



Mineral Rights Adjudication Board

Annual Report

April 1, 2009 to March 31, 2010



Chairperson's Message

September 27, 2010

Honourable Kathy Dunderdale
Minister of Natural Resources
Natural Resources Building
P.O. Box 8700
St. John's, NL
A1B 4J6

Dear Minister:

In accordance with the provisions of the Transparency and Accountability Act for category 3 public bodies, I am pleased to submit the Annual Performance Report for the Mineral Rights Adjudication Board based on its activities for the period April 1, 2009 to March 31, 2010.

The Mineral Rights Adjudication Board recognizes the vision and mission of the Department of Natural Resources and is committed to its supporting role to ensure that mineral exploration and development companies who have been aggrieved by the application of *the Mining Act* or *the Mineral Act*, have recourse to an appeal.

The Mineral Rights Adjudication Board was successful in achieving all indicators of its objective for the reporting period. My signature below is on behalf of the entire Board and is indicative of the Board's accountability for the preparation of this Report and for the results reported on its objective for 2009/10.

Respectfully submitted,



Gregory F. Kirby
Chairperson

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Overview

Section 37 of the *Mineral Act* provides for the appointment of a Mineral Rights Adjudication Board. The Board is to be appointed by the Minister of Natural Resources with the approval of the Lieutenant-Governor-in-Council. The members serve for a three year period, and they are eligible for reappointment. The Board consists of 3 persons, at least 1 of whom is a barrister, who shall be chairperson, and 1 of whom is experienced in mining.

The Mineral Rights Adjudication Board now consists of: Mr. Gregory F. Kirby (lawyer, Chair), appointed March 26, 2010, replacing Mr. Ernest Boone who resigned as Chair in late October, 2009; Dr. Hugh Miller, appointed February 28, 2009; and Mr. Sam El’Gohary, appointed April 30, 2009. Dr. Hugh Miller and Mr. Sam El’Gohary were temporary Board Members up until the above noted dates at which point they were appointed for a full three year term. The Board can be contacted as follows:

Gregory F. Kirby, Board Chair
P.O. Box 5955
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The Mineral Rights Adjudication Board receives extensive operational support from the Department of Natural Resources. Employees of the Department perform many day to day administrative functions. Budgetary support for operations is provided through the Department, as well.

Mandate

It is the function of the Board and the board has exclusive jurisdiction to hear and determine a question, dispute or matter arising out of the application of the *Mineral Act* or the *Mining Act* and applicable regulations, including hearing and determining on:

- the rights of persons to the issuing of licences, certificates and leases, including extensions of licences and leases;
- the suspension and reinstatement of a person’s right to stake out claims;
- a decision by the minister to withhold approval of a transfer, assignment, mortgage, pledge or conveyance of a license;
- disputes or questions arising between a person and the minister or recorder, or between competing claimants, respecting the boundaries of areas physically staked or the manner and time of staking;
- questions of priority for the right to obtain licences;

- all matters respecting the cancellation of licences and leases, including allegations of default of the conditions of licences and leases, and whether a misrepresentation by applicants for licences or leases is material;
- the right of persons to certificates;
- a question pertaining to security deposits required to be made by applicants for licences, including rights to refund and forfeitures to the Crown and amounts of refund and forfeiture; and
- other matters pertaining to the rights, privileges, obligations or duties of persons claiming or holding licences or leases conferred or imposed under the applicable legislation.

Core Values and Guiding Principles

The Mineral Rights Adjudication Board performs its duties within the core values established by the Department of Natural Resources for the Mines and Energy Branches.

Integrity - Each individual will be honest, dependable, fair, credible and trustworthy. They will openly acknowledge mistakes, take corrective action and learn from these mistakes.

Respect - Each individual will provide opportunities for others to express their opinions and will consider these views in making decisions. Each individual will treat the public and other employees with courtesy and acceptance.

Professionalism – Each individual will demonstrate high professional standards and positive attitudes and deliver quality service in an objective, timely and responsive manner.

Collaboration - Each individual is open to sharing their knowledge with others and actively seeking the opinions and ideas of others to achieve the desired results.

Innovation - Each individual will demonstrate initiative, creativity and flexibility in responding to challenges and change.

Safety - Each individual views the personal safety of themselves and co-workers in the highest regard and will promote workplace safety at all times.

Primary Clients

The clients of the Mineral Rights Adjudication Board are mineral exploration and development companies who have either rights under either *the Mineral Act* or mineral developments subject to the *Mining Act*.

Vision

The Mineral Rights Adjudication Board contributes to the vision of the Department of Natural Resources by ensuring that the land tenure rights and development requirements of mineral development companies are fairly administered and thereby supports fair benefits maximization.

Vision of the Department of Natural Resources

“The vision of the Department of Natural Resources is a province that realizes the full benefit from the sustainable development of its natural resources.”

