

June 12, 2008

The Honourable Donna Cansfield
Minister of Natural Resources
6th Floor, Room 6630, Whitney Block
99 Wellesley Street West
Toronto, Ontario
M7A 1W3

Dear Minister:

I am pleased to submit the Annual Report for the Office of the Mining and Lands Commissioner for the 2007-2008 fiscal year.

Yours very truly,

Linda Kamerman
Mining and Lands Commissioner

LK:dp

cc: M. Gravelle, Minister, Ministry of Northern Development and Mines
D. Lindsay, Deputy Minister, Ministry of Natural Resources
S. Herbert, Deputy Minister, Ministry of Northern Development and Mines

Office of the Mining and Lands Commissioner
Mandate

The Mining and Lands Commissioner is appointed by the Lieutenant-Governor in Council pursuant to the **Ministry of Natural Resources Act**. The Commissioner is unique in government, having characteristics of both the courts and administrative tribunals. The Commissioner is responsible for hearing and deciding matters under legislation and programs administered by the Ministries of Natural Resources and Northern Development and Mines.

The purpose of the **Mining Act** is "to encourage prospecting, staking and exploration for the development of mineral resources and to minimize the impact of these activities on public health and safety and the environment through rehabilitation of mining lands in Ontario". The **Mining Act** functions as a comprehensive administration of mining lands within the province under the general administration of the Minister of Northern Development and Mines and various ministry personnel. This authority and the attendant determination of rights created by the legislation primarily rests with the Minister, through delegated authority to Ministry officials and with the Provincial Mining Recorders. The Mining and Lands Commissioner exercises a variety of statutory functions from an administrative and adjudicative perspective.

Prior to amendments to the **Mining Act** which became effective in 1991, the Mining and Lands Commissioner was and continues to be empowered to receive referrals from the Minister, hear applications at first instance and to hear appeals from the decisions of Provincial Mining Recorders. The responsibilities are broad, including hearing and deciding disputes, whether at first instance or on appeal, the issuance of vesting orders and the hearing of prosecutions. Following major amendments to the **Act** effective June 3, 1991, these duties were supplemented by the authority to hear appeals from the orders of the Director of Mine Rehabilitation.

In carrying out its functions under the **Act**, excepting mine rehabilitation, the Mining and Lands Commissioner has been characterized by the Supreme Court of Canada as an inferior Court of appeal or review, and more recently by the Ontario Superior Court of Justice as the Mining Court.

The Mining and Lands Commissioner has also been assigned the authority, duties and powers of the Minister of Natural Resources under the **Ministry of Natural Resources Act** to hear appeals from the decisions of conservation authorities made under the **Conservation Authorities Act** regarding their refusal to grant permission to a property owner for the development of lands within floodplains, hazardous lands, dynamic beaches and wetlands. Substantive and procedural requirements are set out in Part VI of the **Mining Act**.

In 1997, amendments to the **Conservation Authorities Act** allowed participating municipalities against which a discounted equalized assessment had been levied for both the funding of the operation and maintenance of flood control structures to appeal directly to the Commissioner. In 2000, further amendments to this **Act** changed the method of calculating municipal apportionments from the current "Discounted Equalized Assessment" method to the provincially approved "Current Value Assessment".

Until the end of 1997, the Commissioner heard appeals under the Conservation Land Tax Reduction Program, pursuant to the **Conservation Land Act**, from notices of the Ministry of Natural Resources that land is excluded from or ceases to be conservation land. Various tax reduction programs were replaced with tax incentive or exemption programs on April 1, 1998 as a result of amendments to the **Assessment Act**. The expertise of the Commissioner in issues concerning natural resources was recognized and the jurisdiction of the office was supplemented with managed forest appeals as well as appeals concerning the conservation land tax incentive program. As a result of reforms to the administrative justice system, these appeals are filed with the Assessment Review Board (the ARB), offering a one window approach to assessment appeal matters. The ARB administers all files and refers those having managed forests or conservation land classification issues for initial determination by the Commissioner. These decisions are deemed to be the decisions of the ARB. Any outstanding valuation issues will then be determined by the ARB.

The Commissioner has historically been *persona designata* under the **Lakes and Rivers Improvement Act**, which provides for an inquiry upon the request of an applicant who has received notice from the Minister of his intention to refuse approval or make an order. The inquiry would result in a report with recommendations to the Minister. Similarly, under the **Aggregate Resources Act**, appeals from refusals by the Minister of Natural Resources involving existing aggregate permits are heard by the Commissioner, resulting in recommendations after a hearing.

