

MINING ONTARIO:  
CORPORATE POWER, THE MINING INDUSTRY, AND PUBLIC POLICY IN ONTARIO

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A DISSERTATION SUBMITTED TO  
THE FACULTY OF GRADUATE STUDIES  
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

GRADUATE PROGRAM IN POLITICS,  
YORK UNIVERSITY  
TORONTO, ONTARIO

JUNE 2020

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## **Abstract**

This dissertation critically examines the history of the government of Ontario's policies towards the mining industry to analyze the impact of concentrated economic power on political processes in liberal democracies. It is the first comprehensive study of the political power of one of the province's largest and most influential industries. Drawing on critical theories of business power, this dissertation examines policy developments across four contentious issue areas, namely fiscal policy, air pollution control, occupational health and safety, and access to mineral lands.

Employing a qualitative historical narrative, the study draws on data collected from the Public Archives of Ontario, newspapers, published reports and secondary academic literature.

Challenging those theoretical perspectives that downplay the direct influence of large business enterprises over public policy, this dissertation argues that the mining industry has exercised a predominant influence over the government of Ontario's public policies. While the industry disposes of several political resources that privilege it in relation to its opponents, two in particular deserve special attention: First, mining's commanding economic presence in the provincial North where alternative investment opportunities are generally absent, and second, the industry's deep-seated linkages with the provincial mining ministry in terms of personnel and ideology. In sum, the mining industry's structural power over the Northern economy together with its close working relations with the provincial ministry of mines have rendered provincial policymakers particularly vulnerable to the industry's lobbying, allowing the industry to play a predominant, though not monolithic, role in shaping provincial public policy.

## Acknowledgements

I owe many thanks to many people for helping me see this project through to completion.

First, I would like to express my deepest appreciation to the members of my supervisory committee, Stephanie Ross, Dennis Pilon, and Mark Winfield. Stephanie dedicated an incredible amount of time and effort to my work, reading and commenting on many hundreds of pages of early and ugly drafts. I am grateful not only for her keen editorial insight, but just as much for her kindness and collegiality. I would not have been able to finish this project were it not for Stephanie's unwavering support and her profound belief in my skills as a researcher and writer. Dennis's perceptive comments drew my attention to several insights that I had missed in my own writing, and his constructive advice helped me to develop a better understanding of what my project was really about. Mark came on board relatively late in the game, but it meant a great deal to me to have my work taken so seriously by the leading expert on Ontario's environmental policies. I benefited very much from his advice, and his insightful questions forced me to think more deeply about the mining industry's lasting structural power. I am also grateful to my examining committee, Stephen McBride, Anna Zalik, and Rodney Loeppky.

Many thanks to the staff in the Department of Politics – especially Margo Barreto, Jlenya Sara-De Meo, Marlene Quesenberry, and Carolyn Cross – without whom I am sure I would remain lost somewhere in the Byzantine bureaucracy that is FGS.

Thanks also to the staff at the Archives of Ontario, especially Allison Hazlett, Deborah Holder, Garin Kirwan, Erin McGouran, and Lindsey Winstone.

Many friends helped me along the way, each in their own way. Thank you especially to the old Dovercourt crew: Kitty Gosen, Brendan Jowett, Ellen Tang, Caroline Howes, and the many, many wanderers who made our little hippie house such a vibrant community.

Thank you also to my friends and colleagues in academe, especially Greg Albo, Bryan Evans, Sam Gindin, Paul Gray, Jordan House, Umair Muhammad, Sadia Muhammad, Rawan Abdelbaki, Lacey Croft, Adam King, and Mark Thomas. And to my friends holding the mining industry accountable, especially Joan Kuyek, Jamie Kneen, Judith Marshall, and Janice Martell.

I want to thank my family: My parents-in-law: Kathy and Richard Cox; my sisters, brothers-in-law, niece, and nephews: Alysha, Jon, Madeleine, Stellan, Aiden, Jessica, Albert, Atticus, and Baby-on-the-Way; and my grandfather: Poppa Joe. A very big thank you to my parents – Mike and Loretta – who've given me so much material and emotional support over the years. I owe you guys – a lot.

Last – but certainly not least – I am deeply grateful to my wife, Caitlin. Thank you for your love and friendship, for your companionship on journeys near and far, and – very sincerely – for your patience. I can't wait to start our new adventure together in our little cottage on Geneva Street.

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## **List of Acronyms**

ACGIH – American Conference of Governmental Industrial Hygienists

AMD – Acid Mine Drainage

AMMNO – Association of Mining Municipalities of Northern Ontario

CGBA – Central Bank Gold Agreement

CCAMU – Community Coalition Against Mining Uranium

CCAR – Canadian Coalition on Acid Rain

CCF – Cooperative Commonwealth Federation

CIMM – Canadian Institute of Mining and Metallurgy

FPIC – Free, prior and informed consent

FUME – Fight Unwanted Mining and Exploration

GDP – Gross Domestic Product

GSA – General Services Administration

JHSC – Joint Health and Safety Committee

ICRP – International Commission on Radiological Protection

IRS – Internal Responsibility System

KI - Kitchenuhmaykoosib Inninuwug

MAPAO – Mines Accident Prevention Association of Ontario

MEB – Mines Engineering Branch

MNDM – Ministry of Northern Development and Mines

MNR – Ministry of Natural Resources

MPP – Member of Provincial Parliament

NDP – New Democratic Party

OHS – Occupational health and safety

*OHSA – Occupational Health and Safety Act*

OMA – Ontario Mining Association

OMEF – Ontario Mineral Exploration Federation

PDAC – Prospectors and Developers Association of Canada

QE – Quantitative easing

TEIGA – Treasury, Economics and Intergovernmental Affairs

TLV – Threshold Limit Value

TWA – Time-Weighted Average

USAEC – United States Atomic Energy Commission

USW – United Steelworkers

USWA – United Steelworkers of America

WLM – Working Level Month



## Chapter 1: Introduction and Theory

### Introduction

In July 2009, United Steelworkers Local 6500 in Sudbury walked off the job in what was to become the longest strike in the local's tumultuous history. Three years before, the Brazilian-based multinational conglomerate Companhia Vale do Rio Doce (Vale) had acquired Canada's one-time largest mining corporation – Inco – in a \$19 billion deal that, for many observers, signalled the “hollowing out” of Canada's mining sector. In bargaining, Vale went on the offensive. As more than one analyst saw it, the company sought nothing less than to dismantle the union that had represented Sudbury's workers since the 1960s.<sup>1</sup> For almost a year, the local held out in Canada's largest private sector labour disruption in nearly three decades. Yet, by every account, the union suffered a major defeat. Vale won each of its main demands. In an effort to improve the company's “global competitiveness,” the new collective agreement restructured pension plans for retirees, restricted union seniority rights, allowed the company to hire more non-unionized outside contractors and pared down the “nickel bonus,” a profit-sharing scheme that gave workers a portion of rising nickel prices.<sup>2</sup>

In a roundabout way, the strike and its outcome sparked my interest in writing this dissertation. In a microcosm, the strike expressed the realities of a corporate-led global capitalism, in which big business increasingly called the shots. Examining Vale's corporate structure and the scale of its far-flung multinational operations for a research project on labour unions under globalization, I was struck by the remarkable disparities in resources – and seemingly, power – that set the two sides apart. Despite the Sudbury region's storied history as

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<sup>1</sup> For example, see Linda Diebel, “Inside Sudbury's bitter Vale strike,” *Toronto Star*, 6 June 2010.

<sup>2</sup> The most comprehensive academic analysis of the strike is provided in John Peters, “Down in the Vale: Corporate Globalization, Unions on the Defensive, and the USW Local 6500 Strike in Sudbury, 2009-2010,” *Labour/Le Travail* 66 (2010), 73-105.

one of the world's largest mining centres, Vale's Sudbury operations were just one small part of the company's global network of mines, processing facilities, power plants and ocean-faring transportation vessels. The company's 2008 Form 20-F Report to the United States Securities and Exchange Commission provides a good indication of its reach. At the time, Vale described itself as "the second largest metals and mining company in the world." It was the world's largest producer of iron ore and iron ore pellets and controlled a third of the global seaborne iron market. With revenues totaling more than US \$37 billion, its business segments included coal mines in Australia and Colombia, nickel mines in Indonesia and Canada, bauxite mines and aluminum smelters in Brazil, mineral exploration projects across the globe and a fledgling fertilizers operation, among a host of others.<sup>3</sup> What kind of bargaining power could Sudbury's workers hope to leverage against such a corporate giant, I wondered?

From there, it was not much of a leap to extend this line of questioning in a slightly different direction, for it was clear that workers were not the only interests who stood to be affected by the company and industry's power. Mining is a major industry, with a long history of social conflict and environmental harm. In controlling the supply of strategically important commodities – whether nickel, iron ore, copper, or uranium – mining companies appeared to enjoy unique advantages in relation to the state. As the commodities boom continued apace in the early 2010s, the industry was in the public spotlight. Another multinational – the US-based Cliffs Natural Resources – was touting the widespread benefits the public could expect from the development of the company's apparently massive chromite deposits in the so-called "Ring of Fire" in the province's Far North. Meanwhile, the government was "modernizing" its century-old

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<sup>3</sup> Companhia Vale do Rio Doce, Form 20-F: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the fiscal year ended: December 31, 2008. [http://www.vale.com/EN/investors/information-market/annual-reports/20f/20FDocs/20F\\_2008\\_i.pdf](http://www.vale.com/EN/investors/information-market/annual-reports/20f/20FDocs/20F_2008_i.pdf), (accessed 27 April 2020).

*Mining Act*, after a series of high-profile conflicts drew intense criticism of the province's seemingly archaic mining laws.

With so much public attention focused on mining, a research project examining the industry's political impact was timely. I decided upon a series of research questions to guide my study: How did the metal mining industry's tremendous resources affect its relationship with the provincial government? To what extent was the industry able to translate its economic power into political power over the province's elected governments? To what extent were non-business interests – environmentalists, labour unions, social democratic politicians, Indigenous peoples, and others – able to shape public policy towards mineral development in ways that industry opposed? To be sure, there was a long-standing tradition in Canadian political economy that offered something of a clue. Staples theorists have long emphasized the inordinate power that the resource extractive industries have exercised over Canadian governments and society. But in a way, the staples tradition appeared ill-suited to answering the kinds of questions that I wanted to ask. Staples theorists seemed to be less concerned with the push and pull of policy debate than they were with the overarching structural impact of Canada's reliance on staples production. Combining Harold Innis' "staples thesis" with Latin American dependency theory, these analysts focused on Canada's unique status as a "rich dependency." Excessive levels of foreign direct investment, a truncated domestic manufacturing base, low levels of research and development and technological innovation, and severe environmental degradation in the resource hinterland are all the hallmarks of Canada's staples-led growth pattern.<sup>4</sup>

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<sup>4</sup> The literature assessing the staples' tradition in Canadian political economy is vast. Some illustrative examples include Wallace Clement, "Debates and Directions: A Political Economy of Resources," in Wallace Clement and Glen Williams (eds.), *The New Canadian Political Economy* (Montreal: McGill-Queen's University Press, 1989), 36-53, and Jim Stanford, "Staples Dependence Renewed and Betrayed: Canada's Twenty-First Century Boom and Bust," in Mark P. Thomas, Leah F. Vosko, Carlo Fanelli and Olena Lyubchenko (eds.), *Change and Continuity: Canadian Political Economy in the New Millennium* (Montreal: McGill-Queen's University Press, 2019), 79-105.

In short, while staples theorists recognized the commanding influence of resource capital over Canada's political economy, their approach had less to say about how resource capital exercised its influence in policy debates of a comparatively limited scope, whether in the realms of environmental regulation, income taxation or occupational health and safety. Thus, like many other researchers in the post-2008 Financial Crisis era, I was drawn to another body of literature: namely, political science's long-standing debate about the relative power of business compared to other societal "interest groups" in shaping public policy.

Having largely been glossed over since the 1980s, the business power debate had resurfaced on the political science radar by the time I began writing this dissertation. Perhaps unsurprisingly, considering the events of 2007-09, it was the financial sector that received the lion's share of attention. Researchers debated the extent to which major policies like the United States' "Troubled Asset Relief Program" and the bank "bailouts" were the result of the financial sector's direct influence peddling or the result of finance's central location in the political economies of advanced capitalist countries. For some, the US bailout could not be understood without identifying the financial sector's massive campaign contributions to elected officials, its repertoire of high-powered lobbyists haunting the halls of Congress, and its direct access to the executive branch through Wall Street's "revolving door" with the US Treasury Department. For others, these "instrumental" actions were hardly what mattered. Instead, policymakers had little choice but to bail out the banking system, for the alternative was the collapse of the global financial system and an even deeper recession than the one that ultimately transpired.<sup>5</sup>

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<sup>5</sup> For some illustrative examples of interventions in this debate, see Pepper D. Culpepper and Raphael Reinke, "Structural Power and Bank Bailouts in the United Kingdom and the United States," *Politics & Society* 42 (2014), 427-454; Cornelia Woll, "Politics in the Interest of Capital: A Not-So-Organized Combat," *Politics & Society*, 44 (2016), 373-391; and Kevin A. Young, Tarun Banerjee and Michael Schwartz, "Capital Strikes as Corporate Political Strategy: The Structural Power of Business in the Obama Era," *Politics & Society* 46 (2018), 3-28.

The parallels between this debate and the one that had pitted “structuralists” against “instrumentalists” in the 1970s and 1980s were clear. Yet, not all researchers fell into this seemingly irresolvable dilemma. Several researchers offered a way out of the impasse that had beset the earlier “state debate” by recognizing that they did not need to rely exclusively on either structural or instrumental explanations. The dilemma was a false one. From this perspective, structural and instrumental mechanisms of power were not mutually exclusive, but mutually reinforcing. Business used its instrumental channels of influence to enhance its structural power. To be sure, in the context of capitalist political economies, in which private decisions over investment and production have enormous societal ramifications, policymakers could not ignore business demands. Yet, it was clear that, despite its structural power, business did not get everything it wanted from elected governments. In formally democratic systems, policymakers also had to consider the needs of non-business interests, if only to maintain popular legitimacy and stand a chance to win re-election. The task for researchers, then, was to specify empirically the conditions that made business success more or less likely. This could only be achieved through fine-grained historical analyses of business influence in specific policy debates across time and place.<sup>6</sup>

In this dissertation, I draw upon this body of literature to argue that the Ontario mining industry has wielded considerable direct influence over the shape of the provincial government’s policies across a wide range of issue areas. To put it bluntly, the mining industry is a remarkably powerful political actor. Examining four contentious issue areas – fiscal policies, air pollution

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<sup>6</sup> For example, see Jacob S. Hacker and Paul Pierson, “Business Power and Social Policy: Employers and the Formation of the American Welfare State,” *Politics & Society* 30 (2002), 277-325; Daniel Levy and Daniel Egan, “Capital Contests: National and Transnational Channels of Corporate Influence on the Climate Change Negotiations,” *Politics & Society* 26 (1998), 337-361; Stan Luger, *Corporate Power, American Democracy, and the Automobile Industry* (Cambridge: Cambridge University Press, 2000); and John Mikler, *The Political Power of Global Corporations* (Cambridge: Polity Press, 2018).

control, occupational health and safety and the disposition of mineral rights – this dissertation shows the mining industry has taken advantage of its commanding economic power over the provincial North and its close working relationship with regulators in the provincial ministry of mines to dominate provincial policy. Because of the general absence of alternative investment opportunities in the provincial North, the Ontario mining industry is especially well positioned to further its political interests. Keen to promote a strong investment climate to foster the North's economic vitality and sustain their own electoral legitimacy, provincial policymakers are notably susceptible to the industry's influence. When challengers arise, the industry is ready to meet them, commanding several advantages over its opponents: its huge economic resources, its control over strategic information and its easy access to key decision makers within the state.

Yet, the industry's command over public policy is not monolithic. As subsequent chapters will detail, despite the industry's dominant position, it has lost public policy debates. The mining industry must pay taxes to acquire its raw materials, negotiate with labour unions over health and safety policy, limit the amount of pollutants it releases into the atmosphere, and respect Aboriginal and treaty rights when conducting its activities on public lands. Public authority constrains the industry's autonomy. Under what conditions is the industry's power held in check? This dissertation suggests that the industry's hegemony is vulnerable when deep-seated changes in the ideological and cultural environment undermine the legitimacy of business as usual. Non-business interests can win when values have changed sufficiently that keeping to the status quo threatens policymakers' electoral viability. Such deep-seated changes are relatively rare, and hard to predict. They include the emergence of environmental consciousness, the occupational health and safety movement, Canadian economic nationalism, and, more recently, the Indigenous rights movement.

Still, what is perhaps most striking about the case studies examined in this dissertation is the degree to which the industry set the terms of provincial policy. Policymakers have evinced a clear reluctance to undermine the conditions favourable for sustained capital accumulation. Yet, industry itself determines the conditions conducive for sustained accumulation, and, thus, policymakers remain sensitive to business advice and influence, even in contexts of heightened politicization. As a result, it is difficult to identify a single instance of policy reform affecting mining that was not in some way modified or diluted by the active pressure of industry or its political allies in the state. The industry's command over the state was surprising, even from a Marxist perspective, which views the modern state as "but a committee for managing the common affairs of the whole bourgeoisie." A central concept in Marxist theory is the "relative autonomy of the state." That is, while the state is seen to act "on behalf" of capital, it does not necessarily do so at "the behest" of specific capitalists, if for no other reason than to balance out the conflicting interests pitting different industries against one another, or even firms within the same industry.<sup>7</sup> Yet, as subsequent chapters will show, provincial policymakers, particularly those in the mining ministry, had little autonomy from the mining firms operating in the province. Policymakers exercised little in the way of independent initiative, largely deferring to their counterparts in private industry for advice on crafting public policy. In that sense, provincial policymaking was reactive, rather than proactive, as policymakers responded to external forces and events. How can we make sense of these patterns? The rest of this chapter reviews competing perspectives on business power to highlight the concepts that inform this study, before providing a brief overview of the study's research methods and a summary of the chapters that follow.

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<sup>7</sup> On this point, see Ralph Miliband, "State Power and Class Interests," *New Left Review* 138 (1983), 67-78.

## **Theorizing Business Power in Liberal Democracy**

Most theoretical perspectives are critical of theories that highlight the direct influence of business power over policy processes. Long the dominant theory, pluralism suggests that while business groups no doubt have power, theirs is equally matched by countervailing interest groups against whom business must compete for influence. In liberal democratic states, in which citizens have the right to vote, to freedom of expression and association and so on, it is argued that no single group has any unique advantage in its relationship with the state. Political power is dispersed and fragmented, and today's winners are just as likely to be tomorrow's losers.

While approaching the question of policymaking from a different lens – not to mention anticipating different outcomes – both neo-pluralism and structural Marxism, like pluralism, downplay business' *direct* influence over the state. Taking as their point of departure the state's structural dependence on capital for the maintenance of economic vitality, both neo-pluralism and structural Marxism emphasize the impersonal workings of market forces as the locus of policymaking. Thus, while both schools recognize that the structure of capitalist market economies systematically biases the state's policies towards the interests of the owners of capital, they treat various forms of overt pressure – campaign contributions, lobbying, the “revolving door” and so on – as incidental to the general pattern of policymaking. In fact, in many respects, the structural dependency thesis is premised on the assumption that business interests are too internally divided to be able to mount the unified political effort necessary to steer the state in the direction of the general interests of capital.

Finally, state autonomy theorists have gone the furthest in denying a prominent role for business in policy formation. In their view, other theoretical approaches – pluralist and neo-



Marxist alike – were “society-centred,” and, as such, they had failed to appreciate the role of the state as an “independent actor” in its own right. State autonomy theorists thus ascribed an important role to independent policy experts, insulated from societal pressures, as the key agents in policy formation.

However, a close review of the historical record casts doubt on each of these theories. The sheer frequency and magnitude of the industry’s victories in contested policy disputes across such a wide range of issue areas affecting a variety of interests, not to mention its longstanding capacity to shape the legislative agenda itself, belie the pluralist contention that power is widely dispersed and fragmented. Simply put, no other interest group – labour, farmers, the environmental movement, Indigenous peoples, or even private property owners – has exercised anything approaching the deep and pervasive influence over the provincial state that the mining industry has. Other approaches fail to account for the historical patterns of policymaking towards Ontario’s mining industry. The longstanding interpersonal linkages between provincial state officials and mining industry executives, not to mention the industry’s near-constant effort to advance its policy preferences vis-à-vis the government, undermine the structural Marxist and neo-pluralist claims that governments in capitalist societies advance the general interests of capital as a whole, irrespective of the social composition of the state elite, or the active pressure of business through lobbying, campaign contributions or other such forms of overt influence. Indeed, the distinction between nominally independent state managers and private industry representatives has been so blurred that state autonomy theory’s claims about a hard and fast separation between state and society cannot be maintained.

Among the competing theoretical approaches, the one that best captures the mining industry’s relationship with the provincial state and patterns of policymaking affecting the sector

is what has been variously termed “instrumental Marxism” or “class-based power structure research.” In the eyes of many critics, power structure researchers posit a simplistic relationship between business and the state, one in which business seamlessly translates its expressed political preferences into state policy outcomes without fail. Yet, as several advocates of power structure research have made clear, these criticisms are wide of the mark. Far from simply positing the inevitable dominance of business over the state, power structure researchers emphasize the uncertain nature of business power in the context of liberal democracy. It is precisely because non-capitalist social forces can exercise political power – whether through the vote, the strike, the demonstration, or civil disobedience – that specifying the conditions under which business can more or less easily convert its dominant economic power into political power becomes the crucial task of research.

### ***Open-Ended Competition: The Pluralist Approach***

From the pluralist perspective, power is dispersed, fragmented and competitive. There is not one, but many loci of political power. Because power is exercised in tightly circumscribed and non-overlapping issue areas, no single group dominates politics. Business, although disposing of large economic resources, possesses no unique form of influence, because economic power is not synonymous with political power, nor the potential for power with the exercise of power. What is more, business vies for influence with other social interest groups – labour, farmers, conservationists and others – each of whom can mobilize their own political resources in their efforts to shape policy outcomes.

Pluralists do not doubt that large corporate enterprises possess a high potential for control, nor that they enjoy a wide variety of political resources, far beyond the scope of other

interest groups. As leading pluralist Edwin Epstein admitted, no other interest could match corporations in terms of the sheer scale of their organization; their wealth; their access to policymakers and government officials; their control over employment; their centrality in fulfilling a variety of basic economic tasks; and their ability to influence the mass media and thereby shape public opinion, not only in regard to particular policy matters, but also the very contours of the political and economic systems.<sup>8</sup> Yet, despite this impressive list of political assets, pluralists contend that corporations do not wield a commanding influence over governments in liberal democracies. As Epstein himself put it, “no definitive statements regarding the extensiveness of corporate political power in America are possible, except to note that such power does not monopolize the social order and does not constitute a threat to political democracy.”<sup>9</sup>

Several limitations upon corporate political power in an open and competitive political system restrain corporate political dominance. First, pluralists argue, *political resources* – which corporations no doubt have in abundance – are not synonymous with *political power*. Actors achieve political power not simply because they have abundant resources at their disposal, but because they are able to deploy their resources skillfully and efficaciously. Such capacities are neither uniformly distributed among corporate political actors, nor stable over time. Personnel in one firm may be more disposed toward political activity than their counterparts in other firms; some firms have greater financial resources than others; some public officials are more receptive to the concerns of corporate personnel than others. Nor is it certain that corporations can seamlessly employ their economic resources to political ends. As Nelson Polsby explained, “A corporation may be worth millions, but its policies and liquidity position may be such that it

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<sup>8</sup> Edwin M. Epstein, *The Corporation in American Politics* (Englewood Cliffs, NJ: Prentice-Hall, 1969), 192-221.

<sup>9</sup> *Ibid*, 241.

cannot possibly bring these millions into play to influence the outcome of a community decision – even one in which the corporation is vitally interested.”<sup>10</sup> In short, corporate political power is not constant, but varies according to the skills and capacities with which particular corporate actors make use of the resources at their command.

Second, there are as many, if not more, sources of corporate *conflict* as there are of corporate *unity*. Corporate political actors are not monolithic, but fractured and competitive. In fact, corporate political activity is just as likely to be directed against other corporate interests as it is to be against other social interests. In their study of American business and trade policy, Bauer, Pool and Dexter make the point forcefully. Because different divisions within the DuPont conglomerate stood to be affected differentially by reciprocal trade legislation, the company did not take a unified position on the matter.<sup>11</sup> That is, there is not simply disunity between different corporations and between different industries, but also within particular corporate enterprises themselves. To the extent that business is fractured, its political influence is limited as a wide variety of competing interests seek satisfaction of their particular demands.

Finally, and most importantly, corporate political power is restrained by the political resources of other interest groups. Simply put, if corporations appear to have a unique power base, in reality other social groups command political resources of equal value. As Epstein explained,

Other social interests possess *equivalent political assets*. Labour unions possess organization and riches. Educational and professional interest groups have access, and social status and reputation. Farm groups have a history of political success. Moreover, certain resources possessed by other social groups – such as large number of voters,

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<sup>10</sup> Nelson Polsby, *Community Power and Political Theory* (New Haven: Yale University Press, 1963), 120.

<sup>11</sup> Raymond A. Bauer, Ithiel de Sola Pool and Lewis Anthony Dexter, *American Business and Public Policy: The Politics of Foreign Trade* (New York: Atherton Press, 1963), quoted in Epstein, *The Corporation in American Politics*, 172-73

unimpeachable legitimacy as political participants, and deep-seated organizational loyalty – are unavailable to corporations.<sup>12</sup>

It is in this sense that Robert Dahl spoke of “non-cumulative” resource inequalities. While Dahl recognized that resources were far from evenly distributed among social groups, in his view the possession of no single resource accorded its holder inordinate political power. For one thing, the great variety of resources available to influence decisions ensured that virtually every political actor possessed at least some means of influencing decisions. For another, resources effective in one issue area were usually ineffective in another. Finally, actors well off in one resource were generally lacking in another.<sup>13</sup>

Pluralists define power as the successful attempt by one agent – A – to get another agent – B – to do something he or she would not otherwise do. Measuring who has political power is thus a matter of directly observing instances of open conflict in government decision-making processes, and tabulating who initiated, who modified and who vetoed policy proposals. Those actors that score the greatest number of policy victories are held to be the most powerful. As Polsby explained it, identifying “who prevails in decision-making ... seems the best way to determine which individuals and groups have ‘more’ power in social life, because direct conflict between actors presents a situation most closely approximating an experimental test of their capacities to affect outcomes.”<sup>14</sup> From this perspective, where there is no disagreement over preferences, there is no possibility of measuring power. Nor can researchers assume anything about a given actor’s interests or preferences, apart from what is directly observable.

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<sup>12</sup> Epstein, *The Corporation in American Politics*, 223, emphasis added.

<sup>13</sup> Robert Dahl, *Who Governs?: Democracy and Power in an American City* (New Haven: Yale University Press, 1961), 223-228.

<sup>14</sup> Polsby, *Community Power and Political Theory*, 4.

At first glance, the pluralist approach offers a compelling framework to interpret recent trends in Ontario mining politics. Government policymaking procedures no doubt incorporate a wide range of societal interests, each of whom mobilize their resources to advance a particular policy agenda. The process culminating in the release of Ontario's most recent Mineral Development Strategy is a case in point. According to official government sources, the Strategy is "a comprehensive 10-year plan, created with input from representatives of exploration and mining companies, prospectors, First Nation communities, Métis communities, northern communities, and environmental NGOs."<sup>15</sup> In crafting the strategy, the Ministry of Northern Development and Mines held 22 information workshops over a period of 67 days. Almost 200 "stakeholder representatives" and an additional 148 "Aboriginal community representatives" attended the sessions. The discussions addressed a variety of topics, including environmental sustainability, respect for treaty rights, education and skills training and investment in infrastructure, among others.<sup>16</sup> The government engaged similar consultative processes in the lead up to its amendments to the *Mining Act* in 2009, which resulted in more stringent regulatory oversight of the mineral exploration sector. Several industry officials have expressed frustration with their apparent powerlessness vis-à-vis other interests. As the President of the Northwestern Ontario Prospectors Association David Hunt alleged, "The anti-development, preservationist hordes have played a large part in drafting this legislation. They have the Southern Ontario votes and the ear of government."<sup>17</sup>

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<sup>15</sup> Ontario Ministry of Northern Development and Mines, "Ontario's Mineral Development Strategy," <https://www.mndm.gov.on.ca/en/mines-and-minerals/mineral-development-strategy> (accessed 23 November 2019).

<sup>16</sup> Ministry of Northern Development and Mines, "Renewal of Ontario's Mineral Development Strategy," *Environmental Registry*, posted March 2, 2015, <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTI0NTA5&statusId=MTg3NDk1&language=en> (accessed 23 November 2019).

<sup>17</sup> David Hunt, "Ontario Mining Act Modernization: The Repercussions," *Republic of Mining*, posted 4 April 2012, <https://republicofmining.com/2012/04/04/ontario-mining-act-modernization-the-repercussions-by-david-s-hunt-p-geo-april-3-2012-%E2%80%93-thunder-bay-canada/> (accessed 23 November 2019).

Several researchers of Canadian mining policy have adopted an essentially pluralist outlook in their studies. In these accounts, the mining industry's capacity to achieve its desired policy objectives has waxed and waned over time, largely in tandem with shifts in prevailing public opinion. Pluralist assessments follow a common pattern: While the Canadian state's policies toward mineral development prior to the late 1960s were geared exclusively to attracting investment capital and promoting rapid resource development, profound social, economic and political transformations since that time have generated equally profound transformations in the policy environment. As a result, Canadian mining policy has shifted from a "policy of growth" to a "policy of redistribution." Not only have governments insisted that mineral wealth be distributed more evenly across society, but also that industrial actors bear a greater burden of the social and environmental costs associated with resource exploitation. In short, since the 1970s mining policy formation has become increasingly complex and fragmented, incorporating the concerns of a variety of new policy actors, and reflecting broader concerns about ecological integrity, long-term economic sustainability, regional development, and cooperative decision-making processes.<sup>18</sup>

Notably, these accounts suggest the "policy of growth" did not reflect the mining industry's power but rather a societal consensus about how best to achieve economic prosperity.

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<sup>18</sup> The authors cited in this footnote do not necessarily explicitly subscribe to a pluralist framework in their analyses, but their general emphasis on variables such as public opinion, interest groups, political parties, and state actors' leadership role in policymaking processes put them squarely in the traditional pluralist camp. Prominent examples include: Marsha A. Chandler, "The Politics of Provincial Resource Policy," in Marsha A. Chandler and Michael M. Atkinson (eds.), *The Politics of Canadian Public Policy* (Toronto: University of Toronto Press, 1983), 43-67; Mary Louise McAllister, *A Stake in the Future: Redefining the Canadian Mineral Industry* (Vancouver: UBC Press, 1997); Mary Louise McAllister, "Shifting Foundations in a Mature Staples Industry: a Political Economic History of Canadian Mineral Policy," *Canadian Political Science Review* 1 (2007), 73-90; Donald J. Patton, "The Evolution of Canadian Federal Mineral Policies," in Carl E. Beigie and Alfred O. Hero, Jr., (eds.) *Natural Resources in Canadian-U.S. Relations, Volume I: The Evolution of Policies and Issues* (Boulder: Westview Press, 1980), 203-246; David Yudelman, *Canadian Mineral Policy Formulation: A Case Study of the Adversarial Process* (Kingston: Centre for Resource Studies, Queen's University, 1984); David Yudelman, *Canadian Mineral Policy Past and Present: The Ambiguous Legacy* (Kingston: Centre for Resource Studies, Queen's University, 1985).

In fact, prior to the late 1960s, the development of mineral resources involved not “political” but “technical” debates. As Marsha Chandler argued, “The traditional arena of resource policy can be described as relatively harmonious, for prior to the 1970s neither the public-private split of resources nor the federal-provincial division of the public share generated a great deal of conflict or any significant variations in provincial policy.”<sup>19</sup> Thus, although the mining industry received generous treatment from the state, the overall aim of policy was nevertheless to advance the public interest, not the private interest of industry. As Donald J. Patton explained, Canadian mining policies have long reflected “a continuing struggle to find the best approach for developing the country’s rich endowment of resources to the maximum benefit of Canadians.”<sup>20</sup>

Yet, suddenly this consensus broke down, as the politics of growth no longer commanded widespread legitimacy. Amidst growing concerns of resource scarcity, environmental degradation and the wasting of Canada’s natural heritage, the public began to demand state action not only to promote economic development, but also to distribute its benefits more evenly and mitigate its negative consequences. New policy actors, armed with competing policy agendas, arose to challenge the traditional approach to resource development. As David Yudelman explained, “The proliferation of newly powerful and articulate interest groups and the expanding role of the state – particularly to accommodate them – led to what has been regarded by some as a breakdown in the historic consensus between business and state on material goods and priorities.”<sup>21</sup> The result was a political transformation that shook the policy environment to

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<sup>19</sup> Marsha A. Chandler, “The Politics of Provincial Resource Policy,” 46. Robert Dahl expressed a similar understanding of “politics” in *Who Governs?*: “A political issue can hardly be said to exist unless and until it commands the attention of a significant segment of the political stratum.” *Who Governs?*, 92.

<sup>20</sup> Patton, “The Evolution of Canadian Federal Mineral Policies,” 203.

<sup>21</sup> Yudelman, *Canadian Mineral Policy Past and Present*, 41.



its core, threatening the mining industry's long-term viability. Mary Louise McAllister has expressed this viewpoint most clearly:

With no clear picture of the public interest, governments are buffeted by the growing demands of competing interest groups who do not hesitate to articulate their particular visions of the public good. Rising pressures for public participation coupled with escalating land-use disputes ... have led to increasing levels of mistrust between members of the mineral industry and other interest groups. ... The growing complexity of the modern state limits the ability of governments to provide a coordinated, regulatory environment that would attract investment capital to resource-based projects.<sup>22</sup>

Pluralists are not wrong to suggest that corporate political power varies across time and place; that corporations – much like other interest groups – must deploy their resources efficaciously, forge strategic alliances with like-minded interests, and overcome opposition if they are to achieve their policy objectives in a competitive political arena. As several studies have shown, corporate political defeats abound. Were it not for its initial plausibility, pluralism simply would not have been able to maintain its staying power. Yet, pluralists err in suggesting that power can only be measured by observing the results of open contestation. In fact, the absence of open contestation around an issue by no means implies the absence of power differentials or the existence of policy consensus.

This point was well made by several of pluralism's critics, most notably Peter Bachrach, Morton Baratz and Steven Lukes.<sup>23</sup> As Bachrach and Baratz had it, pluralists failed to see power's "second face." That is, power was exercised not only when an actor influenced "concrete decisions," but also when an actor successfully devoted resources to narrowing the very range of issues given public consideration to those it deemed to be "comparatively innocuous."<sup>24</sup> In that sense, power was reflected as much in "non-decisions" as it was in

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<sup>22</sup> McAllister, *A Stake in the Future*, 18.

<sup>23</sup> Peter Bachrach and Morton S. Baratz, "Two Faces of Power," *The American Political Science Review* 56 (1962), 947-952; Steven Lukes, *Power: A Radical View* (London: Macmillan, 1974).

<sup>24</sup> Bachrach and Baratz, *op. cit.*, 948.

decisions. As Bachrach and Baratz explained, “to the extent that a person or group – consciously or unconsciously – creates or reinforces barriers to the public airing of policy conflicts, that person or group has power.”<sup>25</sup> For his part, Steven Lukes extended the discussion, arguing that power consisted of not only two, but three dimensions. Power was not simply reflected in the capacity to influence decisions or control the agenda, but also in the capacity to shape desires and beliefs. Ideological hegemony secured the consent of subordinate groups to existing power arrangements, even if those arrangements were inimical to their “real” interests. Hegemony shaped their preferences, suppressed their grievances, and ultimately, prevented the emergence of open conflict. For Lukes, then, power was at its most effective when it was least visible.

In essence, the pluralist conception of power is too narrow; open contestation is far from the only arena in which power is exercised.<sup>26</sup> In fact, in contexts of highly unequal power relations, one should anticipate minimal instances of open conflict. Weaker actors, recognizing their inferior position, may opt out of conflict with stronger opponents for the lack of resources they can bring to the battle. They may do the same for fear of retaliation: Employers can dismiss workers who challenge managerial prerogatives, for example. More powerful actors may stifle overt conflict through other means: Control over communication media allows powerful actors to shape the beliefs and values of subordinate groups, securing their consent and keeping potential conflicts out of politics altogether.

Such observations are particularly germane when considering the mining industry’s power in Northern Ontario, where large employers have dominated not only regional economies, but also social and cultural life. As Eileen Goltz has shown, Ontario’s one-time largest mining

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<sup>25</sup> Ibid, 949.

<sup>26</sup> As Steven Lukes pointed out, Dahl himself admitted that an actor had power to the extent that he or she successfully “*initiates a policy where no opposition appears*,” but failed to incorporate this insight into his methodological approach.

employer, the International Nickel Company of Canada (Inco), crafted a variety of strategies to exercise social control in its wholly owned “company towns.” In Copper Cliff, which remained Inco property until 1973, the company used its control over housing and employment not only to ensure worker loyalty, but also to segregate town residents by ethnicity and occupation. In effect, Inco secured the compliance of its workforce by threatening sanctions for disobedience.<sup>27</sup>

Moreover, the mining industry has gone to considerable lengths to influence public perceptions about the nature of its activities and its pioneering role in developing the Canadian economy. The industry has worked assiduously to persuade the Canadian public that a policy framework geared to the private development of mineral resources is in the interest not simply of the mining industry, but the public more broadly. The industry has employed various mass media in these efforts. Newspapers at both the local and national level have been particularly important. In fact, William H. Wright, President of Lake Shore Gold Mines, purchased the *Globe* and merged it with the *Mail and Empire* in 1936 precisely for the purpose of promoting the mining industry. As he explained his decision,

... mainly it was my interest in mining. My object in purchasing the *Globe* was not to make money out of it – at least that was not my main object. I thought I could do something for the country by making our mining industries better known. Anything that is of advantage to mining is of advantage to the country as a whole.<sup>28</sup>

Thereafter, the *Globe* became, in effect, an important part of the industry’s public relations strategies. A search through the newspaper’s archives from the time of Wright’s purchase until its sale in the early 1970s turns up several reports and editorial comments as follows: “Amongst all productive sectors of our economy none is more important than mining. The development of

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<sup>27</sup> Eileen Alice Goltz, “The Exercise of Power in a Company Town: Copper Cliff, 1886-1980,” (PhD diss, University of Guelph, 1989), 29.

<sup>28</sup> Quoted in Brian J. Young, “C. George McCullagh and the Leadership League,” *The Canadian Historical Review* 3 (1966), 202.

Canada's mineral resources was the forerunner of our great industrial development and mining remains an essential prop to our national wealth and progress."<sup>29</sup> If it is true that Canadian mining policies were not "political" until the late 1960s, one cannot ignore the lengths to which the industry went to mould public opinion.

The mining industry engages in similar, perhaps more pervasive, forms of public relations work to this day. Responding to its waning legitimacy following a series of high-profile environmental disasters and disputes with Indigenous peoples in the early 1990s, the Canadian mining industry launched an extensive campaign to rehabilitate its image. As education researcher Stuart Tannock has shown, the industry did not simply target the mass media, but endeavoured to reshape the fabric of the Canadian public education system to promote its sectoral interest. For instance, the Prospectors and Developers Association of Canada (PDAC), one of the industry's leading trade associations, created an educational program called "Mining Matters," which the association offered to public school boards. The program's goal was "to educate students 'about mining's importance to our quality of life,' and help the industry 'get its message across ... in competition with a media-savvy environmental movement.'"<sup>30</sup> Industry executives also infiltrated the post-secondary education system, perhaps none more controversially than Barrick Gold founder Peter Munk, who donated \$6.4 million dollars to the University of Toronto to establish the Munk Centre for International Studies in 1997. The initial contract between Munk and the University stipulated that the Centre would receive advice from

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<sup>29</sup> H. E. Langford, "Noranda Mines: An Investment I Like," *Globe and Mail*, 27 December 1954.

<sup>30</sup> Stuart Tannock, "'Not Mining is Not an Option!,'" *Our Schools Our Selves* 18 (2009), 107.

Barrick Gold's international advisory board, and that Munk could suspend funding if he was dissatisfied with the Centre's direction.<sup>31</sup>

Measuring power by observing cases of open conflict is particularly problematic when considering Indigenous politics. In reviewing the historical record, one is struck by the near-total absence of overt Indigenous political action from the end of the Second World War until perhaps 1973, when the Teme-Augama Anishnabai filed cautions claiming Aboriginal title to lands in the Lake Temagami region. That Indigenous peoples' relative quiescence in the period prior to 1973 as compared to their greater activity thereafter was simply a function of changing preferences is hard to sustain in the light of the several institutional barriers Indigenous peoples faced in airing their grievances. "Status Indians," for example, did not achieve the right to vote in Ontario provincial elections until 1954.

