establishment of NovaRoc, the online staking registry, creates an opportunity to fix this problem by switching from the current approvals-based system to a notifications-based system for all updates/changes to claims and licenses. In other words, to give conditional “green lights” to filings instead of “red lights.”

This model, which is used by New Brunswick, essentially means that NovaRoc would immediately accept updates to claims and reports submitted by claims holders and show those changes in the NovaRoc system in real time.

For example, if a claims holder drops some claims, NovaRoc would immediately show those claims as being unheld and make them available to other prospectors/explorationists – there would no longer be a lengthy period between
changes being filed and DNR’s approval of them in which no one knows the status of those claims and work on them ceases. Similarly, work reports would effectively be immediately approved when submitted, so claims holders can continue with budgeting and planning work instead of being left in limbo for lengthy periods while they wait for DNR to process paperwork.

This same principle of real-time approvals would apply to all other changes to claims filed via NovaRoc. DNR would then have a reasonable period (i.e. 30 days) to actually review the filings and either allow them to remain approved, reject them or discuss them with claims holders.

Since the vast majority of work reports and changes to claims are ultimately approved by DNR anyway, it makes more sense to give them immediate conditional approval than to hinder exploration until DNR is able to process the paperwork. DNR should give the industry green lights instead of red lights.

This system is similar to a philosophical change currently being adopted by Nova Scotia Environment in which that department will increasingly require notifications of smaller industrial activities, such as watercourse alterations, instead of requiring that permits be issued. The assumption is that a project is approved unless the department states otherwise, instead of a project being in limbo until the department processes a permit. This model reduces the paperwork burden for the department while still maintaining its ability to prevent or more stringently regulate a particular project. It also gives industry greater certainty around planning and eliminates unnecessary delays and costs.

**Recommendation:** Give immediate conditional approval to all filings made through NovaRoc. Also, establish a deadline of 30 days for DNR to review filings and either allow them to remain approved, reject them or discuss them with claims holders.

**Filing of Work Reports**

Most other provinces allow additional time past the anniversary of a claim registration for claims holders to file work reports. For example, New Brunswick allows reports to be filed up to 30 days past the anniversary date and Newfoundland and Labrador allows reports to be filed up to 60 days past the anniversary date.

Nova Scotia, on the other hand, requires reports to be filed by the anniversary date.
Because most work on claims can only be done on a seasonal basis, and equipment and human resources are limited during the season, it is sometimes difficult to get work and reports completed in time for the anniversary date deadline. It would therefore be helpful if Nova Scotia allowed additional time for the filing of work reports. We also believe that an extension of, for example, 60 days past the anniversary date, would not disadvantage either the industry or the government, particularly since DNR does not generally process work reports within the first several months of them being filed.

** Recommendation**: Allow work reports to be filed up to 60 days after the anniversary of a claim registration.

**Extension of Time Requests for Filing of Assessment Reports**

The current system for requesting extensions of time for the filing of assessment reports is unnecessarily complicated and requires modification.

When assessment reports are not completed by the renewal date of a license, the holder currently has to submit an interim expenditure report (Form 10) to request a 30 day extension, or a 60 day extension with supporting documentation from a third party. Longer extensions require ministerial approval. Ministerial approval for longer extensions is an unnecessary impediment to the process and should be granted at the administrative level. Our shared goal should be reduction of government paperwork to focus time on actual exploration and development of mineral resources.

A simpler solution is to allow the Registrar to grant extensions, with good cause shown, of up to one year. Should the Registrar require supporting information from a third party, then he could seek it directly from the third party, or otherwise base his grant on the written extension request and the interim Statement of Expenditures, both of which provide the evidence of the work conducted on the license and the reason for the request for additional time to complete the assessment report.
We further recommend that the licensee receive confirmation that the work for which the extension of time for the filing of the assessment reports has been made will be considered at 100% value of the assessment work during the later period of review.

**Recommendation:** Allow the Registrar to grant up to one year extensions of time for the filing of assessment reports.

**Assessment Work Credits**

The current list of allowed assessment work credits in section 38 of the Act’s regulations should be expanded to encourage prospecting and exploration at effectively no cost to the government.