In 1997, a number of provisions were transferred from the Ontario Energy Board to the Commissioner. As a regulatory agency, the Energy Board's processes are lengthy, formal and costly to the applicants. This was believed to have had an adverse effect on exploration and production efforts in the province. The Petroleum Resources Centre, Ministry of Natural Resources, advocated the move, to allow producers access to the expeditious and informal resolution of issues. The Commissioner hears applications under the **Oil, Gas and Salt Resources Act** for the joining of interests within spacing units for the purpose of drilling or operating a well and will apportion the associated costs and benefits. The Commissioner also may order the joining of interests within a field or pool for the purposes of drilling or operating wells and flowing from this may designate the management of the field or pool and the apportioning of associated costs. In addition, a person who considers him or herself aggrieved by the Minister of Natural Resources' refusal of consent to transfer a well licence may appeal the Minister's decision to the Commissioner. In certain cases, the Commissioner has been the Minister's designee for appeals by persons considering themselves aggrieved by a decision or order of a petroleum resources inspector.

The duality of judicial and adjudicative responsibility has been identified as a challenge faced by the Commissioner whose effects have been particularly felt in recent years. Since the inception of the Office in 1906, the Commissioner has variably been clothed with the express judicial powers of the High Court and been made a section 96 Judge of the Mining Court with a federal fiat. Amendments in 1956 saw all overt judicial references removed from the legislation, as is the case to date, but the underlying judicial authorities and substantially all powers remain. There have been two constitutional challenges, in 1923, finding that the powers dealing specifically with issues arising after the granting of patents were *ultra vires*, meaning beyond provincial powers and in 1958, finding that the powers examined, which are in the legislation today, were within the power of the province to make.

The absence of express judicial powers and the ambiguity created is a matter for which resolution is being sought.

2007/2008

During the 2007/2008 fiscal year, the Office of the Mining and Lands Commissioner continued its practice of progressive case management and alternative dispute resolution measures designed to expedite the resolution of all of the various matters brought to the Office for determination. Included are pre-hearing conferences, held either "in-person" or via telephone conference call, to explore the potential for settlement, to narrow the issues in dispute and to ensure hearing preparedness for those matters proceeding to a hearing. Similarly, issues for preliminary determination, whether jurisdictional or procedural, continued to be dealt with prior to the hearing on the merits, thus eliminating unnecessary adjournments and delays. For cases requiring a hearing on the merits, hearing readiness has been targeted within three months of the issuance of the Order to File documentation. The Office has, as part of this procedure, prepared draft Exhibit Lists and Agreed Statements of Fact, where appropriate.

The majority of cases received during this reporting period were resolved in less than two months. However, when necessary, on average, it took two to two and a half months for the Office to receive the necessary documentation to proceed with an appeal/application and a further two and a half months to hear and decide the matter. A more detailed statistical outline is provided later in this report.

The Office received 41 applications, appeals or referrals in 2007; 23 under the **Mining Act**, six under the **Conservation Authorities Act**, 10 under Ontario Regulation 282/98 of the **Assessment Act** (involving the managed forests or the conservation lands property classes) and one each under the **Oil, Gas and Salt Resources Act** and the **Aggregate Resources Act**. Eight matters were heard under the **Mining Act**. One appeal was heard under each of the **Oil, Gas and Salt Resources Act** and the **Conservation Authorities Act**. Just prior to this reporting period, the Commissioner was finally able to hear a preliminary motion for party status on a conservation authority matter which was filed in 2005. The Commissioner's decision was appealed and judicially reviewed but was upheld in both instances. The Commissioner will be able to hear the merits of the appeal during the next reporting period.

A significant settlement rate continued to be demonstrated for those matters commenced in 2007. Statistics show that 26 mining, six conservation authority, 10 managed forest and conservation land cases and one oil, gas and salt matter fell within these parameters. These cases were disposed of prior to a hearing or an inquiry through either in-person or telephone conference call mediation sessions, pre-hearing conferences, or other methods of alternative dispute resolution including various forms of facilitation. In addition, the mediation services of the Registrar were requested by parties in several matters before the Ontario Superior Court of Justice.

In 2007, the Office issued 62 interim and 43 final orders, including nine vesting orders and eight orders involving exclusions of time under the **Mining Act**.

The Commissioner is committed to monitoring and maintaining delivery standards in the core business of adjudication to be shown through the collection of detailed statistics. The objective is the efficient and successful processing of files through adjudication, settlement or appropriate disposition, in a timely manner. This is the eighth year in which the collection of data for the reporting of metrics has been undertaken by the Office. The detailed statistical data collected on cases provides a more accurate picture of the adjudicative activities of the Office and will be developed and refined on a go-forward basis.

The following summarises performance measures for key commitments and targets achieved, as well as illustrating anomalous cases.

The Office continues to enjoy a considerable settlement rate. The target was to maintain its range of between 70 and 92%. The settlement rate was exceeded at 85%. It is pointed out that even with many settlements, it is necessary for the Commissioner to make statutory decisions.