Mission

The mission statement is the priority focus area of a public body over its planning cycle. It represents the key longer term result that the public body and the responsible minister will work towards to achieve a component of government’s strategic directions. The statement also identifies the measures and indicators that will assist a public body and the public in monitoring and evaluating success.

The Mineral Rights Adjudication Board has determined that an applicable mission statement would be unduly repetitive of its mandate. It has opted to forgo development of a mission statement at this time.

The Mineral Rights Adjudication Board considered the Board’s role in assisting the Mines and Energy Branches of the Department of Natural Resources in achieving its mission for the planning period. The Board has a role to ensure that mineral exploration and development companies who have been aggrieved by the application of *the Mining Act* or *the Mineral Act*, have recourse to an appeal; thereby, it helps to optimize benefits from resource development. As such, aspects of the following general statement from the mission of the Mines and Energy Branches that may relate to mineral development apply to the Board:

“By March 31, 2011, the Mines and Energy Branches will have enhanced departmental programs and services to optimize the benefits the province receives from natural resource developments and promoted the sustainability of these resources.”

The Board has determined that it has no material impact on achievement of measures and indicators of the mission statement.

The complete mission of the Department of Natural Resources for the Mines and Energy Branches is found in its Strategic Plan for the period covering April 1, 2008 to March 31, 2011.

Outcomes of Objective

A person affected and aggrieved by a matter falling within the Mandate of the Mineral Rights Adjudication Board, may apply to the Board to have the matter adjudicated.

Upon receipt of a notice of grievance, the Mineral Rights Adjudication Board shall hear the grievance, decide the matter of the grievance and record its decision not later than 90 days from the date of the receipt of the notice of grievance unless the minister extends that period of time.

The Mineral Rights Adjudication Board, comprising all of its members, shall hear the grievance on a day appointed by it for the purpose, and shall decide the matter of the grievance, record its decision in writing, disclosing in that record whether the decision is unanimous or by majority, and transmit copies of the decision to the grievor, other persons affected by the appeal and the minister.

The Mineral Rights Adjudication Board may, before deciding the matter of the grievance, refer a question of law raised at the hearing of the grievance for the opinion of a judge of the Trial Division, and the Rules of Court made under the Judicature Act relating to a special case apply to a reference made under this subsection as if that reference were made by the parties to the grievance.

The Mineral Rights Adjudication Board may award costs in an adjudication under this section for or against a party to the grievance, or the Crown, and fix the amount of the costs.

The Mineral Rights Adjudication Board considered the Strategic Directions of the Minister of Natural Resources for the Mines and Energy Branches and has determined that it has a role in working toward increased natural resource development and diversification through efficient and effective management of the adjudication of mineral rights. The following area was identified as the key priority of the Board for the period April 1, 2009 to March 31, 2011. The objective below applies to each year covered by the corresponding three-year activity plan and will be reported upon in relevant annual reports.

Issue 1: Mineral Rights Adjudication

Objective: The Mineral Rights Adjudication Board will have reviewed all notices of grievances under the applicable *Act and Regulations*.

Measure: Reviewed all notices of grievances

Indicators:

- Adjudicated all grievances in a timely manner
- Issued decisions in a timely manner

During this report period only two grievances were on file. Details are as follows:

The Board was directed by the Supreme Court of Newfoundland and Labrador (Citation: 2008 NLCA 12) on February 18, 2008 to re-hear a grievance originally filed by Vinland Resources Limited on December 20, 2000. The grievance filed by Vinland Resources Limited relates to the refusal by the Mineral Claims Recorder to issue mineral licenses to an area near the Mary March Park, central Newfoundland – the lands in question being shown on official Departmental claim maps as not available for staking.

The Vinland Resources Limited grievance was heard by the Board in late 2008 – early 2009 with written and oral summations presented to the Board mid 2009. Due to voluminous number of documents presented to the Board for review, the Board requested that the Minister of Natural Resources extend the deadline for rendering its decision from August 27, 2009 to October 23, 2009. On October 23, 2009 the Board ruled in favor of the Mineral Claims Recorder on the matter. The Board's decision was subsequently appealed by Vinland Resources Limited and the matter is now scheduled to be dealt with by the Courts on October 25 and 26, 2010.

On July 7, 2009, a grievance was filed by Nfld. Aggregates (1991) Ltd. against the decision of the Mineral Claims Recorder to cancel a mineral license held by said company. The deadline for the Board to hear this matter was extended by the Minister of Natural Resources due to the resignation of Mr. Ernest Boone, Chairman, in late October 2009 and the subsequent appointment of Mr. Gregory F. Kirby as Chairman on March 26, 2010. The matter is now scheduled to be heard on June 15, 2010.

Financial Information

The Board does not have a stand-alone budget and as a result, audited financial statements are not required. Board member expenses are funded through the Department of Natural Resources and totaled \$44,750 for 2009-2010. In addition to Board member expenses, the department also has a contract for independent legal services which the Board avails of, the cost of which is covered in the department's budget.