A final shortcoming of the pluralist approach is its inattention "to the interplay of economic conditions and interest group influence," as Stan Luger has put it.<sup>32</sup> That is, pluralist theory fails to consider the way in which changing economic contexts shape not only the capacity of different actors to intervene in the policy process, but also the range of options seen as possible to policymakers. Business interests leverage economic downturns to their political advantage, as policymakers' fears of further undermining economic vitality are enhanced. Policymakers' response to the 2007-08 financial crisis, which included bailing out the auto industry and banks that were "too big to fail," provides a graphic illustration of this reality.

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<sup>31</sup> Yves Engler, "Munk School of Global Affairs reveals much about the state of Canadian foreign policy," *Rabble blogs*, posted 29 October 2016, <https://rabble.ca/blogs/bloggers/yves-engler/2016/10/munk-school-global-affairs-reveals-much-about-state-canadian-fore> (accessed 25 February 2020).

<sup>32</sup> Luger, *Corporate Power*, 23.

## ***Policymaking in a Market Prison: Structural Marxism, Neo-pluralism and Structural Dependency***

In its simplest formulation, the structural dependency thesis asserts that the imperatives of capitalist market economies systematically bias policymaking in the interest of owners of capital. Most often associated with the neo-Marxist sociologist Nicos Poulantzas, the structural dependency thesis was subsequently elaborated by several theorists who sought to apply Poulantzas' insight to concrete cases of policymaking. Poulantzas' theories of the state provoked an intense debate among neo-Marxists, pitting "structuralists" and "instrumentalists" against one another. In the structuralist view, what mattered was not the social background of leading state personnel or the direct relationship between members of the capitalist class and the state; instead, it was the very nature of the capitalist system that ensured the state would function as the "factor of cohesion" for the system as a whole, reproducing class privilege throughout the social formation.<sup>33</sup>

In Poulantzas' view, the capitalist class was internally divided. Individual firms, who faced off against one another as competitors in the marketplace, were far too narrowly concerned about their own short-term interests and profit levels to be able to mount the political effort required to sustain the long-term interests of capitalists as a class. Instead, that task fell to the state, a unique institution characterized by a "relative autonomy" from the *particular* interests of conflictual, individual firms. For Poulantzas, the state was autonomous insofar as it was not under the direct sway of any particular segment of the capitalist class. Indeed, as Poulantzas had it, the greater the state's independence from capital, the better it could perform its functions on behalf of capital as a whole: "it can be said that the capitalist State best serves the interests of the

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<sup>33</sup> Nicos Poulantzas, "The Problem of the Capitalist State," *New Left Review* 58 (1969), 73.

capitalist class only when the members of this class do not participate directly in the State apparatus, that is to say when the *ruling class* is not the *politically governing class*.”<sup>34</sup> Yet, that autonomy was only “relative” insofar as, in the long run, state action necessarily reproduced the system of class domination as a whole. As Poulantzas argued, “The relation between the bourgeois class and the State is an *objective relation*. This means that if the *function* of the State in a determinate social formation and the *interests* of the dominant class in this formation *coincide*, it is by reason of the system itself.”<sup>35</sup>

Yet, in his initial highly abstract formulations, Poulantzas failed to identify any mechanisms by which the capitalist class’ interests were translated into state action, even if his thought evolved in subsequent works. That is, Poulantzas left unspecified precisely why autonomous state managers must necessarily act in the interests of capital, despite the absence of concrete mechanisms of influence, personal or otherwise. However, theorists building on Poulantzas’ insights, most notably Fred Block and, in a different vein, Charles Lindblom, offered a corrective to this shortcoming by linking the popular legitimacy of elected officials and incumbent state managers to the performance of the economy. Insofar as policymakers depended on a robust economy to sustain their prospects of winning re-election and funding the state’s coffers, they had clear incentives to offer a generous climate to capital, which would invest only on condition of healthy returns to their bottom lines.

Block rejected instrumentalist explanations of state action on several grounds. For one, in depicting the state as a tool wielded by a capitalist elite, instrumentalists failed to explain the state’s ideological role, that is, its role in maintaining the legitimacy of an otherwise exploitative social order. For another, instrumentalists failed to appreciate the simple fact that to act in the

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<sup>34</sup> Ibid, 73, emphasis in original.

<sup>35</sup> Ibid, 73, emphasis in original.

general interests of the capitalist class as a whole, the state had to act against the short-term interests of particular segments of that class. But most importantly, Block rejected the instrumentalist contention that the capitalist class was somehow conscious of its long-term political interests, that capitalists could organize themselves as a class to advance policy proposals to sustain their dominance over society. In Block's view, even Poulantzas' concept of relative autonomy was inadequate, for it ultimately collapsed into a "sophisticated instrumentalism" wherein a class-conscious elite responded politically to the state's abuse of its autonomy.<sup>36</sup>

To move "beyond relative autonomy," Block argued that it was first necessary to reconceptualize the relationship between the state and the capitalist class. In Block's view, state power was "*sui generis*," that is "not reducible to class power" in the Marxist sense.<sup>37</sup> Drawing on Weber's concept of the state as the repository of the legitimate use of violence in a particular territory, Block argued that there was a "division of labour" between capitalist elites on the one hand, and state managers on the other. Whereas individual capitalists concerned themselves only with their short-term economic interests in advancing capital accumulation, the structural position of state managers as guardians of the social order forced upon them a broader set of concerns. State managers, who were conceived as "self-interested maximisers," were imbued with their own interests, independent from those of the capitalist class. The very simple fact of their independence meant that state managers posed a potential threat to capital's power and privilege. Yet, despite their independence, state managers were not only reluctant to pursue anti-capitalist policies; they also acted in the general interests of capital as a whole.

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<sup>36</sup> Fred Block, "The Ruling Class Does Not Rule: Notes on the Marxist Theory of the State," *Socialist Revolution* 7 (1977), 9.

<sup>37</sup> Fred Block, "Beyond Relative Autonomy: State Managers as Historical Subjects," in Ralph Miliband and John Saville (eds.), *The Socialist Register 1980* (London: Merlin Press, 1980), 229.



Why did independent state managers, imbued with their own interests, nevertheless promote the general interests of capital as a whole? Block's answer to this puzzle was that state managers – “regardless of their own political ideology” – were in a position of dependence on capital. The reasoning was relatively straightforward: State managers depended on a high level of economic activity. This was the case for two reasons. First, the state's fiscal capacities were dependent on taxation and borrowing in financial markets. States governing robust economies would have a far easier time generating revenues than those overseeing stagnating economies. Second, state managers depended on a high level of economic activity for their own popular legitimacy. Those state managers who oversaw a decline in economic activity, with its consequent surge in unemployment and shortages in consumer goods, were unlikely to maintain broad public support. Because capitalists, who controlled investment, effectively determined the level of economic activity in a society, they enjoyed “a veto” over public policies, for capital's collective refusal to invest would generate severe political problems for incumbent state managers. Thus, the state's autonomy was constrained by the need to maintain what Block termed “business confidence.”<sup>38</sup>

In a sharp departure from their earlier work, leading pluralists Robert Dahl and Charles Lindblom adopted an approach in many respects similar to Block's, conceding that in the context of capitalist democracies, business could not be treated as simply another interest group: “Businessmen play a distinctive role in polyarchical politics that is qualitatively different from that of any interest group. It is also much more powerful than an interest-group role.”<sup>39</sup> According to Lindblom, business' “privileged position” vis-à-vis the state was not simply a

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<sup>38</sup> Block, “The Ruling Class Does Not Rule,” 15.

<sup>39</sup> Robert Dahl and Charles Lindblom, *Politics, Economics, and Welfare* (Chicago: University of Chicago Press, 1976), xxxvi, quoted in David Vogel, “Political Science and the Study of Corporate Power: A Dissent from the New Conventional Wisdom,” *British Journal of Political Science* 17 (1987), 386.

function of its tremendous resources or its lobbying capacities, but of its central function in sustaining economic vitality. Business, not government, was responsible for ensuring several aspects of public welfare. As Lindblom explained, businesses “decide a nation’s industrial technology, the pattern of work organization, location of industry, market structure, resource allocation, and of course, executive compensation and status.”<sup>40</sup> Because governments could not force businesses to perform these functions, but could only induce them to do so, capitalist market economies effectively placed policymakers in a “prison.” In other words, the very nature of the system was biased toward privileging business’ political preferences over the preferences of other social groups. Businesses did not have to engage in overt political activity to receive favourable treatment from the state, as, in Lindblom’s conception, policymakers understood that one of their primary tasks was to motivate businesses to invest. As Lindblom explained, “To understand the peculiar character of politics in market oriented systems requires ... no conspiracy theory of politics, no theory of common social origins uniting government and business officials, no crude allegation of a power elite established by clandestine forces.”<sup>41</sup>

Policymakers’ fears of “capital flight” and disinvestment thus serve as the key linchpins in both Block and Lindblom’s analyses of business’ structural power. Yet, neither Block nor Lindblom conceived of capital flight as a conscious political weapon that business employed to punish recalcitrant policymakers or to reward their cooperative counterparts; instead businesses acted simply to further their economic interests. To the extent that a given state’s policy mix offered business an opportunity to earn healthy profits, that state was likely to attract new investment. To the extent that its policies undermined profitability, disinvestment was likely to

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<sup>40</sup> Charles E. Lindblom, *Politics and Markets: The World’s Economic Systems* (New York: Basic Books, 1977), 171.

<sup>41</sup> Ibid, 175.

follow. In that sense, the impersonal workings of the market system – and not the conscious political action of a unified business class – drive patterns of state activity.

These formulations represented an advance in terms of understanding patterns of state activity in capitalist democracies compared to traditional pluralist analyses, which neglected the specifically capitalist context in which policies were formulated. There is no doubt that Ontario lawmakers, irrespective of their political leanings, have good reason to avoid crafting policies that could undermine the confidence of mining firms. While the mining industry accounts for only a relatively small proportion of total provincial income and employment, it nevertheless makes a major contribution to Ontario's economic life in other ways. Mineral exports are a key component in maintaining the province's balance of trade. For example, in 2017, unwrought gold was Ontario's second largest export by total value, behind only automobiles.<sup>42</sup> The industry's activities are also tied to several other important economic actors through forward and backward linkages. Mining continues to account for more than one-half of the revenues of Canada's major railways – Canadian National Railways and Canadian Pacific Railways – while Inco was Canada's single largest consumer of timber into the 1950s.<sup>43</sup> More recently, the city of Toronto has positioned itself as something of the mine financing capital of the world. In 2012, more than \$10 billion in mining equity was raised on Toronto's two principal stock exchanges, an amount equivalent to 70 percent of the world's total.<sup>44</sup> And, as the Mining Association of Canada boasts, Toronto "is home to several dozen mining company head offices, as well as several hundred mining suppliers, consulting firms and service providers."<sup>45</sup> In that sense, the web of

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<sup>42</sup> Ontario, "Ontario Trade Fact Sheet," *Source From Ontario*, posted February 8 2017, [http://www.sourcefromontario.com/tradefactsheet/en/page/tradefactsheet\\_ontario.php](http://www.sourcefromontario.com/tradefactsheet/en/page/tradefactsheet_ontario.php), (accessed 23 November 2019). Autos accounted for 24.89 percent of exports in 2017, unwrought gold for 6.97 percent.

<sup>43</sup> Mining Association of Canada, *Facts & Figures 2017* (Mining Association of Canada: 2018), 6.

<sup>44</sup> Ibid, Figure 15, 38.

<sup>45</sup> Ibid, 13.

interconnected interests with a direct stake in the health of the mining sector extends far beyond those actors directly engaged in mineral extraction and development. A growing coterie of actors in the financial and legal services sectors depend as much on the maintenance of a robust mining sector as do the mining companies themselves.

Yet, for all the strength of Lindblom and Block's structural analyses, important problems remained. While Lindblom recognized that business' privileged position varied across time and place, his theorization provided little in the way of specifying the conditions under which business' privilege was likely to wax or wane. In fact, Lindblom appeared to suggest that business could only lose on "secondary issues," matters like environmental regulation and the general rate of corporate taxation, but not on "primary issues," which essentially involved the private ownership of the means of production. Such a rigid dichotomy is troublesome for comparative purposes, whether geographical or historical. And, as Stan Luger has argued, it leaves researchers ill-positioned to evaluate "modifications of business power that stem from the welfare state or from legislation strengthening the rights of workers and unions," since these reforms are more trenchant than the label "secondary issues" makes them to be.<sup>46</sup> In Block's view, momentary periods of crisis – war, depressions and postwar reconstruction – weakened capital's "veto," providing the state with the room to enact reforms inimical to business' interests.<sup>47</sup> But in light of the policy response to the financial crisis of 2007-08 and its attendant recession, it is clear that states do not respond to all crises in the same manner.

Another difficulty is that it is by no means clear that those states that adopt the most ardently pro-business policy frameworks necessarily attract the greatest amount of capital investment, just as it is equally unclear that those states that enact policies that redistribute

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<sup>46</sup> Luger, *Corporate Power*, 24.

<sup>47</sup> Block, "The Ruling Class Does Not Rule," 24.

income or restrict corporate autonomy inevitably face capital flight. At best, empirical findings in this regard are mixed.<sup>48</sup> As Clyde Barrow has shown, several American states with nominally high scores on the Conference of State Manufacturers' Association's "General Manufacturing Index" – an index that defined a favourable business climate as one with "low wages, low union density, high work force availability ... conservative state and local fiscal policies, and low state-mandated employment costs" – were nevertheless characterized by low levels of economic activity. By contrast, several states with low scores on the index had far higher levels of economic activity than their better-ranked peers.<sup>49</sup>

Similarly, whether Ontario policymakers could have genuinely feared threats of capital flight on the part of the nickel industry in the 1950s and 1960s is debatable, to say the least. Given the centrality of the Sudbury area mines to both Inco and Falconbridge's profitability and respective market shares, the considerable amount of sunk costs the companies had incurred in plant and equipment, not to mention the general absence of alternative orebodies elsewhere, the likelihood that the industry would flee for greener pastures elsewhere was virtually impossible. Finally, the structuralist suggestion that business groups need not engage in overt political activity to secure their policy preferences from the state is also on shaky ground. If the market's triggering mechanisms automatically tip the balance of policymaking in capital's favour, why do business groups engage in such extensive and overt political action?

None of this is to suggest that the structurally privileged position of business is irrelevant to policy formation. Instead, the point is simply to highlight that, even if business does maintain

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<sup>48</sup> For a review, see Mark A. Smith, *American Business and Political Power: Public Opinion, Elections, and Democracy* (Chicago: University of Chicago Press, 2000), 149-152.

<sup>49</sup> Clyde W. Barrow, "State Theory and the Dependency Principle: An Institutionalist Critique of the Business Climate Concept," *Journal of Economic Issues*, 32 (1998), 116.

a privileged position, this privilege does not guarantee its success in any given policy battle, nor does it obviate the need to actively influence government decisions.

### ***Neo-Institutionalism and State Autonomy Theory: “Bringing The State Back In”***

Block’s conception of state managers as “historical subjects” was instrumental in initiating a new research paradigm. Taking Block’s discussion of the state’s relative autonomy to a new extreme. Neo-institutionalists sought to “bring the state back in” to political science. Adopting a Weberian conception of the state, Neo-institutionalists – or state autonomy theorists – linked state activity to its specifically political functions. The primary tasks of the state were to defend its territory from other states in the international system and to maintain control and order over the society it governed. Because, as Stephen Krasner argued, the state was characterized by a “high degree of insulation from specific societal pressures,” its actions could not be read off the interests or behaviours of competing social forces.<sup>50</sup>

By the early 1980s, state-centred theory had largely supplanted both pluralism and neo-Marxism, both of which were dismissed for having privileged society-centred explanations at the expense of the state. Whereas pluralism and Marxism had conceived of policy outcomes as reflecting pressures emanating from outside the state, whether interest group competition or class conflict, state-centred theorists argued that independent state managers, acting autonomously from social pressures, were the key agents in shaping policy outcomes. As two leading state-

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<sup>50</sup> Stephen D. Krasner, *Defending the National Interest: Raw Materials Investments and US Foreign Policy* (Princeton: Princeton University Press, 1978), 34, quoted in Theda Skocpol, “Bringing the State Back In: Strategies of Analysis in Current Research,” in Theda Skocpol, Peter Evans and Dietrich Rueschemeyer (eds.), *Bringing the State Back In* (New York and Cambridge: Cambridge University Press, 1985), 13.

centred theorists, Karen Orren and Steven Skowronek, put it, “institutions have an independent and formative influence on politics.”<sup>51</sup>

Perhaps the most influential state autonomy theorist was Theda Skocpol. In an article outlining what she considered the strengths and weaknesses of competing theoretical perspectives on the emergence of the New Deal in the United States in the 1930s, Skocpol elaborated on her conception of the state. Her criticisms of “instrumental” variants of Marxism are particularly relevant for this discussion. In Skocpol’s view, instrumental Marxists had failed, not only because, like theorists of other persuasions, they had neglected the independent structuring effect of state organizations themselves; but, more importantly, they had exaggerated big businessmen’s “class consciousness.” Importantly, Skocpol did not argue that businessmen did not play an important role in shaping the New Deal system; indeed, she readily conceded that their participation in the new regulatory agencies was “all-pervasive.” When it came to key components of the New Deal, like the National Recovery Administration, she admitted, “Capitalists, above all, those who ran the major corporations in each industry, were by all historical accounts able to get exactly what they wanted.” The problem, for Skocpol, however, was that the National Recovery Administration failed to bring about economic recovery. That is, in Skocpol’s view, instrumental theory was not validated to the extent that researchers could trace business’ pervasive influence over state policy; it was only validated to the extent that such policies were the product of a general, class-conscious strategy, capable of advancing “functional strategies for recovery and stabilization.” It was thus business’ inability to overcome their narrow, sectoral interests and thereby reinvigorate accumulation during the New Deal period that invalidated instrumental Marxist theory.

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<sup>51</sup> Karen Orren and Steven Skowronek, “Editor’s Preface,” *Studies in American Political Development* 1 (1986), vii.

This criticism is less compelling than Skocpol suggests. In effect, Skocpol here critiques only a straw-man version of the theory, which unjustly ascribes near-perfect strategic foresight to members of a unified business elite. But this is not the heart of the matter; power structure researchers do not claim that businesses always recognize their “long-term interests,” particularly if their long-term interests are defined as the capacity to advance policies that promote stable capital accumulation in all circumstances. They simply emphasize the disproportionate power that capital enjoys over state policy relative to other social groups. In fact, a good case can be made that Skocpol’s review essay offered strong evidence in support of the instrumental conception of the state, a point noted by several critics, including Patrick J. Akard and Paul Cammack.<sup>52</sup>

Another difficulty relates to the question of the degree of the state’s autonomy. For Skocpol, state autonomy was “not a fixed structural feature of any governmental system.” State autonomy could “come and go.”<sup>53</sup> Autonomous state action varied across both time and place and was most likely to occur in relatively rare crisis periods. Administrative capacities developed unevenly across countries, so “strong states” were better positioned to undertake autonomous action than their “weak” counterparts. Yet, such distinctions were blurred in Skocpol’s theoretical statements. As Cammack noted, it was unclear whether Skocpol subscribed to the position that states “can and sometimes do act autonomously,” or that states “always act autonomously.”<sup>54</sup> In any event, in their broad theoretical statements, state autonomy theorists clearly downplayed the direct power of business over policy formation.

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<sup>52</sup> Patrick J. Akard, “Bringing the Economy Back in (Again): Conceptions of the Capitalist State and their Relevance for Public Policy,” *Mid-American Review of Sociology*, 11 (1986): 75-100; Paul Cammack, “Bringing the State Back In?,” *British Journal of Political Science*, 19 (1989), 261-290.

<sup>53</sup> Skocpol, “Bringing the State Back In,” 14.

<sup>54</sup> Cammack, “Bringing the State Back In?,” 268-9.



Another branch of neo-institutionalism also deflected attention away from concerns of business power. Historical institutionalists emphasized less the agency of independent state actors, and instead focused on the way in which varying institutional structures shaped the “strategies of organized interests and their beliefs regarding the efficacy of different types of political action.”<sup>55</sup> Similarly, as Skocpol put it, “states may be viewed macroscopically as configurations of organization and action that influence the meanings and methods of politics for all groups and classes in society.”<sup>56</sup> From this perspective, researchers have sought to understand how different state structures have shaped the preferences and interests of business actors in different institutional settings. The key theoretical point is that business’ preferences cannot be ascribed to their economic position in society alone but vary according to historically specific patterns of economic development in different countries. For instance, Japanese business has pursued notably different strategies in relation to economic policy than has its counterpart in the United States, owing largely to the divergent paths that each country pursued towards industrialization.

Yet, although business is treated as an important political actor in this approach, business power is left undertheorized. Indeed, for historical institutionalists, preference – not power – is the central concept. For her part, Kathleen Thelen avoided “the language of ‘power’ in favor of identifying the interests and coalitions on which institutions are founded [because], unlike power, actors and their interests are more tractable empirically.”<sup>57</sup> The implications of such an approach are clear. As Pepper Culpepper has noted, a focus on preferences rather than power “leads

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<sup>55</sup> Ellen M. Immergut, “The Theoretical Core of the New Institutionalism,” *Politics & Society* 26 (1998), 21.

<sup>56</sup> Skocpol, “Bringing the State Back In,” 28.

<sup>57</sup> Kathleen Thelen, *How Institutions Evolve: The Political Economy of Skills in Germany, Britain, the United States, and Japan* (Cambridge: Cambridge University Press, 2004), 32-33, quoted in, Pepper D. Culpepper, “Capitalism, Institutions, and Power in the Study of Business,” in Orfeo Fioretos, Tulia G. Falleti and Adam Sheingate (eds.), *The Oxford Handbook of Historical Institutionalism* (Oxford: Oxford University Press, 2016), 456.

scholars to downplay what used to be the central question of political economists: does the commanding economic power of business in capitalism convert into an equally commanding role for capitalists in capitalist democracies?”<sup>58</sup> Similarly, Stan Luger has remarked that while state-centred theory was advanced to move beyond “society-centred” theories, historical institutionalism shares a commonality with traditional pluralist approaches: “each downplays the political influence of the large corporation and those with significant financial resources.”<sup>59</sup>

### ***Class-Based Power Structure Research***

In contrast to the theoretical perspectives discussed above, the central focus of class-based power structure research is “the organization of corporate power.”<sup>60</sup> Drawing on the insights of the neo-Marxist state theorist Ralph Miliband and power structure researcher G. William Domhoff, this tradition highlights the political power conferred upon that social class that owns and controls society’s “means of production,” namely industrial and financial capital. In a sense, power structure research combines the sociological elite theory pioneered by C. Wright Mills with Marxist political economy. Yet, whereas elite theorists saw power as residing in the hands of elite agents in command of society’s key institutions, the latter tradition treats power as “a fluid social process.” From this perspective, the corporate elite’s power base rests not in its control over institutions, but in its control over capital. Far from being able to make “unconstrained decisions,” elite agents’ freedom of manoeuvre is constrained by the socio-economic context in which they find themselves. To maintain their positions, the corporate elite must ensure a sufficient rate of profit or face the prospect of bankruptcy or the transfer of capital to more

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<sup>58</sup> Ibid, 456.

<sup>59</sup> Luger, *Corporate Power*, 31.

<sup>60</sup> Patrick J. Akard, “Corporate Mobilization and Political Power: The Transformation of U.S. Economic Policy in the 1970s,” *American Sociological Review* 57 (1992), 599.

profitable corporations. In addition, subordinate social groups exercise their own power in concrete political struggles that “limit and influence the decisions of institutional office holders.”<sup>61</sup>

Nevertheless, for theorists in this tradition, business interests command such tremendous advantages in the political system that any semblance of equal competition among contending groups is illusory. With their unparalleled economic resources, business interests can organize pressure campaigns with far greater effectiveness than any other group. They have far easier access to government officials in the executive, to whom they can supply much welcomed information and advice. Business interests can also speak convincingly as one voice through their trade associations, or, in the cases of the largest firms, to speak forcefully for themselves. Finally, business interests are better positioned than any other interest group to shape public opinion, what some critical theorists have termed “discursive power.”<sup>62</sup>

In addition to these advantages, Miliband highlighted business’ distinct advantages over other interests in terms of its relationship with policymakers inside the state. In Miliband’s view, civil servants were hardly the “neutral” executants of government policies that pluralist theory made them out to be, nor the independent policy experts that state autonomy theorists subsequently theorized. Instead, Miliband saw state servants as playing “an important part in the process of governmental decision-making,” and therefore constituting “a considerable force in the configuration of political power in their societies.”<sup>63</sup> For Miliband, the claim that state

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<sup>61</sup> Leo Panitch, “Elites, Classes, and Power in Canada,” in Michael S. Wittington and Glen Williams (eds.), *Canadian Politics in the 1990s* (Scarborough: Nelson Canada, 1990), 189.

<sup>62</sup> For example, see Levy and Egan, “Capital Contests”; and Mikler, *The Political Power of Global Corporations*.

<sup>63</sup> Ralph Miliband, *The State in Capitalist Society* (London: Weidenfeld & Nicolson, 1969), 119.

officials could be free from political bias was “absurd,” and he had little doubt as to their generally conservative (that is, pro-business) “ideological inclinations.”<sup>64</sup>

Miliband identified several reasons for the pro-business ideological inclinations of leading civil servants. For one, there was their “social provenance.” Top civil servants shared a common social background with their counterparts in business. They attended the same elite private schools and universities, they were members of the same exclusive social clubs and were members of the same (upper) social class.<sup>65</sup> Studies of the Canadian civil service, most notably John Porter’s *Vertical Mosaic*, lend credence to Miliband’s contention. For instance, Porter found that an ethnically homogenous “upper class” with extensive social, religious and familial ties dominated the country’s leading corporations, and therefore its economy, while Canada’s “avocational” political and bureaucratic elites in the state posed no substantive challenge to the upper class’s reigning value system.

Yet, more important than these shared social backgrounds for reinforcing civil servants’ pro-business outlook was “their ever-greater closeness to [the business] world.”<sup>66</sup> The state’s increasing intervention into economic life brought civil servants into ever closer contact with business officials, “not as antagonists or even as representatives of different and divergent interests, but as partners in service of a ‘national interest.’”<sup>67</sup> Miliband also described the near-constant interchange of personnel between the public and private sectors which characterized capitalist countries. These “technocrats,” who “belong[ed] exclusively neither to the world of government nor to the world of business” “belong[ed] and [were] part of both, and move[d]

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<sup>64</sup> Ibid, 120.

<sup>65</sup> Ibid, 123.

<sup>66</sup> Ibid, 124.

<sup>67</sup> Ibid, 125.

easily between them.”<sup>68</sup> The ideological inclinations and political biases of leading state personnel conferred upon business interests a political advantage that no other group enjoyed.

This interchange of personnel has come to be known as the “revolving door” phenomenon, and, as has been shown by several researchers, it provides a powerful mechanism by which business interests can coopt government officials to advance their private political aims. As John Mikler noted in his study of the political power of global corporations, in some cases such cooptation can take some rather extreme forms. In Australia, for instance, a group of officials from the country’s fossil fuel industry, who referred to themselves as the “greenhouse mafia,” wrote a series of Cabinet Submissions with the goal of limiting efforts to address climate change.<sup>69</sup> For some observers, this interchange lays the groundwork for “corrosive regulatory capture,” a process by which private interests render the state’s regulatory capacities “less robust” than either what is intended by statute or demanded by the public interest.<sup>70</sup>

Miliband’s supposedly “instrumentalist” account, in which he had allegedly reduced the state to a mere instrument in the hands of an omnipotent capitalist elite, drew a host of criticisms, most notably from Nicos Poulantzas, who wrote a series of polemical rejoinders to Miliband’s views in the *New Left Review*. Yet, while there were real differences in Miliband’s and Poulantzas’ theoretical perspectives, much of the criticism directed towards Miliband overlooked a great deal of his work. Part of the problem was that, in seeking to undertake a comprehensive rebuttal to pluralist theory, Miliband sought to draw attention to capital’s political advantages both inside the state as well as outside of it. It was for this reason that Miliband emphasized the

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<sup>68</sup> Ibid, 126.

<sup>69</sup> Mikler, *The Political Power of Global Corporations*, 37.

<sup>70</sup> Daniel Carpenter and David A. Moss, “Introduction,” in Daniel Carpenter and David A Moss (eds.), *Preventing Regulatory Capture: Special Interest Influence and How to Limit it* (Cambridge and New York: Cambridge University Press, 2014), 16-18.

social composition of the state elite, which, in the context of liberal democracies, could not be assumed, but had to be empirically demonstrated. Yet, these strong linkages between state and capital notwithstanding, it was clear to Miliband that the capitalist class did not constitute a “governing class” as had the aristocratic elite of the feudal era. For Miliband, state and class remained analytically separate categories.

Thus, the social composition of the state elite and its pro-business ideological biases were only part of capital’s political dominance. Indeed, a close reading of *The State and Capitalist Society* shows that, despite his critics, far from ignoring the state’s structural dependence on capital, Miliband put it at the centre of his analysis. As Miliband put it, “business enjoys a massive superiority *outside* the state system as well, in terms of the immensely stronger pressures which, as compared with labour or any other interest, it is able to exercise in pursuit of its purposes.”<sup>71</sup> One such form of pressure, he wrote,

which pluralist ‘group theorists’ tend to ignore, is more important and effective than any other, and business is uniquely placed to exercise it, without the need of organization, campaigns and lobbying. This is the pervasive and permanent pressure upon governments and the state generated by the private control of concentrated industrial, commercial and financial resources. The existence of this major area of independent economic power is a fact which no government, whatever its inclinations, can ignore in the determination of its policies, not only in regard to economic matters, but to most other matters as well.<sup>72</sup>

This “pervasive and permanent pressure” notwithstanding, it was still the case that capital could not merely rely on the state to pursue its policy objectives in the absence of more direct forms of political pressure on state officials. In part, this reflected the state’s dual purpose. For just as much as it must promote capital accumulation, the state must also legitimate the existing social order. In the context of liberal democracy, policymakers cannot ignore the demands and wishes of non-business interests if they are to maintain popular support and legitimacy. As

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<sup>71</sup> Miliband, *The State in Capitalist Society*, 146.

<sup>72</sup> *Ibid*, 147.

another power structure researcher, G. William Domhoff, put it in his characteristically colorful wording,

Given the tensions and uncertainties of a dynamic and volatile capitalist economic system, and the potentialities for social change in a democratic state system where elected legislatures can greatly influence the functioning of administrative agencies and businesses themselves, it is just a fairy tale to think that it does not take continuous efforts on the part of the corporate community to dominate the state structure.<sup>73</sup>

From this perspective, the state's dependence on capital accumulation is not a force that automatically shapes government policy outcomes. Instead, it is, as Jacob Hacker and Paul Pierson put it, "a signaling device,"<sup>74</sup> or, in Jeffery Isaac's terms, "an essential policy consideration." As Isaac explained it more fully,

it does not mean that the state is incapable of acting against the politically expressed preferences of capital. Nor does it mean that every policy pursued by the state is undertaken with an eye toward short-term economic prosperity. It simply, but crucially, means that successful capital accumulation is an essential policy consideration due to the state's dependence on economic prosperity for revenues and stability.<sup>75</sup>

As such, business' structural power is not a "uniform resource over time," but varies depending on economic, political, and cultural circumstances. For Luger, business' structural power is more potent during times of anemic economic growth, when both the general public and policymakers prioritize economic security over other policy issues. It is also enhanced, as Hacker and Pierson have argued, in contexts of greater capital mobility, as business is able to whipsaw governments competing against one another to secure capital investment.

From this perspective, several factors can constrain business power, even if public policy cannot be understood as the result of "open-ended interest group competition."<sup>76</sup> Evolving social

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<sup>73</sup> G. William Domhoff, "State Autonomy and the Privileged Position of Business: An Empirical Attack on a Theoretical Fantasy," *Military Sociology*, 14 (1989), 156.

<sup>74</sup> Hacker and Pierson, "Business Power and Social Policy," 282.

<sup>75</sup> Jeffrey Isaac, *Power and Marxist Theory: A Realist View* (Ithaca: Cornell University Press, 1987), 180, quoted in Luger, *Corporate Power*, 25.

<sup>76</sup> *Ibid*, 26.

norms like environmentalism, the mobilization of social movements asserting popular rights against business privileges, the election of social democratic and other politicians of the left to office all threaten to undermine business' power in relation to the state and other societal interest groups. Thus, from this perspective of structural dependence, Stan Luger argues, "it is important to analyze precisely how business takes advantage of its privileged position, and how the combination of the political behavior of business and its structural position shape public policy."<sup>77</sup>

One final difference between the approach taken here and other theoretical perspectives needs to be highlighted. That is, while pluralism and state autonomy theory begin from the assumption of the separation of state from society, class-based power structure researchers treat capitalist society as a "contradictory totality." In this view, far from standing above society, "the state is located within the basic economic contradictions and conflicts of capitalism."<sup>78</sup> In other words, because the state is not understood as either an independent entity in its own right, nor the "preserve of one class," power structure researchers treat the state as "*a field of class struggle itself*."<sup>79</sup> As such, there is a degree of openness and contingency in patterns of state action. If structural Marxists following Poulantzas theorized the state's relative autonomy, for power structure researchers the task is to study that autonomy in historically specific contexts.

To recapitulate, this dissertation draws on a class-based power structure research approach in order to analyze the government of Ontario's policies towards the metal mining industry over the course of the postwar period. While recognizing capital's "privileged position" in relation to the state, class-based power structure researchers emphasize the concrete inter- and

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<sup>77</sup> Ibid, 28.

<sup>78</sup> Ibid, 31.

<sup>79</sup> Panitch, "Elites, Classes, and Power in Canada," 196, emphasis in original.



intra-class struggles that shape state action in their explanations of policy development and change. Despite their superior resources and central position in capitalist political economies, business interests must mobilize politically to achieve their aims. As Patrick J. Akard has explained it, for power structure researchers, “there is nothing inherent in the structure of the state or in the wisdom of state officials that guarantees that the interests of capital will be served.”<sup>80</sup> From this perspective, precisely because any relationship between economic class and the state is a “historically contingent one,” the task of research becomes to analyze critically how business interests take advantage of their structural power and how changing socio-economic conditions affect patterns of state action.

## **Research Methods**

The research methods adopted in this dissertation are qualitative. The analysis is presented as a historical narrative, each chapter covering a separate policy area. Policy debates are presented in their historical context, and the efforts of competing actors to influence policy outcomes are highlighted in detail. To construct these narratives, the study relied upon primary research conducted at the Public Archives of Ontario. The aim was to analyze documents produced by the main participants in the policy debates, including industry representatives, civil servants, elected officials, and representatives of various social movements. Several records groups were consulted, including those of the Department of Mines, the Division of Mines within the Ministry of Natural Resources, the Ministry of Northern Development and Mines, as well as the correspondence files of several provincial premiers and the minister of labour. In addition, the databases of several major mass media publications, including the *Globe and Mail* and the

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<sup>80</sup> Akard, “Corporate Mobilization,” 599.

*Toronto Star* as well as industry journals like the *Northern Miner* and the *Canadian Mining Journal* were consulted. These primary sources were supplemented by a review of the literature on business political power as well as scholarly accounts of the Ontario mining industry's participation in various policy debates.

## **Chapter Outlines**

The rest of this dissertation is divided into six chapters. The next chapter examines the structure and economic history of the Ontario mining industry from the Second World War until the end of the 2002-2014 commodities boom. The main aim of this chapter is to contextualize the policy debates that follow. It traces the industry's significant economic concentration, and, in the case of the nickel industry, its market power; its power over the communities where it operates; and its longstanding dependence on the public sector as an outlet for its output. The chapter also examines the many "booms and busts" that have affected the industry and analyzes how trends in the global economy have influenced patterns of development in its various subsectors, including nickel, gold, uranium and iron ore. A final section of the chapter examines the industry's close-knit relationship with officials in the various iterations of the province's mining ministry. It suggests that far from acting as a neutral administrator of the province's mining laws and policies, the mining ministry has been effectively "captured" by the industry and serves as a bridgehead of industry influence within the state. Key in this regard has been the interchange between and the "closeness" of personnel in private industry and public service. While the industry has also often enjoyed good relations with other agencies in the provincial state, subsequent chapters will show that several of its most notable policy defeats have come at the hands of agencies less inclined to the industry's worldview.

Chapter 3 begins the examination of concrete policy developments, starting with the province's mining fiscal regime. It suggests that immediately following the Second World War, the industry leveraged its discursive and instrumental power to secure a raft of concessions that made it the province's most preferentially taxed industry. Discursively constructing mining as an activity of fundamental importance to the Canadian social fabric and taking advantage of its close relationship with sympathetic provincial politicians, the industry exercised an unchallenged hegemony over the province's fiscal policies for more than two decades. Not until the mid-1960s and the emergence of a new form of Canadian economic nationalism, a reinvigorated social democratic left and the publication of prominent economic analyses condemning the tax code's distortions of Canada's economic structure did the industry's hegemony wane. Yet, with the continued support of provincial politicians, the mining industry waged a successful campaign to defeat a Royal Commission-inspired federal tax reform program, while simultaneously overcoming a host of moderate reform proposals at the provincial level as well.

While Ontario politicians supported their industry counterparts in the tax reform debates of the late 1960s, by the mid-1970s, their relations soured, if only temporarily. With an amendment to the *Mining Tax Act* implemented within the Treasury, the province sought to promote the construction of domestic mineral processing facilities. Yet, as global economic conditions deteriorated and industry resistance intensified, the province backed down from its most ambitious mining policy proposal of the postwar period. This episode highlights the challenges governments face in constructing economic policies in the context of private control over investment. It also marks the defeat of the mining tax reform agenda. Since the late 1970s, a string of successive provincial governments of different partisan and ideological affiliations have

enacted a host of mining tax concessions, lessening the industry's fiscal burden and reinforcing its status as the province's most favourably-taxed industry.

Chapters 4 and 5 shift the focus to examples of what David Vogel has referred to as “social regulation,” namely legislation to control industrial air pollution and protect workers’ occupational health and safety. Focusing on the province’s policies towards sulphur dioxide emissions from smelters, Chapter 4 shows that in the early 1900s provincial policymakers collaborated with the emergent nickel industry to construct a legislative framework that clearly favoured the mining industry at the expense of other social and economic interests. Ontario law conferred special status upon metal ore smelters, the operations of which were protected from the threat of injunctive relief by the *Damage by Fumes Arbitration Act*. Steady protest from the Sudbury region’s agricultural community through the 1940s and 1950s had minimal impact, as the province’s Progressive Conservative government prioritized the interests of the rapidly-expanding nickel industry over farming. The post-1960s emergence of the modern environmental movement transformed the political significance of smelter pollution, and the province responded with its first legal controls on sulphur dioxide emissions. Yet, these controls were hardly severe, and conformed to the industry’s pre-existing modernization plans. Moreover, when economic difficulties prevented the nickel companies from completing their programs on schedule, the government amended its policies in deference to the industry’s financial straits. The early 1980s emergence of “acid rain” as the most salient issue in environmental politics in a context of weak nickel markets put policymakers in a bind. Several vocal constituencies mobilized for stringent action, but it was clear that the nickel companies were hardly able to make the major capital investments required to mitigate emissions in the short term. Ultimately, policymakers’ desire to meet the electorates’ growing concerns about the environment without

undermining the business climate was reflected in the Peterson government's 1985 Countdown Acid Rain program, which gave polluters a decade to meet new emissions requirements and to do so largely on their own terms. At no point did Ontario's policies towards smelter pollution seriously threaten the industry's priorities to modernize its operations only to enhance productivity.

Chapter 5 analyzes the province's policies towards occupational health and safety (OHS) in the mining industry. It shows how the industry consolidated its early legislative hegemony by maintaining close relations with OHS regulators in the Mines Engineering Department and by controlling public perceptions of OHS issues. Mining safety law reflected industry-crafted practices, prioritized enhanced labour productivity and was effectively silent on occupational health. The emergence of the union movement in the early postwar period did little to alter the industry's power over legislation, as policymakers continually rebuffed the labour movement's calls for greater union participation in managing OHS issues.

