



Office of the Mining and Lands Commissioner
Annual Report 2017-2018

Office of the Mining and Lands Commissioner

700 Bay Street, Suite 2400
Toronto, ON M5G 1Z6

Telephone: (416) 314-2320
Fax: (416) 314-2327

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www.ontario.ca/omlc

**Mining and Lands
Commissioner**

Box 2400
24th Floor
700 Bay Street
Toronto, Ontario
M5G 1Z6

Tel. No.: (416) 314-2320
Fax No.: (416) 314-2327

**Commissaire aux mines et
aux terres**

C.P. 2400
700, rue Bay
24^e étage
Toronto (Ontario)
M5G 1Z6

Téléphone : (416) 314-2320
Télécopieur: (416) 314-2327



The Honourable Nathalie Des Rosiers
Minister of Natural Resources and Forestry
6th Floor, Room 6630, Whitney Block
99 Wellesley Street West
Toronto, Ontario
M7A 1W3

March 31, 2018

Dear Minister Des Rosiers:

Re: Office of the Mining and Lands Commissioner 2017 – 2018 Annual Report

I am pleased to submit to you our 2017- 2018 Annual Report. This report reflects the office's activities for the fiscal year ending March 31, 2018. As the Office of the Mining and Lands Commissioner will become the Mining and Lands Tribunal on April 1, 2018, this is the final report that I will submit to you as Mining and Lands Commissioner.

Although this transition represents the end of an institution that is over a century old, I'm confident that this rich legacy of knowledge, support and service that has been provided to the mining and lands communities will continue at the tribunal's new home in Environment & Land Tribunals Ontario at the Ministry of the Attorney General. It has truly been my honour to serve as the Mining and Lands Commissioner for these past twenty-six years.

Sincerely,

Linda Kamerman
Mining and Lands Commissioner

c: Michael Gravelle, Minister, Ministry of Northern Development and Mines
Bill Thornton, Deputy Minister, Ministry of Natural Resources and Forestry
David de Launay, Deputy Minister, Ministry of Northern Development and Mines

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About The Office of the Mining and Lands Commissioner (OMLC)

Who We Are

The Mining and Lands Commissioner (Commissioner or MLC) is appointed by the Lieutenant-Governor in Council pursuant to the Ministry of Natural Resources Act. The Office of the Mining and Lands Commissioner (OMLC) receives administrative support from the Ministry of Natural Resources and Forestry (MNR) for purposes of estimates, budgeting and IT and the Commissioner's point of contact and reporting is through the Deputy Minister.

What We Do

The OMLC is an independent adjudicative tribunal responsible for hearing and deciding matters under legislation administered by the Ministry of Northern Development and Mines (MNDM) and the MNR.

Vision

We are client-focused and committed to excellence in the resolution of mining and lands disputes for all clients.

Mandate and Mission

Mandate

The OMLC determines appeals, applications, and referrals and conducts inquiries.

Mission

The OMLC strives for excellence and demonstrates the highest standards of public service in:

- Delivering modern, fair, accessible, effective and timely proceedings, decisions and dispute resolution.
- Demonstrating consistency in procedures and outcomes while remaining responsive to differing cases and party needs, and to the evolving development of the law.
- Responding to the needs of diverse stakeholder communities.
- Resolving disputes, within the applicable legislative framework to support strong, healthy communities and to achieve fair and effective outcomes.

Diversity, Inclusion and Accessibility

Accessibility

- Publications, communications and facilities, including hearing and mediation rooms, provide full and equitable access.
- Diversity is fully respected and reflected.
- Processes are designed in a way that facilitates informed participation.
- Proceedings are conducted in a manner that is welcoming and respectful.
- Practices and procedures provide for a meaningful, effective opportunity to be heard on the relevant issues.

Fairness

- Proceedings are conducted impartially. Decisions are principled and based on the facts, applicable law, regulations, and merits of each case.

Transparency

- Procedures, rules, and decisions are clear and readily available to the public. Reasons for decisions explain how the decision was reached.

Timeliness

- Proceedings are conducted in a timely and expeditious manner.
- Decisions are issued as soon as possible after a proceeding.