Specifically, we recommend that the following be credited at 100%:

- Community consultations;
- Consultations with First nations;
- Landowner negotiations and compensation;
- Costs associated with preparation of environmental impact studies relating to exploration;
- Costs associated with the building of access roads; and
- Costs associated with remediation resulting from excavation registrations, drilling and metallurgical studies reported under section 50.

**Recommendation:** Expand the list of allowed assessment work credits and credit them at 100%.

**Claims/License Renewals**

We believe claims renewals should only be required every second year rather than annually. As above, the seasonal nature of exploration means there is a relatively short window of opportunity to establish financing, plan an exploration program, carry it out and submit work reports. Doing license renewals every second year, as some other jurisdictions do, would fit better with the exploration cycle and the limitations imposed on the industry by Nova Scotia’s climate. It would also substantially reduce the workload on DNR and help facilitate faster approvals.

**Recommendation:** Do license renewals every second year instead of annually.
Restriction on right to apply and Conversion to single license

There are two sections of the Act whose timelines should be updated simply to reflect that advances in technology, particularly NovaRoc, allow prospectors and explorationists – and regulators – to act much faster than was previously possible.

Applications under Section 46(1), “Restriction on right to apply,” and under Section 54(7), “Conversions to a single license,” should be accepted after only fifteen days instead of being subject to the current 90 day waiting period.

The lengthy waiting periods under these two sections are no longer necessary to ensure fair access to dropped claims by other prospectors and explorationists. The data available via NovaRoc and other sources allows all parties to act faster and reduce the amount of time that past claims holders are prevented from again staking certain claims.

**Recommendation:** Amend Sections 46(1) and 54(7) to make their timelines fifteen days instead of 90 days.

“Our shared goal should be reduction of government paper work to focus time on actual exploration and development of mineral resources.”
Ensuring Mines can move Forward

Minerals are a shared resource and all Nova Scotians benefit when they are removed from the ground and used to create jobs, generate tax and royalty revenues, and provide the raw materials we need to support our modern society.

Key to ensuring that financing can be found, exploration can take place and mines will actually open and create jobs is maintaining the Government’s authority to facilitate access to minerals in exceptional cases where a landowner is opposed to exploration or a potential mine project. This authority is the obvious and logical extension of the fact that the Crown owns mineral rights and must ensure they are exploited for the benefit of all Nova Scotians.

The vast majority of the time mining companies are able to negotiate mutually-beneficial arrangements with private landowners that allow exploration and development to occur. However, there are rare cases in which a landowner simply refuses to cooperate and act in the best interest of their fellow Nova Scotians. In those exceptional cases it is vital that the government, through ministerial authority, have the ability to ensure exploration and development can take place.

Application for Right in Land

While it is always the industry’s preference to negotiate private, mutually-beneficial arrangements with landowners, and to avoid vesting order applications under the Act’s Section 70, there are rare cases in which such applications are necessary.

To our knowledge there have only been three applications for vesting orders under Section 70 since the current Mineral Resources Act was enacted in 1990. Section 70 is, and it should be, a last resort. However, it is a necessary last resort that must be maintained in the Act for those exceptional cases where there is no other way for a mining company to purchase all the land necessary to establish a new mine and create the associated jobs and other benefits for Nova Scotians.

The only recent example of a Section 70 case is DDV’s proposed Touquoy gold mine which will create 300 jobs during the construction phase, 150 ongoing direct jobs during
operations and have an annual payroll of over $13 million. The mine will generate millions of dollars in tax and royalty revenues for the province when it starts in a few years.

While DDV was able to negotiate successfully with 29 other landowners in the area to purchase land from them, one landowner unfortunately refused to sell a small portion of his property to DDV to facilitate the establishment of the mine. The landowner in this case was offered $300,000 for 7.2 acres of land, a tiny portion of the several hundred acres he owns in the area, and a price that far exceeds market value.

As a result, it became necessary for DDV to seek a vesting order under Section 70 so jobs can be created and the government – all Nova Scotians – can benefit from the taxes and royalties that the mine will generate.

Section 70 is also essential because it allows mining companies to gain ownership of properties in which ownership is unclear due to complex historical circumstances (i.e. the landowner is unregistered and/or unknown, estates are unprobated, etc.). Without Section 70, such properties can be virtually impossible to acquire and job creation and economic development can be prevented. In DDV’s case, the company was able to acquire eleven such properties, which were essential for the project, due to Section 70.