Yet, the industry's hegemony began to wane in the late 1960s, as in a context of a wider questioning of traditional social values and growing discontent with work, the labour movement came to prioritize OHS as its leading policy priority. Ontario's mineworker unions played a pivotal role in this new OHS movement. Their efforts were enhanced by the New Democratic Party's renewed strength in the provincial legislature in the 1970s. The 1976 release of the *Report of the Royal Commission on the Health and Safety of Workers in Mines* laid the groundwork for the overhaul of the province's OHS legislation. Yet, despite the provincial government's rhetorical commitment to enhancing workers' OHS, its policy priorities remained closely aligned with industry. This was best reflected in the provincial government's attitudes towards the right to refuse unsafe work and joint health and safety committees as well as its slow

adoption of regulations limiting workers' exposure to toxic substances in the mining workplace. The Ministry of Labour's adoption of and subsequent commitment to the "Internal Responsibility System" offers further reason to question the depth of the late-1970s OHS reforms.

Finally, Chapter 6 examines Ontario's *Mining Act*, a law that governs several different stages of the "mining sequence," including mineral exploration, development, and mine closure and rehabilitation. It shows that in administering a "free entry" system of mineral exploration, the province has conferred a unique status upon the mining industry, treating mine development as the optimal use of public land. The *Mining Act* is distinguished by its notable lack of public discretionary authority: Once a licensed prospector has registered a mining claim, there is little the provincial government can do to control development in the public interest.

Taking advantage of its superior resources and its close relationship with provincial officials, the mining industry has dominated public policy debates concerning the *Mining Act*. Ironically, large mining companies were the driving force behind amendments passed in 1989 requiring mine operators to submit detailed closure plans and realizable financial assurances prior to mine development. Their subsequent efforts to loosen these rules during the Mike Harris government's "Common Sense Revolution" were largely successful, though the Ministry of Finance resisted the industry's calls for some forms of financial self-assurance. Finally, the industry secured most of its priorities during the heated debates about the rights of both Aboriginal peoples and rural property owners in relation to mineral exploration and development in the early 2000s. Thus, despite the provincial government's marketing its commitment to "modernizing" its mining laws, the industry retained many of its long-standing privileges in relation to the use of public lands.

## **Chapter 2: The Structure of the Ontario Mining Industry**

### **Introduction**

This chapter examines the structure and economic history of the Ontario mining industry and its major subsectors – nickel, gold, uranium, and iron ore – each of which have tracked different patterns of development since the Second World War. The chapter analyzes these varying trajectories, focusing on the base metal sector's rapid postwar growth compared to the gold sector's rapid decline. It discusses the industry's significant corporate concentration, and in the case of the nickel industry, its market power and remarkable profitability. The chapter also examines the industry's steady reliance on the state sector as an outlet for its production. Finally, the chapter highlights the profound transformations the industry has experienced since the mid-1970s, when, owing to deep structural changes in the global economy, demand for base metals declined and international competition intensified, while investor interest in gold escalated. While base metal mining companies were among Canada's most profitable corporations in the opening decades of the postwar period, by the mid-1970s their performances began to stagnate, their fortunes only partially revived by the early 2000s commodities boom. Since the 1980s, gold has come to play the largest role among Ontario's mineral products.

The second section of this chapter highlights the social backgrounds and ideological dispositions of the mining ministry's personnel. In this respect, the concept that best describes the industry's relationship with this ministry is regulatory capture. This explains why, as subsequent chapters will show, the industry has mobilized to ensure that as much of the province's regulatory ambit remains under the mining ministry's purview. The industry's

relationship with other parts of the state system, while not necessarily acrimonious, has not been nearly as secure.

## Nickel

For decades, a single corporation – the International Nickel Company of Canada Ltd. (Inco) – dominated the global nickel industry. As *Forbes* put it in 1967, “Of all industrial empires forged by J.P. Morgan at the turn of the century, there is only one that still remains unchallenged master of an unregulated industry – the International Nickel Co. of Canada, Ltd.”<sup>1</sup> After merging with its lone rival in the Sudbury area – the Mond Nickel Company – in 1929, Inco controlled 90 percent of the “free world” nickel market, a position it maintained into the 1950s.<sup>2</sup> According to a 1936 study for the Council on Foreign Relations, the company’s “monopoly power” was “firmly based on property holdings in the Sudbury district of Canada, where nature has concentrated most of the readily available nickel in the world.”<sup>3</sup> Sudbury’s nickel deposits were remarkably large. After four decades of continual production expansion, exploratory drilling doubled Inco’s proven nickel reserves in the Sudbury area from 205 million short tons in 1933 to 414 million short tons in 1974. They were also rich in a variety of by-products, allowing Inco to offset short-term downturns in the nickel market. Inco produced fifteen separate minerals from its Sudbury area mines. For every two pounds of nickel, Inco also raised a pound of copper and a variety of precious and platinum group metals. By contrast, the world’s second largest nickel

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<sup>1</sup> “International Nickel,” *Forbes*, December 1, 1967, 22.

<sup>2</sup> An Ontario Ministry of Natural Resources study indicated that Inco and Mond merged in recognition of the fact that the two companies held in common “an extremely large deposit of nickel, the Frood Mine and Frood Extension. It was believed that a great savings could be made if the deposit was worked by one firm instead of two.” S. Charles Maurice and Philip J. Mizzi, *An Analysis of Market Structure: The Nickel Industry* (Toronto: Ontario Ministry of Natural Resources, 1985), 64.

<sup>3</sup> Eugene Staley, *Raw Materials in Peace and War* (New York: Council on Foreign Relations, 1937), 276.



deposits in New Caledonia produced no by-products.<sup>4</sup> Secure in its monopoly position, Inco reaped enormous profits. For instance, in the ten-year period 1958-67, *Forbes* reported, the company earned profits of 33.5 percent on the sales dollar against a metal industry average of just 13.8 percent.<sup>5</sup>

In many respects, the history of the postwar nickel industry is the history of the gradual disintegration of Inco's monopoly power. From the 1950s onward, several new entrants emerged to capture larger portions of Inco's market share. Yet, the global nickel industry remained highly oligopolistic in structure into the late 1970s. As late as 1976 the three largest nickel producers – Inco, Falconbridge Nickel, and Société Métallurgique Le Nickel – controlled 60 percent of the industry's total capacity, making nickel the most highly concentrated of any major natural resource industry.<sup>6</sup> The industry was also characterized by a high degree of vertical integration. In addition to operating mines, both Inco and Falconbridge conducted mineral exploration, operated smelters and refineries and marketed their output. Inco's metallurgical operations extended across the globe: The company owned mines in Canada, Indonesia and Guatemala; nickel smelters in Copper Cliff, Ontario and Thompson, Manitoba; refineries in Port Colborne, Ontario, Thompson, Manitoba and Clydach, Wales; and nickel alloy rolling mills in Huntington, West Virginia and Hereford, England.

The development of Ontario's nickel industry in the period after the Second World War was inextricably linked to the emergence and consolidation of the United States as the world's leading industrial and military power. More than any other factor, the industry's rapid growth in

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<sup>4</sup> Maurice and Mizzi, *An Analysis of Market Structure*, 67.

<sup>5</sup> "International Nickel," *Forbes*, 1 December 1967, 22.

<sup>6</sup> Joseph Hilmy, "Old Nick" – *An Anatomy of the Nickel Industry and its Future* (Washington, DC: World Bank, 1979), 25. <http://documents.worldbank.org/curated/en/473541467989504191/Old-Nick-an-anatomy-of-the-nickel-industry-and-its-future>.

the 1950s and 1960s was driven by a series of conscious decisions by US government officials, who, in the absence of large-scale domestic deposits, sought to ensure a reliable supply of nickel, a vital raw material in several emerging high-technology and military industries. Because of its unique strength and durability, and its capacity to withstand extreme temperatures and corrosion, there were no substitutes for nickel in a variety of technologies central to the US military's post-Korea rearmament strategy, including the construction of jet engines, gas turbines and atomic energy projects.<sup>7</sup> In 1954, the US Department of Defense reported that nickel "comes closest to being a true 'war metal.' It deserves first priority among materials receiving conservation attention. Since the start of the Korean War, nickel has remained the world's most critical material; this condition is likely to continue for some time."<sup>8</sup> From the perspective of US policymakers, then, the "key problem of postwar policy was how to get more nickel."<sup>9</sup>

To that end, in 1950, the US Congress passed the Defense Production Act, authorizing the US government to enter long-term contracts with foreign suppliers for the purposes of delivering raw materials to the national stockpile. A series of contracts signed between 1950-1957 restructured the industry, slowly eroding, though not eliminating, Inco's market power. Several firms received contracts, including the Canadian firm Sheritt Gordon Mines, the American firms Hanna Coal & Ore Corporation and Freeport Sulphur Company, and the US government-owned Nicaro facility in Cuba. Yet, it was Falconbridge Nickel Limited, a company originally incorporated in 1928, that was the nickel expansion program's greatest beneficiary. Indeed, Falconbridge's 1951 contract with the General Services Administration (GSA) transformed the company from a relatively minor actor focused almost exclusively on European

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<sup>7</sup> Percy Bidwell, *Raw Materials: A Study of American Policy* (New York: Council on Foreign Relations, 1958), 134.

<sup>8</sup> Ibid, 131-132.

<sup>9</sup> Ibid, 132.

markets into a major force. Under the contract, Falconbridge received a \$6 million advance to deliver 50 million pounds of nickel at above-market prices. In 1953, the company received a more lucrative contract: With incentives, the GSA purchased 100 million pounds of nickel at 40 cents higher than the market price, with an option to deliver an additional 50 million pounds before 1962.<sup>10</sup> According to a 1977 Ontario Ministry of Natural Resources report on the nickel industry,

The stockpile contracts enabled Falconbridge to build a major mining and refining complex and launched the Company as a significant primary nickel producer supplier to the USA. Over a period of 10 years, Falconbridge cathode also became known to major consumers through the release from the US [General Services Administration] stockpile delivered for defense production.<sup>11</sup>

The stockpile contracts served other purposes. The US government had long been wary of its reliance on a single supplier of such a crucial raw material. Yet, while Inco was controlled by US capital, the company's incorporation in Canada immunized it from American antitrust proceedings and other forms of government action. In fact, after a civil antitrust complaint was filed against the company in 1946, the Ontario legislature enacted the *Business Records Protection Act*, "making it a criminal offense to turn over the business records of Ontario firms in response to any foreign legislative or judicial authority."<sup>12</sup> In 1948, the antitrust complaint was settled with a consent decree of only limited impact, as the Ontario law had effectively prevented normal discovery proceedings under the Antitrust Act. Thus, in stimulating the development of new sources of supply, the stockpile contracts accomplished what legal action could not, lessening US dependence on Inco.

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<sup>10</sup> Ibid, Table 17, 145.

<sup>11</sup> Thomas Patrick Mohide, C.L. Warden, and J. David Mason, *Towards a Nickel Policy for the Province of Ontario* (Toronto: Ministry of Natural Resources, 1977), 55.

<sup>12</sup> US Senate Committee on Banking and Currency, *Review of Voluntary Agreements Program under the Defense Production Act: The Nickel Industry* (Washington: United States Government Printing Office, 1957), 13.

This is not to say that Inco did not benefit from the stockpiling program. In fact, Inco received five contracts from the GSA under the nickel expansion program. The largest came in 1953, when the GSA contracted for 120 million pounds of nickel. To incentivize the construction of new processing facilities – the Iron Ore Recovery Plant – to allow for the production of relatively low-grade ore bodies, the GSA initially offered Inco a premium price of 89 cents per pound, which, with escalation clauses, eventually increased to 97 cents.<sup>13</sup> In total, Inco's contracts with the GSA were valued at \$90 million. On the strength of this cash injection, Inco not only constructed new processing facilities and expanded its Sudbury mines and mills, it also undertook its first major development outside Ontario, eventually brining new nickel deposits on stream in northern Manitoba in the early 1960s.

Perhaps not surprisingly, the two major Ontario nickel firms earned tremendous profits in the mid-1950s, with some business analysts referring to nickel as “the happy metal.”<sup>14</sup> Inco reported record profits in the first three quarters of 1955, only to reach a new high the following year. For its part, Falconbridge broke its profit record in 1953 and again in 1954.<sup>15</sup>

Still, the industry did not simply rely on the US government to meet its growth objectives. For its part, Inco aggressively created new markets, dedicating significant resources to product research and development in efforts to expand civilian nickel consumption. In fact, as M.W. Bucovetsky noted in his study of the taxation of mineral extraction for the Royal Commission on Taxation, Inco “organize[d] its investment policy in such a way that new

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<sup>13</sup> Bidwell, *Raw Materials*, 153-4.

<sup>14</sup> Wellington Jeffers, “Finance at Large,” *Globe and Mail*, 25 March 1954.

<sup>15</sup> “New Financing Arranged: Falconbridge Nickel Reports Record Year,” *Globe and Mail*, 15 April 1954; “Highest in History: Falconbridge Profit Equals \$1.24 Per Share,” *Globe and Mail*, 14 April 1955; “Best in History: Inco 9-Month Profit Equals \$4.53 a Share,” *Globe and Mail*, 15 November 1955; “Inco Reports Record Profit for 9 Months,” *Globe and Mail*, 20 November 1956.

productive facilities [were] available at the right time – just sufficiently in advance of market requirements to maximize its long-run profit perspective.”<sup>16</sup>

Despite the emergence of new entrants, Inco retained its market power, and thus its ability to control prices, into the 1960s. As a result, unlike most other mineral commodities, the price of nickel remained remarkably stable, rarely undergoing decline. As the American think tank Resources for the Future put it in its 1963 volume *Resources in America's Future*, “The fact that the quoted price of nickel dropped in the spring of 1962 was a major event in the industry. Apart from duty changes, the price had not declined in over thirty years, probably a record for a major resource material.”<sup>17</sup> In a 1984 Ontario Ministry of Natural Resources study, Texas A&M University economists S. Charles Maurice and Philip J. Mizzi explained how Inco managed its “producer price.” After estimating its production costs, the company added a markup for exploration, research and development “and to provide for an acceptable return.” The price bore little relationship to normal supply and demand factors as “it generally remained unchanged during periods of shortage or surplus.” Rather than lowering or raising prices, Inco shifted production patterns. In periods of high demand, Inco responded by increasing its rate of production; in periods of oversupply, Inco cut production and built inventories.<sup>18</sup> In this way, Inco shielded itself from the cyclical fluctuations – the booms and busts – that marred other metal mining firms, even if its workforce was not so fortunate. During times of weak demand, the company laid off much of its workforce.

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<sup>16</sup> M.W. Bucovetsky, *Studies of the Royal Commission on Taxation. Number 8 The Taxation of Mineral Extraction* (Ottawa: Queen's Printer, 1964), 36.

<sup>17</sup> Hans H. Landsberg, Leonard L. Fischman and Joseph L. Fisher, *Resources in America's Future: Patterns of Requirements and Availabilities, 1960-2000* (Baltimore: Johns Hopkins Press, 1963), 444, fn. 14.

<sup>18</sup> Maurice and Mizzi, *An Analysis of Market Structure*, 74-75.

In setting prices, Inco faced two constraints: preventing new entrants and the development of nickel substitutes.<sup>19</sup> Yet, as the company depleted its highest-grade ore reserves, forcing it to mine at increasing depths, mining costs rose considerably. In response, Inco raised prices so that, in real terms, the price of nickel doubled in the twenty-year period 1948-1967.<sup>20</sup> Higher prices, not to mention Inco's remarkable profitability, gradually attracted new entrants. As demand continued to outstrip supply into 1960s, several companies were organized to find and develop new nickel deposits, most notably in Western Australia.<sup>21</sup>

Labour militancy further hampered the company's strategies. Two lengthy strikes – one lasting three months in 1966 and another lasting four months in 1969 – paralyzed the company's operations as US nickel consumption, fuelled by rapid industrial expansion and the invasion of Vietnam, drove ahead at record-breaking levels.<sup>22</sup> When Falconbridge workers also struck in 1969, the nickel market was thrown into chaos. As demand soared, prices on the open market broke new highs.<sup>23</sup> While Inco's producer's price was \$1.03 a pound, during the strike consumers in steel and other heavy industries paid as much as \$7 per pound on the open market.<sup>24</sup>

The strike-induced shortages and higher prices triggered a global nickel rush. High prices, combined with advances in nickel refining, steelmaking and transportation technologies

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<sup>19</sup> Because, in general, the amount of nickel used in end products was minimal compared to total costs, nickel consumption was not greatly sensitive to price. In that sense, the threat of substitution was mitigated.

<sup>20</sup> Benson Varon, *Review of the World Nickel Situation* (International Bank for Reconstruction and Development: 1971), Table VI.

<sup>21</sup> Maurice and Mizzi, *An Analysis of Market Structure*, 77.

<sup>22</sup> The 1966 strike involved both a 25-day illegal "wildcat," sparked when a shift boss penalized a group of workers for opening their lunch pails to eat sandwiches at the start of their shift, and a legal strike from August into September. See "Wildcat strike at Inco plant," *Globe and Mail*, 15 July 1966; "Men back after pact at Inco," *Globe and Mail*, 13 September 1966.

<sup>23</sup> The open market was comprised of both primary nickel – nickel that had not been previously consumed by industry – and secondary nickel – nickel derived from scrap. Primary nickel on the open market included the excess supplies sold by the Soviet Union and other Eastern Bloc countries, smaller "Free World" mining firms and merchants who resold their stock. Varon, *Review of the World Nickel Situation*, 4.

<sup>24</sup> An internal World Bank study referred to the rise in open market prices as "astronomical." See *Ibid*, 8.

enabled the profitable development of alternative ore bodies, called “laterites,” found mostly in the world’s tropical regions. In contrast to the sulphide ore bodies at Sudbury, which were generally discovered deep in the earth’s crust and required complex and expensive underground mining methods, laterites were generally found in surface deposits and therefore amenable to relatively cheap strip-mining methods. Meanwhile, with advances in steelmaking technologies, ferronickel, a low-grade nickel product derived from laterites, could be profitably used to make stainless steel. Although laterites were comparatively energy-intensive and did not allow for the extraction of metallic by-products, their development further eroded Inco’s market power. By the early 1970s, Inco’s total capitalist world market share had declined from 75 to 54 percent, and with several projects yet to come on stream, the company could anticipate greater losses.<sup>25</sup>

After the 1969 strike, Inco raised its producer price by 25 cents to \$1.28, the single greatest increase in the industry’s history. Yet, workers’ wage gains were not the main reason for doing so. Instead, Inco sought to raise funds to cover the increasing construction and capital costs of its massive expansion program, described by *Forbes* as “the greatest single expansion program in the history of the Free World’s mining industry.”<sup>26</sup> In the view of several industry analysts in the mid-1960s, further nickel consumption growth had been slowed only by supply limitations. Convinced that the postwar era’s long-term growth trends would continue indefinitely, Inco sought to add an additional 150 million pounds of nickel capacity to its operations. The company invested \$1.1 billion in plant and equipment between 1966-1972, opening eight new mines – five in Ontario and three in Manitoba – to supplement its ten already

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<sup>25</sup> W. Carter and Fred Goff, “Strategic Raw Materials: Nickel Imperialism,” *NACLA Newsletter* 4 (1971), 6.

<sup>26</sup> “International Nickel,” *Forbes*, 1 December 1967, 23. On increasing capital costs, see Varon, *Review of the World Nickel Situation*, 9.

in operation. Falconbridge made similar efforts, developing two new mines in the Sudbury area, and opening a \$195 million mining and metallurgical complex in the Dominican Republic.

Meanwhile, Inco also turned its sights overseas. As Inco Chairman Henry Wingate told *Forbes* in 1967, “The biggest potential sources of nickel in the Free World outside of Canada are New Caledonia, and we’re *there*; Guatemala, and we’re *there*; and Indonesia, and I think we’ll be there.”<sup>27</sup> Ultimately, Inco was there too. In 1970, the company purchased a 25,000 square mile concession – an area equivalent to three percent of the country’s total land mass – from Suharto’s government.<sup>28</sup> At the time, some critical observers attributed Inco’s overseas expansion to the much lower wage scales paid to workers in the “Third World” as compared to Sudbury’s highly paid workforce. Yet, considering the highly capital-intensive nature of mining operations, wage savings were not likely Inco’s greatest motivator. Instead, the company’s desire to maintain market share, retain its ability to control prices and thereby manage risk appeared more important.<sup>29</sup>

Ironically, at the moment the new nickel projects came on stream, demand subsided. After 1975, annual world consumption growth fell to about two percent, compared to its postwar average closer to six percent. Severe nickel gluts hampered corporate profits in the late 1970s, triggering massive layoffs and, ultimately, a wave of industrial restructuring. Inco’s 1977 decision to eliminate 2,800 jobs in the Sudbury area sparked considerable criticism, forcing the Ontario government to strike a select committee to investigate the decision. However, the government rejected the committee’s recommendation to offer Inco an interest-free loan to finance excess production, and the layoffs went ahead as scheduled. As the number of nickel

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<sup>27</sup> “International Nickel,” *Forbes*, December 1, 1967, 23, emphasis in original.

<sup>28</sup> Carter and Goff, “Strategic Raw Materials,” 8, fn. 14.

<sup>29</sup> Steven Langdon, “Inco debate keeping alive ‘economic myths’,” *Globe and Mail*, 29 October 1977.



producers grew, Inco finally lost its ability to control prices in 1979. Thereafter, the price of nickel traded on the London Metal Exchange, which reflected supply and demand conditions, replaced Inco's producer price.

The recession that gripped the North American economy in the early 1980s added further stress to the nickel and other base metals industries. In 1984, *Business Week* ran an article foretelling the "death of mining," as the North American industry appeared to be on the verge of a terminal crisis. In the western United States, where copper mining had long been a pillar of the economy, mining employment collapsed from 108,000 in 1981 to just 25,000 in 1986.<sup>30</sup> The industry's mainstays – Amax, Anaconda, ASARCO and Kennecott – closed their mines and shuttered their smelters. The ten largest North American mining companies lost \$1.8 billion between 1982 and the first nine months of 1984.<sup>31</sup> Meanwhile, after having earned profits in every year since the Great Depression, Inco suffered 13 consecutive quarters of operating deficits, its total losses exceeding \$1 billion.<sup>32</sup>

In this context, the industry sought to restructure its operations to cut costs and enhance labour productivity, which had lagged through the 1970s. Research and development gains bore fruit. In 1980, Inco raised 20 million pounds of nickel from Sudbury with a workforce of 14,900. By 1984, it raised the same amount with a workforce two-thirds that size. Meanwhile, "bulk mining methods" – which involved planting explosives at far greater intervals than traditional underground mining methods and removing the collapsed ore by remote-controlled scoop trams – accounted for 63 per cent of Sudbury's mining operations, compared to just 33 per cent in

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<sup>30</sup> Michael Malone, "The Collapse of Western Metal Mining: An Historical Epitaph," *Pacific Historical Review* 55 (1986), 462.

<sup>31</sup> "Historical – The Death of Mining [in America] (Business Week December 17, 1984)," *Republic of Mining*, posted June 22, 2011, <https://republicofmining.com/2011/06/22/historical-%E2%80%93-the-death-of-mining-in-america-business-week-%E2%80%93-december-17-1984/>, (accessed 16 September 2019).

<sup>32</sup> Lawrence Welsh, "Inco reports 13<sup>th</sup> quarterly loss," *Globe and Mail*, 19 October 1984.

1980. In all, the improvements raised the Sudbury operation's productivity from 154 pounds of nickel per "manshift" in 1982, to 208 pounds in 1984, with further gains anticipated.<sup>33</sup> The mining workforce itself was changed. After Inco initiated a voluntary early retirement program and hiring freeze in 1981, the total size of its workforce shrank from 34,000 to 22,200. By 1984, no worker had less than 9.5 years of seniority, and the average Inco worker was 44 years old. Inco launched extensive retraining programs, reducing the number of job classifications from 26 to six, increasing worker versatility and productivity.<sup>34</sup> Alongside its counterparts Falconbridge and Noranda, Inco introduced a host of information technologies to monitor operations. As the *Globe and Mail* reported in 1989, in a period of five years, Inco had developed IT applications for ore body mine planning, engineering design, geological analysis, process control, safety monitoring, maintenance systems and energy management, saving the company millions in expenditures.<sup>35</sup> There were changes above ground, too. The company closed its least efficient nickel refinery, the Port Colborne plant, consolidating operations at Copper Cliff and Thompson, Manitoba.<sup>36</sup> White collar workers were also affected. Falconbridge slashed its Toronto head office from three floors to one, and as *Business Week* noted, even company Chairman William James had to share a secretary.<sup>37</sup>

The industry's downfall had several causes. Overseas competition and excess capacity figured importantly among them. Despite rock-bottom metals prices, emerging producers in the Global South continued to expand their output in efforts to maintain employment and earn foreign exchange to repay their heavy international debt loads.<sup>38</sup> Equally important, however,

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<sup>33</sup> Lawrence Welsh, "Troubled Inco inches toward profit," *Globe and Mail*, 3 December 1984.

<sup>34</sup> Bud Jorgensen, "Research, work incentives paying off at Inco," *Globe and Mail*, 5 August 1985.

<sup>35</sup> Jim Hayward, "Forward-looking mining giants taking technology underground," *Globe and Mail*, 13 March 1989.

<sup>36</sup> *Ibid.*

<sup>37</sup> "Historical – The Death of Mining".

<sup>38</sup> Robert D. Cairns, "A Reconsideration of Ontario Nickel Policy," *Canadian Public Policy* 7 (1981), 527; Malone, "The Collapse of Western Metal Mining," 462.

were deep structural changes in the global economy. Mineral economist John Tilton highlighted two factors that contributed to the slowdown in primary metals consumption after the mid-1970s. First, economic growth rates in Organization for Economic Co-operation and Development countries shrank considerably. Whereas growth rates in these countries averaged 5 percent over the period 1960-1973, they dropped to just 2.4 percent over the years 1973-1985. Second, alongside declining economic growth rates, there was also a decline in the intensity of metals use in these countries, an index measured by the ton of a given metal consumed per billion dollars of real Gross Domestic Product (GDP). The precise reason for the decline in the intensity of metals use remains subject to debate. Among the plausible explanations, some analysts pointed to the increasing use of metals substitutes like plastics and ceramics. Others suggested that resource-saving technologies allowed for high-quality products to be manufactured using less material than in the past. Still others suggested the decline in metals use intensity reflected the rise of the tertiary sector as the primary engine of economic growth in advanced economies. Yet, whatever the cause, the fact of declining metals consumption was undeniable, and the trend was particularly pronounced for nickel: Whereas nickel's intensity of use grew by 1.5 percent over the period 1960-1973, it declined by almost two percent in the period 1973-1985.<sup>39</sup> In fact, apart from a brief upturn at the end of the 1980s, the slowdown that began in the early 1970s persisted. For three decades, base metal mining industry profits languished and were considerably lower than world market averages.<sup>40</sup>

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<sup>39</sup> John E. Tilton, "Changing Patterns of Mineral Trade," in L. Moira Jackson and Peter R. Richardson (eds.), *Marketing of Nonferrous Metals: Proceedings of the Nineteenth CRS Policy Discussion Seminar, November 21-23, 1988, Kingston, Ontario* (Kingston: Centre for Resource Studies, Queen's University, 1989), 15-25.

<sup>40</sup> David Humphreys, "Corporate Strategies in the Global Mining Industry," in Elizabeth Bastida, Thomas Wälde and Janeth Warden-Fernández (eds.), *International and Comparative Mineral Law and Policy: Trends and Prospects* (The Hague: Kluwer Law International, 2005), 454.

By the early 2000s, however, there were growing signs that the industry's long period of stagnation was coming to an end. Ironically, the very market conditions that for so long had beset the industry ultimately gave rise to its dramatic turnaround. With weak prices overhanging base metal markets through the 1980s and 1990s, investment in exploration and development dried up. When demand rose, producers chose to rehabilitate existing idle capacity, rather than sink the large costs in new projects. The disintegration of the former Soviet Union in 1991 put a further damper on new investment, as Russia's integration into the capitalist system released even more output into the global economy. Yet, gradually, supply and demand began to fall out of balance, and prices finally began to tick upward.

Meanwhile, metal markets were hit by an exogenous shock: China's rapid emergence as an industrial power and the massive amount of materials it needed to fuel its spectacular growth. From the early 2000s, demand growth for metals was driven almost entirely by China. The statistical figures are remarkable. From 2001-02 to 2011-12, Chinese metal consumption expanded by 329.2 percent. In the rest of the world – with the exception of India – consumption grew by just 3.2 percent. In fact, outside of China, nickel and copper consumption *declined* over this period.<sup>41</sup> In all, China's share of global metal consumption more than tripled from 13 percent in 2000 to just under half by 2014.

The result was a commodities boom of unparalleled magnitude and duration. As the World Bank has shown, the real US dollar price of commodities rose by some 130 percent between its cyclical low in 1999 and its 2008 peak. By contrast, no other boom had seen price

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<sup>41</sup> International Monetary Fund, "Commodity Special Feature," in *World Economic Outlook, October 2015* (International Monetary Fund, 2015), 43, <https://www.imf.org/external/np/res/commmod/pdf/WEOSpecialOCT15.pdf>.

risers higher than 60 percent.<sup>42</sup> Nickel prices shattered record highs. At its peak in May 2007, nickel was trading for \$52,161 per metric ton on the London Metal Exchange, more than thirteen-times higher than its October 1998 low of \$3,872.<sup>43</sup>

The soaring prices generated enormous new investment in mining projects around the world. At the same time, the international metals trading network was transformed. In 2002, the bulk of the world's metals were exported from Canada and Russia to the United States or from Australia to Japan, South Korea and China. However, by 2014, Australian, Brazilian and Chilean exports to China alone amounted to almost half of the global total.<sup>44</sup> Meanwhile, nickel production in the Philippines and Indonesia exploded, their output far surpassing Canada's record production levels of the 1970s.

Still, as a stable jurisdiction with strong geological potential, Ontario remained an attractive target for investors. For instance, in 2008, mining firms spent a record \$3.3 billion on exploration and deposit appraisals in Canada, including almost \$800 million in Ontario. Meanwhile, there were a record 308,000 active mining claims registered in the province, nearly double the amount from eight years prior.<sup>45</sup> In 2006, two of the province's leading firms, Inco and Falconbridge, were taken over by multinationals Vale and Xstrata respectively. Yet, by 2014, the boom had finally reached its end. After overseeing a \$580 billion stimulus package in 2009 and 2010 that focused heavily on metal-intensive infrastructure spending, Chinese

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<sup>42</sup> The World Bank, "The Commodity Boom: Longer-Term Prospects," in *Global Economic Prospects 2009: Commodities at the Crossroads* (Washington, DC: The World Bank, 2009), 55, <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1322593305595/8287139-1327608129931/GEP09Chapter2.pdf>.

<sup>43</sup> Peter H. Kuck, "Nickel," in *US Geological Survey Minerals Yearbook – 2007* (Reston, VA: US Geological Survey, 2008), 51.4, <https://s3-us-west-2.amazonaws.com/prd-wret/assets/palladium/production/mineral-pubs/nickel/myb1-2007-nicke.pdf>.

<sup>44</sup> International Monetary Fund, "Commodity Special Feature," 44.

<sup>45</sup> Canadian Intergovernmental Working Group on the Mineral Industry, *Overview of Trends in Canadian Mineral Exploration, 2007*, (Ottawa: Natural Resources Canada, 2008) 70, [http://publications.gc.ca/collections/collection\\_2011/rncan-nrcan/M31-2-2007-eng.pdf](http://publications.gc.ca/collections/collection_2011/rncan-nrcan/M31-2-2007-eng.pdf).

authorities began to rethink their economic development strategies. After 2010, Chinese policymakers began to prioritize increasing domestic consumption, rather than expanding its manufacturing export base. As a result, metals demand slowed, and after 2012 peak, so too did new mining investment.<sup>46</sup>

## Uranium

Ontario's uranium mining industry shared several similarities with the nickel mining industry in terms of its relations with the United States defense and state sector. Indeed, the Ontario uranium industry depended on contracts with various state agencies for its entire existence from the early 1950s until the mid-1990s. However, unlike the nickel industry, which enjoyed decades of price and production stability, the uranium industry's trajectory was highly erratic, and production patterns varied considerably. The United States' rush to develop thermonuclear weapons in the early Cold War resulted in the most intensive period of mine development in Canadian history in the Elliot Lake-Blind River area, site of the world's largest uranium deposits.<sup>47</sup> Commercially viable uranium was first discovered in the region in 1953 and mine production began in 1955. By 1959, there were 14 uranium mines operating in Ontario, eleven in Elliot Lake, another three in the Bancroft area. At the same time, uranium had become Canada's most valuable mineral commodity export, as \$331 million worth of uranium was shipped to the United States and the

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<sup>46</sup> International Monetary Fund, "Commodity Special Feature," 43-44.

<sup>47</sup> See Alan Phillips, "Our Wild Atomic City," *Maclean's Magazine*, 25 May 1957, <https://archive.macleans.ca/article/1957/5/25/our-wild-atomic-city>, (accessed 16 September 2019).

United Kingdom for weapons development.<sup>48</sup> Between 1954 and 1958, uranium mine employment spiked from 500 to over 10,000.<sup>49</sup>

Because of its strategic importance for military purposes, the federal government exercised its declaratory power, bringing the regulation of the uranium industry under federal jurisdiction. Initially, a federal Crown corporation, El Dorado Mining and Refining Ltd., held exclusive marketing rights for uranium in Canada. In essence, El Dorado acted as an intermediary between private mining companies and the United States Atomic Energy Commission (USAEC), which contracted to purchase “uranium from Canada essentially in unlimited quantities and on a cost-plus basis.”<sup>50</sup> Under these contracts, companies received \$25 for every kilogram of uranium delivered, spurring an unprecedented prospecting frenzy. By 1956, prospectors had claimed more than 10,000 radioactive occurrences in Canada, making uranium the most sought-after mineral in the country. Yet, because an adequate supply had been attained in that year, the federal government discontinued its special contracts and exploration activity went into severe decline.<sup>51</sup>

Developments in the United States had the greatest impact on the industry’s fortunes. Under increasing lobbying pressure from domestic uranium producers, the USAEC announced in 1959 that it would not exercise its option to purchase additional uranium from Canadian mines. As a result, the Canadian companies would have no market for their output after 1963 when the contracts were set to expire, making a complete collapse a likely possibility. To allow the mines to remain in production to recoup their initial investment, the federal government – through El

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<sup>48</sup> O.J.C. Runnalls, *Ontario’s Uranium Mining Industry – Past, Present, and Future* (Ontario Ministry of Natural Resources, 1981), 3.

<sup>49</sup> Ontario, Royal Commission on the Health and Safety of Workers in Mines, *Report of the Royal Commission on the Health and Safety of Workers in Mines* (Toronto: Ministry of the Attorney General, 1976), 34.

<sup>50</sup> Runnalls *Ontario’s Uranium Mining Industry*, 3.

<sup>51</sup> *Ibid*, 3.

Dorado Mining and Refining – negotiated delivery stretch-outs with several companies, extending production until 1966. Under this plan, the industry underwent a considerable concentration, as high-cost producers merged with their lower-cost counterparts. Yet, the delivery stretch-outs did not make up for the loss of the US market. By 1964, only four uranium mines remained in operation in Canada, down from 21 in 1960. In Ontario, eight of the eleven Elliot Lake mines closed, while production in Bancroft ceased entirely.<sup>52</sup> Employment fell precipitously, dropping from 10,000 to 3,000 in just four years, while the population of Elliot Lake declined from a high of 25,000 to 6,600 in 1966.<sup>53</sup>

Because “peaceful” markets for uranium – that is, the markets for nuclear reactor fuel – developed slowly, the federal government remained the industry’s lifeline through the 1960s and early 1970s. In 1963, Ottawa initiated the first of three uranium stockpiling programs, purchasing 2,065 tonnes of uranium from three companies – Denison Mines Ltd., Rio Algom Mines Ltd. (a subsidiary of the London, U.K.-based Rio Tinto), and Faraday Uranium Mines Ltd. – for \$24.5 million. In 1965, a second, more lucrative stockpiling program was established for a period of five years. Under this agreement, the federal government purchased an additional 5,340 tonnes of uranium for \$76.8 million, bringing the total cost of the stockpiling program to \$101 million, or \$13.65 per kilogram. Elliot Lake-based Denison Mines received the lion’s share of the federal monies, some \$80 million, while another Elliot Lake producer, Rio Algom, received \$14 million.<sup>54</sup> Finally, in 1970, a third stockpiling program was initiated, this time as a joint venture between Denison Mines and the federal government. This program allowed Denison to maintain

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<sup>52</sup> Ibid, 3-4; For the U.S. domestic uranium industry’s lobbying efforts, see Earle Gray, *The Great Uranium Cartel*, (Toronto: McClelland and Stewart, 1982), 57-64.

<sup>53</sup> *Royal Commission on Health and Safety of Workers in Mines*, 34; Shawn Heard, “The City of Elliot Lake to 1991: Before the Roof Fell In,” in Anne-Marie Mawhiney and Jane Pitblado (eds.), *Boom Town Blues* (Toronto: Dundurn Press, 1999), 23.

<sup>54</sup> Runnalls, *Ontario’s Uranium Mining Industry*, 4.



production at 1,500 tonnes per year between 1971 and 1974 at a total cost of \$29.5 million, while Denison also became sales agent for all the uranium in the joint stockpile. In 1972, Denison contracted with several electrical utilities in Spain, committing the entire joint stockpile and an additional 1,100 tonnes from the General Government Stockpile to the Spanish utilities. The following year, the federal government agreed to release an additional 770 tonnes from its general stockpile when Denison reached an agreement with the Japanese utility, Tohoku Electric Company.<sup>55</sup>

The stockpiling program was not the only measure of support that the federal government offered to the uranium mining industry. In fact, in the mid-1970s, the federal government also played a leading role in establishing an international uranium producers' cartel in an effort to raise the metal's price and improve the industry's profitability. To be sure, the federal government's actions were a response to developments in the United States, which had effectively closed its doors to uranium imports in 1966. Despite the Canadian government's repeated claims that the US government's uranium policies violated the provisions of the General Agreement on Tariffs and Trade, it was not until 1977 that the USAEC relaxed its embargo, allowing domestic nuclear reactors to increase their use of foreign uranium on a step-wise basis.<sup>56</sup> With the USAEC's embargo on foreign uranium, Canadian producers were shut out of a market that represented for 70 percent of world demand.

The Ontario government, too, acted as an important outlet for the uranium industry's output. Anticipating that demand for hydroelectricity would continue its upward swing, Ontario Hydro initiated a major expansion program in the early 1970s, which included the construction of multiple nuclear reactors. Initially, the utility pressed the Ontario government to purchase

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<sup>55</sup> Ibid, 6.

<sup>56</sup> Ibid, 8.

Denison Mine's Elliot Lake assets as only Denison and Rio Algom had sufficient uranium reserves to meet Hydro's requirements. As such, the industry had a clear advantage in bargaining. However, the Bill Davis cabinet – and key ministers like Minister of Energy Darcy McKeough – opposed nationalizing the mines and other measures, like short-term contracts, joint Hydro-company production sharing agreements or a federally mandated two-price system for uranium. Instead, the Davis cabinet sought long-term contracts, despite the industry's favorable bargaining position.<sup>57</sup>

The resulting uranium contracts proved among the most controversial public expenditures in Ontario history, in part because of Denison majority shareholder Stephen Roman's close friendship with Premier Bill Davis. Initially signed for a forty-year period, Ontario Hydro agreed to purchase 198 million pounds of uranium from Denison and Rio Algom for a total price in the range of \$6 to \$7 billion on a cost-plus basis. In addition to guaranteeing the companies \$5 per pound profit in the base price, the contracts also provided Denison an estimated \$151 million interest-free advance to expand its production facilities, a guarantee that any future tax increase would be passed on to Hydro, and a protective clause that would have Hydro pay a higher price to Denison should any other uranium producer in the Elliot Lake area earn a higher profit than Denison. In total, the Denison contract was worth \$4.1 billion in 1976 dollars (undiscounted).<sup>58</sup>

The Hydro contracts appeared to offer a newfound stability to the Elliot Lake region. Both Denison and Rio Algom expanded their workforces, and once again, the region's population began to grow. Between 1976 and 1978, 4,000 new residents arrived in Elliot Lake and by 1981 some 1,500 new homes were constructed. Meanwhile, in recognition of its growing

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<sup>57</sup> G. Bruce Doern, *Government Intervention in the Canadian Nuclear Industry* (Montreal: Institute for Research on Public Policy, 1980), 152-155; Paul McKay, *The Roman Empire: The Unauthorized Life and Times of Stephen Roman* (Toronto: Key Porter, 1990), 139-168.