Integrity, Professionalism and Independence

- Appointees and staff act with honesty, integrity and professionalism, exhibiting the highest standards of public service.
- Appointees and staff work together to build public confidence in the OMLC and the administration of justice.
- The OMLC must be, and be seen to be, neutral, unbiased and independent from influence.

OMLC's Diversity, Inclusion and Accessibility Plan goals include:

- reinforcing a strong workplace free from harassment and discrimination;
- embedded diversity objectives/outcomes, processes and services; and
- responding to the needs of diverse stakeholder groups.

The OMLC continues to improve accessibility and plans to ensure it meets the requirements of the *Accessibility for Ontarians with Disabilities Act (AODA)* and the *Integrated Accessibility Standards Regulation (IASR)*. Some of the OMLC's recent education and awareness initiatives relating to diversity, inclusion and accessibility include:

- Completing training for all staff on the "IASR Information and Communications Standard," which sets out the requirement to provide accessible formats and communication supports for persons with disabilities.
- Completing training for management and supervisory staff on "IASR Employment Standards," which sets out employee rights regarding accommodation.

Accommodation Requests

The OMLC actively offers to provide accommodation to clients when accessing its services. OMLC's staff have been trained to recognize and respond to requests for the accommodation of clients. All correspondence and hearing notices include a notation offering accommodation, upon request.

Accessible Built Environment

The OMLC identified and addressed the needs of its staff and clients at its offices located at 700 Bay Street in Toronto through:

- Retrofitting the accessible washroom for staff and clients to ensure it meets current AODA and IASR standards.
- Making improvements to its accessible hearing room, including the installation of an assistive hearing system.

Accessible Documents

OMLC staff has been trained to and are responsible for reviewing all forms, documents and procedures to ensure documents are formatted using best practices for accessibility. All decisions are available in an accessible format on the OMLC website. Accessible formats and communication supports continue to be available, upon request.

Accessible Employment and Hiring Practices

OMLC senior management continue the practice of offering and providing accommodation throughout the recruitment process. Managers actively reach out to staff to offer and put in place accommodation plans, where required. All staff and members who require evacuation assistance have emergency evacuation plans in place.

Legislative Authority

The purpose of the Mining Act is “to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights found in section 35 of the Constitution Act, 1982, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment.” Until 1986, responsibility for mining was included in the Ministry of Natural Resources Act. Thereafter, the Mining Division was moved to the Ministry of Northern Affairs, but responsibility and oversight of the OMLC remained with MNR(F).

The Mining Act functions as a specialized and comprehensive administration of mining lands within the province under the general administration of the MNLM and various ministry personnel. Through delegated authority to Ministry officials, this authority and the attendant determination of rights created by the legislation rests primarily with the Provincial Mining Recorders, Directors of Mine Rehabilitation or the Minister.

In carrying out responsibilities under the Mining Act, the Commissioner exercises a varied and broad jurisdiction involving nearly 90 statutory functions dealing primarily with unpatented lands. In addition, there is jurisdiction over specified mining land interests as well as the right to grant easements over adjacent patented lands of third parties for extensive access and servicing purposes in connection with the proper working of a mine. The Commissioner has exclusive jurisdiction to decide any matter which arises under the Mining Act with several exceptions. The Commissioner has no jurisdiction to cancel or annul Crown patents. The Construction Lien Act process operates independently of the Mining Act and Commissioner’s processes, with limited exceptions. Also, dispute resolution and aboriginal consultation processes with Aboriginal communities and the assertion or determination of Treaty rights under the Mining Act fall outside of the Commissioner’s jurisdiction. The Ontario Superior Court of Justice has acknowledged

the Commissioner's exclusive jurisdiction and further acknowledged that the Commissioner has concurrent jurisdiction with that Court involving private civil and property rights arising out of its proceedings which, if not waived, may not be challenged later. The Superior Court may also call on the Commissioner as a Referee in a proceeding or question. Provision is also made for the movement of matters between the Commissioner and the Superior Court of Justice, upon the application of a party in either case or at the initiation of the Court in the latter, as the Court deems most appropriate.