The DDV case illustrates why Section 70, though it is rarely used, is nonetheless vitally important to the industry and to Nova Scotians, and why the Government must ensure the section remains in the Act.

There are several improvements we propose for Section 70:

Timeline - The Government should establish a timeline for the Minister to render his/her decision on vesting order applications. We appreciate that the decision to grant vesting orders is an extremely difficult one and the Minister needs sufficient time to fully consider such a request. However, a reasonable time limit is
also necessary to ensure all affected parties, including the landowner, can see light at the end of the tunnel in such a situation. It is unhelpful to everyone if these cases drag on for years.

We therefore propose that a deadline of 90 days be added to Section 70 to ensure vesting order decisions are made within a reasonable time frame.

**Land Price** – When vesting orders are issued under the MRA’s Section 70, the issue of actually determining the price of the land in question is dealt with under the Expropriations Act. This creates ambiguity in how the price of the land ought to be calculated, specifically whether the value of the mineral rights should be included in the price paid to the landowner.

Since the Crown owns the mineral rights - not the landowner - the value of the minerals should not be included in the price the landowner receives for the land. The mineral rights are not the landowner’s to sell, so it would make no sense for the landowner to be compensated for them. However, the Expropriations Act’s process for determining the price of the land does not clearly reflect this. The Mineral Resources Act should therefore be amended to ensure that the value of the mineral is not a consideration in determining the price paid to the landowner.

**Unclear Ownership** – While DDV was granted vesting orders for several properties in which ownership was unclear or unknown due to complex historical circumstances, Section 70 does not specifically address this situation. Section 70 should therefore be amended to clarify that the Minister has the authority to grant vesting orders in cases where ownership is unclear (i.e. the landowner is unregistered and/or unknown, estates are unprobated, etc.).

**Recommendation**: Maintain the Minister’s authority to grant vesting orders under Section 70.

**Recommendation**: Add a deadline of 90 days to Section 70 to ensure vesting order decisions are made within a reasonable time frame.

**Recommendation**: Amend the Act to ensure that the value of the mineral is not a consideration in determining the price paid to the landowner.

**Recommendation**: Clarify that the Minister has the authority to grant vesting orders in cases where ownership is unclear.
Prerequisites to issue and term of lease

Section 56(d) of the Act requires that mining companies commit to starting production within two years of receiving a mineral lease from the Government. While we support the Government’s goal of ensuring mines are moved into production as quickly as possible – no one wants to reach the revenue-generating stage faster than the companies themselves – recent experience has shown that a two-year timeline is sometimes not possible for a variety of reasons. For example, securing the necessary financing to begin production often takes longer than two years, especially in the current environment in which a global downturn in the industry has made it very difficult to finance projects. Also, government regulatory and permitting processes can cause significant delays that are beyond the control of the companies.

We therefore recommend that the two-year requirement be changed to reflect the challenges companies face in transitioning to production. Specifically, we recommend that the maximum timeline to commence production be changed to five years, and that extensions beyond five years be allowed in cases where the Government agrees that the mineral lease holder is making best-efforts to reach the production stage.

Recommendation: Amend Section 56(d) to extend the maximum timeline to commence production to five years and allow for timeline extensions.
Reclamation

Mining is an environmentally-responsible industry that makes temporary use of land, and then reclaims it for other purposes, such as natural space, recreational areas and commercial and residential development. For example, Point Pleasant Park, one of Nova Scotia’s most beautiful natural spaces, contains over 50 former quarries, and shopping centre Dartmouth Crossing was built where several quarries used to operate. Also, Cabot Links, a golf course in Inverness, was built on the site of a former coal mine. Today the reclaimed site is contributing to the community in a different way – with a world-class golf course that is creating jobs and attracting tourists to this beautiful corner of Cape Breton.

Reclamation, or preparing a mine or quarry site for its next use, is key to ensuring future generations will continue to enjoy an area after we have taken from the ground the materials that we need to support our modern society. Mining and quarrying companies are committed to minimizing their environmental impact while working on a site, and then to reclaiming it in ways that maximize its use for communities.

Reclamation Bonds

We support the Government’s goal of ensuring former mine sites are fully reclaimed at no cost to taxpayers.
We believe the Act’s Section 75 and the regulations’ section 77 give the Government the authority it requires to secure bonds for the full cost of reclamation, and to adjust the bond amount every two years to reflect progressive reclamation. While we are open to discussing additional improvements to these sections, we believe they already allow the Government’s and industry’s shared goal of ensuring full reclamation to be achieved.