For mining cases, within the 2007 calendar year, 76% of cases settled. Those which did not can be described as labyrinthine, sometimes taking a period of years to reach their conclusion and often involving more than one hearing and a significant number of interlocutory decisions before the final decision.

On an annual basis, 100% of the conservation authority and aggregate resources appeals, and 100% of the managed forest and conservation land referrals received under the **Assessment Act** were resolved without a hearing as did one of the two outstanding oil, gas and salt matters.

Three Deputy Commissioners provide assistance to the Commissioner as a result of the expanded or increased jurisdiction, each having expertise in one of the **Conservation Authorities Act**, the **Oil, Gas and Salt Resources Act** or the **Mining Act**. The Deputy Commissioners were initially appointed in June, 1998 and renewed for two further three year terms in June, 2000, July 2003 and July 2006, respectively. Two are paid on a per diem basis and had billings totalling 17.5 days and 2 days respectively, for fiscal 2007/08. The third Deputy Commissioner has a home position in the Legal Services Branch of an unrelated Ministry. By agreement, 25% of her time is paid for through journal entry each fiscal year.

Although the MLC Website went live at the end of 2005, ongoing scanning of thousands of Commissioner's Orders in both the HTML and the PDF formats continued daily, based on an audit of procedural and interlocutory decisions of importance. The site is a research tool for the dissemination of information and decisions and has been very well received. Work in this fiscal year centred on meeting requirements for the MNR Web Communications Refresh Project and will be ongoing in the next reporting period.

The Office continued to access to the Ministry of Northern Development and Mines' Client Claims System (CCS), whereby it could maintain high standards of service delivery and ensuring accuracy on Orders it issues which by operation of statute have a direct impact on the operation of the Claims System. In 2007/2008, the direct and worthwhile result was that no amended orders were issued.

Despite ongoing efforts to be proactive, the Office also noted that settlements and decisions are often delayed by a number of factors beyond its control. For example, the Commissioner often has to wait for decisions, information and/or documentation such as maps or surveys from parties, title searches, Ministries, other adjudicative bodies or regulators. Furthermore, in matters where significant amounts of money or title to land is being transferred from one party to the other as a result of a settlement, it takes time for those transactions to occur. Parties will understandably not execute "consent to dismiss" or "consent to grant" forms until their settlements are full and final.

The Registrar attended the Fourth International and the 23rd National Council of Canadian Administrative Tribunals Conference which was held in Vancouver in June, 2007. The Registrar also attended the Conference of Ontario Boards, Agencies and Commissions which was held in Toronto in November, 2007.

The Registrar and the Administrative Assistant travelled to Sudbury in June, 2007, where the Registrar addressed the Mineral Development and Lands Branch of the Ministry of Northern Development and Mines on the topic of conflict resolution.

Due to ongoing budgetary pressure, the Office began to track its hearing and office costs in 2003/2004 to more accurately predict its constant and variable costs. Greater scrutiny of its fixed costs has led to an ongoing exercise to find further economies. During the previous reporting period, the Office audited its equipment leases and re-evaluated its needs.

In the 2004-2005 Annual Report, the Commissioner identified costly adjudicative tensions created by the anomalous hybrid function of the Office, that of a Court and an administrative tribunal. Answering concerns raised, the Deputy Minister of the MNR, struck a Steering Committee headed by the Assistant Deputy Minister, MNR and comprised of the Commissioner, the Legal Directors of MNR and MNDM and a constitutional expert of the MAG to develop strategic and organizational plans for the Office. This work is ongoing.

A number of employee engagement initiatives were undertaken in the previous reporting period and then continued. The Commissioner retained a management coach who assisted in ongoing team building initiatives including a day session with all staff. Regular team meetings were held to inform and involve staff, to establish priorities and results and to discuss deliverables and results based planning initiatives on a proactive basis. Staff volunteered for a number of OPS initiatives including the United Way and Federated Health Campaigns.

The Office continued to make its hearing room available to the Agency, Board and Commission Community and to other Ministries. The hearing room was also used for examinations for discovery for matters before the Commissioner.

The Office also housed the executive coordinator/project manager for the Ministry of Natural Resources Facility Director's Council on an interim basis.