The Commissioner has, since 1982, by permanent regulation¹, been assigned the powers and duties 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. Hence, the "Lands" portion of the Commissioner's title refers to natural resources jurisdiction. Substantive and procedural requirements are set out in Part VI of the Mining Act. Also, participating municipalities may appeal the levy of their discounted equalized assessment for the operation and maintenance of flood control structures.

The Commissioner hears classification issues concerning managed forests and conservation lands, both programs administered by the MNRF, in relation to property tax assessment appeals. These appeals are filed with the Assessment Review Board (ARB) pursuant to the Assessment Act, offering a one window approach to assessment appeals. The ARB administers all appeals and refers those having managed forest or conservation land classification issues for initial determination by the Commissioner. Any outstanding valuation issues will then be determined by the ARB.

The expertise of the Commissioner in issues concerning natural resources was recognized when jurisdiction for managed forest classifications under the Assessment Act was added in 1998. The conservation land appeals had previously been provided for by an Order-In-Council and were transferred to the Assessment Act at that time as well. The office is also involved indirectly at the ARB triage stage by asking the MPAC to apply its decision, re-assess the property(ies) and use that information to follow up with the parties as to whether they still wish to pursue their valuation question on appeal with the ARB or, whether the result of the MLC decision(s) has addressed their concerns so that the appeal file may be closed.

¹ In 1971, the **Ministry of Natural Resources Act** was amended to provide the assignment of these powers and duties to the Commissioner. Each appeal would involve a separate regulation naming the individual appellant(s) and the specific conservation authority involved, with the first being O.Reg. 473/74, until O.Reg. 364/82 provided for a general assignment of the Ministers powers and duties to the Commissioner for all conservation authority appeals. With subsequent amendments to the Conservation Authorities Act, the subsection providing for an appeal to the Minister was changed. Accordingly, the regulation was repealed and re-enacted as O.Reg. 571/00.

The Commissioner has been *persona designata* for issues under the Lakes and Rivers Improvement Act. Similarly, under the Aggregate Resources Act, appeals from refusals by the Minister of Natural Resources and Forestry to issue a permit to excavate aggregate or topsoil that is not the property of the Crown, or the revocation of or changes to conditions involving existing aggregate permits are heard by the Commissioner, resulting in recommendations after a hearing.

The Commissioner hears both pooling and unitization applications under the Oil, Gas and Salt Resources Act. In connection with such applications, access to subsurface oil, gas and salt resources may be provided in accordance with section 175 of the Mining Act. The Commissioner also hears appeals of refusals of the Minister to grant permission to transfer a well license or permit and makes recommendations.

The Ministry of Natural Resources Act provides that the Commissioner may sit alone on hearings, appoint one Deputy Commissioner to sit or must hear matters as a panel of three. Ongoing reliance on the Statutory Powers Procedure Act that parties waive this requirement has not been consistently successful.

Mining Act Modernization

The origins of the Mining Act date back to the 1864, but The Mines Act of 1906 is the true predecessor of today's legislation, prompted by the huge silver discovery in Cobalt, Ontario in 1903. Prior to today's modernization efforts, the most recent significant updates to the Act became effective in the early 1990s, with new legislation at that time focusing on vast changes to staking rules, a shift to mining claims comprised of multiple claim units, dispensing with certificates of interest coupled with limits imposed on staking disputes, and environmental and rehabilitation matters.

In 2009, Bill 173 - An Act to Amend the Mining Act (S.O. 2009 c.21), was passed into law. The modernization process is intended to promote mineral exploration and development in a manner that recognizes Aboriginal and treaty rights, to introduce processes that are more respectful of private landowners, and to minimize the impact of mineral exploration and development on the environment. These commitments were previously expressed in Ontario's first-ever Mineral Development Strategy released in 2006 and reaffirmed in July 2008 when Ontario's Premier announced steps to modernize the Mining Act.

MNDM is modernizing the Mining Act and implementing the changes prescribed by Bill 173 using a phased-in approach. While some changes came into effect upon Royal Assent, most of the changes are being brought into effect over time. Relevant regulations and policies are being or have been developed following extensive consultation and in collaboration with many representatives of the mineral exploration sector, the mining industry, Aboriginal communities and organizations, environmental groups as well as many other stakeholders, private citizens and other parties with an interest in the stewardship of Ontario's mining lands.