Our only concern with mine reclamation bonds is not in the wording or authority of the Act and regulations, but in the actual implementation of the authority. Specifically, we believe the amount of the bond should be based on the amount of disturbed land at any given time, not the full cost of reclaiming the site, a figure which would include areas that have not actually been disturbed and areas that have already been reclaimed. For example, if the full cost of reclaiming a site is $10 million, but there is only ever $7 million worth of reclamation work to be done because parts of the site have not yet been disturbed and/or parts of the site have already been reclaimed, the bond should be for $7 million, not $10 million. There are significant costs and cash flow implications in maintaining the bond at the higher level and since the additional funds, $3 million in this example, are not necessary to reclaim the site, it would not make sense to force a company to maintain a bond for the full cost.

The Act and regulations allow for the bond to be adjusted every two years for just this reason, so no changes are required. However, the regular adjustments allowed for are not generally done, so it would be in the interest of both the Government and industry to work collaboratively to ensure they are in future.

**Recommendation:** Maintain the Act’s Section 75 and the regulations’ section 77 largely as they are.

**Recommendation:** Ensure reclamation bonds are adjusted regularly so bond amounts are limited to actual disturbed acres, not the cost of reclaiming the entire site.

**“Reclamation Mining”**

We support DNR’s approach of using “reclamation mining” as a responsible, practical way to fund the reclamation of historical mine sites that need to be cleaned up. The success of reclamation mining at former coal mine sites, such as Point Aconi and Stellarton, clearly shows that putting additional historical mine sites out to tender for mining and reclamation is in the best interest of communities and Nova Scotians. We encourage the Government to continue this program.
**Recommendation:** Continue the Government’s use of “reclamation mining” to ensure reclamation of historical mine sites.

This mine – Coalburn – was reclaimed in 2005 and today it is beautiful rolling fields with a pond and lots of wildlife.
Taxes and Royalties

Nova Scotia generally has among the highest mining tax/royalty regime in the country, which discourages exploration and investment and costs the province jobs.

To illustrate, Exhibit 1 in PricewaterhouseCooper’s 2011 Canadian Mining Taxation report (the most recent edition available) shows that Nova Scotia’s mining industry has the highest provincial tax burden in the country. The chart shows that Nova Scotia mining companies pay a combined provincial income and capital tax rate of 28.6%. This is 2% higher than the next highest jurisdiction, Newfoundland and Labrador, and 15.1% higher than the best rate in the country, Ontario’s 13.5%.

Exhibit 7 shows that Nova Scotia’s corporate income tax rate applicable to mining is 16%, tied for highest in the country with PEI. The same chart shows that the general tax and mining tax combined rate is 34%, which is again the highest in the country, tied only with PEI, which does not have a mining industry of any significance.

Other provinces support their mining industries through a variety of tax measures that the Government of Nova Scotia should consider, including:

- Give the industry the same fuel tax rebate other Nova Scotia resource industries get;
- Royalty holidays for new mines and allowing companies to recover full capital costs before paying taxes;
- Establish a provincial flow-through share tax credit similar to Quebec’s; and
- Lower corporate taxes.

While these tax policies are beyond the bounds of the Mineral Resources Act, it is important that the Government keep in mind the overall tax and royalty burden on the industry as it reviews royalties, and how Nova Scotia’s high tax and royalty regime is hurting the industry. Royalties are just one part of the overall financial burden the Government places on Nova Scotia’s mining industry and they cannot be looked at in isolation.

---

3 [http://www.pwc.com/ca/canminingtax](http://www.pwc.com/ca/canminingtax)
4 Ibid, Page 3 (or page 8 of 76)
5 Ibid, Page 17 (or page 22 of 76)
Royalties

The fundamental goal of a review of the royalty regime should be to lower royalties and thereby encourage prospecting and exploration, investment and the opening of new mines – in other words, to help the industry grow and create jobs.