<sup>58</sup> Doern, *Government Intervention in the Canadian Nuclear Industry*, 167-172.

population, the former Township of Elliot Lake became the Town of Elliot Lake in 1976.<sup>59</sup> Yet, long-term stability remained elusive. Although it was once the site of the world's richest uranium mines, by the late 1980s Elliot Lake struggled to maintain its position amidst increasing global competition and dwindling uranium prices. With mining costs at \$30 a pound compared to a market price of \$8.90, in 1990 Rio Algom announced that it was closing two of its three Elliot Lake mines. More than 1,600 of the region's 4,500 uranium miners were permanently laid off.<sup>60</sup> Making matters worse, after a round of negotiations to review its contracts with the Elliot Lake producers, Ontario Hydro signalled that it was no longer willing to pay such high prices when lower-cost alternatives were available. Immediately following Hydro's announcement, Denison moved to close its mines, putting another 1,060 workers out of work.<sup>61</sup>

In this context, the NDP government undertook several measures to lessen the blow to the regional economy, which remained heavily dependent on uranium production. In 1991, the Ministry of Northern Development and Mines announced a \$250-million aid package, financed by Ontario Hydro. The package ensured that Hydro would continue to purchase uranium from the region until 1997, maintaining mine employment at about 775 workers. In addition, Hydro committed \$90 million in an effort to spur long-term economic diversification and an additional \$25 million for energy-efficient programs in the region.<sup>62</sup> By 1996, Rio Algom closed its last mine, putting an end to Elliot Lake's tumultuous 40-year history with uranium.

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<sup>59</sup> Heard, "The City of Elliot Lake to 1991," 26.

<sup>60</sup> "Rio Algom moves early to close Elliot Lake mines," *Globe and Mail*, 21 July 1990.

<sup>61</sup> Heard, "The City of Elliot Lake to 1991," 28.

<sup>62</sup> *Ibid*, 28-9.

## Gold

Once Ontario's most important mineral commodity in terms of production value, by the late 1960s, the gold mining industry faced an uncertain future. Total production had declined from more than 3.5 million ounces in 1940 to less than 1.5 million ounces by 1968. At the national level, the number of lode gold mines in Canada fell from 97 in 1949 to 20 in 1968.<sup>63</sup> Yet, by 2015, gold had reclaimed its status as Ontario's leading mineral commodity with production valued at \$3.4 billion, more than double the value of nickel.<sup>64</sup>

The fortunes of the Ontario gold mining industry varied according to trends in the international political economy, beyond the control of Ontario policymakers. To understand the industry's trajectory, it is necessary to appreciate the special role that gold played as the anchor of the international monetary system until 1971, and its unique status among commodities as a store of value. Traditionally, the price of gold was determined by its role in monetary exchange. For more than 200 years until 1933, gold's price was fixed at the equivalent of \$20.67 in British pounds. However, after the onset of the Great Depression, US President Franklin Roosevelt established a government market for gold and devalued the dollar to stimulate the US economy. The government price eventually settled at \$35 an ounce in January 1934.<sup>65</sup>

Initially, the new price, which almost doubled overnight, was a major boon for Ontario gold producers. Amidst the generally low levels of economic activity resulting from the Depression, gold mining companies benefited from a surplus of labour, relatively low prices for equipment and materials, a low Canadian dollar, and federal government incentives, like the

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<sup>63</sup> Eric Cousineau and Peter R. Richardson, *Gold: The World Industry and Canadian Corporate Strategy* (Kingston: Centre for Resource Studies, Queen's University, 1979), xi.

<sup>64</sup> Ontario Mining Association, "Ontario Mineral Production Valued at \$10.8 Billion," <https://www.oma.on.ca/en/ontariominining/resources/Ontario-Production-Factsheet-2016.pdf> (accessed 14 December 2017).

<sup>65</sup> Cousineau and Richardson, *Gold*, 22.

three-year tax holiday for metal mines instituted in 1936.<sup>66</sup> The Second World War further stimulated gold production, as the Canadian government deemed the precious metal a necessary war industry to ensure a steady supply of foreign exchange credits. In 1941, production in the Timmins-Porcupine region peaked, when 23 operating mines produced 1.44 million ounces of gold.<sup>67</sup>

However, political developments soon put an end to the industry's good fortunes. In 1941, the US Congress passed the Lend-Lease Act, allowing the United Kingdom and its allies to purchase American-manufactured war materiel on deferred credit. Because the Act threatened to divert all British war orders from Canada to the US – and because Canada's balance of payments with the US had deteriorated significantly during the war – Prime Minister Mackenzie King pushed President Roosevelt to allow American-produced goods manufactured in Canada to be included in the program. The resulting Hyde Park Agreement eased Canada's balance of trade difficulties considerably, lessening the government's need for expanded gold production. Gold was dropped from the list of high-priority war industries, setting in train the industry's decline.

Postwar monetary stability, undergirded by the Bretton Woods system of fixed exchange rates, further undermined the industry's vitality. Signatories to the Bretton Woods agreement promised to keep their currencies at a fixed exchange rate relative to the US dollar, while the US promised to keep the dollar fixed to gold. International balances were settled in US dollars, which were convertible to gold at \$35 an ounce. For the system to function smoothly, the US had to maintain a balanced supply of dollars relative to gold reserves to maintain confidence in

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<sup>66</sup> Ibid, 64.

<sup>67</sup> Ibid, 61.

convertibility.<sup>68</sup> With the price of gold pegged at US\$35 an ounce, rising production costs, lowering ore grades, labour shortages, and the appreciation of the Canadian dollar relative to the US dollar undercut the sector's profitability. In 1949, the federal government passed the *Emergency Gold Mining Assistance Act* to alleviate the industry's stagnation, but this was enough only to keep the industry barely afloat. Companies survived by cutting costs. As Cousineau and Richardson put it, "This task was accomplished through eliminating exploration, reducing capital expenditures to levels that were just sufficient to keep essential equipment in operation, and by paying wages that were lower than in the rest of the mineral industries."<sup>69</sup>

The industry's decline had an enormous social impact on Ontario's scattered gold towns, a fact well demonstrated by a study commissioned by the Town of Timmins and published by William Lougheed Associates in 1958. Ironically, the "golden age" of capitalism largely bypassed the gold towns themselves. Unlike their urban counterparts in the province's industrial heartland to the south, which experienced rapid population and income growth, the northern gold towns experienced population and income stagnation, if not outright decline. The study's description of developments in Matachewan, Ontario were typical of gold-dependent communities in general. There, three mines were opened in the heady days of the late 1930s and by the year the township was incorporated in 1947, its population had grown to 2,000. Yet, by 1956, two of the three mines had ceased operations. As the report explained, "Population has decreased since the early war years by over one-half, and is now about eight hundred. A quarter of Matachewan's three hundred-odd dwellings are unoccupied, and pressure of costs on marginal

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<sup>68</sup> Sandra Kollen Ghizoni, "Nixon Ends Convertibility of US Dollars to Gold and Announces Wage/Price Controls," *Federal Reserve History*, posted November 22, 2013, [https://www.federalreservehistory.org/essays/gold\\_convertibility\\_ends](https://www.federalreservehistory.org/essays/gold_convertibility_ends) (accessed 16 September 2019).

<sup>69</sup> Cousineau and Richardson, *Gold*, xi.

mining operations has made the municipality exceedingly poor in comparison to its condition before the war.”<sup>70</sup>

In gold-dependent communities, the ever-present drive to “rationalize” production, to “capitalize labour” had pronounced effects. Given the absence of alternative employment opportunities for workers, the mines’ introduction of labour-saving technologies only hastened depopulation. Thus, new technologies had a cascading effect, described well in the same report: “the reduced human element produces excess social capacity in the community – empty houses, lower real estate values, under-utilized community services, higher taxes, a lack of young people – all heralds of the wasting away of dreams inspired by the head promise of gold twenty years ago.”<sup>71</sup>

In this context, workers had difficulty achieving wage gains. While in 1947, gold miners’ wages far exceeded the average earned in both manufacturing and construction and essentially paralleled those in metal mining as a whole, by 1957, their earnings had fallen well below their metal mining counterparts, and lagged behind even those in construction. This latter was all the more remarkable considering the fact that, in 1947, gold miners earned wages some 32 percent higher than construction workers. Gold miners’ wages failed to keep pace with productivity growth. As William Lougheed Associates put it tellingly, “One of the reasons that mining wages are relatively high is that mining is still a somewhat more hazardous occupation than many others in Canada, [yet] the current level of gold miners’ earnings no longer reflects this safety differential.”<sup>72</sup>

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<sup>70</sup> William Lougheed Associates, *The Gold-Mining Community: A Study of Economic Growth* (Toronto: 1958), 9.

<sup>71</sup> Ibid, 36.

<sup>72</sup> Ibid, 56.

So long as the Bretton Woods system held, there was little hope for the gold mining industry to recover. However, by the 1960s, international monetary and economic stability gave way to uncertainty. Driven by the rapid expansion of international trade, growing US military spending, capital exports and foreign aid a surplus of US dollars accumulated in international reserves. As Japanese and western European goods began to account for a greater share of international exports, demand for the dollar declined, spurring speculative demand for gold. The problem, though complex in origins, was simple in detail. With a looming run on gold, there were more dollars in the international market than there was gold in the US government reserves. As a result, both the dollar's status as the international reserve currency and the stability of the international monetary system were under threat.<sup>73</sup>

In light of these developments, the United States and other industrialized countries took a number of steps to remedy the problem. The US Treasury Exchange Stabilization Fund intervened in foreign exchange markets for the first time outside of war in 1961; the Federal Reserve established "currency swaps" with nine other central banks in 1962 in an effort to limit conversion. A two-tier price for gold was established in 1968. While the monetary price of gold remained pegged at \$35 per ounce, market forces were allowed to determine its price for non-monetary purposes. Yet none of these measures were sufficient to stem continued speculation against the dollar, while the difficulties were compounded by a rapid rise in the inflation rate. Ultimately, in 1971, US President Richard Nixon announced the suspension of convertibility, delinking the dollar from gold, effectively putting an end to the Bretton Woods system, and re-establishing a free market for gold.

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<sup>73</sup> Ghizoni, "Nixon Ends Convertibility of US Dollars to Gold and Announces Wage/Price Controls."



Since this time, the gold mining industry has passed through three distinct phases. Sustained political-economic instability in the 1970s generated a remarkable uptick in the precious metal's price. Nixon's decision to devalue the US dollar in 1972, the oil shock of 1973, runaway inflation and high unemployment combined to push gold to a record high of \$197.50 an ounce in December 1974. After a brief downturn, prices continued their upward trend through the rest of the decade marked by economic stagnation and geopolitical turmoil in Iran, Afghanistan, and Vietnam. Between 1979 and 1980, the price of gold almost doubled, reaching a new record of \$613 an ounce.<sup>74</sup> Still, despite the tremendous increases in the price of gold, Ontario production continued its pattern of decline. In fact, in the period 1970-1975, production dropped from 1.27 million to less than 800,000 ounces.

It was not until the 1980s that the Ontario gold mining industry was revitalized. While gold exploration was almost non-existent in the mid-1970s, in 1981 mining firms spent more than \$300 million (in 1998 dollars) in search of gold and other precious metals in Canada. In 1987, a year which saw a major stock market crash, gold exploration budgets increased dramatically once again. Mining companies spent more than \$1.2 billion on gold as compared to a budget of only \$200 million for base metals.<sup>75</sup> It was during this time that the most recent of Ontario's major gold mining regions, the Hemlo deposits, was discovered and put into production.

Ironically, while the 1980s saw a renewed investor interest in gold exploration and production, gold prices underwent a steady downward trajectory over the next two decades. The return to growth and the gradual control of inflation put an end to the special circumstances

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<sup>74</sup> United Nations Conference on Trade and Development, *Commodities at a Glance: Special Issue on Gold* (New York and Geneva: United Nations, 2016), 33.

<sup>75</sup> Colin Edward Chambers, "Environmental Policy and Metal Mining in Ontario in the 1990's: How an Old Industry Gained New Power," (PhD diss, York University, 2004), 71.

driving the price of gold upward through the 1970s. Central bank activities further dampened gold prices, as most central banks adopted net selling positions.<sup>76</sup> Nevertheless, between 1980 and 2000, global gold production expanded by close to four percent annually, more than double the rate at the beginning of the century. Meanwhile, gold production globalized. While South African mines accounted for some 55 percent of global production in 1980, by the year 2014 South Africa's share of the world market had fallen to just five percent. Over the same time, Canada's share increased from four to six percent, with Ontario mines accounting for about half of Canadian production.<sup>77</sup>

Two notable occurrences affected gold markets in the new millennium. First, following the gradual decline in the price of gold over the 1980s and 1990s, in 1999 many of the world's central banks agreed to take coordinated action to stabilize the gold market so as to protect the value of their reserves. Under the first Central Bank Gold Agreement (CGBA), signatory banks agreed to limit their gold sales to 400 tons per year. Within four years of the agreement, the price of gold had risen by 47 percent.<sup>78</sup> The second major turning point came with the 2008 financial crisis. As the financial panic devolved into the deepest recession since the Great Depression, investors scrambled to purchase gold as a financial asset in view of its role as a safe haven. Between 2001 and 2012, the real price of gold rose more than fourfold, peaking in 2012 at \$1,670 per ounce, just two percent lower (in inflation-adjusted terms) than the record levels seen in 1980. Again, monetary policy played a major role in these developments. As the world's largest economies, including the US, Japan and the European Union, enacted "Quantitative Easing" in a bid to increase the money supply and spur economic activity, investors began to

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<sup>76</sup> UNCTAD, *Commodities at a Glance*, 33-34.

<sup>77</sup> Ibid, 22 Figure 13.

<sup>78</sup> Ibid, 15.

consider gold a more attractive investment option than traditional safe investments like US ten-year bonds.<sup>79</sup> Perhaps unsurprisingly, higher prices generated new interest in gold production. While Canadian output had declined in the early 2000s, following the crisis of 2007-08, production recovered, reaching 160 tons in 2014.<sup>80</sup>

## **Iron Ore**

Iron ore mining became a prominent industry in Canada only after the Second World War. The rapid development of the steel industry in the 1950s led to a considerable expansion of iron ore mining in Canada, centred at the Iron Ore Company of Canada's Quebec-Labrador operations, which accounted for almost half of the industry's domestic production into the mid-1970s. A considerable number of mines were also opened in Ontario, though compared to the Quebec-Labrador deposits, the Ontario mines were both small and low in grade.

Because of its central importance in the making of steel, Ontario's iron mines were "captives" of the steel industry. There were nine iron ore mining operations in Ontario by the mid-1970s with a total annual production capacity of 11.3 million long tons. (In comparison, the Iron Ore Company of Canada's annual production capacity at its Schefferville and Labrador City operations was 31 million long tons.) Of these mines, eight were directly controlled by one or more steel companies to ensure a supply of input for their mills. Hamilton's Dofasco operated the Adams Mine at Kirkland Lake and the Sherman Mine at Temagami jointly with The Cleveland Cliffs Iron Company; Stelco owned the Griffith Mine near Red Lake, which was operated by the US firm, Pickands, Mather and Company; Algoma Steel Corporation owned and operated the Algoma Ore Division at Wawa; the Inland Steel Company of Chicago operated the

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<sup>79</sup> Ibid, 34.

<sup>80</sup> Ibid, 25.

Caland Ore Company at Atikokan in partnership with Steep Rock Iron Mines Limited; The National Steel Corporation, a joint venture of the Hanna Mining Company, Weirton Steel and Great Lakes Steel, operated the National Steel Corporation of Canada's mine at Capreol, the output of which was shipped to Detroit for processing at the National Steel mill; Bethlehem Steel Corporation owned the Marmoraton Mining Company at Marmora, shipping its output to its Lackawanna mill in Buffalo, New York. The final mine was a partial exception to this structure. Inco derived iron ore as a by-product of its nickel-copper operations, and in 1956 that company entered into an agreement with the Hanna Mining Company to market its iron ore.<sup>81</sup>

Compared to the uranium and nickel industries, the iron ore industry was less reliant on governments as an outlet for its production. Still, the industry benefited from active state intervention. The development of the large deposits at Steep Rock Lake during the Second World War provide the most telling example. The US, Canadian and Ontario governments each played a major role in bringing the mine into production in an effort to overcome severe steel shortages in the context of the war. As the *Globe and Mail* reported in 1943, bringing the mine online involved "the drainage of a lake, diversion of a river into a newly constructed riverbed, construction of a 132-mile powerline, construction of a three-and-one-half-mile railway spur line, improvement of railway lines to Port Arthur, Government construction of docks at Port Arthur, and subsidization of freight rates."<sup>82</sup> The US Reconstruction Finance Corporation and Export-Import Bank provided much of the initial capital for the project. The Canadian

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<sup>81</sup> For ownership structures, see Energy, Mines and Resources Canada, *Iron Ore* (Ottawa, Mineral Policy Series Mineral Bulletin MR 148, 1976), Figure 2, 3; for information on the Marmoraton Mine, see "The State of the Union," *Globe and Mail*, 17 July 1959.

<sup>82</sup> "Governments Co-operate to Hasten Steel Making From Steep Rock Ore," *Globe and Mail*, 18 March 1943.

government financed the construction of the docks at Port Arthur, while the government of Ontario funded the construction of the transmission line.<sup>83</sup>

In general, because the steel producers purchased iron ore at cost, iron mining companies earned little to no profit, so the industry contributed little to the provincial Mining Tax. In effect, the industry's pricing structure ensured that profits were transferred from the mine to the steel companies. In the case of US-controlled firms, then, both profits and potential Mining Tax revenues were exported with the ore to the benefit of American owners of capital. Yet, because of the Canadian steel industry's limited capacity to absorb greater amounts of iron ore and the ready supply of high-grade alternatives, Ontario policymakers were reluctant to impose taxes on foreign buyers.<sup>84</sup>

The Ontario iron ore industry began to decline in the late 1970s in tandem with the decline of the North American steel industry. Beset by intense foreign competition, particularly from much more efficient Japanese producers, the North American steel industry was forced to rationalize its operations. Ontario's costly, low-grade iron deposits could not compete with other North American sources. Bethlehem Steel's closing of the Marmoraton Mine in 1978 initiated a string of similar moves from the late 1970s until the late 1990s. National Steel closed the Capreol mine in 1979; Steep Rock and Caland Ore shuttered the Atikokan mines in 1979 and 1980; Inco discontinued its iron ore pelletizing process in 1980; Stelco closed the Griffith Mine at Red Lake in 1986; Dofasco closed the Adams and Sherman mines in 1990; and Algoma Ore closed the Helen Mine in 1998.

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<sup>83</sup> K.J. Rea, *The Prosperous Years: The Economic History of Ontario, 1939-75* (Toronto: University of Toronto Press, 1985), 167.

<sup>84</sup> Metallic Minerals Section Mineral Resources Branch Division of Mines, *Towards an Iron Ore Policy for the Province of Ontario* (Ontario Ministry of Natural Resources, 1975), 4-5.

## **Capturing the Ministry of Mines: Industry-Government Linkages**

As was discussed in Chapter 1, different theoretical perspectives on business power assign varying levels of significance to precisely who occupies key decision-making positions within the state. For structural Marxists and neo-pluralists, the social composition and ideological inclinations of the state elite is at most a “subsidiary mechanism” of business influence. The state is a capitalist one irrespective of the social origins of its agents, as the constraints imposed upon them by the accumulation process curtails their freedom of manoeuvre. For state autonomy theorists and neo-institutionalists, the state is an independent power in its own right. Its interests cannot be reduced to the interests of any group or class in society. For pluralists, there is some ambiguity on the question. Yet, in general, pluralists suggest that the state is neutral from the conflictual interests in the society that it governs. Like a weathervane, the state responds to shifts in the prevailing political capacities of different interest groups and alliances, whose power advantages are deemed temporary at best. Thus, in their own way, each of these perspectives downplays the importance of the social composition of the state elite and its direct connections to the business world.

Power structure researchers, on the other hand, have a different view. From their perspective, the social composition of the state elite provides “a strong presumption ... as to its general outlook, ideological dispositions and political bias.”<sup>85</sup> Although power structure researchers have been criticized for their overreliance on the so-called “colonization process” in their explanations of capital’s power over the state, the criticism is unwarranted. For power structure researchers, colonization – that is, the degree to which capitalists occupy key command posts within the state – is but one of many tools business interests can use to achieve their

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<sup>85</sup> Miliband, *The State in Capitalist Society*, 68.

political aims. Nevertheless, it is an important one precisely because power structure researchers assume an analytical separation of the state from social class. As a potentially autonomous site of power, determining who wields state power and to what ends is an important question for empirical research.<sup>86</sup>

Given the provincial mining ministry's major role in administering the province's mining laws and policies, this section examines the relationship between the mining industry and the Ontario Department of Mines and its successor agencies, that is the Division of Mines within the Ministry of Natural Resources and the Ministry of Northern Development and Mines. While subsequent chapters will examine the ministry's interventions in concrete policy disputes in greater detail, this section shows that the ministry's leading personnel exhibited a clear political bias, consistently favouring the mining industry at the expense of other interest groups and social classes. Indeed, what was most striking about Ontario's mining ministry was its utter lack of autonomy from the industry it regulated. It would hardly be a stretch to suggest that industry had effectively captured the ministry, ensuring the public agency acted on behalf of industry's narrow private interests, rather than the broad public interest.

In the main, the ministry's pro-industry bias has been maintained through its "closeness" to the mining industry. Key decision-making personnel in the ministry's ranks have been drawn from the industry, while several government personnel have transitioned to careers in the private sector. While precise information about the Department of Mine's personnel prior to the 1970s is difficult to come by, thanks to Sudbury East NDP MPP Eli Martel's question to the Minister of Natural Resources in the Legislature in December 1972, a detailed breakdown of much of the staff of its successor – the Division of Mines within the Ministry of Natural Resources – is

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<sup>86</sup> Clyde W. Barrow, *Critical Theories of the State: Marxist, Neo-Marxist, Post-Marxist* (Madison: University of Wisconsin Press, 1993), 26-27.

available on the public record. The Division's first Executive Director (subsequently retitled Executive Coordinator) G.A. Jewett had taken the position in September 1972. Prior to his role in the civil service, Jewett had worked in executive and managerial positions in the mining industry, including as Vice-president and General manager of Dresser Industries Ltd.'s Canadian subsidiary and as Construction manager of Rio Tinto Canada's Elliot Lake projects.<sup>87</sup> The Director of the Mines Engineering Branch (which enforced the *Mining Act's* operating requirements), H.F.R. Davis, had previously served as a mine captain and assistant engineer at Waite Amulet Mines Ltd., a gold mining company affiliated with the Noranda group. In fact, among the Mines Engineering Branch's twenty-two engineers, seventeen had previously worked in supervisory or managerial positions for mining companies. Davis was succeeded by Peter McCrodan, a former General Manager at McIntyre Porcupine Mines in Timmins as well as the former Chairman of the industry-dominated Mines Accident Prevention Association's Committee on Occupational Health.

Subsequently, several other officials transitioned from industry to government service. Succeeding Jewett as Executive Coordinator in 1982 was J.E. Finlay, a former Falconbridge Nickel vice-president of planning who had also served two terms as the Ontario Mining Association's (OMA) president in the late 1970s. In 1988, another former Falconbridge manager, John Gammon, became the director of the mineral development and lands branch in David Peterson's Liberal government's new Ministry of Northern Development of Mines. In 1990, Bob Rae's NDP government appointed Gammon to the position of Assistant Deputy Minister of that ministry's Mines and Mineral Division, a post he retained until retiring in 2005.<sup>88</sup>

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<sup>87</sup> Legislative Assembly of Ontario, *House Hansard*, 14 December 1972, 5374-5375.

<sup>88</sup> "ADM John Gammon retiring," *Northern Miner*, 22 July 2005.



The composition of the ministry's leading personnel underwent a notable change following John Gammon's retirement. Christine Kaszycki's appointment as the Assistant Deputy Minister for the Mines and Mineral Division marked the first time since the early 1970s that the civil servant with lead responsibility for the mining portfolio had started her career in the civil service rather than the private sector. This is not to say that Kaszycki was an outsider. Initially a geologist with the Geological Survey of Canada, Kaszycki subsequently moved to Manitoba where she became Assistant Deputy Minister for Mineral Resources. There, she "led the development of Manitoba's Mineral Sector Guidelines for fostering relationships and economic opportunities with First Nations and Métis communities in the province."<sup>89</sup> It was this experience that appears to have been crucial from the industry's perspective. By the time of Kaszycki's appointment, improving relations with First Nations communities had become one of the industry's leading priorities.

Other personnel were appointed with similar goals in mind. In 2015, David de Launay became MNDM's Deputy Minister. De Launay brought considerable experience working with First Nations communities to the position, including service in MNDM's Aboriginal Affairs office and a subsequent appointment as Deputy Minister of the Ministry of Aboriginal Affairs. De Launay's views on the importance of mineral development to First Nations communities' economic well-being gelled with the industry's own. As de Launay wrote in the *Northern Miner*, mining can "provide hope" to otherwise hopeless communities. Mining, de Launay suggests,

brings an economic foundation for a future of growth and participation by Indigenous people. It is often the only modern economic activity in remote regions. It is already the sector that employs more Indigenous people in Canada than any other.<sup>90</sup>

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<sup>89</sup> Centre for Excellence in Mining Innovation, "Board of Directors: Christine Kaszycki," <https://www.cemi.ca/directors/christine-kaszycki/> (accessed 16 September 2019).

<sup>90</sup> David de Launay, "Commentary: Partnership with First Nations key to Canada's mining resurgence," *Northern Miner*, 22 February 2019.

This “revolving door” between government and industry has gone both ways, and several leading ministry personnel have taken positions in the private sector upon completing their terms in the civil service. One notable figure in this regard was Keith Reynolds, who had served as Premier John Robarts’ Cabinet Secretary as well as the Deputy Minister of Natural Resources from the ministry’s establishment in 1972 until 1981. Upon his retirement, Reynolds was appointed to directorships on two mining company boards, Rio Algom and Dome Mines. Shortly before Reynold’s appointment, Rio Algom had signed a lucrative, cost-plus contract to supply uranium to Ontario Hydro. In the case of Dome Mines, there is evidence to suggest that Reynolds enjoyed a close personal relationship with that company’s Chairman and Chief Executive Officer, M.A. Taschereau, whose speech to the federal Conservative Party’s 1980 Policy Conference Reynolds praised as “absolutely first class” in a private note.<sup>91</sup> For his part, after leaving MNDM John Gammon founded a private consulting firm, taking contracts with both private mining firms and international organizations like the World Bank to offer advice on mining legislation for a range of countries, mostly in the Global South. In addition, he was appointed directorships with several junior mining firms, including Strait Gold Corporation, Probe Mines Ltd., First Point Minerals Corporation and Golden Arrow Resources Corporation.<sup>92</sup> Similarly, David de Launay transitioned to the private sector shortly after his resignation from the civil service, joining Enterprise – “one of Canada’s leading strategic communications, public affairs and public relations firms” – to chair the company’s new Advisory Board.<sup>93</sup>

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<sup>91</sup> Public Archives of Ontario (hereafter AO), RG 1-526 Division of Mines Executive Director’s files, 550.28, J.K. Reynolds to M.A. Taschereau, 17 June 1980.

<sup>92</sup> John Gammon, LinkedIn page, <https://ca.linkedin.com/in/john-gammon-6a733110> (accessed 16 September 2019).

<sup>93</sup> Enterprise Canada, “Former Ontario Deputy Minister David de Launay joins Enterprise as Chair of new Advisory Board,” posted October 16, 2018, <https://enterprisecanada.com/former-ontario-deputy-minister-david-de-launay-joins-enterprise-as-chair-of-new-advisory-board/> (accessed 16 September 2019.)

Several civil servants and provincial politicians have also found their way into the Ontario Mining Association, the industry's provincial trade association. For instance, J.M. Hughes, a long-time Regional Director in both the Ministry of Natural Resources and its predecessor, the Department of Mines, became the OMA's Executive Director upon his retirement from the civil service in the mid-1970s. Replacing Hughes was Patrick Reid, the former Liberal MPP from the Northwestern Ontario riding of Rainy River. Reid's appointment signaled a reorientation of the OMA's political strategy, as the Association sought to enhance its influence beyond the mining ministry. According to a special commemorative edition of the *Northern Miner* celebrating the OMA's 90<sup>th</sup> anniversary in 2010, Reid was chosen for the role because of his several connections at Queen's Park. As the *Northern Miner* explained,

When Reid took the helm he did not have a mandate but was told by the [Association's] board, 'Just make things better.' The OMA needed help – they had little credibility with the government and were insular. His job was to turn things around. When he started at the OMA, Reid met with numerous people within ministries, from some of the lowest to the highest, including all of the deputy ministers. Reid had been chairman of the Public Accounts Committee and he knew a lot of people, so his background and personal connections in government helped a lot.<sup>94</sup>

In 1978, a few years prior to Reid's appointment, the OMA initiated a new strategy to influence elected officials at Queen's Park, dubbed "Meet the Miners." This was a full-day event during which industry executives met with provincial government officials – including cabinet ministers, senior civil servants and members of the opposition – to discuss mining issues. As the OMA's report on the 2017 "Meet the Miners" explained, the focus of that year's event was "the mining sector's exceptional potential to contribute to the economic development of Ontario, provided good policy and governance frameworks are in place."<sup>95</sup>

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<sup>94</sup> "Patrick Reid: The Right Person at the Right Time," *Northern Miner*, 1 October 2010.

<sup>95</sup> Ontario Mining Association, "Industry Event Highlights How Mines Transform Lives," *Republic of Mining*, posted November 3, 2017, <https://republicofmining.com/2017/11/03/oma-meet-the-miners-industry-event-highlights-how-mines-transform-lives-ontario-mining-association-november-3-2017/>, (accessed 30 October 2019).

Reid held the position until 2004 when he was replaced by Chris Hodgson, the former MPP from the Haliburton-Victoria-Brock riding and one-time Minister of Mines and Northern Development (1995-1999) during the Progressive Conservative government under party leader Mike Harris. Joining Hodgson as the OMA's Manager of Industrial and Government Relations was Philip Bousquet, who had acted as Hodgson's Senior Policy Advisor in the Ministry of Northern Development and Mines during his time in office.

In addition, to this interchange of personnel, the industry and the ministry developed a host of formal and informal mechanisms to keep in close contact. Important in this regard were both industry-organized events, like the OMA's annual receptions at the exclusive Bigwin Inn, a Muskoka resort, and government-sponsored events, like the annual joint federal-provincial mines ministers' conferences. Also, the ministry often invited industry representatives to offer their policy recommendations. The advisory committee to the Minister of Natural Resources on the revision of the *Mining Act*, which published its report in 1973, was one such invitation.<sup>96</sup> By the late 1970s, the Division of Mines and the OMA began to hold formal meetings every two months to discuss policy and other matters affecting the industry within the province. The minutes of these meetings provide a stark illustration of just how blurred the boundaries between autonomous state officials and private actors in civil society can become. For instance, during one meeting at which delegates discussed a recent tax ruling that had disallowed the deduction of so-called "social assets" from companies' Mining Tax bills, Ministry officials pledged their support to the industry in its policy battle with the Ministry of Treasury, Economics and

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<sup>96</sup> Ontario Ministry of Natural Resources, *Report of the Advisory Committee to the Minister of Natural Resources on the Revision of the Mining Act* (Toronto: Ministry of Natural Resources, 1973).

Intergovernmental Affairs in no uncertain terms: “The Minister indicated that in discussions with Treasury, MNR is arguing, on behalf of the mining industry, that the policy be changed.”<sup>97</sup>

Much of the ministry and industry’s joint work has been carried out without effective public oversight, largely by design. For instance, in a December 1979 memo to Jewett, Keith Reynolds proposed striking a “Minister’s Advisory Committee on Mining Matters,” which he envisioned as a

relatively informal committee: no staff, no regular meetings, no publicity. Just a two-way sounding board which the Minister could call together for a couple of hours – maybe sometimes over dinner – to get their joint and separate views and advice, and vice versa.<sup>98</sup>

More formal advisory committees were also subject to little public scrutiny. For instance, the Minister’s Mining Act Advisory Committee, established in the late 1980s, was composed almost entirely of industry representatives, but records relating to its regular meetings were unavailable to the public.

Another important mechanism industry used to maintain positive relations with ministry personnel was flattery. One telling episode occurred in early 1968, shortly after Allan Lawrence’s appointment as the province’s new Minister of Mines. Like other ministers, Lawrence was granted automatic membership in the Canadian Institute of Mining and Metallurgy (CIMM), one of the industry’s leading trade associations, which focused mostly on technical and operational matters. Soon thereafter, Lawrence was invited to give the keynote address to the CIMM Toronto Branch’s final monthly dinner meeting for the year. Lawrence was treated as a guest of honour and given a seat at the head table where he sat alongside the industry’s leading executives, including the presidents and executive vice-presidents of Inco,

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<sup>97</sup> AO RG 1-526 Division of Mines Executive Director’s files, 510.4 Vol. 1, “Minutes,” 6 December 1977.

<sup>98</sup> AO RG 1-526 Division of Mines Executive Director’s files, 170.0 Vol. 2, J.K. Reynolds to G. Jewett, 19 December 1979.

Falconbridge, Noranda, Texasgulf and Algoma Ore and other large firms operating in the province. Lawrence's speech, which addressed the need for ever greater government encouragement of the mining industry, was treated as "something of a sensation," by attendees, and was soon published in the *CIM Bulletin* under the title "Government and the Mining Industry."<sup>99</sup>

As Lawrence's speech indicates, ministry officials most often viewed themselves as forming a partnership with their industry counterparts. Industry and government's goals were synonymous: to develop the province's natural resources with "the maximum benefit to all," as Lawrence put it. This convergence of goals prevailed throughout the period under study. For instance, Mines Minister Leslie Frost wrote of the great success resulting from the "close partnership between the Department of Mines and the prospector" to Prospectors and Developers Association President Viola MacMillan in February 1947."<sup>100</sup> In this partnership, it was the role of the Department of Mines to provide industry with whatever support it needed. Mines Minister Philip T. Kelly put the matter bluntly in a 1954 address to the Ontario Mining Association at the Bigwin Inn:

we are extremely anxious to do everything that lies in our power to assist you as individuals or as corporate officials in the development of our mineral resources. You, after all, are the people we work for. Collectively, you are the 'boss' and it is up to us to give what you what you want if that is humanly possible.<sup>101</sup>

Giving the industry what it wanted took a variety of forms. Public education was one of them. To that end, the Department's geologists delivered public lectures and gave talks about

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<sup>99</sup> AO RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0-711, Associations: Canadian Institute of Mining and Metallurgy, LC Browne to Allan Lawrence, 19 April 1968.

<sup>100</sup> AO RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0-158, Prospectors & Developers Association, 1944-49, Leslie Frost to Viola MacMillan, 13 February 1947.

<sup>101</sup> AO RG 3-23 Premier Leslie M. Frost general correspondence, Box 111, 211-G Ontario Mining Association, Philip T. Kelly, "Address to the Ontario Mining Association," 3 June 1954.

geology, mining, and the benefits of a career in the industry to children's summer camps and at high schools across the province. Similarly, the Department prepared information kits for teachers and students to be delivered to schools. The Department had little doubt about the importance of fostering positive public attitudes towards the industry. As one document examining the Department's educational and promotional activities explained in the late 1960s,

If we believe that the future prosperity of northern Ontario is closely related to jobs created by the development of natural resources then we must zealously guard the proper climate for a thriving mineral industry. Widespread public education is imperative or we could eventually 'kill the goose that lays the golden egg.'<sup>102</sup>

While the Department of Mines' inclination was always tilted clearly in favour of the mining industry, the Division of Mines' ideological biases were especially noteworthy. With Jewett's appointment as Executive Director in 1972, the Division became something of a bridgehead of influence for the politics of the "New Right" within the provincial state. Jewett and the Mineral Resource Branch's Senior Policy Advisor Gerhard Anders played particularly important roles in this regard, as both were adherents of prominent New Right thinkers like Robert Nozick, Friedrich Hayek, and Milton Friedman. Jewett, Anders, and their subordinates vehemently opposed the very idea of government regulation in the private sector, and actively mobilized the Division's resources to advance their political agenda. The Division's ideological bias was particularly evident in its leading official's public writing and speeches as well as their policy advice to their Minister.

Jewett's staunchly New Right outlook was on display in his May 1979 article in the *Canadian Mining Journal*, appropriately titled "Government must reduce its burden on the

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<sup>102</sup> AO RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0-712, Associations: Canadian Institute of Mining and Metallurgy 1969, "Notes on Education for the Mineral Industry from the Geological Branch," no date.

mining industry.” In this article, Jewett clearly expressed his understanding of the government’s role in mineral resource development:

only a lessening of the governmental burden upon the industry can assure the potential investor – whether domestic or foreign – of expected internationally and intersectorally competitive return on capital after taxes. This I believe is the *sine qua non* for the optimum development of the wealth creating potential of the provinces [*sic*] mineral development now and in the future.<sup>103</sup>

Jewett singled out taxation as well as government regulation in the fields of environmental control and occupational health and safety with particular concern. Not only did growing government oversight represent a “diminution of private property rights,” but more importantly, they imposed “mandatory non-productive costs,” which “reduce[d] the present and future value of mineral deposits capable of development.”

Another striking illustration of Jewett’s adherence to New Right politics occurred in the spring of 1979. Earlier that year, Dome Mines Chief Executive Officer M.A. Taschereau had alerted Minister of Natural Resources James Auld to the fact that the Ontario Educational Communications Authority (the agency that administered TVOntario) and the Science Council of Canada were collaborating to produce a television series entitled *Nothing Left to Sell*. The series would highlight economic problems facing Canada – environmental degradation, wealth inequality, high levels of foreign ownership, and the country’s dependence on the export of raw materials – and discuss the relative merits of alternative economic arrangements. For the Division of Mines, such programming had no place on a public broadcaster. In Jewett’s view:

This is the most important and potentially most dangerous issue for the mining industry. The initiative must not be left with the Ontario Educational Communications Authority and the Science Council of Canada, but be assumed by this Ministry and the mining industry. To respond and defend after the proposed TV series has been completed and shown would be futile. It is suggested that an MNR-OMA task force be formed immediately to consider preparation for a factual counter document ready for general

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<sup>103</sup> George Jewett, “Government must reduce its burden on the mining industry,” *Canadian Mining Journal*, May 1979.



release prior to the completion of the TV series in order to at best discourage the proponents from going on with their project and at the least diffuse and blunt the impact.<sup>104</sup>

The results of an OMA-sponsored public opinion survey prompted a similar reaction on Jewett's part. The survey revealed that the mining industry did not command the public's trust. Only 10 percent of the respondents thought the industry was doing "a great deal" about environmental problems; an overwhelming 96 percent thought mining jobs were dirty, 83 percent unhealthy and 81 percent dangerous. Notably, residents of Northern Ontario responded more favourably to "tough environmental and other policy measures" towards mining than did their southern counterparts.<sup>105</sup> As Jewett had it, such results demanded a thorough-going public education campaign to correct mistaken perceptions, particularly as they related to the realities of free enterprise. "What is indicated," he wrote in a briefing to the Minister, "ideally, is perhaps something along the lines of a Texas State Law which requires education at all levels of the public and high school system, not only the principles, but expressly on the advantages of a free enterprise."<sup>106</sup>

The Division of Mines used its resources to disseminate New Right political and economic thought to a wider audience. Beginning in 1975, the Division began compiling a series of "Mineral Policy Background Papers," each edition focusing on a unique set of policy issues. Senior Policy Advisor Gerhard Anders' role in compiling the background papers was particularly noteworthy, for it appears as though his relationship with Texas A&M University's department of economics – where he had completed his doctorate – solidified the link between the Division

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<sup>104</sup> AO, RG 1-526, Division of Mines Executive Director's files, 510.4, Vol. 3, "Minister's Briefing Notes, Meeting With OMA and MNR, April 11th, 1979," no date.

<sup>105</sup> AO, RG 1-526, Division of Mines Executive Director's files, 510.4, Vol. 4, Goldfarb Consultants, "Current Public Attitudes Towards the Mining Industry in Ontario, A Research Report for the Ontario Mining Association," March 1980.