For more information on Mining Act Modernization, please visit the Ministry of Northern Development and Mines website at <https://www.mndm.gov.on.ca/en/mines-and-minerals/mining-act>

Year in Review

OMLC Caseload Management

The OMLC typically manages an average of 35 case files per year.

OMLC Caseload 2015 – 2017*

| ACT | 2015 | 2016 | 2017 |
|-------------------------------------|-----------|-----------|-----------|
| Mining | 19 | 15 | 19 |
| Conservation Authority | 13 | 5 | 6 |
| Lakes and Rivers Improvement | 0 | 0 | 1 |
| Oil, Gas and Salt Resources | 1 | 0 | 1 |
| Managed Forests (Assessment Act) | 1 | 0 | 1 |
| Conservation Lands (Assessment Act) | 9 | 7 | 3 |
| Aggregate Resources | 0 | 0 | 0 |
| TOTAL | 43 | 27 | 31 |

*Reporting on a 12 month period (e.g. January 1, 2017 – December 31, 2017)

Statistical Performance Reporting

Unlike metrics for adjudicative tribunals and despite ongoing efforts to be proactive, settlements and decisions can be delayed by many factors beyond the control of the OMLC. Factors that contribute to delays can include the performance of surveys during inhospitable field conditions, the requirement for title searches and obtaining other documentation, the issuance of summonses for documentation and awaiting outcomes of actions pending before other decision-makers.

Complex option and settlement agreements can involve multiple installment payments over time and/or the issuance of shares, in which case parties are reluctant to execute consents to dispose of matters until outstanding amounts are paid or shares are issued in full.

Given that the life of a mine from exploration through rehabilitation is measured in decades, it is not unusual for active cases to involve years of intensive negotiations prior to final settlement. In this regard, the time involved in disposing of many active matters before the OMLC may appear to exceed normative expectations, but within the context of the mining industry, it is not unusual or overly lengthy.

A core operating objective of the OMLC is to ensure the efficient and successful processing of files through adjudication, settlement or appropriate disposition, with all activities being conducted in a timely manner. Due to the varying nature and topics of OMLC case files, combined with the complexities of the mining industry, the establishment of formal performance targets for reporting purposes would be difficult. However, the OMLC collects and compiles detailed statistical data on caseload management that provides an accurate account of the adjudicative activities of the OMLC on a year over year basis.

Dispute Resolution - Mediation

As the resolution of matters that proceed to a hearing can be time consuming and costly, ideally it is preferable to attempt the resolution of all matters via discussions and/or mediation, with the ultimate goal of reaching a settlement.

In an effort to explore settlement and to narrow the issues in dispute, the OMLC practices intensive, progressive case management through triage and alternative dispute resolution measures, including in-person or telephone conference call mediation sessions, pre-hearing conferences, or other methods of facilitation. The intent is to reach agreement through mediation, thereby negating the need to proceed to a hearing.

The OMLC consistently achieves significant settlement rates year over year as shown in the table below.

OMLC Statistical Caseload Resolution Data Reporting 2015 – 2018*

| ACT | 2015-2016* | | 2016-2017* | | 2017-2018* | |
|-------------------------------------|------------|----------|------------|----------|------------|----------|
| | S | H | S | H | S | H |
| Mining | 19 | 0 | 15 | 0 | 19 | 0 |
| Conservation Authority | 12 | 1 | 5 | 0 | 5 | 1 |
| Lakes and Rivers Improvement | 0 | 0 | 0 | 0 | 1 | 0 |
| Oil, Gas and Salt Resources | 1 | 0 | 0 | 0 | 1 | 0 |
| Managed Forests (Assessment Act) | 1 | 0 | 0 | 0 | 1 | 0 |
| Conservation Lands (Assessment Act) | 9 | 0 | 7 | 0 | 3 | 0 |
| Aggregate Resources | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 42 | 1 | 27 | 0 | 30 | 1 |

*Reporting on a 15 month period as some matters commenced prior to the start of the fiscal reporting period, but were disposed of during the following reporting period. (e.g. January 1, 2017 – March 31, 2018)

(S = Cases that reached Settlement – final Order issued)

(H = Cases that proceeded to a Hearing – Decision issued)

As part of the mediation process, once an agreement to settle or dispose of a matter has been achieved, the Commissioner can issue either an Order on Consent or an Order with Reasoned Decision (Reasons). These Orders formalize the claim or dispute settlement details. The Reasons, if necessary, formalize the Order of the Commissioner, which serves as a final record of the matter.