While we appreciate that the Government’s goal of simplifying the royalty regime sounds good in theory, we are concerned about the practicality of making significant changes to royalties beyond simply lowering them. We have two main concerns:

First, fundamentally restructuring royalties will create a great deal of uncertainty and, we fear, potential unintended consequences. As the MRA review is expected to take at least a couple years, uncertainty around royalty rates has the potential to discourage exploration and investment in the meantime (i.e. companies cannot prepare businesses cases and will have difficulty raising financing for potential projects while royalty rates, a key part of any investment calculation, are unknown).

Second, the only outcome of a royalty review that will actually benefit the industry and help create jobs is lowering royalties to make Nova Scotia more competitive with other jurisdictions. Leaving royalty rates at the same levels would unnecessarily consume time and energy in the multi-year review process without achieving any benefit, and raising royalty rates would potentially cause mines to close and further discourage exploration and investment. Lowering royalties would be the only sensible and beneficial result of a review.

In addition to lowering royalties in general, the Government should also consider giving Nova Scotia’s industry the sorts of incentives that other provinces give their mining industries, such as those discussed above.

The bottom line is that Nova Scotia is an expensive jurisdiction in which to operate and all government-imposed costs, including royalties, taxes and the lack of a fuel tax
rebate, need to be looked at holistically to make Nova Scotia a more attractive jurisdiction for investment and job creation.

**Recommendation:** Lower royalties to make Nova Scotia more competitive with other jurisdictions and help encourage job creation.

**Recommendation:** Consider giving the industry the sorts of incentives that other provinces give their mining industries to support job creation.
Issues outside the purview of the MRA

A number of issues that are outside the purview of the Mineral Resources Act and DNR have been raised as part of the MRA review, particularly Nova Scotia Environment (NSE) policy issues related to quarries/aggregates and various environmental regulations that apply to mines and quarries. Including them in the review of the MRA, or unduly involving DNR in policies that are clearly the responsibility of NSE, would create confusion for both industry and the Government and potentially create unintended consequences that would harm the industry and the province’s economy.

We therefore believe that Nova Scotia Environment policy issues should not be considered during the review of the MRA and we encourage the Government to limit the review to policy matters that are, in fact, within the purview of the Mineral Resources Act.

However, since the bell cannot be “unrung,” we offer the following comments on NSE policy issues that we believe should not be included in any potential changes to the MRA.

Aggregates under the MRA

We understand that DNR has considered regulating aggregates under the MRA, something the industry strongly opposes.

The regulatory regimes for minerals and aggregates are very different and aggregates cannot simply be switched from one regime to another. MANS believes putting aggregates under the MRA would completely upend the regulatory regime and cause tremendous confusion and problems for both companies and the government, with no potential benefit to offset the problems it would cause. For example, we disagree with the suggestion that putting aggregates under the MRA would in any way simplify the regulatory regime for quarries and make it easier for the public to understand the regulatory process. There would still be multiple departments involved in regulating aggregates (i.e. DNR, Environment, and Labour) and the regulatory regime would still be very complex – as the regulatory regimes for virtually all industrial processes and products are.
The solution to the public’s lack of understanding of the regulatory regime around aggregates is initiatives like MANS’ [www.NotYourGrandfathersMining.ca](http://www.NotYourGrandfathersMining.ca) web site which offers a layman’s explanation of the regulatory regime and provides links to key government documents. We are open to partnering with the Government on additional initiatives to help address the public’s lack of understanding of the quarry regulatory regime, an issue which is, and we believe should remain, outside of DNR’s jurisdiction.

We also do not believe that “nuisance staking” – the rare case of someone staking a mineral claim under an existing quarry operation – warrants completely upending the regulatory regime around aggregates. Nuisance staking is just that – a nuisance. Completely changing the regulatory regime to address this minor and infrequent issue would be, as the saying goes, like using a bazooka to kill a fly.

We also believe that putting aggregates under the MRA would lead, sooner or later, to the government charging royalties on aggregate, making Nova Scotia, which is already a high-cost jurisdiction in which to operate, even more costly.

This would:

- Harm the industry and kill jobs, especially in rural areas;
- Increase the cost to taxpayers of road building and maintenance since the majority of aggregate produced in the province is used in public roads and highways; and
- Hurt aggregate exports by making Nova Scotia aggregate more expensive compared to aggregate from other jurisdictions.
We are also concerned that putting aggregates under the MRA could lead to aggregate companies seeking redress through the courts for the lost value of their land and aggregate holdings.

