

1992 BIL 18

Fourth Session, 22nd Legislature, 41 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 18

MINES AND MINERALS AMENDMENT ACT, 1992

MRS. BLACK

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 18

1992

MINES AND MINERALS AMENDMENT ACT, 1992

(Assented to _____, 1992)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

1 *The Mines and Minerals Act is amended by this Act.*

2 *Section 5(1) is amended*

(a) *by repealing clause (n) and substituting the
following:*

(n) respecting the imposition of pecuniary
penalties for

- (i) the late filing or submission of any reports, returns, estimates, declarations, plans, maps, surveys or other information required to be filed with or submitted to the Minister under this Act or an agreement or pursuant to a notice given under this Act or an agreement,
- (ii) filing or submitting any thing referred to in subclause (i) under circumstances where the person filing or submitting the thing knows or ought reasonably to know that the thing is false or misleading or misrepresents or fails to disclose a material fact,

Explanatory Notes

1 This Bill will amend chapter M-15 of the Revised Statutes of Alberta 1980.

2 Section 5(1) presently reads in part:

5(1) The Lieutenant Governor in Council may make regulations

(n) *respecting the imposition of pecuniary penalties for the late filing of any reports, returns, estimates, declarations, plans, maps, surveys or other information required to be filed with or submitted to the Minister under this Act or an agreement or pursuant to a notice given under this Act or an agreement;*

- (iii) the failure to deliver the Crown's royalty share of a mineral, or the failure to pay a money royalty or money owing in respect of the disposal of the Crown's royalty share of a mineral, as and when required under the regulations, and
- (iv) engaging in or attempting to engage in an act, agreement, arrangement, transaction or operation that is of a type specified in the regulations in order to reduce
 - (A) the Crown's royalty share in respect of a mineral,
 - (B) the amount owing on account of a money royalty, or
 - (C) the consideration given for the Crown's royalty share when it is disposed of by an agent;

(b) *by adding the following after clause (p):*

- (p.1) prescribing or authorizing the Minister to prescribe persons who may make a request under section 39 and persons who may make an objection under section 39.01;

3 *Section 38 is repealed and the following is substituted:*

Artificial or undue reduction in royalty

38 If, in the opinion of the Minister, the result of one or more acts, agreements, arrangements, transactions or operations is to artificially or unduly reduce

- (a) the Crown's royalty share in respect of a mineral,
- (b) the amount owing on account of a money royalty, or

3 Section 38 presently reads:

38 If, in the opinion of the Minister, the result of one or more acts, agreements, arrangements, transactions or operations is to artificially or unduly reduce

- (a) the Crown's royalty share in respect of a mineral, or*
- (b) the consideration given for the Crown's royalty share when it is disposed of by an agent.*

- (c) the consideration given for the Crown's royalty share when it is disposed of by an agent,

the royalty share, the amount owing or the consideration or value shall be calculated as if the act, agreement, arrangement, transaction or operation had not taken place.

4 *Section 39 is repealed and the following is substituted:*

Recalculation
of royalty

39(1) Where the Minister considers it appropriate to do so, the Minister may, in accordance with this section, recalculate or make additional calculations of

- (a) the Crown's royalty share of a mineral, and
- (b) amounts owing on account of a money royalty or in respect of the disposal of the Crown's royalty share of a mineral by an agent.

(2) A recalculation or additional calculation may be made by the Minister

- (a) on the Minister's own initiative, or
- (b) on receipt of a request in writing that is made by the lessee, the lessee's agent or any other person authorized by the regulations to make the request in accordance with any terms and conditions specified by the Minister.

(3) A recalculation or additional calculation may be made

- (a) within 4 years after the end of the calendar year in which
 - (i) the mineral that is the subject of the recalculation or additional calculation was recovered, in a case to which subsection (1)(a) applies, or
 - (ii) the amount owing on account of the money royalty became due to

the royalty or value shall be calculated as if the act, agreement, arrangement, transaction or operation had not taken place.

4 Section 39 presently reads:

39(1) The Minister may, as circumstances require, recalculate or make additional calculations of the Crown's royalty share of a mineral, or of amounts owing on account of a money royalty or in respect of the disposal of the Crown's royalty share of a mineral by an agent,

(a) at any time, if the recalculation or additional calculation has been necessitated by misrepresentation attributable to neglect, carelessness or wilful default or by fraud in the filing or supplying of any report or other information under this Act, or

(b) in any other case, within 4 years after

(i) the end of the month in which the Crown's royalty share was deliverable to the Crown, or

(ii) the date on which the amount became due to the Crown,

as the case may be.