<sup>106</sup> AO, RG 1-526, Division of Mines Executive Director's files, 510.4, Vol. 3, "Summary Comments - Attitude Survey," no date.

of Mines and the university's team of New Right economists, including S. Charles Maurice, Charles Smithson and Phil Gramm. The first paper in the series was entitled *The Impact of Taxation and Environmental Controls on the Ontario Mining Industry – A Pilot Study*. While, according to Jewett's preface, this and subsequent papers were to be a seemingly neutral "series of data compilations and professional analyses of the mineral industry of Ontario," in reality, the papers were political documents, designed to promote the mining industry's interest.<sup>107</sup>

The Policy Background Papers' explicitly political dimensions were particularly evident in Paper Number 22, *Selected Papers on Mineral Economics: Issues Affecting the Future of Ontario's Metal Sector*. This volume was a compilation of shorter papers and presentations delivered to the Annual General Meeting of the CIMM. Two chapters of particular interest were Gerald H.D. Hobbs' "Lessons of the Past Decade" and Gerhard Anders' "Mineral Title, Land Use Allocation and Mineral Investment." Hobbs was the former Chairman and Chief Executive Officer of Cominco Limited, Canada's largest integrated zinc producer, and a firm closely tied to the Canadian Pacific Railway. His "Lessons of the Past Decade" – a speech to the CIMM's 1983 AGM – addressed "the investment climate in Canada." Hobbs sought to make sense of Canada's declining economic fortunes since the 1970s, its rising levels of unemployment and inflation and its lagging productivity. In Hobbs' view, the trouble began in the mid-1960s, when Canadian society diverted its attention from questions of "wealth creation" to questions of "wealth distribution." Welfare state measures had eroded "self-reliance," while regulations had "diminished initiative and individual freedom."<sup>108</sup> For Hobbs, the Canadian state had devolved

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<sup>107</sup> George Jewett, preface to *The Impact of Taxation and Environmental Controls on the Ontario Mining Industry: A Pilot Study* by G. Anders, W.P. Gramm and S.C. Maurice (Toronto: Mineral Resources Branch, Ministry of Natural Resources, 1973), i.

<sup>108</sup> G.D. Hobbs, "The Lessons of the Last Decade," in Ontario Ministry of Natural Resources (ed.), *Selected Papers on Mineral Economics: Issues Affecting the Future of Ontario's Metal Sector* (Toronto: Ontario Ministry of Natural Resources, 1985), 16.

into a “parasitical” entity that sapped individuals of their freedom and creativity, enslaving them in a form of servitude:

The emphasis in Canada has been parasitical – when you or I work extra hard to produce, or if we find a better way to produce or find a new mine – our feudal Lord – our Government comes along to extract an additional pound of flesh and our efforts to develop capital is undermined. Their rationale always appears most virtuous, but the fact is that we are all their slaves.<sup>109</sup>

Anders’ article was no less emphatic. Like Hobbs, Anders focused on the declining investment climate in Canada. Yet, his analysis took a slightly different tack. For Anders, the “element common to the policy factors adversely affecting the mineral investment climate in Canada [was] the increasingly broad-based erosion of, if not attack on, private property rights.”<sup>110</sup> Writing shortly after the repatriation of the *Constitution Act*, Anders bemoaned the *Charter of Rights and Freedoms*’ silence on private property rights. Its absence would enable ever greater government intervention in industry, thereby diminishing property owners’ “rights to factor returns ... through taxation, inflation, labour and environmental policies, and planning and other administrative constraints.”<sup>111</sup> Anders dismissed the need for government intervention to force industry to internalize its negative externalities, for the arguments advanced in its support were simply “faulty.” In Anders’ view, the rights accorded to private property were seemingly boundless: “Property rights convey the right to benefit or harm oneself or others,” he wrote.<sup>112</sup>

Anders also expressed deep concern about another “most disturbing development,” namely the increasing support from various quarters of Canadian government and society for

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<sup>109</sup> Ibid, 18.

<sup>110</sup> G. Anders, “Mineral Title, Land Use Allocation and Mineral Investment,” in Ontario Ministry of Natural Resources, (ed.), *Selected Papers on Mineral Economics*, 95.

<sup>111</sup> Ibid, 95.

<sup>112</sup> Ibid, 109.

“native ‘sovereignty,’” and its attendant implications for private property rights and natural resource ownership.<sup>113</sup> As Anders had it, the very concept of “Canadian Indian ‘nations’ [was] a contradiction in terms.” Here, Anders relied on an explicitly racist understanding of Indigenous culture, one grounded in colonialist tropes about the cultural superiority of “white” people: “such artificial entities [that is, Indigenous nations] could not prosper but would relapse into a pre-contact primitivism unless culturally they ceased to be natives.”<sup>114</sup> Moreover, any assertion of Indigenous property or title to land was invalid, as “the primitive aboriginal tribes, who largely followed a hunting economy had not established or developed any concept of property rights in land prior to white culture contact.”<sup>115</sup>

In 1980, Anders and his colleagues distilled their Background Papers’ findings into a book-length volume entitled *The Economics of Mineral Extraction*.<sup>116</sup> After establishing the analytic framework in the first half of the book, subsequent chapters analyzed the effects of particular policy alternatives – including taxation, conservation and environmental controls – on investment in the mineral sector. The chapter on the theory of environmental controls provides an illustrative example of the book’s content. Though the authors admit that pollution control policies serve to force firms to internalize at least some of the costs of pollution which they would otherwise impose on society, they reach the following stark conclusion:

controls have an important impact, because they increase the costs of the individual firms that are being constrained. Either firms reduce their production – and society is deprived of the lost output – or firms respond to the controls by increasing their resources to reduce pollution, or perhaps they do both. Therefore, the constraints may cause a reduction in output and profit, an increase in costs, and either an increase or a decrease in

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<sup>113</sup> Ibid, 104.

<sup>114</sup> Ibid, 104.

<sup>115</sup> Ibid, 109.

<sup>116</sup> Gerhard Anders, W. Philip Gramm, S. Charles Maurice, and Charles W. Smithson, *The Economics of Mineral Extraction*, (New York: Praeger, 1980).

employment and investment. In any case the costs are, in the long run, imposed upon society in the form of decreased output.<sup>117</sup>

The possibility that society may in fact benefit from less pollution is simply discarded. Similar conclusions were reached regarding taxation:

Just as was the case for the imposition of environmental controls, the primary long-run effect of a tax increase is upon the industry's rate of investment. Anything that shifts the marginal return to investment downward must at a given rate of interest cause investment to decline. Since the marginal return must be net of taxation, an increase in the rate of taxation causes such a downward shift.<sup>118</sup>

Again, society suffers from the resulting decrease in material output.

Outside the purview of the Ministry of Natural Resources, Anders and the Division's consultants S. Charles Maurice and Phil Gramm disseminated New Right political and economic thought in other ways, writing popular books, policy analyses for libertarian think tanks, and, in Gramm's case, running for and ultimately winning public office. The trio dedicated significant attention to dispelling then-increasingly prevalent concerns about resource depletion, particularly in the context of the first and second oil crises. In 1978, they co-authored the pamphlet *Does Resource Conservation Pay?* for the International Institute for Economic Research, forerunner to the International Policy Network, a United Kingdom-based think tank dedicated to casting doubt on climate change science.<sup>119</sup> Taking aim at "governmentally-enforced conservation," Anders, Maurice and Gramm argued, perhaps unsurprisingly, that resource conservation did not pay: "at any time during the twentieth century *enforced long-term conservation of mineral resources would have been a poor economic decision*, not only for the generation giving up the

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<sup>117</sup> Ibid, 127-8.

<sup>118</sup> Ibid, 151.

<sup>119</sup> DeSmog, "International Policy Network," *DeSmog Blog*, no date, <https://www.desmogblog.com/international-policy-network>, (accessed 23 November 2019).

consumption of the conserved resources, but also for the later generation that obtained the use of the resources.”<sup>120</sup>

In the pamphlet’s epilogue, the authors used the history of the whale oil crisis in the mid-nineteenth century to show how market signals and technological development – not government regulation – could overcome problems of scarcity and avert resource depletion. Notably, ecological constraints did not factor into their account, for natural resources were not products of the natural world, but instead were “functions of capital accumulation and with it of science and technology.” Indeed, as Anders and colleagues argued, “Man largely creates his own environment and his own resources, and is bounded ultimately by the limits of his imagination, his freedom of action, and, to the extent that natural resources are man-made capital assets, by the property rights structure of his society.”<sup>121</sup>

Returning to the whale oil crisis, Anders, Maurice and Gramm showed how, with the aid of price signals and the development of new substitutes, mid-nineteenth century European and North American societies avoided any and all harm from the rapid depletion of whales across the world’s oceans. As whales became more scarce, the price of whale oil rose, quadrupling in the thirty-two-year period leading to 1855. Yet, the world never ran out of whale oil. Instead, as its price rose, “the initiative and the willingness to take risks that had augmented its supply were employed to develop its replacement.”<sup>122</sup> “Man” [*sic*] turned back from the Arctic Ocean, the last refuge of the once abundant sperm whale, and having done so, he found an even more powerful and plentiful source of energy: crude petroleum.

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<sup>120</sup> G. Anders, P. Gramm and S.C. Maurice, *Does Resource Conservation Pay?* (Los Angeles: International Institute for Economic Research, 1978), 7, emphasis in original.

<sup>121</sup> *Ibid*, 39.

<sup>122</sup> *Ibid*, 40.

At times, Maurice's political activities were more insidious. Confidential files made public as a result of litigation have revealed that Maurice was a prominent member of the Tobacco Institute-sponsored "Cash for Comments Economists Network," a network of New Right academics that challenged taxes on cigarettes and government restrictions on smoking. Taking directions – and payments – from tobacco industry lobbyists, Maurice wrote op-eds for Texas media, sent letters to key legislators, and appeared before legislative committees considering policies of interest to the tobacco industry.<sup>123</sup>

While Ontario's mining ministry subsequently lost its New Right ideological edge, it retained its closeness to the mining industry and continued to share its worldview. Promoting mining remained the ministry's main objective. For instance, in 2007, the Ministry of Northern Development and Mines' mandate was "'aimed at growing the northern Ontario economy' and creating 'a strong, sustainable mining industry by promoting investment and exploration.'"<sup>124</sup> Similarly, the Ministry's 2006 "Mineral Development Strategy" sought "to reinforce Ontario's international position as a leading mining jurisdiction and foster responsible mineral development for the benefit of all citizens of Ontario."<sup>125</sup> While the strategy gestured towards issues of environmental sustainability and community development, in the view of the Environmental Commissioner of Ontario, "MNDM's strategy revolves entirely around the promotion of mining in Ontario, with little consideration given to the larger responsibilities of the Ontario government, such as land use planning or environmental protection." In fact, in many respects the strategy appeared to be a public relations exercise, designed to correct what were

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<sup>123</sup> The Centre for Media and Democracy, "S. Charles Maurice," *Sourcewatch*, no date, [https://www.sourcewatch.org/index.php?title=S.\\_Charles\\_Maurice](https://www.sourcewatch.org/index.php?title=S._Charles_Maurice), (accessed 21 November 2019).

<sup>124</sup> Environmental Commissioner of Ontario, *Reconciling our Priorities: Annual Report 2006-2007* (Toronto: 2007), 56

<sup>125</sup> *Ibid*, 64

considered mistaken public perceptions about the negative impacts of mining activities, perceptions that threatened the province's economic well-being. As the MNMD put it, "A negative perception of mining and misconceptions about the industry could foster unwarranted public concerns and make it more difficult for Ontario to attract much-needed investment in new projects and expansions."<sup>126</sup>

## **Conclusions**

As this chapter has shown, the mining industry has long found itself in a contradictory relationship with the state. Owing to the strategic importance of mineral commodities for both industrial and military purposes, states have strong incentives to promote mineral development to ensure a stable supply of crucial raw materials to sustain economic vitality. Ontario's mining industry has benefited from this reality: The postwar nickel, uranium and gold industries would not have assumed the form they were if not for the active intervention of both the Canadian and American states. Indeed, the industry's postwar growth and profitability were inextricably linked up with high-level state planning and large-scale public subsidies, both direct and indirect.

Yet, as the guarantor of social order, the state must do more than sustain economic vitality. To maintain legitimacy, the state must also heed the concerns of its citizens. Herein lies the contradiction. Mining generates severe negative externalities, both environmental and social. As such, in a dynamic and democratic context, in which citizens are free to form associations and advocate alternative political agendas, the industry faces the near-constant risk that other interests will mobilize to pressure the state to contain mining's negative impacts. Regulatory policies that protect the public interest often entail significant costs on mining companies, which,

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<sup>126</sup> Ibid, 64.



in a context of international competition, cannot easily be transferred to consumers. Thus, mining companies have every incentive to maintain cordial relations with state policymakers to ensure, in Marxist terms, that the state's legitimation function does not interfere too strongly with its accumulation function.

In Ontario, the industry has been notably successful in maintaining such cordial relations with provincial officials, particularly those in the mining ministry. As this chapter has shown, through its near-constant interchange of personnel and its shared ideology, the industry has effectively captured the province's mining ministry, transforming it from a neutral administrator of provincial laws into an advocate for the industry's political interests within the state itself. In the chapters that follow, we examine how successive Ontario provincial governments have navigated this tension between legitimation and accumulation in the making of their policies towards mineral development. We begin our analysis with a review of the province's fiscal regime.

## Chapter 3: The Mining Fiscal Regime

### Introduction

In her 2015 *Annual Report*, the Auditor General of Ontario noted that the province had “one of the lowest mining profit tax rates in Canada,” while in the previous twenty years, “the amount of mining taxes and royalties that the province has collected from mining companies ... has averaged less than 2% of the value of minerals extracted.”<sup>1</sup> Ontario’s marginal effective mining tax rate of 5.6%, she continued, was “considerably lower” than the 8.6% national average. For the Auditor General, there seemed to be little justification for Ontario’s markedly low resource revenue generating capacities, particularly since the province had made “significant improvements” in its international corporate tax competitiveness in recent years. Even after the 2015 Budget announced the government’s plans to eliminate its resource tax credit – the last of the provinces to do so – and harmonize its tax policies with the federal government, “Ontario’s mining tax rate remains one of the lowest in Canada.”<sup>2</sup>

This chapter analyzes Ontario’s mining fiscal regime, a policy over which, as the foregoing suggests, the industry has exercised considerable influence. After reviewing the structure of Ontario’s Mining Tax, this chapter is divided into four sections. The first section shows how the industry took advantage of its close relationship with provincial policymakers to secure for itself tax concessions at both the provincial and federal levels. In the early postwar years, the provincial government proved itself a key ally in the mining industry’s campaign to minimize its federal tax burden. Central in this regard was the 1944 publication of the report of Ontario’s Royal Mining Commission, which, on the basis of industry representations, sounded the alarm over Ottawa’s seemingly irresponsible taxation policies that threatened the industry’s

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<sup>1</sup> Auditor General of Ontario, *2015 Annual Report* (Toronto: Office of the Auditor General, 2015), 465.

<sup>2</sup> *Ibid*, 465.

vitality. In the absence of meaningful opposition, industry lobbying turned mineral extraction into Canada's most favourably taxed industrial sector.

Yet, in contrast to the opening decades of the postwar era, the decade from 1966-1975 saw the industry's concessions come under scrutiny. Expert commissions rejected the industry's claims for special treatment, while economic nationalists and social democratic politicians criticized the tax code's distortion of Canada's industrial structure and its deepening of Canada's dependence on US-controlled resource extraction. In this context, the mining industry mobilized its resources to wage a defensive campaign, which, with the full support of the government of Ontario, thwarted the Royal Commission on Taxation's proposals to tax mining income the same as other forms of business income. Similarly, in collaboration with the Department of Mines, the industry defeated the 1967 Ontario Committee on Taxation's relatively modest proposal to raise the Mining Tax.

While the provincial government remained a key ally to industry in the tax battles of the late 1960s and early 1970s, by the mid-1970s relations soured, if only temporarily. In a context of resilient economic nationalism, the provincial government amended its tax code to penalize mining companies that exported their mineral products in a crude form, much to the chagrin of Falconbridge Nickel, which had operated a nickel refinery in Norway since the late 1920s. Yet, although the measure was the province's most ambitious policy of the postwar era, it was dropped almost as soon as it was introduced. Facing stiff corporate resistance and weakening commodities markets, which hurt industry profits, policymakers rescinded the tax penalties and abandoned any real effort to enhance domestic productive capacities. This decision marked the re-assertion of the industry's hegemony over fiscal policy. Since the late 1970s, the provincial

government has further lowered the industry's tax burden on three separate occasions. It remains the province's most favourably taxed sector to the time of writing.

### **The Structure of Mining Taxation in Ontario**

In Ontario, mining companies are subject to three distinct forms of taxation. Like other corporate enterprises, mining firms are subject to the corporate income tax, while their property is subject to municipal realty taxation. However, as this chapter shows, both the *Corporate Income Tax Act* and the *Assessment Act* have treated the mining industry differently for tax purposes than other industries. Mining income is also subject to the Mining Tax. While industry groups have frequently bemoaned the fact that the mining industry alone must bear this "special tax," the Mining Tax is perhaps best understood not as a "tax" but as a payment to the province for the use of its resources. As the 1978 Federal-Provincial Resource Taxation Review explained, were mineral resources privately rather than publicly owned, "there would obviously be some charge for their use and this payment would be considered a normal cost of production to the companies."<sup>3</sup> This section briefly reviews the structure of Ontario's Mining Tax.

From its introduction in 1907, Ontario's Mining Tax has imposed a levy on profits (not revenues) earned at the mining stage only. That is, profits earned from the smelting of ores or from the refining to the prime metal stage have been exempt from mining taxation, though they have been subject to the corporate income tax. Yet, although simple in theory, calculating profits earned at the "pit's mouth" posed several challenges to early policymakers, particularly in light of the structure of Ontario's leading mineral sector, nickel. It will be recalled that the International Nickel Company enjoyed a virtual monopoly in the nickel market until the 1950s, if

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<sup>3</sup> Federal-Provincial Conference of First Ministers, *Federal-Provincial Resource Taxation Review: Joint Report* (Ottawa: 1978), 30.

not later. Because Inco was a vertically integrated producer that mined, smelted, refined and marketed its output, there simply was no “market price” for nickel concentrates, and thus no obvious method of determining what portion of the company’s profits were earned from extraction. Accordingly, the *Mining Tax Act* called upon the provincial Mine Assessor, the official responsible for administering the Mining Tax, to appraise the value of the concentrates for tax purposes. While the company’s control over the Sudbury Basin’s nickel deposits was the ultimate source of its monopoly profits, Inco had a strong incentive to persuade the provincial government that the bulk of its income was derived from the processing stage, not the mining stage to shield itself from higher taxation. As Inco had it, Sudbury’s complex orebodies presented tremendous metallurgical challenges, and it was only because of the company’s large investments in sophisticated processing technologies that its operations were economical. For that reason, the company suggested that the Mine Assessor should apportion the greatest share of its profits to the processing stage. The Mine Assessor, G.R. Mickle, largely agreed: His practice was to attribute 60 percent of the company’s profits to processing, leaving only 40 percent of its income, less allowable deductions, subject to the Mining Tax. Thus, at a tax rate of three percent, in the fiscal year ending March 31, 1915, Inco paid \$40,000 in taxes on total profits nearing \$5 million.<sup>4</sup>

Only for a brief period after the First World War did the Mining Tax depart from the practice of taxing mining profits only. Inco’s legitimacy was on the wane, not only because of its soaring, war-induced profits. More importantly, the company had sold large amounts of nickel, via its US-based refinery, to German arms manufacturers, a federal order-in-council prohibiting

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<sup>4</sup> Royal Nickel Commission, *Report of the Royal Ontario Nickel Commission* (Toronto: A.T. Wilgress, 1917), 521.

nickel exports to Germany notwithstanding.<sup>5</sup> In this context, an Ontario Royal Commission struck to study the nickel industry argued that mining companies did not pay “a fair amount of taxation.” Rejecting Inco’s claim that refining Sudbury ores presented any unique metallurgical challenges, the Commission called on the Mine Assessor to “fix the profits to be taxed at an amount based upon the price or value of the refined products.” Yet, although the government initially adopted this recommendation, by 1921, it had succumbed again to the industry’s special pleading, and reverted to the practice of taxing only profits earned at the pit’s mouth.<sup>6</sup>

The practice adopted from 1921, itself a reflection of Inco’s market and political power, has remained in force up to the time of writing, with some minor variations. Until amendments passed in the 1970s (discussed below), the tax base was determined at the Mine Assessor’s discretion. In general, in appraising the value of ore other than nickel, his practice was to deduct from the sale price of the processed product a number of expenses, including processing and marketing costs, a portion of head office expenses attributable to processing, depreciation of plant and, finally, an allowance for processing profit. This latter allowance was generally established at 8 percent of the *original* cost of processing assets, regardless of depreciation, but the Assessor would not permit an allowance of less than 15 percent or more than 65 percent of combined mining and processing profits. For their part, nickel producers were given a special allowance of 25 percent of the original cost of processing assets in recognition of the supposed difficulties in treating Sudbury’s nickel-copper ore. Finally, after having arrived at a determination of the pit’s mouth value in this way, the Assessor then deducted a number of costs attributable to mining, including the costs of transporting the ore, various “proper working

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<sup>5</sup> Prominent newspapers, like the *Globe*, suggested that the government of Canada would be well within its rights to nationalize the nickel mines should Inco continue to export to Germany. For example, see “Nickel for Germany,” *Globe*, 20 November 1914.

<sup>6</sup> Ontario Committee on Taxation, *The Ontario Committee on Taxation: Report* (Toronto: Frank Fogg, 1967), 329.

expenses” and depreciation of mining plant.<sup>7</sup> While, for reasons discussed below, the special allowance for nickel producers has been eliminated, the processing allowance remains fixed at a minimum of 15 percent and a maximum of 65 percent of company profits.

To be sure, Ontario was not alone among Canadian provinces in providing favourable tax treatment to the mining industry, particularly before the wave of “resource nationalism” that swept across western Canada during the mid-1970s commodities boom. As W. Keith Buck of the Department of Mines and Technical Surveys put it in a 1963 study, “Royalty and mining tax provisions of the various governments are all designed to encourage exploration, in that they are virtually all levied on production or profits, rather than on ore reserves in the ground. Such levies are usually moderate and so arranged as to place a minimal financial burden on the lower profit mines.”<sup>8</sup> Nevertheless, Ontario’s tax structure was unique in at least one important way: Unlike other provincial legislation, Ontario’s *Assessment Act* barred municipalities from levying realty taxation on mining company property.

The mining industry’s property tax exemption impacted severely municipal financing in mining towns, generating inequities in the distribution of the local tax burden and undermining the municipalities’ capacities to deliver services. While designated mining municipalities received grants from the provincial government in lieu of assessment, the transfer payments were inadequate to compensate for the revenue shortfall. Most mining centres’ long distance from more heavily populated regions, their rocky terrain and their general lack of alternative industry compounded their difficulties. Sudbury’s problems were unique only because it was a much larger urban centre than Ontario’s other mining-dependent towns. In a 1964 brief submitted to

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<sup>7</sup> Ibid, 305-9.

<sup>8</sup> W. Keith Buck, *Mineral Development Policy* (Ottawa: Mineral Resources Division, Department of Mines and Technical Surveys, 1963), 5.

Premier Robarts, the city detailed a long list of issues. While Sudbury residents paid taxes 20.7 percent higher than residents in other Ontario municipalities of comparable size, they received fewer services. The city's water, sewerage and transportation infrastructure were below provincial standards, and the city struggled to maintain other public services like libraries, parks, and police and fire services.<sup>9</sup> Yet, while the city of Sudbury and other mining municipalities – organized under the banner of the Association of Mining Municipalities of Northern Ontario (AMMNO) – often complained bitterly to the provincial government about the inequities arising from the mining industry's property tax exemption, in general, they did not press for changes to the *Assessment Act*. Instead, they pressed for greater transfer payments from the province. Here we see a clear example of how the communities' economic dependence on mining shaped their political activities.

Mineworkers' unions were similarly critical of the government's handling of mining municipalities' finances, but like the AMMNO, hesitated to call on the province to grant municipalities the right to tax mining company property for similar reasons. For example, in their brief to the 1964 Select Committee on Mining, the Steelworkers protested the high tax burden borne by mining town residents, while mining companies evaded their responsibility. Yet, as far as a solution went, the Steelworkers endorsed the AMMNO's proposals for greater transfer payments.<sup>10</sup> Mine Mill Inco Section President Wm. Martin offered one of the most colourful assessments of the origins of the formula that determined payments to mining municipalities in a letter to Sudbury MPP Elmer Sopha, who had suggested in a Sudbury *Star* editorial that provincial government officials acted as if they had received the formula "on Mount Sinai." As

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<sup>9</sup> Gwenda Hallsworth and Peter Hallsworth, "The 1960s," in C.M. Wallace and Ashley Thomson (eds.) *Sudbury: Rail Town to Regional Capital* (Toronto: Dundurn Press, 1996), 223.

<sup>10</sup> AO, RG 49-148, Records of the Select Committee on Mining, *Select Committee on Mining, Volume 10, Hearings Held at Sudbury, Ontario*, 10 December 1964, 872.



Martin put it, “We say ... that the formula cannot claim divine origin. We submit that it was received closer to home, from the hallowed, tax-free corporate Nassau of the Precambrian shield, Copper Cliff and Falconbridge.”<sup>11</sup> Among prominent interests, it appeared that only Elmer Sopha of the Liberal Party and, subsequently, the Northern Ontario contingent of the New Democratic Party caucus advocated eliminating the industry’s special exemption. Although the formula for calculating mining revenue payments was amended several times after the Second World War, it was not until 1969 that a major reform to the municipal tax structure was introduced. Ironically, it was Inco itself that advanced a proposal to permit municipalities to tax mining companies’ surface property, while leaving their underground properties exempt. The provincial government adopted Inco’s proposal, indicating again the industry’s power to shape fiscal policy.

### **Industry Dominance (1943-1965)**

As the Second World War neared its end, tax reform reached the top of the mining industry’s list of policy priorities. Industry officials feared that the special wartime measures enacted to strengthen the federal government’s revenue-generating capacities would continue into the postwar years, sapping industry profits in the name of public spending programs. Before the war had ended, industry devised an elaborate campaign to nip the potential for higher taxes in the bud. Its efforts were a success. Despite earning large profits through the 1940s, 1950s and 1960s, the mining industry leveraged its political power to remain Canada’s most favourably taxed industrial sector.

The industry’s early success in the tax policy field can be attributed to three factors: its discursive hegemony, the support it received from the newly elected Progressive Conservative

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<sup>11</sup> AO, RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-970, Wm. Martin to Elmer Sopha, 1 February 1968.

government of Ontario, and the near-total absence of organized opposition that it faced. The industry dominated public discourse, using public relations campaigns and various media to frame perceptions about the state of the industry, its unique contributions to Canadian social and economic life, and the grave dangers it faced from well-intentioned but ill-conceived government policies. In transmitting this message to a wider audience, the industry received a remarkable degree of assistance from the Ontario provincial government. Indeed, in launching the industry-dominated Royal Ontario Mining Commission in 1943, the government effectively delegated the making of tax policy to the mining companies themselves. Meanwhile, there were few challengers to the industry's hegemony. The Liberal Party proved just as receptive to the mining industry's claims as the governing Conservatives. Although the social democratic Co-operative Commonwealth Federation had twice won the status of the official opposition in the 1943 and 1948 provincial elections, the party recovered only with great difficulty following its shocking performance in 1951 when it won just two of the Legislature's 90 seats. Through the rest of the 1950s, the CCF exercised little influence at Queen's Park, the party's internal organization in "disarray."<sup>12</sup> Fearful of heavy taxation's impacts on profits and, indirectly, employment, unions approached the issue with caution. Not until the mid-1960s did the industry's hegemony begin to wane.

Industry grumblings about taxation dated at least to the lead-up to the 1943 provincial election. In March of that year, the prominent President and Chairman of McIntyre Porcupine Mines, J.P. Bickell, used his company's annual report as a medium to raise an "urgent warning" about the "dangerous situation" then confronting the Canadian mining industry. As Bickell had it, mining taxation was growing so heavy that the industry faced a potentially terminal crisis.

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<sup>12</sup> John Terence Morley, *Secular Socialists: The CCF/NDP in Ontario: A Biography* (Montreal: McGill-Queen's University Press, 1984), 57.

With its close ties to the gold mining industry, the *Globe and Mail* published excerpts of Bickell's address to shareholders to a national audience:

Year after year, [Bickell wrote,] the impact of taxation has increased until today the various governing bodies have imposed taxation upon an industry drawing sustenance from wasting assets to a point where such industry cannot survive and hope to perpetuate itself ... The industry then is on a salvage basis and must continue to shrink until the taxing authorities realize that they have long since reached the era of diminishing returns.<sup>13</sup>

Both the Liberal provincial government and its Progressive Conservative opposition endorsed Bickell's call for action. In May, Mines Minister Robert Laurier urged the striking of a federal-provincial conference to "formulate a mining policy to correct this grave situation."<sup>14</sup> For its part, the Progressive Conservative Party promised in point six of its 22-point election platform that the "mining industry will be assisted in every way possible," and that the industry's "tax burden will be lightened."<sup>15</sup>

After the 1943 election, the new PC government made good on its campaign promise to the industry. In October 1943, the government struck a Royal Commission "for the purpose of making recommendations which would stimulate the mining industry in Ontario."<sup>16</sup> The Commission was tasked with making an inquiry into a variety of topics, including the need to promote prospecting in the province, the financing of mining municipalities, mining's place in postwar employment, and, naturally, mining taxation. The Commission's Chairman, Norman C. Urquhart, was well respected in mining circles. Urquhart was the former president of the Standard Stock and Mining Exchange, a director of the Noranda subsidiary, Aunor Gold Mines,

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<sup>13</sup> "Mining Future is Threatened, Says Bickell," *Globe and Mail*, 20 May 1943.

<sup>14</sup> Wellington Jeffers, "Finance at Large," *Globe and Mail*, 21 May 1943.

<sup>15</sup> "Drew Offers 50 P.C. Cut in Ontario School Tax," *Globe and Mail*, 9 July 1943.

<sup>16</sup> Royal Ontario Mining Commission, *Report of the Royal Ontario Mining Commission* (Toronto: 1944), Vol. 1, iv.

a business partner of the Timmins family, and one of Canada's wealthiest individuals.<sup>17</sup> The seven remaining commissioners each had ties to some aspect of the industry, whether in prospecting, mine financing or mining itself.

Released in 1944, the Royal Commission's final report reiterated Bickell's earlier "urgent warning." As the Royal Commission had it, the industry was living on borrowed time. The massive production increases undertaken to meet the federal government's requests for base metals to fuel the war effort had depleted the province's mineral reserves. Yet, heavy federal taxation had sapped any and all incentive for investors to advance their risk capital in the search for new deposits. As a result of the decline in prospecting, new ore bodies were not being discovered to replace those being depleted. As the Report explained it,

No mineral prospect can justify the risks attendant upon development unless the attainable prize in the form of commensurate profit is available to one who succeeds. The prize has been so reduced in value by progressive increase in taxation that it no longer holds sufficient attraction for those who would venture.<sup>18</sup>

The Report depicted mining as a unique industrial activity, one that required an especially sensitive policy climate to ensure its viability. Unlike other industrial pursuits, the Report noted, mining depended "for its existence on definitely exhaustible resources of raw materials."<sup>19</sup> That is, unlike a manufacturing firm, a mining firm's raw material was irreplaceable once it had been consumed in production. Although the definite size and quantity of a given mineral deposit were matters determined by nature, government policy could either increase or limit just how much ore could be economically extracted. In this regard, the Report argued, the "points of paramount

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<sup>17</sup> Co-operative Commonwealth Federation researcher Watt Hugh McCollum argued that Urquhart was among Canada's 50 "Big Shots" who "ruled" the country. In the mid-1940s, Urquhart owned assets worth \$1.65 million, and sat on a total of 11 corporate boards, including five in mining and two in finance. See Watt Hugh McCollum, *Who Owns Canada: An Examination of the Facts Concerning the Concentration of Ownership and Control of the Means of Production, Distribution and Exchange in Canada* (Ottawa: Woodsworth House, 1947), Table 3, 10-11.

<sup>18</sup> *Report of the Royal Ontario Mining Commission*, Vol. 1, 20.

<sup>19</sup> *Ibid*, 6.

importance” were as follows: “If costs be raised, for instance, by taxation, then the total tons available as raw materials for the mining business will be decreased accordingly.” Yet, this need not be the case, the report suggested. “Wise administration,” “extensive aids to prospecting and exploration,” and technological development could ensure that “the industry as a whole may be expanded to include vast amounts of new ore to keep its plants working and its benefits, both direct and indirect, flowing to the people of this country.”<sup>20</sup>

Notably, the Report suggested that special tax breaks for mining were not simply a matter of concern for the mining industry, but for the public more generally. In the Commission’s view, the mining industry was of “unparalleled importance to the social and economic life of the province.” Its benefits, the Report continued,

have had far-reaching effects on the lives of every one of our citizens in the past, and it is of paramount importance that the industry should continue to play a leading role in determining the destiny of our country. It is the patriotic duty of every citizen of Canada, whether he be in public or in private life, to see that the future of the industry is assured by sound administration, wise leadership and enthusiastic support.<sup>21</sup>

The policy implications of the Royal Commission’s analysis were clear. “Drastic and prompt measures” had to be taken to restore the mining industry to “its rightful position.”<sup>22</sup> More emphatically, the Report continued,

unless some favourable action is taken to overcome the handicaps under which the mining industry is now operation, it will continue its decline at an accelerated rate. This will result not only in catastrophe to the industry, but also very serious disadvantage to the people of Canada as a whole, and of Ontario in particular.

Concretely, the Commission made three recommendations. First, the federal government should allow as deductible expense items mining company payments under the Ontario Mining Tax for the purposes of the federal income tax. The reasoning behind this suggestion was

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<sup>20</sup> Ibid, Vol. 3, 1.

<sup>21</sup> Ibid, 1.

<sup>22</sup> Ibid, Vol. 1, 22.

instructive, particularly in light of the industry's subsequent suggestion to eliminate the Mining Tax entirely. In the Commission's view, Mining Tax payments were proper business expenses like any other. They represented the cost a mining company paid to acquire its raw material. As such, they should be treated in the same manner as were other business expenses. Second, in recognition of the industry's high risks, the federal government should increase the depletion allowance from the existing 33 and one-third percent to 50. In recognition of the fact that mines were depleting resources, the depletion allowance allowed mining companies to deduct automatically one third of their profits for income tax purposes. The industry wanted to increase this deduction to one half of its profits. Finally, the Commission urged the federal government to allow "outside" exploration costs incurred anywhere in Canada as deductible expense items. While exploration work carried out on company property was tax deductible, the industry aimed to secure similar treatment for new exploration sites. Notably, the Commission's recommendations touched on federal tax issues, not provincial ones. Indeed, in industry's view, Ontario's tax structure provided a "model" for other jurisdictions to emulate.<sup>23</sup> This was not surprising in light of the minimal burden it imposed on the industry. For instance, in 1945-46, Inco paid a total of \$1,471 in taxes to the province, Falconbridge just \$34.<sup>24</sup>

To be sure, the Royal Commission's analysis was debatable in more ways than one. In pinning the blame for the decline in prospecting on federal taxation, the Commission neglected other factors, like the drastic labour shortages caused by the war. Other claims were similarly questionable. The Royal Commission made much of the fact that more than half of the province's mineral output derived from mining areas discovered prior to 1910.<sup>25</sup> Yet, in light of

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<sup>23</sup> "Joint Action Needed to Safeguard Mining," *Globe and Mail*, 21 May 1943.

<sup>24</sup> "Int. Nickel Co. Taxes," *Globe and Mail*, 3 April 1947.

<sup>25</sup> *Report of the Royal Ontario Mining Commission*, Vol. 1, 21.

the massive increases in production from the Sudbury nickel mines, discovered in the 1880s, this was hardly surprising. Moreover, with measures like automatic depletion and the three-year income tax holiday for new mines, it would be difficult to suggest the federal government imposed a particularly severe tax burden on mining. Nevertheless, the Conservative government eagerly endorsed the Report and its recommendations.

The industry could not have asked for a better advocate than Mines Minister and Provincial Treasurer Leslie Frost, who adopted the Royal Commission's rhetoric and recommendations as his own. The proposals he made in his January 1944 speech to the Canadian Institute of Mining and Metallurgy in Ottawa were precisely those demanded by industry. Bemoaning the "unfair burden of taxation" imposed on the industry by the federal government, burdens that discouraged "initiative, enterprise and capital," Frost warned that without swift action, the mining industry would face inevitable ruin. Mining simply could not be taxed in the same way as other industries, Frost argued:

Mining taxation must be placed on a different basis from that of other industry. ... Its raw materials are the ore reserves which are definitely exhaustible. It cannot be placed in the same category as another industry which has an unlimited supply of raw material. A mine is a wasting asset, and the continuation of mining depends upon the prospecting and discovering of new properties to replace those so depleted. Only about 1 per cent of the properties are an economic success.<sup>26</sup>

For the next two years, Frost persisted in a dogged effort to secure the industry's desired concessions from the federal government. He took the issue directly to the federal Cabinet. He played a leading role in coordinating a united front among the provinces, presiding over the 1945 Interprovincial Committee on the Mining Industry that pressed for federal relief for mining. He kept the issue squarely in the public spotlight, delivering speeches and addresses on the matter across the province. To the Association of Ontario Mayors and Municipalities, Frost declared,

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<sup>26</sup> "Would Revise Taxation Change Security Laws To Simulate Mining," *Globe and Mail*, 20 January 1944.

“Dominion taxation in the main has not had sufficient regard for the hazardous and uncertain nature of the mining industry. If persisted in, the effect on the industry would be disastrous.”<sup>27</sup>

To the Prospectors and Developers Association, Frost announced, “The most important and far-reaching economic objective of the Government is to provide for a reduction of mining taxation, and thus encourage and reward initiative and enterprise.”<sup>28</sup>

Meanwhile, the Ontario Mining Association hired Public Relations Services Limited to conduct “emergency work” on the mines tax problem on its behalf in Ottawa. The agency mounted an intensive lobbying campaign that included coordinating a letter-writing campaign, in which mining company shareholders sent 92,850 letters to federal MPs; securing personal interviews with at least 60 MPs, who were given copies of the Royal Ontario Mining Commission’s interim report and briefed on the industry’s “special case” as regards taxation; writing editorial content for several newspapers, like the *News*, *Saturday Night* and the *Northern Miner*; and securing the support of the Ontario Association of Boards of Trade and Chambers of Commerce, which issued a joint statement in support of the industry.<sup>29</sup>

It was not long before the industry’s lobbying campaign began to bear fruit. As the Ontario Mining Association reported to its directors in 1947, the recommendation to allow provincial mining tax payments as deductible expenses was granted with an amendment to the *Income War Tax Act* in 1946.<sup>30</sup> No other profits tax paid to the provinces was deductible under the income tax. As for the deductibility of outside exploration costs, the federal government was initially hesitant to make the measure permanent. In every year between 1943 and 1954, the

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<sup>27</sup> Frank Tumpane, “Frost Declares Mining on Eve of Expansion,” *Globe and Mail*, 28 September 1945.

<sup>28</sup> “Revision of Mining Act Seen Aid to Prospectors,” *Globe and Mail*, 8 March 1945.

<sup>29</sup> AO, RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-147, Ontario Mining Association, Henry Janes, “Final Progress Report to Public Relations Committee Ontario Mining Association,” no date.

<sup>30</sup> Ontario Mining Association, *Report of Directors for 1946* (Toronto: 1947), 53.



federal Finance Minister introduced a budget resolution, to have effect for three years, allowing for the deduction of exploration costs from income in the year of expenditure. Nevertheless, in 1955, an amendment to the *Income Tax Act* was passed, giving the allowances a permanent legal foundation.<sup>31</sup> The deductions could be carried forward indefinitely, subject only to the condition that they be claimed once a company had earned income against which to charge them.<sup>32</sup> Thus, only the recommendation to increase the depletion allowance to 50 percent of income was rejected, though it did remain at the generous level of 33 and one-third percent.

With these amendments, the mining industry and its investors added to their list of pre-existing special tax concessions. New mines were exempt from income taxation for their first three years of operation. Because companies did not have to deduct their exploration and development costs from tax-exempt income, a new mine could, as a result, go six to seven years without paying tax. Mining company shareholders enjoyed a special dividend depletion allowance. Income earned from the sale of mineral properties was exempt from taxation. So too was income earned from “grubstaking,” that is, offering financial assistance to mineral prospectors. Overall, the concessions generated significant tax savings for the industry. According to M. W. Bucovetsky’s study for the Royal Commission on Taxation, the depletion allowance alone had resulted in more than \$625 million in foregone revenues in the period 1948-1961.<sup>33</sup> In his 1973 report on mineral policy to the Manitoba government, Eric Kierans showed that in the four years 1965-68, metal mining firms paid federal corporate income tax on only 13 percent of their book profits, while manufacturing firms did so on 79 percent of theirs.<sup>34</sup> For

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<sup>31</sup> D.Y. Timbrell, *Taxation of the Mining Industry in Canada* (Ottawa: Queen’s Printer, 1967), 113-4.

<sup>32</sup> M.W. Bucovetsky, *Taxation of Mineral Extraction*, (Ottawa: Queen’s Printer, 1967), 8-9.

<sup>33</sup> Bucovetsky, *Taxation of Mineral Extraction*, 142.