**Recommendation:** Do not put aggregates under the Mineral Resources Act.

**Public Consultation**

The mining industry believes very strongly in the concept of a “social license to operate” – that the acceptance and approval of the local community and stakeholders is vital to the success of a mining/quarrying operation. Indeed, the term “social license” originated in the mining industry in the 1990s.

While the consultation process varies depending on the type and size of the proposed operation, and what is appropriate for the specific community, the general approach to consulting residents about new projects typically includes several of the following methods:

- Making project details available for public viewing within the community;
- Publishing notices about the project in newspapers, usually the Chronicle Herald and a community publication with weekly distribution;
- Community Open House;
- Newsletters;
- Door-to-door surveys;
- Written responses to questions from the public;
- Outreach to community leaders, such as elected representatives, residents’ associations and other stakeholder groups;
- Aboriginal consultation with local First Nations; and
- Establishment of a Community Liaison Committee to allow for ongoing dialogue with residents.

The government takes into account the quality of a company’s public consultation when considering whether to approve project proposals. Working in partnership with the Government and environmental groups, the exploration side of the industry also recently launched “Community Consultation – A Guide for Prospectors and Mineral Exploration Companies Working in Nova Scotia.” This initiative is further evidence of the importance the industry places on consulting and working with communities and stakeholders.
Responsibility for regulating consultation rests primarily with Nova Scotia Environment, and the Office of Aboriginal Affairs for Aboriginal consultation, and we see no reason for DNR or the MRA to potentially cause confusion or regulatory overlap by becoming more involved with regulating consultation. We therefore encourage the Government to leave the regulatory regime around consultation unchanged.

**Recommendation**: Do not regulate community consultation under the Mineral Resources Act.

**Environmental Assessments for Smaller Quarries**

The question of whether environmental assessments should be required for quarries under four hectares is also a Nova Scotia Environment issue and has nothing to do with the review of the MRA.

As background only, we offer the following explanation of NSE’s regulatory regime around smaller quarries:

Quarries that are smaller than four hectares are held to the same environmental and safety standards as any other quarry – i.e. the buffers are the same; the noise, dust and water management rules are the same; and the reclamation requirements are the same. They go through the same Industrial Approval (IA) process that larger quarries do, and it is the IA that rigorously addresses these operational and environmental issues, not environmental assessments as is sometimes suggested. The only difference is that quarries under four hectares are considered by the government to be lower risk for the environment so they do not require an environmental assessment. They are simply too small to have the sort of impacts that are addressed through an environmental assessment and the IA process is the more effective and appropriate way of regulating them. Regardless, quarries smaller than four hectares are regulated just as stringently as any other quarry.

Paving companies generally establish a series of small quarries throughout areas of the province they operate in so they have access to aggregate as close as possible to paving projects, and

“The mining industry believes very strongly in the concept of a “social license to operate” – that the acceptance and approval of the local community and stakeholders is vital to the success of a mining/quarrying operation. Indeed, the term “social license” originated in the mining industry in the 1990s.”
can keep their transportation costs down. If a company does not have access to aggregate within 30 or 40 kilometres of a paving project, they cannot competitively bid for the job because they cannot compete with companies that do have quarries in the area. This means several important things for communities:

- Aggregate quarried in a community is generally used in the community to improve the local road and highway system and make it safer for residents.
- These smaller quarries reduce paving costs for taxpayers and make it possible for governments to do more paving.
- These smaller quarries also make aggregate available to local contractors for other types of construction projects in the community.
- Under-four-hectare quarries generally only operate for a couple months at a time, and often only operate every few years when there is a paving project in the local area. These quarries operate for short periods but their benefits are long-term.

Having smaller quarries distributed throughout the province is necessary for financial reasons, and beneficial to local residents and taxpayers.

Environmental assessments are very expensive, usually between about $100,000 - $200,000 each. That cost is ultimately borne by the taxpayer through roadbuilding costs so it would not make sense to do environmental assessments for quarries whose footprint is simply too small to have the sort of impacts that are addressed through environmental assessments. For example, if a company had 15 small quarries and did an environmental assessment on each one at an average cost of $150,000 each, that would cost $2.25 million dollars, a cost that would have to be passed on to taxpayers. This would result in less paving and roads that are less safe.