An Order can be issued in the form of a:

Vesting Order

- A court order that passes legal title in lieu of conveyance by the property owners. It is an equitable remedy, discretionary, and results from a finding by a court that fairness demands that the court act in a way to transfer property from one party to another. The Mining Act allows for the unpatented mining claims of a deceased holder to be vested in their personal representative meaning the executor or the administrator of the estate. It also allows for the vesting of ownership of interests that are subject to rents on patented freehold mining leases or liable for tax on patented freehold mining lands of any delinquent co-owners(s) who are in arrears for a period of four or more consecutive years. Interests in unpatented mining claims may also be vested upon the failure of co-owners to pay proportionate share of mandatory assessment work, or to pay third parties for carrying out that assessment work. This type of vesting order will, in all but the most extenuating circumstances, take place after a hearing.

Interim or Interlocutory Order

- Often to determine a preliminary or jurisdictional matter prior to the hearing on the merits.
- May include whether or not to add third parties.

Final Order

- An order that disposes of a matter so that the matter is concluded.

Orders on Consent

- An agreement between parties who consent to the granting or the dismissal of a dispute with or without terms and conditions and with or without costs.

Often, as part of the settlement process, the OMLC will issue Orders that include an “Exclusion of Time” which can exclude the period of time in which the matter was before the Provincial Mining Recorder, the Commissioner and/or the Courts. The order will also establish a new anniversary date(s) for the performance and filing of prescribed assessment work.

OMLC Orders Issued by the Commissioner 2015 – 2017*

| Orders Issued | 2015 | 2016 | 2017 |
|----------------------------------|-----------|-----------|-----------|
| Interim Orders | 14 | 10 | 5 |
| Final Orders | 42 | 27 | 21 |
| TOTAL | 56 | 37 | 26 |
| **Included in above TOTAL | | | |
| **Vesting Orders | 4 | 5 | 3 |
| **Orders on Consent | 17 | 13 | 14 |
| **Exclusions of Time | 5 | 3 | 5 |

*Reporting on a 12 month period (e.g. January 1, 2017 – December 31, 2017)

It should be noted that even with the majority of cases reaching settlements, it is necessary for the Commissioner to ensure compliance with incumbent legislation and provide reasons for findings of statutory compliance. Reasons for settlement and the process to achieve it are conducted without prejudice and are confidential. Any reasons drafted by the Commissioner must reflect this adjudicative reality.

Cases which are not resolved through settlement and proceed to a hearing can take a significant amount of time to reach their conclusion. Cases can be very complex and often involve more than one hearing and the issuance of a significant number of interlocutory orders before the final decision is rendered.

OMLC Appeals/Applications before the Ontario Superior Court of Justice, the Court of Appeal for Ontario, or the Supreme Court of Canada

Routinely, there are a number of mining and conservation authority matters before the Ontario Superior Court of Justice (OSCJ), the Court of Appeal for Ontario (CAO), or the Supreme Court of Canada (SCC). Many of these matters have been before these courts for years and can take over a decade to reach settlement and/or conclusion. To ensure that the mining matters will be remitted to the OMLC for processing to their administrative conclusion, the OMLC tracks these applications. At their conclusion, routine but technically complex orders are prepared for the Commissioner's approval and closure of the file.

This final step of removing notations or vacating certificates of pending proceedings from abstracts of unpatented mining claims ensures that performance of annual assessment work can be resumed and administered by MNDM. Completion of this process ensures that the mining claims (that were previously before the court and unavailable) are returned to active exploration.

At the present time, twelve (12) matters remain outstanding in the OSCJ, CAO, or the SCC.