<sup>34</sup> Eric W. Kierans, *Report on Natural Resources Policy in Manitoba* (Winnipeg: Planning and Priorities Committee of Cabinet, 1973), 8-9.

individual companies, the tax savings were just as pronounced. In the 1960s, Inco's tax exempt income – approximately \$225 million – exceeded its total expenditures on exploration and development.<sup>35</sup>

Not only did the government of Ontario assist the mining industry in its policy efforts at the federal level, but it also offered special concessions of its own. Mines Minister and Treasurer Frost held true to his policy of not increasing taxes on mining companies, even as revenues declined.<sup>36</sup> While the province introduced legislation in 1946 increasing the rate on profits over \$5 million from six to nine percent, it did so only after the industry had secured the deductibility of provincial mining tax payments under the federal income tax. And, when complications in drafting the federal regulations delayed their coming into force for a year, Ontario postponed its own amendments to avoid imposing a higher tax burden on the mines.<sup>37</sup> The following year, Ontario introduced another concession, amending the *Corporation Tax Act* so as to allow as deductible expenses costs incurred in prospecting, exploration and development not only in Ontario, but anywhere in Canada.<sup>38</sup> Meanwhile, mining profits that were levied under the *Mining Tax Act* were exempt from the provincial *Corporation Tax Act*.<sup>39</sup> Another amendment passed in 1948 granted the Minister of Mines the discretion to remit all Mining Tax payments made by iron ore producers, where the ore was smelted in a Canadian blast furnace.<sup>40</sup>

It was not until 1957 that the *Mining Tax Act* was amended in any significant way again. Initially, the amendments broke the prevailing pattern, for, in response to rising metals prices, the government raised the rate of taxation on profits between \$1 million and \$5 million from eight to

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<sup>35</sup> M.W. Bucovetsky, "The Mining Industry and the Great Tax Reform Debate," in A.P. Pross (ed.) *Pressure Group Behaviour in Canadian Politics* (Toronto: McGraw-Hill Ryerson, 1975), 110, fn. 21.

<sup>36</sup> Frank Tumpane, "Frost Declares Mining on Eve of Expansion," *Globe and Mail*, 28 September 1945.

<sup>37</sup> Ontario Mining Association, *Report of Directors, 1947-1948* (Toronto: 1948), 7.

<sup>38</sup> "Ontario Widens Tax Exemption For Exploration," *Globe and Mail*, 15 April 1948.

<sup>39</sup> Ontario Mining Association, *Report of Directors for 1946*, 56.

<sup>40</sup> Ontario Mining Association, *Report of Directors 1948-1949* (Toronto: 1950), 7.

11 percent, and on profits above \$5 million from nine to 12 percent. Yet, in the face of industry protest, the government offered the industry relief. The OMA delivered a brief to Minister of Mines J.W. Spooner, noting that it was “shocked and greatly disturbed” by the 1957 budget speech and the higher rates of taxation imposed on mines.<sup>41</sup> The *Northern Miner* editorialized against the tax changes, urging the government “to take a long, hard and sensible look at the future implications of the new and throttling encumbrances.”<sup>42</sup> While Mine Assessor B.C. Lee advised Spooner that the facts and figures reported in the *Northern Miner*’s October 31 editorial and another article about the impact of the changes on Campbell Red Lake Mines were erroneous, the industry’s special pleading nevertheless produced the intended effect.<sup>43</sup> After meeting with OMA representatives and receiving their brief in August, Spooner arranged for a similar meeting between the OMA and Provincial Treasurer Dana Porter in November. The industry appears to have persuaded Porter as much as it had Spooner. As a result of these meetings, in 1958 the province adopted a depletion allowance modeled on the federal government’s, allowing mining companies to reduce their profits for provincial income tax purposes by 33 and one-third percent, and replaced the exemption from the Mining Tax of the first 50 percent of profits from new mines with a three-year income tax holiday.<sup>44</sup>

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<sup>41</sup> AO, RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0-284, Ontario Mining Association – 1957, 1958, Ontario Mining Association, “Submission on Taxation to the Honourable J.W. Spooner, Minister of Mines,” 27 August 1957.

<sup>42</sup> “Ontario Tax Hikes Hitting Mines Seriously,” *Northern Miner*, 31 October 1957.

<sup>43</sup> AO, RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-284, B.C. Lee to J.W. Spooner, 4 November 1957.

<sup>44</sup> Ontario Mining Association, *39<sup>th</sup> Annual Report* (Toronto: 1959), 12. The OMA’s report reads: “The brief prepared on Taxation in Ontario was presented to the Honourable J.W. Spooner, Minister of Mines, by Messrs. H.J. Fraser, W. Row and the Executive Director on August 27, 1957. The brief was well received and it was the wish of the Minister that a similar meeting be arranged with the Provincial Treasurer. This was done and on November 15, 1957, Messrs. H.J. Fraser, W. Row and M.L. Urquhart and the Executive Director presented this brief to the Honourable Dana Porter, the Provincial Treasurer. Amendments to the Mining Tax Act passed in 1958 arose largely from the proposals contained in this brief.”

Apart from the social democratic Cooperative Commonwealth Federation (CCF), there was little organized opposition to the mining industry's special tax treatment until the mid-1960s. Yet, reduced to a handful of seats in the Legislature, the best the CCF could do was offer up vague statements of principle, suggesting that a CCF government would use natural resource revenues to fund an expansive welfare state.<sup>45</sup> While the Steelworkers were, at times, highly critical of the industry's special tax treatment, they hesitated to call for increases in the rate.<sup>46</sup> At times, opposition parties scrambled to present themselves as the industry's true defenders. On the occasion of the 1957 rate increase, for instance, Albert Wren, the Liberal-Labour representative from Kenora, scored the new tax scale as "discriminatory in the extreme and excessive." As *The Northern Daily News* reported, "He said he could not see where an increase in tax is justified. It would hamper Northern Ontario resources and industry 'if we continue to take most of the profits of the mines in taxes.'"<sup>47</sup> And, as discussed above, mining towns responded to the prohibition against municipal realty taxation, not by demanding a change to the law, but instead by demanding a greater share of existing revenues.

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<sup>45</sup> For example, see Arthur Brydon, "Privileged Tax Basis For Mining Charged," *Globe and Mail*, 23 September 1963; and Arthur Cole, "T.C. Douglas: Demands Higher Taxes for Mines in Ontario," *Globe and Mail*, 9 June 1949.

<sup>46</sup> For example, in his presentation to the Select Committee on Mining in 1964, USW District 6 researcher Dan Taylor suggested, "the picture [the mining industry created of itself] is [one] of a delicately balanced mechanism which can be thrown into disorder or destroyed by the slightest vibration. The surest way then to oil the wheels of progress is to grant further tax concessions to the industry." Yet, while Taylor pointed out that the amount of assistance Ontario gold mines had received under the federal *Emergency Gold Mining Assistance Act* in the 15 years 1948-62 was equivalent to 55 percent of the *total revenue raised by the Ontario Mining Tax in its history*, Taylor explicitly refrained from recommending increases to the tax rate.

<sup>47</sup> AO, RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0-204, "Increased Number of Claims To Force Crown Lands Study," *The Northern Daily News*, 13 March 1957.

## **Tax Reform: The Carter and Smith Reports (1967-1972)**

The industry's hegemony was undermined in a perhaps unexpected way. In 1962, business groups lobbied the federal government to rationalize the tax system. In response, Conservative Prime Minister John Diefenbaker appointed the Royal Commission on Taxation chaired by Kenneth Carter (the Carter Commission) to study the federal tax system and recommend measures for its improvement. While business groups dominated the Commission hearings, pressing for lower rates of corporate taxation to promote capital accumulation and economic growth, the Commission's final report was far from what they had hoped it would be.

For the Carter Commission, the primary objective of taxation was equity. As the Report explained, "The first and most essential purpose of taxation is to share the burden of the state fairly among all individuals and families. Unless the allocation of the burden is generally accepted as fair, the social and political fabric of a country is weakened and can be destroyed."<sup>48</sup> From this point of departure, the Commission recommended a suite of changes that gravely threatened the mining industry's economic interests. The Commission's suggestions enjoyed broad public support and were praised for their farsightedness by tax experts. While the Commission's proposals aimed to treat mining income the same as other forms of business income to minimize distortions in the distribution of investment, the mining industry was deeply opposed to the Report's vision and recommendations. In short order, the industry mobilized a massive defensive campaign that drew on the multiple mechanisms of power at its disposal. It flooded the public discourse with alarmist threats of economic calamity, it threatened capital flight, and it lobbied both federal and provincial government officials to meet its demands. With the full support of the Ontario government, whose actions mirrored its earlier interventions in the

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<sup>48</sup> Quoted in Robert Gardner, "Tax Reform and Class Interests: The Fate of Progressive Reform, 1967-1972," *Canadian Taxation* 3 (1981), 245.

immediate postwar period, industry beat back the Commission's proposals, securing its preferential tax treatment, albeit in modified form. Similarly, the industry secured further concessions at the provincial level, despite the moderate criticisms levelled against provincial mining taxation raised by the Report of the Ontario Committee on Taxation released in 1967.

### ***The Royal Commission on Taxation (The Carter Report)***

The Royal Commission's study of the federal tax system was comprehensive. After four and a half years of study, the Commission's Final Report included six separate volumes touching on every aspect of the tax system. As part of its inquiry, the Commission held 99 days of public hearings, received over 300 briefs and commissioned more than 30 separate research projects, including two that touched on the question of mineral extraction.<sup>49</sup>

M.W. Bucovetsky's study, *The Taxation of Mineral Extraction*, provided the groundwork for the Commission's recommendations in relation to the mining industry. Bucovetsky's study challenged the economic rationale of most every argument the industry had raised in defence of its special concessions. There was little evidence to defend the notion that mining companies faced discrimination in capital markets because of the industry's unique risk factors. Mining generated relatively minor employment benefits in rural areas, while its "ripple" effects tended to be concentrated in distant centres where metals fabrication took place and capital instruments for extraction were manufactured. While metals did make a positive contribution to Canada's external balance of trade, this was no justification for special tax treatment. Concessions to particular industries simply diverted resources from other industries, which could have made similar positive contributions.<sup>50</sup> In the Commission's view, the tax concessions to the mining

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<sup>49</sup> Neil Brooks, "Canadian Tax Journal: The Second Decade – 1963-1972," *Canadian Tax Journal* 50 (2002), 634.

<sup>50</sup> See Bucovetsky, *The Taxation of Mineral Extraction*, "Chapter 6: Policy Objectives."

industry were neither equitable nor efficient. That is, because the concessions were so expensive, other taxpayers had to compensate for the revenue shortages by paying higher taxes. They were inefficient because they applied to projects that would have been undertaken even had the concessions not been in force. As a result, they merely sapped government revenue with no added investment stimulus.

Large, vertically integrated firms benefited from the concessions more than their smaller counterparts. For instance, the expensing of exploration and development costs provided no immediate benefit to firms beginning exploration without processing facilities. The Carter Commission studies showed that, in 1964, five mining companies and three petroleum companies accounted for 85 percent of the depletion claimed, while just four mining companies accounted for more than three-quarters of the income exempted under the special provisions for new mines. Given the uneven – and upward – distribution of the benefits, some critics argued that the tax system facilitated the further concentration of ownership in the industry.<sup>51</sup> The tax concessions were also particularly inefficient in the context of the nickel industry, a virtual monopoly. Because, presumably, a monopolist produced the profit-maximizing output irrespective of the rate of taxation, a profit-dependent tax concession had no influence on investment decisions, which depended entirely on demand considerations. In that sense, the concessions amounted to a “transfer payment with no allocative function.” By increasing the industry’s short-term profits, the tax concessions simply increased the capitalized market value of the industry’s existing assets, generating a capital gain for those with an interest in the sector at the expense of other taxpayers.<sup>52</sup>

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<sup>51</sup> Bucovetsky, “The Mining Industry and the Great Tax Reform Debate,” 92.

<sup>52</sup> Bucovetsky, *Taxation of Mineral Extraction*, 26.

For such reasons, the Carter Commission urged the federal government to withdraw its special concessions to mining firms, including the percentage depletion allowance and the three-year income tax exemption for new mines. It also recommended that the immediate write-off of development costs should be phased out in five to ten years, after which such expenses should receive depreciation treatment. Nevertheless, the Commission did see merit in maintaining, and even broadening, the provisions concerning the deductibility of exploration costs. Overall, were the proposals to come into force, the mining industry's federal tax bill would double. Larger firms would bear the brunt of the changes. More than 80 percent of the increase in the extractive sector's taxes would come from just fifteen mining and petroleum companies.<sup>53</sup>

Immediately, the industry organized a counterattack. Seeking to regain its control over the public discourse, the industry impressed upon both policymakers and the public that adopting the Carter proposals could only lead to economic ruin. As one anonymous director of a provincial mining association told political scientist Robert Presthus, "we built up a strong feeling against the Carter recommendations across Canada. I think Carter asked for it. I mean we had to hit him hard and we did hit him hard."<sup>54</sup> Leading industry representatives spoke out against the proposals in no uncertain terms. In a speech to the Hamilton Rotary Club, the Canadian Mining Association's managing director John L. Bonus warned that Carter's proposals were "little short of disastrous."<sup>55</sup> According to McIntyre Porcupine Mines President J.D. Barrington, the Carter Report paved "a rapid road to mediocrity, socialism and a police state." And for Sherritt Gordon Mines Chairman E.L. Brown, it was "reckless to recommend the scrapping of a system that [had] been remarkably successful in stimulating the development of

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<sup>53</sup> Bucovetsky, "The Mining Industry and the Great Tax Reform Debate," 94.

<sup>54</sup> Robert Presthus, *Elite Accommodation in Canadian Politics* (Toronto: Macmillan of Canada, 1973), 150.

<sup>55</sup> "Carter Opposed: End of mine tax aids 'disastrous' for nation," *Globe and Mail*, 29 August 1969.



our mineral resources particularly in the semi-frozen north, where there [were] no other resources.”<sup>56</sup> To broaden its appeal, the industry penned opinion pieces for both large, national newspapers, like the *Globe and Mail*, and smaller “backwoods” dailies in mining regions.<sup>57</sup> Inco commissioned University of California at Los Angeles business professor Neil Jacoby to skewer the Carter Report in his volume, *Canada’s Tax Structure and Economic Goals: A Critique of the Royal Commission on Taxation*.<sup>58</sup> According to Inco, the Carter proposals would have made fully half of its investments in the preceding ten years uneconomic.

The Mining Association of Canada made dire warnings of capital flight, a threat which some companies appeared to fulfill. In April 1967, Noranda Mines cancelled plans to develop two new copper mines in British Columbia at a cost of \$90 million, citing “the adverse effect that implementation of the Carter commission report on taxation would have.” Likewise, Asbestos Corp. Ltd. cancelled its plan to proceed with a large asbestos mine in Quebec’s Ungava region for the same reason.<sup>59</sup>

In addition, the mining industry continued to enjoy the support of both key civil servants and leading politicians in the Ontario government. Within the provincial state, criticisms of the Carter Report paralleled those that industry had raised. The Department of Treasury and Economics laid out the grim implications of the proposed reforms in an internal report published in 1969. The Carter Report’s advocacy of tax neutrality simply failed to appreciate the unique character of the mining industry. Eliminating mining’s special concessions would not, as the

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<sup>56</sup> Quoted in AO RG 13-1 Correspondence of the Minister of Mines, Container 95, RG 13-1-0-967, Economic Planning Branch, Policy Division, Department of Treasury and Economics, “Major Implications of the Tax Reforms Proposed by the Royal Commission on Taxation for the Mining Industry in Ontario,” 10 January 1969, 9.

<sup>57</sup> Presthus, *Elite Accommodation in Canadian Politics*, 150.

<sup>58</sup> Gardner, “Tax Reform and Class Interests,” 249. In addition to his professorship at UCLA, Jacoby was also a director of the Occidental Petroleum Company, had served on President Eisenhower’s Council of Economic Advisers, and was later appointed to President Nixon’s task force on economic growth. See Eleanor Blau, “Neil Jacoby, 69, Dies; Economist, Eisenhower Aide and Professor,” *New York Times*, 1 June 1979.

<sup>59</sup> “\$90 million program: Noranda shelves plans, blames Carter report,” *Globe and Mail*, 29 April 1967.

Carter Report suggested, result in greater investment in secondary industry. Rather, it would result in capital flight. The “specialized group of investors” who controlled “mining funds” were unlikely to transfer their capital to other Canadian industries. Instead, they would seek to invest in jurisdictions where governments offered better conditions or in regions where “rich and as yet undeveloped mineral deposits” remained plentiful. Given the Canadian economy’s dependence on natural resources, and the weakness of its manufacturing sector in international markets, the Carter Report’s recommendations could only prove detrimental to the country’s well-being.<sup>60</sup>

Bowing to the industry’s pressure, it was not long before the federal government began to beat a strategic retreat. In May 1967, Finance Minister Mitchell Sharp made the government’s first concession to the mining industry, promising that, were the government to withdraw the provisions for the three-year income tax exemption, the measure would not apply to income earned prior to January 1, 1974. Meanwhile, Sharp also pledged that, should the grubstakers’ exemption be withdrawn, its cancellation would not apply to properties acquired before January 1, 1968.<sup>61</sup>

In November 1969, the government continued its retreat when the new federal Finance Minister E.J. Benson released the government’s official response to the Carter Report, *Proposals for Tax Reform*, or the Benson White Paper. While the White Paper admitted that the mining industry’s special tax benefits were “unnecessarily costly and inefficient,” the federal government was not prepared to eliminate the industry’s concessions entirely.<sup>62</sup> Framing the concessions as inducements “intended to encourage the establishment and growth of highly

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<sup>60</sup> AO RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0-967, Economic Planning Branch, Policy Division, Department of Treasury and Economics, “Major Implications of the Tax Reforms Proposed by the Royal Commission on Taxation for the Mining Industry in Ontario,” 10 January 1969.

<sup>61</sup> Bucovetsky, “The Mining Industry and the Great Tax Reform Debate,” 95.

<sup>62</sup> E.J. Benson, *Proposals for Tax Reform* (Ottawa: Queen’s Printer for Canada, 1969), 6.

productive industry in areas of Canada outside those where rapid urban and industrial [were] already occurring,” the White Paper proposed two main changes that aimed to promote mineral development, while ensuring that “really profitable projects [paid] a fair share of the national revenues.” First, Benson proposed to replace the three-year income tax exemption for new mines with a system of accelerated capital cost allowances for assets purchased for new mine development. Second, he proposed to replace the automatic depletion allowance with an “earned” depletion model. That is, while mining companies could continue to write off as much as one-third of their income, they could only do so on condition that they carried out exploration and development in Canada. Under the new system, for every \$3 of expenditures on qualifying exploration and development activities, mining companies would “earn” the right to \$1 of depletion.<sup>63</sup>

According to Benson, the government was “in no way bound” by its proposals in the White Paper.<sup>64</sup> Instead, the White Paper was intended above all to initiate further public discussion. The House of Commons Standing Committee on Finance, Trade and Economic Affairs was tasked with inviting public commentary and studying the White Paper’s proposals. The Senate Standing Committee on Banking, Trade and Commerce also received briefs and heard testimony.<sup>65</sup> Much as they had the initial Royal Commission hearings, business groups dominated the White Paper discussions. Despite Benson’s departures from the Carter Report, the mining industry remained vehemently opposed to the proposed reforms. In his presentation to the Commons committee, Inco Chairman Henry S. Wingate painted a gloomy picture: Mining would

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<sup>63</sup> Ibid, 13.

<sup>64</sup> David Crane, “Benson makes two changes in white paper proposals,” *Globe and Mail*, 29 November 1969.

<sup>65</sup> Originally, the government planned to hold a joint Commons-Senate committee on the White Paper, but several MPs objected to possible conflicts of interests on the part of senators, many of whom held corporate directorships. See David Crane, “White paper debate starts on Thursday,” *Globe and Mail*, 22 November 1969.

be “the most heavily taxed of all Canadian industries,” he argued. Had the White Paper reforms been in force in the mid-1960s, his company would not have initiated its present \$1-billion expansion program. According to Wingate, “the proposals would impede the growth of Canada’s national productivity, distort the tax burden on Canadian middle management and skilled workers, hinder personnel mobility and have a substantial adverse impact on investment in the mineral industry and the potential for growth in the entire Canadian economy.” Wingate saw little alternative but to orient his company toward the increasingly attractive nickel deposits overseas.<sup>66</sup> Other leading industry executives – Noranda’s Alf Powis, Hollinger’s A.L. Fairley and Cominco’s Robert Hendricks, among others – presented essentially similar views.<sup>67</sup>

In a December 1969 briefing to Premier John Robarts, the OMA urged the provincial government to oppose the White Paper and “initiate discussions with the federal Government toward establishing a basic mineral development policy to guide both industry and government.”<sup>68</sup> The following winter, Robarts and his leading cabinet colleagues – Treasurer Charles MacNaughton and Mines Minister Allan Lawrence among them – toured the province, attacking the proposals in a series of speeches.<sup>69</sup> Benson’s recommendations, Lawrence told the Georgian Bay Regional Development Council, threatened to “forever destroy any hope of economic independence for Canada.” Much as the OMA’s brief to Robarts warned, Lawrence argued that implementing the White Paper proposals would “most assuredly stifle expectations

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<sup>66</sup> “Inco claims tax proposals could curtail development and make mining most highly taxed industry,” *Globe and Mail*, 17 June 1970.

<sup>67</sup> David Crane, “Plan held deterrent to mines,” *Globe and Mail*, 30 January 1971; Clair Balfour, “Hollinger president condemns white paper,” *Globe and Mail*, 13 May 1970; “Cominco defends mining incentive,” *Globe and Mail*, 31 July 1970.

<sup>68</sup> “Ontario lead urged for mineral policy,” *Globe and Mail*, 9 December 1969.

<sup>69</sup> Frances Russell, “White Paper called damaging: Economy could be retarded by tax plan, Robarts claims,” *Globe and Mail*, 11 February 1970. In one speech, Robarts decried the White Paper proposals as “punitive”, “confiscatory”, “disquieting”, “inequitable”, “administratively unwieldy” and “unconscionably harsh.” See “A tough, reasoned attack,” *Globe and Mail*, 11 February 1970.

for long range growth and development of Northern Ontario.”<sup>70</sup> In the lead-up to a planned December 1969 federal-provincial conference to discuss tax reform, MacNaughton released a report suggesting that the White Paper would generate twice the revenues that federal officials contended it would. The White Paper was not only a tax grab, it would also have severe inflationary consequences.<sup>71</sup>

Continuing its attack on the White Paper in 1970, the Ministry of Treasury and Economics released its own vision for tax reform, *Ontario's Proposals for Tax Reform in Canada*. Glossing over the Royal Commission's comprehensive analysis of the justification for special tax incentives for mining, the chapter on taxation on resources industries declared that the White Paper's proposals were not “supported by any economic studies.”<sup>72</sup> Treasury and Economics reverted to the familiar arguments about the mining industry's “unusual riskiness, its unique capital intensity and its dependence on international markets.” To the extent that the White Paper failed to appreciate these special circumstances, it threatened to undermine one of the “cornerstones” of the Canadian economy.

Ontario's proposals for mining tax reform effectively mirrored the recommendations that industry representatives made in their briefs to the House and Senate standing committees. Yet, recognizing the shift in public opinion, both the government and industry moderated their demands. Ontario's proposals were slightly less generous than those advocated by industry. For instance, whereas Inco pressed for an automatic depletion allowance of 20 percent, Ontario's recommendation was for an allowance of 15 percent. There were other similarities. To encourage domestic industry, Ontario called for an additional 10 percent depletion allowance for companies

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<sup>70</sup> “Tax proposals again assailed by Lawrence,” *Globe and Mail*, 29 January 1970.

<sup>71</sup> David Crane, “Big revenue gain predicted: Ontario feels tax estimate low,” *Globe and Mail*, 13 December 1969.

<sup>72</sup> Ontario Department of Treasury and Economics, *Ontario Proposals for Tax Reform in Canada* (Toronto: Taxation and Fiscal Policy Branch, Department of Treasury and Economics, 1970), 35.

that processed minerals in Canada; Inco called for greater earned depletion for companies with domestic processing facilities; Ontario called for special incentives to stimulate mining in remote areas; Inco called for a three-year income tax exemption applicable only to new mines in remote areas.

Under unrelenting pressure, the federal government retreated once more. In August 1970, before either standing committee had published its report on the White Paper, Benson sent a letter to each of his provincial colleagues outlining further changes to the federal government's mining tax policy. The new proposal made three important changes. Two of these expanded the definition of expenditures eligible for earned depletion. Whereas the White Paper had restricted earned depletion to exploration and development, Benson now proposed to include expenditures related to the construction of new mineral processing facilities, as well as expenditures related to a "major" expansion of an existing mine, including new buildings, machinery and equipment. Moreover, Benson pledged to lower the federal income tax rate on mining from 40 to 25 percent. (The deductibility of provincial mining tax payments was simultaneously eliminated.) In this respect, Benson aimed to transfer primary responsibility for mineral taxation from the federal to the provincial governments. Benson's move thus presented the provinces with a choice: They could either maintain their mining tax rates at their present levels and allow the abatement to flow to industry, or they could raise their mining tax rates to generate higher revenues for provincial purposes.<sup>73</sup>

According to one estimate, Benson's proposals eliminated two-thirds of the White Paper's proposed tax increases. Perhaps unsurprisingly, then, the mining industry warmly

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<sup>73</sup> Meyer Bucovetsky and Richard M. Bird, "Tax Reform in Canada: A Progress Report," *National Tax Journal* 25 (1972), 23.

welcomed the latest modifications. Inco was “delighted to hear of the modifications.”<sup>74</sup> Stelco felt that the new additions to the earned depletion model put the steel industry “in about the same position as if the three-year tax holiday were continued and that’s good.”<sup>75</sup> In a contemporary analysis of Benson’s final adjustment, tax experts Meyer Bucovetsky and Richard Bird confirmed Stelco’s optimism. Under the new Act, they wrote, “although the nature and incidence of the preferences will differ from those under the old Act, the total federal tax burden on the industry may conceivably be little different than before.”<sup>76</sup> Indeed, they continued, because of the greater abatements available to firms that carried out domestic processing, the major nickel producers “may pay even lower taxes.”<sup>77</sup>

That said, in their new form, the industry’s tax concessions were not without their risks. The depletion allowance was now contingent on sustained domestic investment, and mining companies were less likely to earn the full allowance than their counterparts in oil and gas. The elimination of the three-year income tax exemption was also a setback, particularly for smaller companies working high-grade deposits. Also, several contemporary observers were wary of the potential consequences of the federal government’s decision to vacate mineral taxation to the provinces. As R.D. Brown, a PricewaterhouseCoopers mining tax specialist noted, the industry had “major concerns” with respect to how far the provinces would “take advantage of the opportunity to expand their own tax revenues by increasing mining taxes.”<sup>78</sup> As will be discussed below, these fears materialized, at least in British Columbia, Saskatchewan and Manitoba.

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<sup>74</sup> John Rolfe, “Mining, steel industry plans reconsidered: Tax changes may prompt \$1 billion in development,” *Globe and Mail*, 28 August 1970.

<sup>75</sup> “Stelco asserts new tax plans very favorable,” *Globe and Mail*, 29 August 1970.

<sup>76</sup> Bucovetsky and Bird, “Tax Reform in Canada: A Progress Report,” 35.

<sup>77</sup> *Ibid*, 36.

<sup>78</sup> R.D. Brown, “Round Three for the Taxation of Mining Income,” *Canadian Tax Journal* 18 (1970), 371.

The industry had less reason for concern in Ontario, however. Immediately upon receiving Benson's letter, Treasurer MacNaughton indicated that Ontario would pass the mining tax rebated to the province on to industry. As he told reporters, "Ontario intends to study the revised proposals and discuss them with the industries concerned and with our provincial partners in order to maintain essential incentives to ensure the continued growth and development of the Canadian and Ontario mining industries."<sup>79</sup>

### ***The Ontario Committee on Taxation (The Smith Report)***

The federal government was not alone in launching a review of its tax code in the mid-1960s. At the same time, the Ontario government had struck a committee of its own to study the provincial tax system and make recommendations to improve it. Yet compared to the federal Royal Commission, the Ontario Committee on Taxation (the Smith Committee) offered only muted criticisms of the mining industry's special tax concessions. Indeed, in the Smith Committee's view, the controversial depletion allowance could be justified for income tax purposes "by sound accounting principles." Thus, while the Royal Commission urged an overhaul of the federal government's mining tax legislation, the Smith Committee proposed a series of relatively moderate reforms. In fact, because the Smith Committee's proposals would have maintained the deductibility of Mining Tax payments from the corporate income tax, it is unclear whether the industry's *total* tax burden would have increased at all.

Still, examining the industry's response to the Smith Committee's recommendations offers a useful illustration of the multiple mechanisms of business influence in policymaking processes. Although the proposed reforms were moderate, they did prove troublesome to the

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<sup>79</sup> "Ontario to pass rebates to industry as incentives," *Globe and Mail*, 28 August 1970.



industry in two important respects. First, the Smith Committee's proposals suggested that a portion of the "economic rent" generated by mining activities ought to accrue to the public, not simply to private capital.<sup>80</sup> Second, the Committee's criticisms of the Department of Mines' calculation of the processing allowance indicated that the Ontario government had long granted hidden concessions to the high-profit, monopolistic nickel industry. In the Committee's view, these concessions unjustifiably boosted the nickel giants' profits at the expense of public revenues. Ultimately, while the government publicized its 1969 Mining Tax changes as a significant policy reform in the public interest, a careful review of the archival record indicates that the Department of Mines collaborated with the mining industry in ensuring that the Mining Tax burden would remain effectively unchanged.

The Ontario Committee on Taxation was initially struck by Premier John Robarts in 1962 with the aim to end "discrimination and unfairness" in the provincial tax system.<sup>81</sup> The Committee was composed of five "economics experts," and chaired by the chartered accountant Lancelot J. Smith, described by the *Globe and Mail* as "one of Canada's most persistent advisers on municipal government, the head of a university economics department and an articulate industrialist who speaks frequently for big business." In the *Globe and Mail*'s view, the Committee's "establishment" credentials were evident in the fact only one of its members' biographies did not appear in *Who's Who in Canada*. Although the Toronto Labour Council advocated for the inclusion of representatives of organized labour, homeowners and small business, Premier Robarts rejected the council's pleas and left the Committee as it was.<sup>82</sup>

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<sup>80</sup> The Smith Committee defined "economic rent" as "the amount by which, on the average, the return on capital invested in mineral development *exceeds* the return where capital is employed in the best alternative areas of investment." *The Ontario Committee on Taxation: Report*, 316, emphasis in original. While the Committee noted that, in principle, the government could tax the full amount of such rent, it argued that doing so to a "high-risk" industry like mining would be "both impracticable and imprudent." Ibid, 316.

<sup>81</sup> Ralph Hyman, "There are taxing times ahead for the Smith report," *Globe and Mail*, 30 April 1967.

<sup>82</sup> "The Smith Committee: 5 economics experts," *Globe and Mail*, 1 September 1967.

In addition to receiving briefs from interest groups, the Committee conducted almost 50 independent studies. Officially commencing its work in the fall of 1963, it was not until September 1, 1967 that the Committee released its final report, which ran to 1,306 pages over three separate volumes. As for the Mining Tax, the Committee argued that, in its present form, the tax failed to achieve what ought to be its two main objectives: namely, providing revenue payments to the mining municipalities in lieu of assessment, and providing the province with a fair return for the use of its natural resources.

The Mining Tax, according to the Smith Committee, did not “represent a significant cost of mining.”<sup>83</sup> In the three-year period 1962-1964, the assessed value of the Mining Tax as a percentage of the value of metal production did not exceed 2 percent. For some metal groups, the incidence was even lower. For instance, silver mines paid Mining Taxes valued at less than one per cent of their production value in 1962. The highest assessment was for uranium in 1962, at 3.17 per cent. However, this figure fell to 0.53 per cent in 1964. Ontario’s rates of taxation were more favourable to industry than they were in other provincial jurisdictions. This was especially true when one took into consideration the fact that Ontario alone exempted mining company property from municipal assessment, and about one-third of the revenues raised by the Mining Tax were distributed to municipalities.<sup>84</sup>

For both constitutional and economic reasons, the Smith Committee endorsed maintaining the Mining Tax as a levy on profits, rather than a royalty calculated on a per unit-extracted basis.<sup>85</sup> Yet, the Committee proposed several notable changes to the structure of the

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<sup>83</sup> *The Ontario Committee on Taxation: Report*, 338.

<sup>84</sup> *Ibid*, 338.

<sup>85</sup> From 1908, mining companies in Ontario acquired title to both the mineral and surface rights of their mining properties. The Judicial Committee of the Privy Council ruled in 1928 that a royalty on mineral production on privately owned land was an “indirect tax” and thus *ultra vires* the enacting province. Hence, the Smith Committee rejected a royalty as “impracticable.” *Ibid*, 315.

tax, which, in its view, would ensure more equitable treatment of different operators, provide adequate revenue to mining municipalities and allow for the province to earn greater returns for its resources from the most profitable mines. The Committee proposed a two-stage tax. The first stage, the “Mines Service Tax,” entailed a 3 percent tax on profits with no basic exemption. Notably, the Committee suggested the tax should be based on total profits earned from both mining and processing. The Mines Service Tax was designed to yield the revenues required to finance payments to mining municipalities. In another section of the Report, the Committee proposed amendments to the formula for distributing revenue payments to the municipalities.<sup>86</sup> The second stage, a 12 percent “Mines Profits Tax,” effectively served as a royalty, designed to ensure that the public received fair compensation for the sale of its resources. In addition, the Committee recommended the elimination of the provision that gave the Minister of Mines the discretionary power to remit Mining Tax payments made by iron ore producers. Although the Minister “invariably” remitted the tax, in the period 1946-1964 only \$1.1 million was remitted, suggesting the concession had little effect on steelmaking capacity.

The Smith Committee justified its recommendation to include profits earned from processing despite their longstanding exemption from the Mining Tax on three separate grounds. First, its proposed Mines Profits Tax included a “generous” investment allowance for both mining and processing assets, which ensured that only those mines that earned profits in excess of a normal rate of return would be subject to the second stage of the tax. Thus, neither mining nor processing profits earned at or below a “normal rate of return” on investment would be subject to the Mining Profits Tax. Second, the Committee could find “no valid justification” for exempting processing profits from the Mines Service Tax, as this tax “merely permit[ted] the

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<sup>86</sup> The Committee’s proposed formula was quickly rejected by all interested parties when it was found that it would result in smaller transfer payments to mining municipalities than the existing formula.

mines to discharge their collective obligation to pay for municipal services.” Finally, in the Committee’s view, simple consistency demanded that processing profits be subject to the Mining Tax. Since both federal and provincial income tax provisions treated profits earned to the prime metal stage as mining profits, then such profits should be similarly treated for the purposes of the Mining Tax.<sup>87</sup>

The Committee was particularly critical of the administration of the processing allowance, although if its proposals were to go into effect, the allowance would be eliminated. That the allowance was fixed at an asset’s original cost, rather than its depreciated value, was troublesome, because this practice ignored “the fact that the operator recovers his investment in depreciable assets from his profits by the annual depreciation allowances.”<sup>88</sup> The result was that several old mines, which had fully recovered their investment in processing assets, continued to receive the allowance based on those assets’ original cost. Moreover, in the Committee’s view, the Mine Assessor’s practice of allowing no less than 15 per cent and no more than 65 per cent of combined profits was simply arbitrary, having no clear relation to the actual distribution of income earned from the various stages. Worse yet, allowing the Mine Assessor the discretion to appraise the value of the ore for tax purposes “had resulted in substantial inequity as between nickel producers and other mine operators.”<sup>89</sup> The Mine Assessor had long given special treatment to nickel producers, granting them an allowance of 25 per cent of the original cost of processing assets, compared to the standard 8 per cent for other operators. While early difficulties in separating nickel from copper may have once justified such leniency, there was no longer any evidence to suggest that nickel refining was any more difficult than refining other

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<sup>87</sup> Ibid, 320.

<sup>88</sup> Ibid, 328.

<sup>89</sup> Ibid, 328.

metals. Were the government to reject its proposal to extend the tax to processing, the Committee argued that a processing allowance of 12 percent of the *written down* value of processing assets, with no special allowance for nickel mines would make up for these defects.

Like the Carter Report's proposals, the Smith Report's proposals would have seen larger, more profitable firms pay a higher rate of taxation than their smaller counterparts. In fact, while the Committee's calculations suggested that, applied to fiscal year 1962, its tax structure would have generated revenues 50 per cent greater than the existing rates, 40 of the province's 65 operating mines would have paid lower taxes in the aggregate. Nickel producers had the most to lose, as "a considerable part" of the increase would be accounted for by the elimination of their special processing allowance. As the Committee put it, "[u]nquestionably the burden on certain mine operators will be increased, but only if they have been treated with undue generosity in the past."<sup>90</sup> Yet, in a certain respect, the Committee overstated the magnitude of the tax increase. This was because Mining Tax payments were deductible under both the federal and provincial income tax acts. Thus, any increase in Mining Tax payments would be offset by greater deductions for the purposes of corporate income tax.<sup>91</sup>

Just as the federal government had struck committees to hold public hearings on the recommendations of the Carter Report, so too did the provincial government strike a Select Committee to review the Smith Report. While 110 organizations appeared before the Select Committee, only a few mining companies chose to do so, including Inco, Algoma Steel, Stelco and the industry's main trade association, the OMA. Among the broader mining constituency, there were several participants, including the AMMNO and various individual municipalities,

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<sup>90</sup> Ibid, 338.

<sup>91</sup> Ibid, 341; 343-45.

Sudbury Liberal MPP Elmer Sopha, Progressive Conservative Nickel Belt MPP Gaston Demers, the Northern MPPs of the NDP and the USW. Mine Mill did not submit a brief, however.<sup>92</sup>

The OMA came out strongly against the recommendations that would have increased the industry's tax burden, however marginally. The OMA sought to exploit its role as the main driver in the Northern Ontario economy to its political advantage, organizing its brief around the theme of Northern development. While the industry had once conceded that the Mining Tax was a proper cost of doing business, to the Select Committee it now argued that it was an unfair "special tax," one that could only hinder Northern Ontario's prosperity:

the towns and people of northern Ontario desperately need more mines. *Special taxes of any kind on mining, insofar as they inhibit the process of search and investment in new properties militate against the development of the regional economic base.* Incentives to development, on the other hand, can pay social dividends – not only in terms of new jobs, new incomes, new tax sources, but also in forestalling otherwise costly burdens on provincial subsidization of declining communities.<sup>93</sup>

The OMA criticized each of the Smith Committee's main recommendations. It rejected the Mines Service Tax on several grounds, most notably for its insistence that profitable mines provide for the financial welfare of all mining municipalities. As for the Committee's proposal to extend the tax to the processing stage, the OMA argued that such a tax would be "highly discriminatory."<sup>94</sup> It would provide unfair advantages to operators that shipped their concentrates out of province for processing elsewhere over those who processed in Ontario. That so many operators exported their output in a crude form clearly indicated that Ontario needed to create a more favourable investment climate, not stifle it with greater taxation. Finally, the OMA simply

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<sup>92</sup> In addition to the 110 organizations that appeared before the Select Committee, 205 also made written submissions to either the Select Committee or to the Treasurer. See Select Committee of the Legislature on the Report of the Ontario Committee on Taxation, *A Program for Reform* (Toronto: 1968), Appendices A and B.

<sup>93</sup> AO RG 49-152, Records of the Select Committee on the Report of the Ontario Committee on Taxation, C-149, Ontario Mining Association, "Submission to the Government of Ontario on the Report of the Ontario Committee on Taxation, 1967," no date, 2, emphasis in original.

<sup>94</sup> *Ibid*, 10.

rejected the Smith Committee's use of the "false concept of economic rent" upon which it had based its proposals on the Mines Profits Tax. In the OMA's view, the Mines Profits Tax was "just a thinly disguised excess profits tax on a high-risk industry where such a tax has virtually no justification despite its longstanding acceptance by the mining companies." In effect, the OMA argued that there was no valid reason for the province to charge a fee for the use of its resources, nor for the mining companies to pay a fee to acquire their raw materials. That it had accepted paying the Mining Tax in the past was simply a reflection of its good corporate citizenship.

Each of Ontario's major steel producers also severely criticized the Smith Report. Algoma Steel essentially suggested that Ontario's iron mining industry could not survive unless it received generous tax subsidies.<sup>95</sup> Dofasco's brief implied it was unfair for that company to bear the Mining Tax, since it would have to do so only because it had elected to own and operate a mine in Ontario rather than import its raw material from elsewhere.<sup>96</sup> According to Stelco, the new tax structure would add \$2 to every ton of ore it raised from its Griffith mine in Red Lake, increasing costs by a total of \$3 million. Stelco management considered "this proposed tax to be excessive – even ridiculous."<sup>97</sup>

Like the industry it regulated, the Department of Mines also rejected the basic thrust of the Smith Report, although it did initially endorse the concept of the Mines Service Tax. It was not until after industry had made its opposition to the Mines Service Tax known that the

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<sup>95</sup> AO RG 49-152, Records of the Select Committee on the Report of the Ontario Committee on Taxation, C146, Algoma Steel, "Highlights of Submission to Treasurer of Ontario with Respect to The Report of the Ontario Committee on Taxation," 8 July 1968.