**Recommendation:** Leave the regulation of quarries, including issues related to environmental assessments, under Nova Scotia Environment’s jurisdiction.
List of Recommendations

Key Principles

Recommendation: Make Crown ownership of minerals a guiding principle of the review.

Recommendation: Leave section 1A, the “Purpose of Act,” unchanged.

Recommendation: Ensure the provincial government retains primary jurisdiction over the mining industry to prevent incursions on provincial authority by municipalities, groups and individuals.

Prospecting and Exploration – Improving our Knowledge Base

Recommendation: Allow prospectors/explorationists to walk over private land, for non-disturbance activities, without landowner permission.

Recommendation: Allow non-disturbance exploration on Crown lands without a permit.

Recommendation: Establish a deadline of fifteen days for approving initial permit applications and five days for approving revised permit applications for disturbance activities on Crown lands.

Recommendation: Allow automatic access to land for prospecting and exploration after 60 days in cases where the landowner cannot be contacted.

Recommendation: Allow automatic land access after 60 days of legitimate but unsuccessful efforts to negotiate permission with a landowner.

Recommendation: If the Government does not adopt the 60 day policy, maintain the Minister’s authority to grant surface rights permits under the Act’s Section 100. Also, add a deadline of 60 days to Section 100 to ensure surface rights permit decisions are made within a reasonable time frame.
**Recommendation**: Reduce claim staking fees to what they were prior to the August 2013 increase.

**Recommendation**: Require a $50 work deposit which counts toward work requirements when a claim is worked, but is forfeited when a claim is not worked. Also, allow up to 30 claims to be staked each year without requiring this fee.

**Recommendation**: Increase the number of contiguous claims allowed to be grouped in an exploration license to 256.

**Recommendation**: Automatically include contiguous claims in the same license.

**Recommendation**: Make the cost of regrouping claims a simple $20 administrative fee.

**Recommendation**: Give immediate conditional approval to all filings made through NovaRoc. Also, establish a deadline of 30 days for DNR to review filings and either allow them to remain approved, reject them or discuss them with claims holders.

**Recommendation**: Allow work reports to be filed up to 60 days after the anniversary of a claim registration.

**Recommendation**: Allow the Registrar to grant up to one year extensions of time for the filing of assessment reports.

**Recommendation**: Expand the list of allowed assessment work credits and credit them at 100%.

**Recommendation**: Do license renewals every second year instead of annually.

**Recommendation**: Amend Sections 46(1) and 54(7) to make their timelines fifteen days instead of 90 days.

**Ensuring Mines can move Forward**

**Recommendation**: Maintain the Minister’s authority to grant vesting orders under Section 70.
Recommendation: Add a deadline of 90 days to Section 70 to ensure vesting order decisions are made within a reasonable time frame.

Recommendation: Amend the Act to ensure that the value of the mineral is not a consideration in determining the price paid to the landowner.

Recommendation: Clarify that the Minister has the authority to grant vesting orders in cases where ownership is unclear.

Recommendation: Amend Section 56(d) to extend the maximum timeline to commence production to five years and allow for timeline extensions.

Reclamation

Recommendation: Maintain the Act’s Section 75 and the regulations’ section 77 largely as they are.

Recommendation: Ensure reclamation bonds are adjusted regularly so bond amounts are limited to actual disturbed acres, not the cost of reclaiming the entire site.

Recommendation: Continue the Government’s use of “reclamation mining” to ensure reclamation of historical mine sites.

Taxes and Royalties

Recommendation: Lower royalties to make Nova Scotia more competitive with other jurisdictions and help encourage job creation.

Recommendation: Consider giving the industry the sorts of incentives that other provinces give their mining industries to support job creation.

Issues outside the purview of the MRA

Recommendation: Do not put aggregates under the Mineral Resources Act.
**Recommendation:** Do not regulate community consultation under the Mineral Resources Act.

**Recommendation:** Leave the regulation of quarries, including issues related to environmental assessments, under Nova Scotia Environment’s jurisdiction.
Contact Us

Sean Kirby, Executive Director
(902) 820-2115
sean@tmans.ca

Sarah Kirby
Director, Government Relations and Communications
(902) 820-2862
sarah@tmans.ca

Mining Association of Nova Scotia
7744 St. Margaret’s Bay Road
Ingramport, Nova Scotia
B3Z 3Z8

www.tmans.ca

www.NotYourGrandfathersMining.ca