(2) If the Minister makes a recalculation or additional calculation under subsection (1), he may also make recalculations or additional calculations of interest payable.

the Crown or the disposal of the Crown's royalty share of the mineral occurred, as the case may be, in a case to which subsection (1)(b) applies,

or

- (b) at any time, if the recalculation or additional calculation is made necessary by reason of
 - (i) fraud, or
 - (ii) misrepresentation attributable to neglect, carelessness or wilful default

in the filing or submission of any report or other information under this Act.

(4) Where the recalculation or additional calculation is made

- (a) pursuant to a written request in accordance with subsection (2)(b), or
- (b) as a result of an audit or examination under section 46(5),

and the written request is received or the audit or examination is commenced in the 4th year as calculated under subsection (3)(a), that 4-year period is extended by one year.

(5) If the Minister makes a recalculation or additional calculation under this section or section 39.01, the Minister may also make recalculations or additional calculations of interest payable and related penalties.

Objection to calculation or recalculation of royalty

39.01(1) A lessee, an agent of a lessee and any other person authorized by the regulations to make an objection may, in accordance with terms and conditions specified by the Minister and in the form and manner and within the time specified by the Minister, object to

- (a) the Minister's calculation of royalty under the regulations under this Act, and

- (b) the Minister's recalculation or additional calculation under section 39

with respect to the lessee.

- (2) On receipt of an objection under subsection (1) the Minister may recalculate or make additional calculations of royalty that the Minister considers appropriate.

5 *Section 42 is amended*

- (a) *in subsection (1) by striking out "in respect of royalty on a mineral" and substituting "for amounts owing on account of a money royalty or in respect of the disposal of the Crown's royalty share of a mineral by an agent";*
- (b) *in subsections (2) and (3) by striking out "liability in respect of royalty on a mineral to the Crown in right of Alberta" and substituting "debtor's liability referred to in subsection (1)".*

6 *Section 45(2) is amended by adding "or of an amount owing on account of a money royalty or in respect of the disposal of the Crown's royalty share of a mineral by an agent" before "shall".*

7 *Section 46(3) is amended by striking out "5-year period" wherever it occurs and substituting "6-year period".*

5 Section 42 presently reads in part:

42(1) In this section, "debtor" means a person indebted to the Crown in right of Alberta in respect of royalty on a mineral.

(2) If the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a debtor, the Minister may, by a notice, require that person to pay the money otherwise payable to the debtor to the Minister on account of the liability in respect of royalty on a mineral to the Crown in right of Alberta.

(3) If a notice is given to a person pursuant to subsection (2), the requirement to pay is applicable to all future payments by that person to the debtor until the liability in respect of royalty on a mineral to the Crown in right of Alberta is fully satisfied.

6 Section 45(2) presently reads:

(2) Notwithstanding the provisions of an agreement, a demand for or acceptance of rental or royalty deliverable or payable under the agreement shall not be deemed a waiver of the right of the Minister

(a) to enforce compliance with a regulation or a term or condition of the agreement, or

(b) to cancel the agreement for breach of a regulation or a term or condition of the agreement.

7 Section 46(3) presently reads:

(3) The records shall be kept until the expiration of the 5-year period following the end of the year to which the information contained in the records relates unless

(a) in the case of any particular records, the Minister consents in writing to their destruction before the end of the 5-year period, or

8 *The following is added after section 53:*

Compensation
for
unauthorized
taking

53.1(1) Where the Minister has grounds to believe that a person has contravened section 53(1), the Minister may in writing direct that person to pay to the Minister within the time specified in the direction compensation in an amount determined under this section.

(2) Subject to subsection (3), the amount of compensation shall be an amount equal to

(a) the value of the mineral, as determined by the Minister, that was won, worked or recovered in contravention of section 53(1),

less

(b) that portion of the incremental costs of drilling and production incurred that the Minister considers is attributable to the unauthorized winning, working or recovery of the mineral.

(3) No costs may be deducted under subsection (2)(b) in respect of any part of a mineral won, worked or recovered in circumstances where the Minister is of the opinion that the person who won, worked or recovered the mineral knew or ought reasonably to have known that he was doing so in contravention of section 53(1).

(4) The Minister may require a person who claims a deduction for costs under subsection (2)(b) to provide to the Minister within the time and in the manner specified by the Minister any documentation or other information in support of the claim that the Minister requires.

(5) Compensation referred to in a direction under subsection (1) is recoverable by the Minister in an action in debt.

(6) Section 42 applies to compensation owing under this section in the same way as if it were liability in respect of royalty on a mineral.

(b) the regulations authorize their destruction before the end of the 5-year period.

8 Compensation for unauthorized taking.