<sup>96</sup> AO RG 49-152, Records of the Select Committee on the Report of the Ontario Committee on Taxation, C147, Dominion Foundries & Steel Ltd., "Report of The Ontario Committee on Taxation," 29 February 1968.

<sup>97</sup> AO RG 49-152, Records of the Select Committee on the Report of the Ontario Committee on Taxation, C150, Steel Company of Canada, Ltd., "Statement by the Steel Company of Canada, Limited before the Select Committee on the Report of the Ontario Committee on Taxation," 14 August 1968, 3.

Department changed its position. The Department did not appear before the Select Committee, but it did provide a detailed summary of its position on the Smith Report in a submission to the government's Committee on Economic and Financial Advisers.<sup>98</sup> The Department could not accept the Smith Report's proposal to extend the tax to the processing stage, for this recommendation amounted to a "complete change in philosophy." From the Department's perspective, the purpose of the Mining Tax was to tax profits attributable to the extraction of minerals in their "raw state" only. The public may have had a claim to a fair return on its natural resources, but it did not have one on processed materials. This was because "processing operations add[ed] value to the ore." While the Department recognized that there could be no processed material without the ore, it countered that "without the processing plant and the scientific know how the ore in its raw state would be valueless."

The Department was at pains to dismiss the Smith Committee's suggestion that it had given special treatment to the nickel mines. The maximum and minimum processing allowances were far from the "arbitrary devices" the Smith Report had made them to be.<sup>99</sup> The lower limit was instituted in recognition of the fact that several operators who had built their processing facilities prior to the period of rapid inflation after the Second World War were receiving inadequate returns for processing in relation to the present value of their assets. The upper limit protected the public's right to a return should mine production halt – as during a strike – and a

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<sup>98</sup> AO RG 13-1, Correspondence of the Minister of Mines, Container 95, RG 13-1-0-971, Department of Mines to H.I. Macdonald, no date.

<sup>99</sup> Interestingly, in its submission to the Treasurer, Falconbridge explicitly conceded that the allowances were "arbitrary," but suggested they were valid nevertheless. See AO RG 49-152, Records of the Select Committee on the Report of the Ontario Committee on Taxation, C147, Falconbridge Nickel Mines, "Submission by Falconbridge Nickel Mines, Limited to the Treasurer of Ontario on the report of The Ontario Committee on Taxation," 5 March 1968, 9. Subsequent Mine Assessors have also admitted that because "there is no way of determining actual processing profits, notional profits are determined as a percentage of the original value of the assets." See AO RG 1-526, Division of Mines Executive Director's files, 174.0, Volume 6, Kumara S. Rachamalla, "Mineral Tax Incentives in Ontario," 16 February 1982.



greater portion of a company's profits derive from processing. As for the notion that the 25 percent allowance to nickel mines amounted to special treatment, the Department countered that during a special study of Inco in 1956 "it became obvious that a very much more substantial value was added to the metal 'nickel' as a result of the processing operations after the smelting stage." Dismissing both the findings of the Royal Ontario Nickel Commission of 1917 and the Smith Committee, the Department argued that nickel refining processes were far more difficult than any other type of metal refining. In that sense, the separate formula for nickel mines was required to avoid imposing an unfair burden up on them, not to unduly privilege them.

There was at least one notable surprise among the industry's submissions. In its own 90-page brief, Inco's arguments against the Smith Committee's proposals mirrored those advanced by the OMA. Yet, Inco's brief differed from the OMA's in one important respect. Accepting its "responsibility to pay [its] fair share of the mounting costs of public services," Inco called on the provincial government to amend the *Assessment Act* to eliminate the special exemption for the mining industry's processing facilities, though not for its underground properties.<sup>100</sup> Precisely why Inco adopted this position is unclear, but it seems likely the company hoped to improve its public image. The proposal received widespread support from political figures in the Sudbury area. MPPs Sopha and Demers endorsed it, as did the City of Sudbury. The provincial government adopted Inco's proposal in late 1968, announcing the measure as part of its terms of reference to study a regional government model in the Sudbury area.<sup>101</sup>

Among other interests, there was not much enthusiasm for the Smith Committee's proposals. The AMMNO rejected the two-stage tax, on much the same grounds as had the OMA.

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<sup>100</sup> AO RG 49-152, Records of the Select Committee on the Report of the Ontario Committee on Taxation C148, International Nickel, "International Nickel Press Information," 1 March 1968.

<sup>101</sup> Frances Russell, "Assessment to start in 1969," *Globe and Mail*, 14 December 1968.

As the AMMNO had it, the “yield from any tax or royalty for provincial purposes” should be a “secondary consideration” in relation to both revenue payments to mining municipalities and the investment climate for mining firms.<sup>102</sup>

On the labour left, attitudes were mixed. The Northern MPPs of the NDP were generally supportive of the Report’s recommendations, at least as they pertained to the Mines Profits Tax. In their view, a flat-tax rate that extended to the processing stage was “the fairest way to obtain for the people of the province their dividend for the exploitation of their natural resources.” The NDP balked at the OMA’s suggestion that a tax on processing profits would inevitably stifle the development of processing operations in the province, as rates of taxation were not the only consideration in investment decisions. In any event, the legislature could amend the *Mining Act* to require that producers carry out processing within the province, if it so desired. While the party endorsed granting municipalities the right to impose realty taxation on mining company property, it failed to understand the logic behind Inco’s proposal to restrict such taxation to surface property only, and called for the full assessment of all company property.<sup>103</sup> For its part, the USW also endorsed the Committee’s recommendations to extend the tax to the processing stage and to raise the overall rate of taxation, but, unlike the NDP, the union was guarded. Its brief urged the government to “proceed cautiously in this area.” The union appeared to fear the unintended consequences for investment should Ontario’s rate of taxation become larger than that of the other metal mining provinces.<sup>104</sup> Yet, for the Ontario Federation of Labour, the Smith

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<sup>102</sup> AO RG 49-152, Records of the Select Committee on the Report of the Ontario Committee on Taxation, Association of Mining Municipalities of Northern Ontario, “Brief Submitted to the Select Committee on the Report of the Ontario Committee on Taxation by the Association of Mining Municipalities of Northern Ontario,” no date, 16.

<sup>103</sup> AO RG 49-152, Records of the Select Committee on the Report of the Ontario Committee on Taxation, Northern MPPs, “Submission by Elie Martel (Sudbury East), Will Ferrier (Cochrane South), Jack Stokes (Thunder Bay), and Donald Jackson (Timiskaming),” 1 August 1968.

<sup>104</sup> AO RG 49-152, Records of the Select Committee on the Report of the Ontario Committee on Taxation, United Steelworkers of America, “Submission of the United-Steelworkers of America (CLC),” 27 March 1968.

Committee did not go far enough. The Smith proposals, the Federation noted, “would amount to less than 3% of the mines output, in effect, hardly any increase to the mining corporations.” The statement continued, “Since most mining companies, especially the big ones, are doing well, and since most of their profits leave this country, we fail to see why the report treats these companies so generously.”<sup>105</sup>

The Select Committee released its report, *Taxation in Ontario: A Program for Reform*, in September 1968. Although the Select Committee’s members dismissed the calls to extend the tax to processing profits and to eliminate basic exemptions of profit subject to the tax, they did favour at least four of the Report’s more contentious proposals, including computing the processing allowance against the *written-down value* of assets rather than their original cost, abolishing the minimum and maximum limitations of the allowance, eliminating the special allowance for nickel producers, and repealing the provision allowing the Minister of Mines to remit tax payments to iron ore smelters.

For neither the Department of Mines nor the mining industry was *A Program for Reform*’s moderation enough. In his review of the Select Committee’s report for Minister Lawrence, Brady Lee, the Mine Assessor, argued that “the select committee comes to some conclusions which are diametrically opposed to the philosophy of a Tax on Mining only,”<sup>106</sup> even if it had rejected the Smith Report’s recommendation to extend the tax to the processing stage. For Lee, insofar as the Select Committee had endorsed the Smith Report’s recommendation to calculate the processing allowance against the *written-down value* of the

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<sup>105</sup> AO RG 49-152, Records of the Select Committee on the Report of the Ontario Committee on Taxation, C148, Ontario Federation of Labour, “Statement on Taxation Adopted by Ontario Federation of Labour at 11<sup>th</sup> Annual Convention,” November 1967.

<sup>106</sup> AO, RG 13-1, Correspondence of the Minister of Mines, Container 95, RG 13-1-0-970, B.C. Lee, “Re: Report of the Select Committee of the Legislature on The Report of the Ontario Committee on Taxation,” 4 October 1968.

assets as opposed to their original cost, it had, in fact, endorsed taxing processing profits. Lee was similarly dismissive of the Select Committee's endorsement of the elimination of the special processing allowance for nickel mines. Lee reiterated that his department had not given undue special treatment to the nickel producers, but had, in fact, adopted a separate formula for them so as to "avoid discrimination."

Yet, Lee recognized that the practice had become a political liability. To correct this, Lee advanced his own recommendations for reform that would both "eliminate the notion that nickel companies [were] receiving any special consideration ... [and] clearly indicate that Ontario [was] anxious to bring smelters and refineries into this country." In direct contrast to the Smith Report's call for tax increases on processing operations, Lee advocated tax reductions on processing operations. Lee proposed a new, graduated method for calculating the processing allowance, which would apply to all hard rock mining companies, but varied according to the location of their processing facilities. Companies that operated concentrators would receive an allowance of 8 percent of their original cost; companies that operated smelters and refineries *outside* of Ontario would receive an allowance of 8 percent of the *current investment* in those facilities; were the concentrator and smelter located in Ontario, but the refinery elsewhere, the allowance would be 16 percent of the original cost of the former, but only 8 percent of the *current investment* in the latter; companies that operated a concentrator, smelter and refinery in Ontario would received an allowance of 20 percent of the original cost of all processing facilities. Ironically, insofar as Lee's allowances would apply to all processing facilities, including those already in operation, they were precisely the type of "inefficient" concessions that the Carter Report had so severely criticized.

Meanwhile, Lawrence was keen to know industry's view on the Select Committee's report. To that end, he requested that his deputy minister, D.P. Douglass, compile a list of "influential people in all aspects of the mining industry" with whom he wanted to discuss the report "on a confidential basis."<sup>107</sup> Douglass responded with a list of 26 "influential people," all of whom were corporate officers, mining company board members or representatives of industry associations. The respondents were also provided with a copy of Lee's proposals.

Not surprisingly, mining industry representatives favoured Lee's method of calculating the processing allowance over the manner proposed in *A Program for Reform*. In its reply to Lawrence, which provided a detailed, recommendation-by-recommendation commentary on *A Program for Reform*, Inco's arguments against calculating the processing allowance on the basis of the written-down value of assets were a carbon copy of Lee's: "by recommending an insufficient processing allowance [the Select Committee] has captured the very profits it agrees the mining tax should not be extended to include, i.e., the processing profit."<sup>108</sup> However, the industry did have at least one concern. Lee's proposals provided "incentives" only to those facilities located in Ontario, while excluding those located elsewhere in Canada. In its response to Lawrence's letter, the OMA advocated extending Lee's concessions to all domestic facilities. So too did Noranda President Alf Powis, who wrote of his own "selfish" reasons for doing so, noting that his company processed Ontario ores at its facilities in Quebec: "These facilities were located where they are due to purely economic considerations. (Actually, for political reasons, we would [have preferred] to have them in Ontario.) ... We believe it would be unfair to limit

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<sup>107</sup> AO, RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-970, Allan Lawrence to DP Douglass, 2 October 1968.

<sup>108</sup> AO, RG 13-1, Correspondence of the Minister of Mines, Container 96, RG 13-1-0-978, The International Nickel Company of Canada, Limited, "Comments on the Recommendations of the Select Committee of the Legislature on the Report of the Ontario Committee on Taxation," 22 October 1968.

the incentive to [Ontario], and would urge that it be applicable ... to facilities anywhere in Canada.”<sup>109</sup> In other words, Powis admitted that the incentive features of the processing allowances were not truly incentives, for the location of his company’s facilities had been determined on “economic” grounds.

In the spring of 1969, the government announced its mining tax changes as part of its budget speech. The government’s rhetoric reflected shifting public opinion about the industry’s special tax concessions. Noting that “the Government believes that the mining industry has been taxed too lightly in relation to the taxes borne by other industries and sectors of the economy,”<sup>110</sup> the government raised the mining tax from a variable rate of 6 to 12 percent to a 15 percent flat rate, prompting historian K.J. Rea to suggest that the industry’s lobbying was insufficient to defeat the Smith Committee’s proposed tax hike.<sup>111</sup> Yet, the budget announcement obscured the extent to which the industry had secured its privileged tax treatment behind the scenes. With the assistance of the Department of Mines, the industry had not only defeated calls to extend the tax to the processing stage, it had in fact secured more generous processing allowances, and discredited the notion that the public had a right to share in mining’s “economic rent.”

### **The “Manufacturing Condition” Revisited (1973-1979)**

The defeat of the Carter Report’s reform agenda did not put an immediate end to the industry’s tax troubles. Economic nationalist sentiment remained strong, particularly in Ontario.<sup>112</sup> Social

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<sup>109</sup> AO, RG 13-1, Correspondence of the Minister of Mines, Container 96, RG 13-1-0-978, Alfred Powis to Allan F. Lawrence, 18 October 1968.

<sup>110</sup> Ross Hynes, *Provincial Mineral Policies, Ontario, 1945-1975* (Kingston: Centre for Resources Studies Queen’s University, 1978), 19.

<sup>111</sup> Rea, *The Prosperous Years*, 183.

<sup>112</sup> Stephen Azzi, *Walter Gordon and the rise of Canadian nationalism* (Montreal: McGill-Queen’s University Press, 1999).

democratic reformers used the momentum generated by the Carter Report to highlight Canada's failure to fully benefit from its abundant natural resource endowment. In 1972, federal NDP leader David Lewis published his popular volume on the inequities of Canada's tax system, *Louder Voices: Corporate Welfare Bums*, in which the extractive industry's privileges figured prominently.<sup>113</sup> Liberal reformers like Walter Gordon, Mel Hurtig and Peter C. Newman centred in organizations like the Committee for an Independent Canada also popularized criticisms of Canada's status as a "hewer of wood and drawer of water" for the dominant US economy to the south. With the publication of the former Postmaster General and president of the Montreal Stock Exchange Eric Kierans' report on mineral policy to the government of Manitoba, the industry's credibility took another hit. Coming from a respected member of the business community, Kierans' criticisms were particularly impactful. Kierans took on the industry's "risk image," and found it utterly wanting. The Canadian mining industry, he argued, was "an immensely powerful and wealthy industry, controlling the supply of basic natural resources, earning high returns on sales and equity and tending towards increased concentration and monopoly."<sup>114</sup> Not only could the industry's claims for special tax treatment not be supported, but Kierans advised the province to nationalize its mineral development industry.

NDP governments in western Canada – in British Columbia, Manitoba and Saskatchewan – further emboldened the resource nationalist movement. When commodities prices soared as a result of the 1973 oil crisis and widespread consumer fears of materials shortages, these governments took advantage of the federal government's decision to abate fiscal space to the provinces and enacted a string of highly contested tax reforms. Within Ontario's newly established Division of Mines, there was much hostility towards these moves. No better

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<sup>113</sup> David Lewis, *Louder Voices: The Corporate Welfare Bums* (Toronto: James Lewis & Samuel, 1972), 17-37.

<sup>114</sup> Kierans, *Report on Natural Resources Policy in Manitoba*, 15.

indication of such was policy analyst Gerhard Anders' rebuttal to Kierans, *Rent, Communal Property, and Economic Nationalism: A Case Study*, published by the Ministry of Natural Resources. For Anders, Kierans' "Marxist" analysis was "mistaken as to what 'the people' [did] own in common, and his analysis of the implications of the attenuation of private property rights inherent in his proposals [was] totally inadequate."<sup>115</sup>

Still, in the context of booming extractive sector profits and strong popular favour for economic reform, Ontario followed its provincial counterparts' lead in amending its Mining Tax system. In the years 1974-75, the government adopted two important changes. First, in a move designed "to secure for the people of Ontario a higher return from their natural resources ... without imposing an unfair burden on the industry should metal profits decline," Treasurer John White introduced a new graduated system of mining taxation. Henceforth, mine profits over \$40 million were to be taxed at a maximum rate of 40 percent as compared to the flat rate of 15 percent that had prevailed after the 1969 amendments. Second, in February 1975, the Davis Cabinet amended the processing allowance to ensure that those companies that operated processing facilities in Ontario would receive significant tax savings, while those that operated such facilities overseas would face significant tax penalties. The tables below provide a breakdown of the new taxation rates as well as the generous allowances for domestic mineral processing facilities.

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<sup>115</sup> G. Anders, *Rent, Communal Property, and Economic Nationalism: A Case Study* (Toronto: Ministry of Natural Resources, 1974).



Table I: Ontario Mining Tax, Graduated Rates (1974-1978)

MINING PROFITS (DOLLARS)	TAX RATE (PERCENT)
0-100,000	0
100,000 – 1 MILLION	15
1 MILLION – 10 MILLION	20
10 MILLION – 20 MILLION	25
20 MILLION – 30 MILLION	30
30 MILLION – 40 MILLION	35
40 MILLION – 50 MILLION	40

Source: Hynes, *Provincial Mineral Policies*, Table 3, 19.

Table II: Processing Allowances, February 1975

Degree of Processing Achieved	Northern Ontario	Rest of Canada	Outside Canada
Concentrating	8%	8%	-
Smelting	16%	16%	-
Refining	30%	20%	-
Further Processing (fabrication)	35%	-	-

Source: Hynes, *Provincial Mineral Policies*, Table 4, 35.

Of these two changes, it was the latter that proved most controversial. In fact, despite the nominally large increases in the Mining Tax rates, the industry did not raise much in the way of protest regarding the new rates, largely because the government retained its tax on mine profits (rather than a royalty), and expanded several other concessions.<sup>116</sup> However, the change to the processing allowance provoked considerable hostility from the industry. No company voiced greater opposition than Falconbridge Nickel. The reason for this was clear. The elimination of overseas processing allowances was designed to shift Falconbridge's nickel refinery from Norway, where it had been located since the company was established in the late-1920s, to Canada. Falconbridge had purchased the already constructed refinery both for reasons of cost,

<sup>116</sup> "Thank goodness for small mercies... Ontario tax to affect earnings significantly," *Northern Miner*, 18 April 1974.

and because Inco controlled the North American patents on nickel refining. By the mid-1970s, Falconbridge was the only major Ontario producer that did not refine at least some of its output in Canada. Unless Falconbridge made large investments in a Canadian refinery, the company would face considerably higher tax bills than it had in the past.

The government's elimination of the overseas processing allowance amounted to its most ambitious mining policy reform in the postwar era. Yet, the measure failed. With the collapse of the commodities boom in 1975, not to mention the deepening of the terminal economic crisis of the postwar "Golden Age," the industry's structural power was enhanced. While policymakers were initially keen to see their reform through, in the context of emerging market dislocations, they came to fear the consequences of further undermining the investment climate. Industry officials and sympathetic civil servants in the Division of Mines amplified these concerns, providing selective information and advice to Cabinet ministers concerning the state of Sudbury's international competitiveness and the nature of the nickel companies' international operations. In that sense, the defeat of the government's domestic processing policy reflected not only business' structural power, but also its ability to exploit such power to its advantage. This section recounts the complex series of twists and turns that lay behind the government's decisions to enact and subsequently retreat from a system of tax incentives and penalties.

To do so, a brief break with the chronological narrative to examine the history of Falconbridge's relationship with the *Mining Act*'s domestic processing requirements is required. In 1917, the Legislature amended the *Mining Act* to the effect that, henceforth, mining licenses carried with them the requirement that all ores extracted from the province had to be treated in Canada to a degree suitable for "direct use in the arts."<sup>117</sup> Failure to comply with this

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<sup>117</sup> Hynes, *Provincial Mineral Policies*, 33.

requirement would result in the forfeiture of the mining company's license to operate. Initially, the requirements applied only to mining licenses granted on lands that had been patented (that is, transferred from the Crown to a private owner) after 1917, but in 1969 the *Act* was amended to include lands patented prior to 1917. Nevertheless, the Cabinet maintained its discretionary authority to grant individual exemptions from the *Act*'s requirements. In assessing a company's application for an exemption, the government took into consideration several factors and enforced the policy only when doing so made "economic sense."<sup>118</sup> As Ross Hynes noted in 1978, "there is no public record of there ever having been a forfeiture on account of a violation of this [law]."<sup>119</sup>

In Falconbridge's case, the *Mining Act*'s domestic processing requirements were not a concern until 1954 when, in order to accommodate its expansion to meet its contract to supply the US government's strategic stockpile, the company sought for the first time to develop mines on lands that had been patented after 1917. Thus, the company applied for and received its first exemption from the *Act*'s domestic processing requirements, which was to remain valid until 1966. Two years before the exemption expired, Falconbridge requested an extension in order to accommodate the testing of a pilot project in Norway, which the company claimed could lay the foundation for a Canadian plant. This request was granted, ensuring the company would remain exempt from the domestic processing requirements until 1969. Meanwhile, Falconbridge's Norwegian capacity had increased from 33 million to 70 million pounds per year since its first exemption.<sup>120</sup>

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<sup>118</sup> Mohide, Warden and Mason, *Towards a Nickel Policy for the Province of Ontario*, 94.

<sup>119</sup> Hynes, *Provincial Mineral Policies*, 34.

<sup>120</sup> AO RG 1-526, Division of Mines Executive Director's files, 550.2, "Briefing paper for Dr. J.K. Reynolds, Deputy Minister," no date.

When the time came to negotiate again in 1969, Falconbridge could offer the government some good news. As part of its expansion program, Falconbridge planned to construct a new nickel-iron pellet refinery in Sudbury that would treat the pyrrhotite ores that the company had previously discarded at the smelting stage. The new plant was a breakthrough in years of research and development, dating at least to the signing of the company's first contract with the US government. The plant would not only allow Falconbridge to increase the efficiency of its operations and add iron to the list of its saleable mineral commodities, but also it would ensure the company would refine as much as 40 percent of its Ontario mine output domestically. The timing was apt, as public interest in domestic mineral processing had peaked following the discovery of the massive Kidd Creek copper-zinc deposit on the outskirts of Timmins. It was largely in response to popular pressure stemming from that find that the government had amended the *Mining Act* in 1969. In a sure sign of the times, Mines Minister Allan Lawrence had announced the amendments with much fanfare, suggesting that the new law may even cause some companies "economic hardship".<sup>121</sup>

Ultimately, the legislation called for firms to process a minimum of 51 percent of their ores domestically, meaning that even with the nickel-iron pellet plant in operation Falconbridge would fail to comply with the law. Fortunately, the company's pilot project in Norway appeared promising, and with its plans to expand mine output not only in Ontario but also at greenfield sites in Manitoba and Quebec, constructing a Canadian nickel refinery began to appear economic.<sup>122</sup> It was for these reasons that in 1969 the Ontario government granted Falconbridge a *conditional* exemption that was to remain valid until December 31, 1975. According to the terms of this latest exemption, Falconbridge was to have contracted to construct a Canadian

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<sup>121</sup> Geoffrey Stevens, "Ontario to change law on processing of province's ores," *Globe and Mail*, 3 April 1969.

<sup>122</sup> Lyndon Watkins, "Falconbridge has plan in event it must build Canadian plant," *Globe and Mail*, 10 April 1969.

refinery capable of treating 51 percent of its mine output by year-end 1972 or face the forfeiture of its mining license. Meanwhile, in agreeing to the deal, Falconbridge president Marsh Cooper assured government officials that his company had no intentions of further expanding its Norwegian facilities.

Although for political reasons the government would have liked to take credit for Falconbridge's decision to construct the nickel-iron facility, the company was motivated by economic considerations. It had already planned to construct the facility before it had negotiated the latest exemption. The company touted its new plant and its product in full-page advertisements in international business journals like *The Economist* and anticipated no problems in finding a market for its output. Gauging the company's economic interest in the nickel refinery is more difficult, and it appears as though pressure from the Ontario government was indeed instrumental in pushing this project forward.<sup>123</sup> Still, the company did not challenge the conditional exemption and also managed to use its economic weight to extract significant concessions when it finally settled on Bécancour, Quebec as the site for the plant: The federal Department of Regional Economic Expansion provided a \$4 million grant for the construction project, while Hydro Quebec offered the company a favourable long-term contract.<sup>124</sup> In addition, the decision to locate the plant in Quebec rather than Ontario may have had a political motivation. As business historian Pal Thonstad Sandvik pointed out in his study of Falconbridge's Norwegian subsidiary, the Ontario government would surely be less likely to punish Falconbridge for its failure to build a refinery in Quebec than it would be for its failure to build one in Ontario.<sup>125</sup>

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<sup>123</sup> For example, see "Reports of Quebec site denied by Falconbridge," *Globe and Mail*, 13 November 1970.

<sup>124</sup> Nicholas Cotter, "Falconbridge plans \$60-million refinery at Bécancour site," *Globe and Mail*, 15 January 1971.

<sup>125</sup> Pal Thonstad Sandvik, *Multinationals, Subsidiaries and National Business Systems: The Nickel Industry and Falconbridge Nikkelverk* (London: Pickering & Chatto, 2012).

Yet, despite Falconbridge's early hopes, neither of the company's new investments went according to plan. The Sudbury nickel-iron plant ran into technical problems and failed to achieve a production rate higher than two-thirds of its rated capacity. As a result, Falconbridge closed the plant in December 1972, absorbing a write-off of \$60 million.<sup>126</sup> Meanwhile, the Bécancour project faced such large cost overruns in its construction phase that the company felt compelled to abandon it before it went it operation. Despite Falconbridge's pledge to have contracted to construct a domestic refinery under its *Mining Act* exemption, corporate officials provided the Ontario government with no forewarning of either of these decisions.

As early as April 1972, Falconbridge made it clear that it had no intention to follow through on the terms of its exemption. In a presentation to Premier Bill Davis, the company highlighted the long list of setbacks it had faced since reaching the deal in 1969, suggesting "The Company does not have the resources to finance [a Canadian refinery] nor is it permitted under loan indentures to borrow the amounts required." Even if it had the finances, Falconbridge continued, there were "strong economic arguments" against constructing one, as the company did not require additional refining capacity at its current production levels. A second refinery would result "in unused capacity" in Norway and "higher unit costs due to the lower production level." In short, building a second refinery would undermine the company's competitive position. To bolster its position, Falconbridge reminded the Premier that Ontario could no longer boast of a monopoly on the world's nickel reserves. With new nickel laterite projects coming on stream in Australia and throughout the Global South, Falconbridge warned Ontario policymakers to tread with caution lest they kill the goose that laid the golden eggs.<sup>127</sup>

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<sup>126</sup> Lawrence Welsh, "Falconbridge Nickel to close pellet refinery; total write-off for 1972 may reach \$60 million," *Globe and Mail*, 22 December 1972.

<sup>127</sup> AO RG 1-526, Division of Mines Executive Director's files, 550.2.2, Falconbridge Nickel Mines Limited, "Presentation to Honourable William Davis," 21 April 1972.

The provincial government's subsequent course of action offers a compelling illustration of the challenges policymakers face in formulating an effective economic policy in the context of corporate control over investment decisions. Government officials proved reluctant to employ the most powerful tool at their disposal – the cancellation of Falconbridge's mining license – for the simple reason that doing so could throw thousands out of work and undermine Sudbury's regional economy, at least in the short term. Notably, it took the government some two years before it finally committed to its decision to use a combination of tax penalties and incentives to influence Falconbridge's decision-making calculus.

In arriving at this decision, the government was motivated by two unexpected developments. First, the rapid development of oil deposits in Norway's North Sea in the late 1960s and early 1970s generated a significant spike in the value of the Norwegian krone relative to the Canadian dollar. In a matter of just three years, Falconbridge's Norwegian operating costs had risen from \$19 million in 1971 to \$30.7 million in 1974 largely as a result of changes in the exchange rate. Insofar as overseas operating costs remained deductible from the Mining Tax, the appreciation of the Norwegian currency would eat into the province's revenues. In fact, Falconbridge had paid no Mining Tax at all in 1971 or 1972, largely as a result of the "generous treatment" of its Norwegian operations.<sup>128</sup> Second, despite Marsh Cooper's earlier assurances that his company had no intention of increasing production capacity at its Norwegian facility, Ontario government officials came across information that suggested otherwise. In 1973, Falconbridge launched a "dramatic \$30 million capital alterations programme" without informing the Ontario government, its conditional exemption notwithstanding. In fact, the capital spending programme was never announced in any public forum, and it was only discovered by

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<sup>128</sup> AO RG 1-526, Division of Mines Executive Director's files, 173.2.2, Taxation and Fiscal Policy Branch Ministry of Treasury, Economics and Intergovernmental Affairs, "Report on the Falconbridge Case," 27 February 1975, 3

the provincial mine assessor through a Norwegian acquaintance.<sup>129</sup> Combined with the public's growing economic nationalism and surging mining company profits stemming from the 1973 commodities boom, these developments prompted the government into action. Without an amendment to the processing allowance, Ontario's Mining Tax policies would effectively subsidize the modernization of an overseas facility. It would be hard to imagine an outcome less in keeping with the government's stated objective of increasing domestic mineral processing.

Thus, in his 1974 budget presentation, Treasurer John White announced that overseas processing would soon be disallowed as deductible expenses. Thereafter, industry and government officials convened a series of meetings to discuss the finer points of the policy change, which was not ultimately promulgated until February 1975. Falconbridge representatives participated in these meetings and were well-informed of the proposals.<sup>130</sup>

Yet, when the new regulations came into force, the company went public to express its shock about "this serious and completely unexpected development," as its full-page advertisement in the *Globe and Mail* put it.<sup>131</sup> Because the regulation applied retroactively to 1974, Falconbridge would have to pay an additional \$8 million in taxes for the year as compared to what had been announced in its earnings report released earlier in the year. Immediately, the company set to lobbying the government for relief and maintained a steady stream of pressure through the press. Despite declining metal sales stemming from softening demand, Falconbridge pinned the blame for its poor performance in early 1975 squarely on the government's tax

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<sup>129</sup> AO RG 1-526, Division of Mines Executive Director's files, 550.2, "Briefing paper for Dr. J.K. Reynolds, Deputy Minister," no date. Part of the motivation for the capital spending program may have been pressure from the Norwegian government, which was growing concerned about the increasing incidence of cancer among refinery workers. See AO RG 1-526, Division of Mines Executive Director's files, 173.2.2, "The Problem," August 1975.

<sup>130</sup> For a summary of these discussions, see AO RG 1-526, Division of Mines Executive Director's files, 173.2.2, Taxation and Fiscal Policy Branch Ministry of Treasury, Economics and Intergovernmental Affairs, "Report on the Falconbridge Case," 27 February 1975.

<sup>131</sup> "A Statement from Falconbridge Nickel Mines Limited," *Globe and Mail*, 8 March 1975.



policies. According to company officials, the new disallowance provisions put the company in the red. To help advance its case, at the end of the first quarter, Falconbridge decided to release two sets of earnings: one with overseas processing costs allowed, which showed a small profit, and one with the costs disallowed, which showed a loss.<sup>132</sup> Some media outlets offered the company their rather uncritical support. Despite the Ontario government's announcement a full year prior to implementing the new regulation, the *Globe and Mail* sided with Falconbridge, likening Ontario to a "banana republic" in an editorial denouncing the government for its "retroactive greed."<sup>133</sup>

Notably, the government began to reconsider its policy change even before Falconbridge had launched its public campaign, a clear illustration of the industry's structural power. At a Cabinet meeting in March, just weeks after the regulation had come into force, the Ministry of Natural Resources (MNR) and Treasury, Economics and Intergovernmental Affairs (TEIGA) agreed to review the matter. While MNR pressed for the policy to be revoked immediately, TEIGA held fast to the principle of encouraging greater domestic processing. Yet, in recognition of the changing business climate, TEIGA offered a compromise. In their cabinet submission, Treasury officials made the case for a gradual, rather than immediate, phase-in of the disallowance provision, cushioning the blow to the company's bottom line in the short term without abandoning the policy objective entirely. In July, the Davis Cabinet agreed to this course of action, but with a general election soon approaching, Cabinet agreed that no public announcement would be made.<sup>134</sup>

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<sup>132</sup> Lawrence Welsh, "Mining tax problem is key to Falconbridge Nickel profit," *Globe and Mail*, 4 June 1975.

<sup>133</sup> "Retroactive greed," *Globe and Mail*, 14 March 1975.

<sup>134</sup> AO RG 1-526, Division of Mines Executive Director's files, 173.2.2, "The Problem," August 1975.

In the meantime, however, Falconbridge's economic woes went from bad to worse, reinforcing policymakers' fears of undermining the business climate. Not only was a slowing global economy undermining demand for nickel, but starting in August, Mine Mill Local 598 waged a three-month strike against the company, shuttering its Sudbury operations. And just days after the strike was settled, the company announced a series of drastic cost-cutting measures to weather the stormy economic times. Production was to be cut back by 30 percent from its pre-strike level and several hundred employees in Sudbury and in Norway were to be laid. Moreover, the company announced that it would suspend its major capital projects in the Sudbury area (except for the development of the Lockerby Mine), including the \$95-million smelter environmental improvement program.

While these moves were not a conscious "capital strike" to punish the Ontario government for its recalcitrant tax policy, the effect was the same. In this instance, Lindblom's concept of the privileged position of business was at work. Simply put, policymakers feared that Falconbridge could go out of business unless they offered the company some relief. In addition, it became increasingly apparent that the company was not in the financial position to afford the multimillion-dollar investment in a refinery. With the company having to suspend existing capital projects, it was clear that it was not the time to start a new one.

As a result, having secured its tenth consecutive electoral victory in September, if only with a minority, the Progressive Conservative government relented, backtracking even from the phase-in plan Cabinet had agreed upon in July. In December, Minister of Natural Resources Leo Bernier announced that, in light of the depressed state of global markets, the Ontario government would defer its policy of disallowing overseas processing costs for a period of five years, by which time conditions were expected to have improved. Moreover, with Falconbridge clearly

unable to meet the *Mining Act*'s domestic processing requirements, the Cabinet also agreed to extend the company's exemption once again, this time for a period of four years. However, unlike previous exemptions, the government restricted Falconbridge's right to export ores to 99 million pounds per year, that is to their contemporary levels. The restriction was to pre-empt the company for making any further upgrades to its Norwegian facility without forewarning the government. Once more, a domestic refinery would have to wait.

### ***Reimbursing Foreign Processing Costs and Fighting over "Social Assets"***

Although the economic downturn had sapped policymakers' ambitions, Bernier's December announcement did not put an end to Falconbridge's dispute with the government. With the tax changes deferred, Falconbridge was owed compensation for the higher taxes it had paid when the regulation was in force. Yet, when Falconbridge received its reimbursement, "fresh difficulties" arose: The repayment totalling \$7,076,979 was about \$1 million less than what company officials had anticipated.<sup>135</sup> There was some irony behind this discrepancy. In amending the *Mining Tax Act* in 1974-75, the government had defined for the first time the precise formula by which the Mine Assessor was to calculate a company's processing allowance. Previously, the matter had been left to the Assessor's discretion. This policy was changed to ensure fairness to the industry in light of the larger tax burden the new tax structure would impose. Moreover, industry itself had complained that the Assessor's discretion had created tax "uncertainty." But in this instance, the plan backfired. In considering Falconbridge's reimbursement, government lawyers determined that, in contrast to the Assessor's previous practices, the *Act*'s regulations

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<sup>135</sup> AO RG 1-526, Division of Mines Executive Director's files, 510.4, Volume 1, "Briefing Paper for the Minister Re: Meeting with the OMA," 13 October 1977.

made allowances only for *direct* processing costs, while *indirect* processing costs – head office expenses and the like – were not valid.<sup>136</sup>

Meanwhile, another legal ruling further provoked the industry. This time, government lawyers determined that “social assets” – that is, company property held for the purposes of retaining and attracting workers – were henceforth deductible only under the Corporate Income Tax, but not the Mining Tax. Together, these adverse rulings prompted an intense backlash from the industry, which, with the full support of the Division of Mines, pressed the government for immediate relief on both fronts. However, the industry’s concerns extended beyond these immediate issues. Its true goal was to leverage the economic downturn to dismantle the post-1975 Mining Tax structure and return to the flat-rate structure that had prevailed before.

Ultimately, the industry’s mobilization was a partial success. As policymakers realized the 1973-75 recession had signalled something deeper than just another downturn in the business cycle, they became increasingly receptive to corporate pressure. When in 1977-78 the nickel industry suffered its most serious economic crisis since the Great Depression, policymakers came once again to prioritize maintaining a positive investment climate. Yet, ironically, in some respects the market turmoil blunted the industry’s lobbying strength. As economic growth slowed across the capitalist world, provincial policymakers understood that there was little they could do to alleviate the mining industry’s woes. Until markets stabilized, mining profits would languish, no matter what the provincial government did. While the 1978 and 1979 budgets did

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<sup>136</sup> Ibid. Division of Mines personnel explained the rationale for the decision clearly to their Minister: “Putting the question of what is deductible another way, if a processing stage expense time has *not* enhanced the value of the ore taken from the mine, it is not typically deductible. The Mining Tax is levied on the *mine*, *not* the company. This should not be forgotten, because of the effects.” As shown below, the Division’s subsequent Cabinet submission differed considerably, to Falconbridge’s favour.

offer some notable concessions to mining firms, for the rest of its time in office, the Progressive Conservative government rebuffed the industry's pleas for greater relief.

A letter from the OMA's Executive Director Jim Hughes to the new Minister of Natural Resources Frank Miller gives a flavour of the industry's campaign. Just as it had during the Carter dispute, the industry sounded warnings of economic calamity were its pleadings ignored. Shortly after the Mine Assessor had made his ruling on the deductibility of social assets, Hughes demanded that Miller define his government's "philosophy" in regard to mineral development, inveighing:

Does [the government] want or does [the government] not want to encourage exploration and development in this Province? The mining industry cannot achieve the Minister's objective to maximize investment and employment within the mining industry, with reasonable returns for the Government under the Mining Tax Act and the current proposed rulings and interpretations.<sup>137</sup>

In private meetings with the Minister and his staff, the OMA panned the Mining Tax, arguing its complex structure and burdensome graduated rates stifled investment planning activities. Notably, in contrast to the OMA's defence of the concept of the "pit's mouth" value during the debates on the Smith Report, in this instance the trade association argued the concept had "no relevant meaning whatsoever for practically all taxpayers." Moreover, the OMA claimed, the *Mining Tax Act* was "obsolete" as the law had failed to keep "pace with changing methods of operation within the industry." The Association blasted even some aspects of the tax structure that had been introduced as concessions to the industry, like the disaggregation of new mines. Because of the "nature and volume of information required to calculate tax savings" therefrom, disaggregation made it "virtually impossible to quantify [such savings] on a forecast

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<sup>137</sup> AO RG 1-526, Division of Mines Executive Director's files, 510.4, Vol. 1, J.M. Hughes, "Minutes of a Meeting of Executive Committee members of the OMA and staff with the Honourable Frank Miller, Minister of National [sic] Resources and his staff held on November 8, 1977," no date.

basis.”<sup>138</sup> To amplify its message, the OMA hired a PR firm to write editorial content for newspapers throughout Northern Ontario.<sup>139</sup>

Internally, Division of Mines officials were skeptical of the OMA’s claims. In a lengthy briefing prepared for Minister Miller, the Division provided a detailed summary of the changes in the administration of the *Mining Tax Act* following its amendment in 1974. In one noteworthy passage, the Division explained why indirect overseas processing costs had been disallowed, effectively conceding the ruling was in accord with the underlying purpose of the processing allowance. That is, as the Mining Tax was a tax on Ontario *mines* and not on *mining companies*, and as the goal of the processing allowance was to arrive at a reasonable estimate of the value of the pre-processed ore extracted from the province, then clearly only those expenses that added value to the ore should be deductible. More concretely, it was hardly clear how a financial headquarters in New York overseeing an extensive network of multinational activities added value to Ontario ores. Other passages were also revealing. The company at the centre of the tax dispute, Falconbridge, could gain at most about \$1 million should the government reverse its policy towards the processing allowance. As the briefing indicated, the company had paid no Mining Tax in 1975 or 1976, and from the perspective of Division officials, it appeared the company would pay none again in 1977. Thus, only an amendment retroactive to tax year 1974 could save the company money.<sup>140</sup>

Nevertheless, in their private meetings with the OMA, Division officials assured their industry counterparts that they would support the industry’s campaign for tax relief. As the

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<sup>138</sup> AO RG 1-526, Division of Mines Executive Director’s files, 510.4, Vol. 1, Ontario Mining Association, “Points to Emphasize at Meeting with Miller, December 6, 1977,” no date.