OFFICE OF THE MINING AND LANDS COMMISSIONER
COMMISSIONER, DEPUTY COMMISSIONERS AND STAFF
2007/2008

		<u>Expiry Date</u>
COMMISSIONER:		
Linda Mary Kamerman	(July 1992-Present)	N/A
DEPUTY COMMISSIONER		
Lorne F.G. Carter	(June 1998-Present)	(July 2009)
DEPUTY COMMISSIONER		
Marianne Orr	(June 1998-Present)	(July 2009)
DEPUTY COMMISSIONER		
H. Dianne Sutter	(June 1998-Present)	(July 2009)
REGISTRAR:		
Daniel Edward Pascoe	(July 1993-Present)	N/A
ADMINISTRATIVE ASSISTANT		
Dawn Marie Jollymore	(March 1998-Present)	N/A
ADMINISTRATIVE SECRETARY		
Marilyn Patricia Raby	(Nov 2004-Present)	N/A

Allocation 2007-2008

SALARY	ODOE	TOTAL
\$374,600	\$126,800	\$501,400

OFFICE OF THE MINING AND LANDS COMMISSIONER – CASELOAD REPORT

CASE STATUS as of Mar 31, 2008

Number and Status of Active Appeals/Applications	9
A. Awaiting Documentation	3
B. PHC/Mediation/Motion To Be Scheduled	0
C. PHC/Mediation/Motion Scheduled	0
D. To be Scheduled For Hearing	0
E. Scheduled For Hearing	3
F. Awaiting Decision (After Hearing)	3
G. Vesting Order Requiring Hearing	0
H. Vesting Order Not Requiring Hearing	0
I. Vesting Order Requiring 90 Day Waiting Period	0
J. Awaiting Documentation To Dismiss	<u>0</u>
ACTIVE TOTAL	9

Number and Status of Pending Appeals/Applications	5
K. Correspondence Files/Parties Seeking Information	0
L. Parties Negotiating (Prior To Hearing)	5
N. CA Matter Adjourned Pending Additional Studies	0
O. Matter Adjourned Pending Another Decision	0
P. Adjourned/In Settlement	0
Q. Seeking Instruction From Clients On How To Proceed	<u>0</u>
PENDING TOTAL	5

TOTAL OF ACTIVE AND PENDING APPEALS/APPLICATIONS 14

R. Appeal/Judicial Review	0
S. Referral s.107	3

AGE OF APPEALS/APPLICATIONS

less than 7 months	MA-03	CA-01	LR-00	OG-02	MF-00	CL-00	AG-00
less than 12 months	MA-01	CA-00	LR-00	OG-00	MF-00	CL-00	AG-00
greater than 12 months	<u>MA-06</u>	<u>CA-01</u>	<u>LR-00</u>	<u>OG-00</u>	<u>MF-00</u>	<u>CL-00</u>	<u>AG-00</u>
TOTAL	MA-10	CA-02	LR-00	OG-02	MF-00	CL-00	AG-00

CASE FLOW

Appeals/Applications - 2002	MA-48	CA-07	LR-00	OG-09	MF-16	CL-03	AG-02
Appeals/Applications - 2003	MA-29	CA-12	LR-01	OG-03	MF-120	CL-10	AG-00
Appeals/Applications - 2004	MA-33	CA-06	LR-00	OG-02	MF-54	CL-07	AG-00
Appeals/Applications - 2005	MA-31	CA-09	LR-00	OG-03	MF-03	CL-00	AG-02
Appeals/Applications - 2006	MA-44	CA-07	LR-00	OG-03	MF-29	CL-02	AG-00
Appeals/Applications - 2007	MA-23	CA-06	LR-00	OG-01	MF-03	CL-07	AG-01
Appeals/Applications - 2008	MA-09	CA-00	LR-00	OG-03	MF-03	CL-04	AG-00

2007 – INTERIM ORDERS ISSUED	(January-December)	062
2007 – FINAL ORDERS ISSUED	(January-December)	043
2007 – TOTAL ORDERS ISSUED	(January-December)	105

Avg. Time For Parties To File Documentation	2.5 months
Avg. Time To Hear/Decide With Complete Documentation	5.0 months

MLC STATISTICAL SUMMARY JAN 1, 2007–MAR 31, 2008

Days

Mining Act	Settled	26	76%
	Heard	8	28%
	VO	(9)*	
	Total	43	100%

129.61

Note:

*Vesting Orders (VO) are usually granted or not granted.

They rarely lend themselves to a settlement as for example, parties cannot be located or they can be located and decide to not pay their fair share of delinquent rents or taxes.

Conservation Authorities Act

Settled	6	100%
Heard	0	N/A
Total	6	100%

162.12

Oil, Gas and Salt Resources Act

Settled	1	50%
Heard	1	50%
Total	2	100%

62.33

Lakes and Rivers Improvement Act

Settled	0	N/A
Heard	0	N/A
Total	0	N/A

N/A

Assessment Act

(Conservation Lands)

Settled	7	100%
Total	7	100%

7.50

(Managed Forests)

Settled	3	100%
Total	3	100%

40.83

Aggregate Resources Act

Settled	1	100%
Total	1	100%

Overall Average

Settled	53	85%
Heard	10	15%
Total	62	100%

80.47

Note: Some matters commence prior to but are disposed of during a reporting period.