lavery
Lawyers

Changes to the Mining Act (Québec)

December 1, 2013

On December 10, 2013, Bill 70, *An Act to amend the Mining Act*, was passed by the National Assembly of Québec. Except for select provisions, the new Act took effect immediately. Amendments to the *Mining Act* have been in the making for some time and Bill 70 was the last iteration of what has been a lengthy process. A number of the more interventionist – some might say, extreme – measures found in earlier bills have been dropped. The new *Mining Act*, however, has a distinct "societal" and statist focus.

For one thing, the structure of mining related rights has undergone significant changes. "Mining exploration licences" and "exploration licences for surface mineral substances", among others, are now a part of Quebec mining history. We are left with "claims", "mining leases", "mining concessions" and "leases to mine surface mineral substances". Persons wishing to prospect still must hold a prospecting licence.

The new Act is, in part, oriented toward people living in areas where mining activities are carried on. A 60 day notice of staking must be given where work is to be carried on within the boundaries of a municipality and an advance notice of 30 days must be given to the municipality prior to commencement of work. Leaseholders will now be required to establish "monitoring committees" to "foster the involvement of the local community in the project as a whole". The committees must be set up within 30 days after the lease is issued. The committees are to include a representative of business, First Nations (if applicable), the municipal sector and the public. A majority of the members must be independent from the lessee. All must be from the area in which the work is to take place. The Act is silent as to the authority of these committees. Also, any person wishing to conduct metal mining operations where production is to exceed 2,000 metric tons per day, will be required to hold a public consultation in the region where the property is located and send a report thereon to the Minister of Natural Resources and the Minister of Sustainable Development, Environment and Parks. It is not clear what the impact or implication of this measure is.

When entering into a lease, the Government may, "on reasonable grounds", require that the economic "spinoffs" - whatever these are - within Quebec "be maximized". These terms are exquisitely vague. They will doubtlessly give rise to difficulties in attempts to procure leases from the Ministry of Natural Resources. In addition to these new hurdles, prior to the start of "mining operations" (presumably, extractive activities), and every 20 years thereafter, the lessee must send the Minister a scoping and market study "as regards processing in Québec".

Indeed, s.17 of the new Act states that "sustainable development" is a legislative objective as is development of "homegrown expertise in mineral resource exploration, development and processing". The application for a mining lease must also be accompanied by a survey of the land parcel involved, a report on the nature, extent and probable value of the deposit, a feasibility study together with a scoping study and market study "as regards processing in Québec" (s. 101). The Act

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

also says (s.119) that the Minister may require that an agreement be entered into with the grantee for the purpose of maximizing economic spinoffs within Quebec. Therefore, the notion of economic spinoffs is mentioned three times within the provisions dealing with the granting of mining leases. It is a clear indication as to the intentions of the current government; however, the fact that it crops up so frequently could give rise to interpretational difficulties. Further, an undue emphasis on this aspect may very well cause promoters of new projects to consider proceeding with great caution only.

There are a variety of other provisions which may cause concern. For example, detailed reports on production are to be filed with the Minister annually; special declarations are required in respect of the discovery of or exploration for uranium; five percent of the land subject to a lease is to be reserved to the State “for public development purposes”; and very specific production information (including quantity and value of ore produced, royalties and contributions paid by the holder) as well as rehabilitation plans are to be disclosed publicly on an annual basis.

The foregoing does not cover all the changes found in the new Act. New s. 232.2 requires that a rehabilitation plan be submitted and approved prior to commencement of operations. This may have a substantial impact on open pit mining operations. A lease will not be granted unless a rehabilitation and restoration plan is approved in accordance with the Act and a certificate issued pursuant to the *Environment Quality Act*. Others include the requirement that guarantees be put in place to cover the cost of rehabilitation before work commences, that such work must start within three years of cessation of operations (or sooner) and the amount of penalties which may be imposed for offences under the Act have been significantly increased.

Industry participants may be well advised to carry out detailed due diligence on the attitudes of the local municipalities and First Nations in regions where they propose to stake. They may also wish to determine in advance, to the extent possible, the potential costs of rehabilitation, the possibility of carrying out processing or refining activities in Quebec and the costs thereof before investing in exploration. The new Act has increased the overall obligations of explorers and miners in Quebec and, as such, the costs associated with mineral exploration and extraction. These must be considered together with the relatively new increased royalty burden operators now face and the increases in mining taxes that will now be payable when production begins.

In general, the nature of the changes made should cause explorers and operators to carefully consider new projects they may wish to initiate in Quebec.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.