Modernizing Processes, Building Capacity and Transformation

Revised Procedural Guidelines

Commonly referred to as “the Rules”, the OMLC has developed a set of procedural guidelines to increase the efficiency and timeliness of proceedings through the avoidance of unnecessary delays. While these guidelines or rules are not enforceable by law, the Mining and Lands Commissioner is empowered (by the Mining Act) to make orders regarding the procedural aspect of any matter before her or him. They (the Rules) are intended to facilitate and enhance the experience of all parties to a hearing before the Mining and Lands Commissioner through transparent information sharing and open communication between all those involved. The rules were last updated in 1997.

Further to updates to the Statutory Powers and Procedures Act, changes in technology and a continued focus on improving customer service, an extensive review of the rules was undertaken in 2015 with the intention to improve and modernize the existing set of guidelines. This review has yielded a new set of procedural guidelines which will provide a more efficient and enhanced hearing process in 2018 and going forward.

Improving Client Services

In late 2017, the OMLC began offering oversight to applicants with respect to the registration of Orders sought in conjunction with mining company restructurings. Prior to this undertaking, applicants did not have any resources available to assist them in this regard, leaving them at risk for possible forfeiture of their unpatented mining claims.

Recruitment of Appointees

To improve efficiencies in service delivery leading to more timely resolution of matters, The OMLC recruits appointees (Deputy Mining and Lands Commissioner(s) – DMLCs) through a competitive and merit-based process as per the Ontario Public Service recruitment procedures. These positions are part-time and recruitment is conducted on an “as needed” basis. DMLCs are Minister’s Appointments (through Order in Council), for a three (3) year term, and are remunerated via a per-diem. Existing appointments may be renewed at the recommendation of the MLC with approval of the Minister.

To better manage the OMLC case load, the DMLCs assist the Commissioner by conducting pre-hearing conferences, settlement conferences and procedural conferences either in person or by telephone conference call. When required, DMLCs will conduct hearings, hear evidence and submissions in proceedings, and adjudicate on areas of OMLC jurisdiction.

The OMLC currently retains three (3) DMLCs.

Transformation - 2018 and Beyond

In the Spring 2017 budget and in accordance with the Adjudicative Tribunals Accountability Governance and Appointments Act, the Office of the Mining and Lands Commissioner was changed to the Mining and Lands Tribunal (MLT), with an Associate Chair and members to be appointed. The MLT will be a part of the Environment and Land Tribunals of Ontario (ELTO), which is accountable to the Minister of the Attorney General. The positions of Commissioner and Deputy Commissioner will no longer exist at the MLT. At present, one current OMLC Deputy Commissioner has expressed interest in being considered for appointment to the MLT as a part-time member. Royal Assent has been received and proclamation is anticipated in April, 2018.

Financial Summary

OMLC Expenditures 2015 – 2018

| ACCOUNT ITEMS | 2015-2016 (\$) | 2016-2017 (\$) | 2017-2018 (\$) |
|-----------------------------------|-------------------|-------------------|-------------------|
| Salary and Wages | 408,815 | 534,488 | 480,650 |
| Employee Benefits | 42,756 | 60,960 | 51,000 |
| Transportation and Communications | 9,171 | 14,583 | 9,175 |
| Services | 55,474 | 60,266 | 60,260 |
| Supplies & Equipment | 10,195 | 14,935 | 2,606 |
| TOTAL | 526,411 | 685,232 | 603,692 |

Fees Collected

The OMLC collects less than \$100.00 per year in fees/revenues.

OMLC Appointees

| | Original Appointment Date | Appointment End Date |
|--|----------------------------------|-----------------------------|
| Commissioner Linda Kamerman | July 1992 | March 2018 |
| Deputy Mining and Lands Commissioners | | |
| Marianne Orr | June 1998 | March 2018 |
| Andrew Halpenny | July 2016 | July 2019 |
| John O’Kane | July 2016 | July 2019 |

OMLC Staff

Manager
Barry Smith

Registrar/Mediator
Daniel Pascoe

Administrative Coordinator
Mariyana Yankulova

Administrative Assistant
Vacant