<sup>139</sup> AO RG 1-526, Division of Mines Executive Director’s files, 510.4, Vol. 1, Ontario Mining Association, “Minutes of Meeting of the Taxation Committee of the OMA,” 29 December 1977.

<sup>140</sup> AO RG 1-526, Division of Mines Executive Director’s files, 510.4, Vol. 1, “Briefing Paper for the Minister Re: Meeting with the OMA,” 13 October 1977.

minutes of one such meeting noted regarding the allowance of social assets, “The Minister indicated that in discussions with Treasury, MNR is arguing on behalf of the mining industry that the policy be changed.”<sup>141</sup> More importantly, in November 1977, MNR prepared a Cabinet Submission, summarizing the industry’s recent tax woes for Premier Davis and his ministerial colleagues. Despite their own skepticism of the industry’s claims, in their presentation to Cabinet, MNR officials reframed the policy debate in a manner favourable to industry. Unlike its internal report, which clearly explained the rationale behind disallowing indirect processing expenses, here, MNR emphasized the impracticability of Falconbridge’s constructing a domestic refinery in light of the company’s increasingly precarious financial position. As the Cabinet Submission put it, “It is recognized that domestic processing is not always feasible. Therefore, it must also be recognized that disallowance of foreign processing costs creates a hardship for certain companies.” MNR indicated clearly its preferred course of action: “the Ministry wishes to obtain for [Falconbridge and Inco, which was also affected by the amendment] relief by way of a deduction under The Mining Tax Act of the *indirect* overseas mineral processing costs.”<sup>142</sup>

As was the case in 1975, economic turbulence bolstered the industry’s position. In 1977, Sudbury’s nickel giants faced one of their worst years in decades. With the global economy in recession, nickel sales collapsed and inventories piled up. The companies’ revenues nosedived. Inco’s third-quarter sales fell 10 percent compared to the year prior. For Falconbridge, the news was even worse. For the first nine months of the year, the company had posted a consolidated loss of more than \$13 million. Its Sudbury nickel operations were particularly hard hit. There, losses totaled some \$14.3 million. By October, the companies took drastic measures to cut their

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<sup>141</sup> AO RG 1-526, Division of Mines Executive Director’s files, 510.4, Vol. 1, Ontario Mining Association, “Points to Emphasize at Meeting with Miller, December 6, 1977,” no date.

<sup>142</sup> AO RG 1-526, Division of Mines Executive Director’s files, 173.2.2, Ministry of Natural Resources, Cabinet Submission, 30 November 1977, emphasis in original.

losses. For its part, Inco announced that it would slash its workforce by one fifth, throwing some 2,800 out of work in the Sudbury area. Soon thereafter, Falconbridge announced its own plans to cut another 750 jobs.<sup>143</sup>

Bowing to pressure from the miners' unions and the ONDP, the Davis government agreed to launch a Select Committee to investigate potential measures to prevent the layoffs. Yet, when the Committee released its interim report recommending a 60-day moratorium on the layoffs and government-sponsored interest-free loans to finance excess production to maintain employment levels, both the federal and provincial governments rejected the advice immediately. As Natural Resource Minister Frank Miller explained, he and his federal counterparts had agreed "that we could not support the recommendations because it wasn't solving the problem."<sup>144</sup>

However, although the government was reluctant to intervene so directly to maintain employment, it proved receptive to the industry's pleas for tax relief. Less than one month after having rejected the Select Committee's recommendations, the government released its 1978 budget. The budget contained a host of concessions for the ailing industry. According to Miller, the budget reflected the government's aim "to keep the most jobs possible in Canada."<sup>145</sup> Effective April 9, 1974, the *operating and maintenance costs* for social assets – though not depreciation – were to be eligible deductions for the Mining Tax. Effective March 8, 1978, companies could write off up to 100 percent of the capital cost of new mining assets acquired for a new mine or for a major expansion. The budget also removed the mandatory 5 percent and 15 percent write-offs for depreciation and exploration and development expenses respectively, and

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<sup>143</sup> "'Worst blow' hits Sudbury as Inco cuts out 2,800 jobs," *Globe and Mail*, 21 October 1977; "Miners on job facing pay cuts, union says," *Globe and Mail*, 24 January 1978.

<sup>144</sup> Marty York, "Ottawa, Ontario refuse to put off Inco layoffs," *Globe and Mail*, 10 February 1978.

<sup>145</sup> "Mine tax changes needed to save jobs, Miller says," *Globe and Mail*, 8 March 1978.



allowed companies to carry forward any unused portion of the processing allowance accumulated in the three preceding taxation years (up to a maximum of 65 percent of combined profits). Most importantly, the government announced that henceforth all foreign processing costs, including depreciation, were to be allowed, so long as the costs related to the processing of Ontario ores. To top it off, after the Legislature approved the budget, the Cabinet issued an Order-in-Council granting relief to Falconbridge for its 1974 assessment, ensuring the company would receive the additional \$1 million it had anticipated following its initial reimbursement in 1976. Publicly, Falconbridge president Marsh Cooper was coy. As he told the *Globe and Mail*, “The proposal will be helpful to us, but I don’t know yet what the full impact will be.”<sup>146</sup> The archival record is more clear. With the promulgation of the Order-in-Council, Falconbridge had paid no Mining Tax at all in the years 1971-1977.

Still, the industry’s instrumental power had its limits. Although the OMA considered the 1978 budget changes a “step in the right direction,” the industry remained unsatisfied with the tax’s graduated rate structure. During 1978, the OMA kept pressure on the government, insisting it needed to reintroduce a flat-rate structure to “re-awaken investor confidence” as OMA president James Finlay put it.<sup>147</sup> Publicly, industry resorted to one of its most common tactics, pinning the blame for reductions in mineral investment not on the state of the economy, but instead on the government and its “restrictive” policies. As Falconbridge president Marsh Cooper told the *Globe and Mail*:

I look for practical encouragement and incentives for the mining industry, an easing of the tax burden and other measures to boost morale and stimulate the flow of risk capital in our direction, but certainly not overnight. With a more positive attitude on the part of

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<sup>146</sup> “Falconbridge hails budget tax breaks,” *Globe and Mail*, 8 March 1978.

<sup>147</sup> Lawrence Welsh, “Mining industry calls tax changes an urgent need,” *Globe and Mail*, 6 May 1978; Lawrence Welsh, “Ontario mining incentives called welcome step in right direction,” *Globe and Mail*, 9 March 1978.

government and an easing of the tight rein under which we now operate, I am sure that we would see a greater commitment of funds to research in exploration technology.<sup>148</sup>

Industry pressure was sufficient to secure for the OMA a series of meetings with TEIGA officials in preparation for the 1979 budget, which, again, offered mining companies new concessions. The budget lowered the top Mining Tax rate from 40 to 30 percent and raised the basic exemption from the first \$100,000 to the first \$250,000 in profits.<sup>149</sup> Still, the industry did not get everything it wanted. Most notably, the government rejected the OMA's calls to eliminate the tax's graduated rate structure.

The government's reluctance in this regard appears to have reflected TEIGA's concerns about the credibility of the industry's claims. From TEIGA's perspective, the OMA had been unable to devise a coherent, industry-wide plan for reform. As TEIGA had it, in their pre-budget meetings, the trade association's representatives spoke not on behalf of the industry overall, but only on behalf of their particular companies and their narrow concerns. For its part, Treasury was understandably hesitant to implement a tax reform package that would be of greater advantage to some companies than it would to others. Notably, Treasury officials reacted rather negatively to what they considered the OMA's unreasonable demands. As MNR administrative assistant Molly Mogford explained to Deputy Minister Keith Reynolds in a November 1978 memo:

TEIGA has categorically refused to meet with the Ontario Mining Association any further on tax matters – apparently they feel that the exercise they have been through was a waste of time in that points brought forward by OMA members indicated that they were not informed and also these points tended to bear upon individual companies rather than being general concerns. In future while they will receive comments from the OMA, they will not work in advance on such matters with them.<sup>150</sup>

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<sup>148</sup> Lawrence Welsh, "Bright spots in mining described," *Globe and Mail*, 9 March 1978.

<sup>149</sup> Peter Mosher, "Corporate tax rate increased to 14%: Miller gives break to mining, tourism," *Globe and Mail*, 11 April 1979.

<sup>150</sup> AO RG 1-526, Division of Mines Executive Director's files, 510.4, Vol. 2, M. Mogford to Dr. Reynolds, 15 November 1978.

The tax concessions in the 1979 budget were the last the industry won from the PC dynasty. Not even in the depressed conditions of the early 1980s, when metal prices sagged to their lowest levels since the Great Depression, could the industry persuade the government to eliminate the graduated rate structure. It would take a new lobbying strategy and the election of a new government for the industry to finally secure its aim.

### **The Return to Normalcy (1985-2015)**

Despite its initial failure to persuade the government to adopt a flat-rate tax, the industry persisted in its lobbying efforts. By 1984, press reports indicated that the industry's top policy priority was the elimination of the Mining Tax's graduated rate structure. The OMA's new executive director Patrick Reid took charge on the issue. Industry lobbying was enhanced by the 1985 release of the Report of the Royal Commission on the Northern Environment, chaired by the former gold mining executive J.E.J. Fahlgren, which advised the government to "review the appropriateness of existing taxes imposed on the mining industry and recommend reforms [to] encourage greater exploration and development in Ontario."<sup>151</sup> In the lead-up to the 1985 provincial election, it looked as though the industry's campaign was on the verge of success as Conservative Minister of Natural Resources Mike Harris promised the OMA that amending the *Mining Tax Act* would be his "top priority" in the next session of the Legislature.<sup>152</sup>

While the May 1985 election had returned a minority PC government under Premier Frank Miller, by June, the government had lost the confidence of the Legislature when the opposition Liberals and NDP combined to defeat it. Subsequently, the Liberal Party under

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<sup>151</sup> Ontario, Royal Commission on the Northern Environment, *Final Report and Recommendations of the Royal Commission on the Northern Environment* (Toronto: Ontario Ministry of the Attorney General, 1985), 6-9.

<sup>152</sup> John Partridge, "Mineral sector sees good year despite weak prices," *Globe and Mail*, 17 May 1985.

Premier David Peterson formed a new government on the basis of an “Accord” with the NDP. The NDP promised to support the minority Liberals for a period of two years in exchange for the Liberals’ pledge to avoid a new election for two years and to follow through on a number of policy issues. Nevertheless, the new Liberal government proved just as open to the industry’s tax goals as their PC predecessors, passing a suite of amendments to the *Mining Tax Act* in 1987. These amendments marked the reassertion of the industry’s hegemony over fiscal policy and the defeat of the reform agenda initiated by the Carter Report. The 1990 election of Ontario’s first NDP government brought little in the way of tax reform, while the Progressive Conservative’s 1995 election victory deepened the province’s industry-friendly tax structure. This section examines the tax policies of each of the three governments that followed in quick succession after the 1985 election.

First, however, it is worth bearing in mind that, despite its graduated rate structure, the pre-1987 Mining Tax remained primarily geared to promoting investment, not collecting revenues, at least according to Ministry of Natural Resources officials. As provincial Mine Assessor Kumara Rachamalla’s presentation to the 1982 Annual Meeting of the Society of Mining Engineers of AIME explained, the *Mining Tax Act* “is intended to function as a policy instrument of the Ontario Government by offering tax incentives to mining producers, who invest their income in exploration and development, new mine openings, or expansions of existing mines and processing facilities.”<sup>153</sup> For instance, among other measures, Rachamalla highlighted the 100 percent write-off of exploration and development costs as one illustration of the “support offered by Ontario to create attractive investment opportunities,” noting that it allowed mine producers to recover as much as 75-87 percent of their exploration expenditures.

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<sup>153</sup> AO RG 1-526, Division of Mines Executive Director’s files, 174.0, Vol. 6, Kumara S. Rachamalla, “Mineral Tax Incentives in Ontario,” 16 February 1982.

### ***The Liberal Government (1985-1990)***

In pressing for a return to a flat-rate tax structure, the mining industry mobilized arguments like the ones it had in the past. In one of his first public interviews as president of the OMA, former Liberal MPP Patrick Reid suggested that securing “fairer mining taxes” would be his central aim in the short term. Although Reid hinted that government should help mining companies cut costs “to win in international competition,” his critique focused on the “specious” nature of the Mining Tax. As Reid had it, levying a Mining Tax in addition to the Corporate Income Tax was “‘specious’ in that the return on capital for mining companies [was] almost the same as the return in manufacturing, even though mining investment [was] far riskier.” The Mining Tax negatively affected “mine productivity, ore reserves, development and capital investment.”<sup>154</sup> Other industry executives made similar public comments on the tax. In a May 1984 interview with the *Northern Miner*, Inco senior vice-president and OMA President Roy Aitken argued that tax reform was “essential.” Like Reid, Aitken criticized the Tax’s graduated structure, and complained that only the mining industry paid taxes in addition to the corporate income tax: “Changes should be made to the Mining Tax Act, which, in 1974, went to a graduated scale when the Ontario government predicted higher real prices and windfall gains by mining companies. Those predictions never materialized and the industry was left with a tax which imposes a rate of 15-30% on profits over \$250,000, a tax no other sector of the economy has to handle.”<sup>155</sup>

The new Liberal government picked up where the Conservatives left off. In his first budget, delivered in October 1985, Liberal Treasurer Robert Nixon announced that pre-budget

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<sup>154</sup> Lawrence Welsh, “Ontario mining group to push for fairer deal,” *Globe and Mail*, 20 September 1984.

<sup>155</sup> “Tax reform essential says OMA president,” *Northern Miner*, 3 May 1984.

consultations had made clear the “urgent need for mining tax reform.” Nixon’s proposals were precisely what the OMA had been pressing for. Seeking to score political points against the Conservative opposition, Nixon argued, “the [former PC Treasurer] John White tax had really held the mining business down.” Nixon proposed replacing the graduated rate structure with a flat-rate tax of 20 percent, and raising the basic exemption from the first \$250,000 to the first \$500,000 in profits. The government’s plan was for Minister of Mines and Northern Development René Fontaine to release draft legislation for comment and discussion, with the aim of having the bill passed into law by April 1986.<sup>156</sup>

As planned, Fontaine released the bill for comment in December 1985. In doing so, Fontaine suggested to the Legislature that, when it came to mining fiscal policy, “the government’s role [was] to ensure that the north [was] an attractive place to invest.”<sup>157</sup> However, the Liberal’s bill was delayed when in June PC MPP Andrew Brandt revealed that Fontaine had failed to disclose the fact that he held some 45,000 shares in a Quebec-based junior mining company, Golden Tiger, raising implications of conflict of interest. This was the second time in his short tenure that Fontaine was involved in such a scandal. The previous December, Fontaine had been forced to turn over control of his assets worth \$1 million in a lumber company that operated in Northern Ontario and was involved in bids for government contracts. While Fontaine resigned his ministerial post, he easily won a by-election in August when both opposition parties boycotted in protest of Premier Peterson’s handling of the matter.<sup>158</sup>

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<sup>156</sup> Robert F. Nixon, *1985 Ontario Budget* (Queen’s Printer for Ontario, 1985), 13.

<sup>157</sup> Legislative Assembly of Ontario, *House Hansard*, 6 February 1986, <http://hansardindex.ontla.on.ca/hansardeissue/33-1/1111.htm>.

<sup>158</sup> Regina Hickl-Szabo, “Fontaine wins easily over five opponents in Ontario by-election,” *Globe and Mail* 15 August 1986; Regina Hickl-Szabo, “Fontaine’s no-conflict argument fails to impress his fellow MPPs,” *Globe and Mail*, 20 September 1986.

As a result, the government was unable to introduce its amendments until January 1987. Yet, in view of the fact that Nixon had sought to have the changes in place by the previous April, the Liberal's bill contained a provision ensuring the measures were retroactive to that time. In introducing the bill for second reading, Treasurer Nixon noted the amendments reflected "the consultative impact and general support of the mining industry," and thanked Patrick Reid for having given his "valuable time ... to see that the officials of the Ministry of Revenue and the Treasury were kept informed of the views of the mining community." When NDP MPP Jim Foulds asked Nixon who had participated in the government's consultation concerning the draft legislation, Nixon replied that he had received about "six or eight" briefs, mostly "from investment houses and banks" in addition to the input he had received from the OMA's Patrick Reid.<sup>159</sup>

Support for the bill broke down along party lines. The NDP maintained its position that the Mining Tax ought to provide a fair return to the people of the province, and that if a flat tax-rate were introduced, it should be at a rate of at least 22 percent. In addition, Jim Foulds made the case for an additional five-percent public smelter royalty on the production of gold bars from the recently discovered gold deposits in the Hemlo district, which were held to be among the richest in the world. The PC Party took the opposite approach. Party leader Larry Grossman's public position was that the Mining Tax ought to be eliminated. In debates, the PC Party's George McCague moved amendments first to limit the tax to a total of \$1 per company, and when that failed, to replace the 20 percent rate with an 18 percent rate to ensure that Ontario "maintain its competitive position" with Quebec, which had an 18 percent rate. The second amendment also failed, the government arguing that Ontario's higher basic exemption ensured

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<sup>159</sup> Legislative Assembly of Ontario, *House Hansard*, 9 February 1987, <http://hansardindex.ontla.on.ca/hansardeissue/33-2/1100.htm>

its mining industry was at no disadvantage. Ultimately, the PC Party voted to support the Liberal's bill.<sup>160</sup>

The final version of the bill contained new concessions that were not originally part of Nixon's 1985 budget address. In addition to lowering the maximum rate from 30 to 20 percent and doubling the initial exemption to \$500,000, the amended *Mining Tax Act* also implemented a three-year tax holiday for new mines or major expansions to existing mines. While operators would have to deduct a normal depreciation expense during the tax-exempt period, they would not have to deduct exploration and development expenses against the exempted income. Notably, the Liberal's amendments also eliminated the allowance for overseas processing costs. Yet, unlike 1975, this move provoked no noticeable reaction on industry's part. It appears that changes in industry structure best explain this difference. In late 1985, Falconbridge purchased a controlling stake in Kidd Creek Mines Ltd. (formerly Texas Gulf Sulphur) from the Canada Development Corporation. Thus, in contrast to 1975, Falconbridge was now in possession of a domestic metal refinery against which it could continue to write down its Mining Tax bill. That Falconbridge had no concerns about the elimination of the processing allowance was evident when company Chairman Bill James personally wrote to Nixon, congratulating the Treasurer for getting the amendments through the Legislature.<sup>161</sup>

### ***The NDP: A Fair Tax Plan for Ontario? (1990-1995)***

Despite the NDP's longstanding criticism of the mining industry's special tax concessions, the party's time in office in Ontario was notable only for its absence of major initiatives on the fiscal

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<sup>160</sup> Ibid.

<sup>161</sup> AO RG 6-67 Provincial income tax policy development files, Mining Profits Tax, Robert Nixon to Bill James, 10 June 1987.



policy file. To be sure, the NDP's time in government was marked by the twin concerns of the province's growing deficit and the deep recession that hit Ontario with particular force. The NDP also had to contend with a vocal, anti-deficit business lobby, which only grew louder after the Bob Rae government released its first budget in 1990 and Wall Street-based credit rating agencies downgraded the province's rating a full two grades.<sup>162</sup> In the absence of concrete empirical evidence suggesting a concerted industry lobbying effort on the Mining Tax in particular, however, it appears the NDP's hesitancy on the matter reflected its broader concerns about winning business confidence.

The NDP introduced its sole change to the mining fiscal regime in its first budget. The change was minor. The government limited exempted profits from new mines to the first \$10 million per year whereas previously all such profits were exempt. Because Mining Tax information is confidential, it is difficult to measure the amendment's impact on the industry. However, it was likely marginal. In 1989-90, the Ministry of Treasury and Economics estimated that the three-year exemption had resulted in \$5 million in foregone revenues.<sup>163</sup> Because the exemption was reduced rather than eliminated, the cost to industry was almost certainly less than this figure.

Notably, the release of the report of the government's Fair Tax Commission – the 1,200-page *Fair Taxation in a Changing World* – did little to bring attention to the issue.<sup>164</sup> The report offered some mild criticisms of the structure of the Mining Tax, but the Commission's recommendations to switch from a profits-based to a cash-flow based tax system to better secure

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<sup>162</sup> Patrick Monahan, *Storming the Pink Palace: The NDP in Power: A Cautionary Tale* (Toronto: Lester Publishing, 1995), 136.

<sup>163</sup> Dan Westell, "Getting tax from a stone," *Globe and Mail*, 18 September 1990.

<sup>164</sup> Fair Tax Commission, *Fair Taxation in a Changing World: Report of the Ontario Fair Tax Commission* (Queen's Printer for Ontario, 1993).

for the public a share of provincial mineral resources’ “underlying value” sparked little public debate, either positive or negative. There is no indication that the NDP government took the Commission’s recommendations seriously enough to bring it forward as policy.

### ***The Progressive Conservatives: “Common Sense Revolution” (1996-2002)***

During the NDP’s time in office, Mining Tax payments as a percentage of revenue remained near their historical averages. For instance, in 1993-94, the Mining Tax generated \$85 million in revenues against a total mineral production value of \$4.5 billion.<sup>165</sup> Thus, the tax collected just under two percent of the industry’s revenues, largely as it had when the Smith Committee released its report in the late 1960s. Moreover, the Fair Tax Commission’s report had shown that the effective tax rate on Ontario’s mining industry compared favourably with several jurisdictions around the world. Ontario’s effective tax rate of 8.68 percent compared to a rate of 10.69 percent in Arizona, 11.51 percent in Western Australia and 22.73 percent in Mexico.<sup>166</sup> Yet, in the Northern Ontario version of its 1995 election platform – the “Common Sense Revolution” – the PC Party suggested that high taxation “threatened to devastate mining” and pledged to “consider tax relief for the mining sector” once it had brought the budget into balance in its fourth year in government.<sup>167</sup>

During the Standing Committee on Finance and Economic Affairs’ pre-budget consultations in February 2000, the OMA’s Patrick Reid reminded the Conservative government of its earlier campaign promise. Four years had passed since the government had taken office, and it was now in a position to consider tax relief. Reid leveraged the recent downturn in mineral

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<sup>165</sup> Ministry of Finance, *Public Accounts of Ontario, 1993-94* (Queen’s Printer for Ontario, 1994), 1-3.

<sup>166</sup> Fair Tax Commission, *Fair Taxation in a Changing World*, 506, Table 23.4.

<sup>167</sup> Progressive Conservative Party of Ontario, *A Voice for the North: Report of the Mike Harris ‘Northern Focus’ Tour*, January 1995, 20.

exploration expenditures to the industry's advantage: Spending in the search for new mines in Ontario had fallen from \$195 million in 1996 to \$108 million by 1999. To believe Reid, such precipitous declines in exploration spending had less to do with the drop in the price of Ontario's most sought-after mineral commodity, gold – which had lost a third of its value over the same period – than it did with the “uncompetitive tax burden” imposed on producers by the Ontario Mining Tax. While the Fair Tax Commission had found that Ontario's effective tax rate on mining was considerably lower than several mining jurisdictions with similar types of geological conditions and mining operations, Reid suggested that a joint OMA-PricewaterhouseCoopers survey conducted in 1999 had found that “the corporate tax burden on mining in Ontario [was] among the highest in the world.” According to the study, the average effective tax rate of 45.3 percent in Ontario was at least ten percentage points higher than average effective rates outside of Ontario. The “main contributor” to Ontario's “uncompetitive tax burden” was the Mining Tax, which stood at 20 percent and was “over and above the usual corporate income taxes.” Reid urged the Committee to support the study's recommendation to lower the Mining Tax to 12 percent, which was the rate in force in Quebec.<sup>168</sup>

The Porcupine Mine Managers' Association presented a carbon copy of the OMA's submission at a later pre-budget consultation meeting held in Timmins. Most interesting about this presentation was not so much its content as the response it received from Timmins-James Bay NDP MPP Gilles Bisson, which indicated the social democratic party's further retreat on the tax question. While Hamilton West NDP MPP David Christopherson had challenged OMA President Patrick Reid on the need for tax cuts when the economy was already booming, Bisson

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<sup>168</sup> Legislative Assembly of Ontario, Standing Committee on Finance and Economic Affairs, “Pre-Budget Consultations,” 3 February 2000, <https://www.ola.org/en/legislative-business/committees/finance-economic-affairs/parliament-37/transcripts/committee-transcript-2000-feb-03>, (accessed 23 November 2019).

complimented the PMMA's presentation as "quite good" and floated his own ideas on ways the government could lower the industry's tax burden to ensure "good jobs" were available for Northern Ontario.<sup>169</sup>

Ultimately, the government's May 2000 budget offered larger concessions than the mining industry had lobbied for, at least in public. The corporate income tax, applicable to mining and other industries, was to be lowered from 13.5 percent to 8 percent of taxable income over a period of six years. Instead of reducing the tax to the 12 percent rate that the OMA-MNDM-PricewaterhouseCoopers study had suggested would make Ontario competitive, the Budget introduced a gradual reduction in the profits tax rate from 20 percent to 10 percent on profits above \$500,000 over a period of five years. It also introduced a new category of mine – so-called "remote mines" – that would be taxed at half the rate of mines in "accessible sites," while also enjoying a 10-year tax holiday as opposed to the existing three-year holiday.<sup>170</sup> This tax structure remains in force to the time of writing.

## Conclusions

Ontario's mining fiscal regime offers a rather stark illustration of the mining industry's political power. Since its introduction in the early 20<sup>th</sup> century, the Ontario Mining Tax's principal policy objective has been to facilitate mining investment and promote the development of public mineral resources by private businesses. Revenue collection has been, at most, a secondary consideration. Without exception, the mining industry has defeated fiscal policy reforms that it

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<sup>169</sup> Legislative Assembly of Ontario, Standing Committee on Finance and Economic Affairs, "Pre-Budget Consultations," 8 February 2000, <https://www.ola.org/en/legislative-business/committees/finance-economic-affairs/parliament-37/transcripts/committee-transcript-2000-feb-08>, (accessed 23 November 2019).

<sup>170</sup> Ernie Eves, *2000 Ontario Budget: Budget Papers, Balanced Budgets – Brighter Futures* (Queen's Printer for Ontario, 2000), 97; 107.

strongly opposed, whether that be the inclusion of processing profits within the definition of income subject to the Mining Tax, or the differential treatment of overseas processing facilities for the purposes of enhancing domestic productive capacities.

As critics on both the left and right have argued, Ontario's (and other provinces') favourable fiscal policies towards mineral extraction have distorted the province's industrial structure, channeling investment into mineral development at the expense of higher value-added sectors like manufacturing. Other social classes have also borne the costs of the industry's favourable tax treatment, perhaps nowhere more blatantly than in the mining towns themselves where the industry's long-standing exemptions under the *Assessment Act* forced municipalities to levy comparatively higher property taxes on the homes of the industry's workers.

To be sure, while predominant, the mining industry's ability to shape Ontario's fiscal policy was not absolute. The very fact that the province levies a tax on mine profits is indicative of the state's need to respond to the needs and demands of a variety of societal interests if for no other reason than to maintain its legitimacy. Yet, policymakers evinced a clear reluctance to overstep the constraints imposed upon them by the need to maintain a favourable climate for capital accumulation.

Industry power waxed and waned according to shifting political circumstances, peaking in the immediate postwar period when no organized political force could challenge the industry's claims for special tax concessions. It was not until the mid-1960s that the industry's hegemony waned. The release of the federal government's Royal Commission on Taxation in the context of a resurgent Canadian economic nationalism undermined the industry's long-standing arguments about its pioneering role in driving Canadian economic development. Meanwhile, the increasingly popular social democratic left raised concerns about the fairness of the Canadian

state's tax system and its privileging, in David Lewis' famous terms, of "corporate welfare bums." Still, with the full support of the Ontario provincial government, the industry mobilized an enormous lobbying campaign to defeat the Royal Commission's proposals that would have negatively impacted its short-term interests. Within the province, policymakers showed little interest in adopting the recommendations of the Ontario Committee on Taxation, which would have raised taxes on the most profitable mining companies, even if only slightly.

Only in the mid-1970s did the province enact a fiscal policy that the industry strongly opposed, amending the *Mining Tax Act* to disallow the costs of overseas processing assets. In the context of soaring commodities prices and the lasting popularity of economic nationalism, the provincial government aimed to prod Falconbridge Nickel to construct a domestic refinery. Yet, when nickel markets tumbled, the government retreated from its policy almost immediately. In the face of industry pressure, the government not only abandoned its efforts to enhance domestic refining capacities, but also reimbursed Falconbridge for the comparatively higher taxes the company had paid for the fiscal year the policy was in force.

Since this time, the industry has effectively leveraged arguments about increasing global competition to secure a host of further tax concessions from provincial governments of varying partisan and ideological stripes. In the new era of "neoliberal globalization," in which mining capital enjoys comparatively greater mobility than it did in the early postwar period, the industry has regained its hegemony, and, until the time of writing, remained the province's most favourably taxed industrial sector. Having examined the industry's power to shape the province's fiscal policies, we now shift our focus to another contentious issue area in which mining companies have exercised considerable influence, namely the regulation of air pollution from ore smelters.

## Chapter 4: Air Pollution

### Introduction

Before the issuance of the Department of Energy and Resource Management's control order on Falconbridge Nickel in 1969, the emission of sulphur dioxide (SO<sub>2</sub>) from Ontario's operating ore smelters was completely unregulated. The provincial government took no action to curtail the release of the toxic gas. The scale of the resulting environmental degradation in the Sudbury area – the site of three large nickel-copper ore smelters – was remarkable: By the late 1960s, smelter pollution had created a dead zone, completely devoid of vegetation, measuring some 40 square miles. Another 140-square mile area could support only minimal plant life. In total, an area covering 1,700 square miles was negatively impacted. Yet, it would be a mistake to conclude that the government's approach to the problem was entirely "hands off." Instead, from 1921 until 1970, under the *Damage by Fumes Arbitration Act* the province administered an arbitration system that provided special legal protection to metal ore smelters, permitting them to release pollutants into the atmosphere in exchange for nominal compensation payments to farmers whose property was damaged by sulphur dioxide.

This chapter analyzes the government of Ontario's policies towards the emission of sulphur dioxide from the opening of the Sudbury Basin's nickel mines in the late 1880s until the implementation of the Countdown Acid Rain program nearly a century later. In light of the scale of the costs imposed by the uncontrolled release of sulphur dioxide, analyzing the province's air pollution policies offers a useful avenue to measure the relative political power of industry as compared to other societal interests. Divided into four sections, this chapter shows that the industry exercised a predominant influence over provincial legislation, enabling smelters to "externalize" the bulk of their pollution costs onto not only the natural environment, but also

other Sudbury-area residents and industries. Most of the twentieth century was characterized by blatant industry dominance as – at the industry’s request – ore smelters were protected from the threat of civil lawsuits and polluted lands were withdrawn from settlement. Persistent local protest against the pollution brought little in the way of legislative change, as the industry took advantage of its economic power and its close relationships with sympathetic politicians to thwart calls for stringent pollution control measures. Indeed, to believe government policymakers, the *Damage by Fumes Arbitration Act* was enacted for the benefit not of the industry it protected, but of the farmers whose property was damaged.

Not until the emergence of the environmental movement in the mid-1960s did the provincial government finally move to control smelter pollution. Yet, the province’s initial measures were hardly radical. Instead, in issuing control orders under the *Air Pollution Control Act*, the government essentially codified the industry’s pre-existing investment strategies, which were geared to enhancing productivity, not mitigating pollution. The regulated companies did not challenge the government’s order, and when the companies faced difficulties in meeting their scheduled programs, the government agreed to renegotiate the orders. Moreover, far from “solving” the air pollution problem, the industry’s control methods ultimately created new ones. Relying on ever-taller stacks to release the sulphur gases even higher into the atmosphere, the industry not only dispersed its pollutants over a greater surface area, but also contributed to an unforeseen problem: acid rain.

Compared to the initial control orders, the policy debates from the late 1970s until the mid-1980s were acrimonious. With the emergence of acid rain as the most salient issue in environmental politics, policymakers felt compelled to address the issue to maintain popular support. Yet, in a context of slowing economic growth and weak commodity markets, the mining



industry's profitability languished, and the major nickel companies hesitated to make large-scale investments in smelter modernization. During this time, then, the contradiction between accumulation and legitimation was particularly acute. In this context, the Progressive Conservative government deferred to the industry, prioritizing its economic vitality over growing concerns about the environment. Much like the initial controls order had, the Bill Davis government's 1980 and 1985 emissions controls programs on Inco reflected the company's internal plans. Yet, with the coming to power of David Peterson's Liberal government on the basis of the Accord with the NDP, the industry faced a new challenge. As the new government's legitimacy rested in part on strong action on the environmental file, the Ministry of the Environment re-opened negotiations with Inco concerning its 1985 emissions program, seeking to extract from the company much deeper cuts. The subsequent regulations on Inco implemented as part of the government's broader Countdown Acid Rain program amounted to perhaps the industry's first clear defeat on the air pollution question, but even here, Inco managed to thwart the MOE's most stringent proposals.

Before analyzing these policy disputes, two brief caveats are in order. First, sulphur dioxide was far from the only pollutant released by the ore smelters. Others released in significant quantities included arsenic, cadmium, lead, nickel and particulate matter. Yet, almost certainly because of its comparatively high visibility, sulphur dioxide was most "politicized" and subject to the greatest contestation. As such, in line with traditional pluralist approaches to studying observable behaviour, debates over sulphur dioxide offer the easiest way to analyze power differentials. Second, the industry's interests regarding sulphur control have been in constant flux. With the proper technologies, sulphur gases can be captured and converted into saleable by-products, including sulphuric acid and elemental sulphur. Yet, depending on cost and

market conditions, it may be more efficient (from the corporate perspective) to simply release the gas into the atmosphere than to invest in the requisite technologies and infrastructure to capture, convert, store and ultimately ship the sulphur by-product to a purchaser. Thus, the industry's position towards controlling SO<sub>2</sub> emissions was consistent throughout this period: It would do so only to the extent that the investments required would enhance corporate profitability. Industry refused categorically to absorb the costs of controlling the gas on any other grounds.

### **Early Legislative Hegemony (1880s-1968)**

Ontario's initial policies towards SO<sub>2</sub> emissions offer perhaps one of the most compelling illustrations of the mining industry's political power. In the early twentieth century, politicians, civil servants and even judges proved so eager to promote the development of what they considered a vital industry that they willingly sacrificed the rights and interests of other citizens to the benefit of the emergent nickel industry. Keen to stave off potential legal challenges and the threat of court-mandated changes to their production processes, the Sudbury area's nickel mining companies took advantage of their economic weight and pressed the government for a host of special legislative and regulatory protections. At the industry's request, the government withdrew agricultural lands from settlement, barred citizens from taking legal action against ore smelters and appointed an industry-friendly arbitrator to settle claims arising from sulphur-induced property damages. For the first eight decades of industrial smelting operations in the Sudbury area, the government of Ontario took no legislative or regulatory action to limit the emission of pollutants from the area's several ore smelters. The result was ecological degradation on a scale perhaps unparalleled in Canadian history.

The environmental problems stemmed from early ore treatment processes, known as open-heap roasting, which were crude and inefficient. The companies dug large pits in the ground, which they proceeded to fill with logs that had been clear-cut from the surrounding forest. Crushed ore was interspersed with the logs, which were then set ablaze for months at a time. The heat burned off the sulphur, separating it from the ore's valuable metallic content. In the absence of chimneys, the resulting sulphur gases were released at ground level. Heavier than the air, the sulphur fumes remained suspended for long periods of time and were simply blown wherever the prevailing winds took them.<sup>1</sup>

Contemporary government and media reports provide an idea as to the severity of the resulting ecological degradation. In one of its earliest annual reports, the Ontario Bureau of Mines described the scene at Copper Cliff as follows:

the sulphur dioxide rising from the roast heaps has destroyed most of the vegetation for a mile or two around and has injuriously affected the more sensitive plants as far as Sudbury, three miles to the east. The destruction near the roast beds is complete, so that scarcely a green thing survives and the swampy flats have been turned into deserts with white or gray or brown stumps of the trees once growing there.<sup>2</sup>

A journalist's account of his visit to Copper Cliff published in Toronto's *Globe* left much the same impression. Copper Cliff was "one of the most unattractive places under the sun," he wrote. Sulphur fumes had left "the rocky hills bare of trees and the streets and lawns innocent of a blade of grass."<sup>3</sup>

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<sup>1</sup> Keith Winterhalder, "Early History of Human Activities in the Sudbury Area and Ecological Damage to Landscape," in John M. Gunn (ed.), *Restoration and Recovery of an Industrial Region: Progress in Restoring the Smelter-Damaged Landscape Near Sudbury, Canada* (New York: Springer-Verlag, 1995), 19-21.

<sup>2</sup> Quoted in Mark Kuhlberg and Scott Miller, "'Protection to the Sulphur-Smoke Tort-feasors': The Tragedy of Pollution in Sudbury, Ontario, the World's Nickel Capital, 1884-1927," *The Canadian Historical Review* 99 (2018), 234.

<sup>3</sup> Quoted in Don Munton and Owen Temby, "Smelter Fumes, Local Interests, and Political Contestation in Sudbury, Ontario, during the 1910s," *Urban History Review* 44 (2016), 28.

Despite the intensity of their environmental impact, it was not until 1906 that “sulphur fumes” became much cause for political concern, however. Seeking to promote agricultural settlement on the new northern frontier, the Ontario government opened several new townships in the Sudbury district to prospective farmers and homesteaders. Meanwhile, the nickel industry continued to expand. But when sulphur fumes visited their farms and damaged their crops and equipment, members of the newly established farming community protested, pressing the industry for compensation. In 1909, the local sheriff stepped in to act as an unofficial arbiter to settle disputes between the two sides, but with the outbreak of the First World War in 1914, intensified production overwhelmed the sheriff’s office. Subsequently, the industry convened committees to replace the sheriff, but the committees’ awards satisfied neither side. As a result, in 1915, the farmers turned to the legal system, launching “a barrage of lawsuits,” “demanding not only increased compensation for their agricultural losses but also stop-work injunctions against [the two nickel mining companies] Canadian Copper and Mond Nickel.”<sup>4</sup>

Fearing the establishment of a potentially damaging legal precedent, the mining companies had hoped to keep the issue out of the court system. As historians Mark Kuhlberg and Scott Miller have shown, Mond Nickel’s lawyer wrote to the Ontario government offering a candid explanation of his company’s policy towards farmers who sought compensation: “Some of the claimants have had only imaginary grievances, but all have to be settled with generously. The Company is naturally averse to litigation and prefers to pay somewhat excessive demands rather than figure in a number of law suits.”<sup>5</sup>

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<sup>4</sup> Matthew Bray, “The Province of Ontario and the Problem of Sulphur Fumes Emissions in the Sudbury District,” *Laurentian University Review* 16 (February 1984), 82.

<sup>5</sup> Quoted in Kuhlberg and Miller, “Protection to the Sulphur-Smoke Tort-feasors’,” 237.

Despite the industry's fears, however, the farmers had little success in court. In 1916, the Supreme Court of Ontario decided to hear six separate claims together in what would become an important test case on the issue. After more than a year in court, Justice Middleton arrived at his ruling in 1917. Denying the farmers' request for an injunction, Middleton's decision "drastically departed from clear Canadian precedent."<sup>6</sup> This ruling was particularly noteworthy, for unlike their British and American counterparts, which had become more accommodating to industry in the context of the Industrial Revolution, Canadian courts had generally adhered to the traditional rules and remedies of nuisance law. In Canada, property owners who suffered a "substantial interference," even in the absence of property damage, were thus entitled to injunctive relief. Yet, Sudbury-area farmers were afforded no such protection.

Justice Middleton's ruling reflected the industry's structural power, which had only deepened in the context of the First World War. Middleton was clearly reluctant to hinder the nickel industry, which was proving so vital to the military effort in Europe, even if that meant sacrificing the common law rights of other citizens. As he explained it, since the mines "cannot be operated without the production of smoke from the roast yards and smelters," an injunction would destroy the nickel industry, and the entire agricultural community that depended on it. "The court," he argued, "ought not to destroy the mining industry – nickel is of great value to the world – even if a few farms are damaged or destroyed."<sup>7</sup> Although Middleton did award the six plaintiffs some compensation, his awards were for amounts less than what the company had offered in out-of-court settlements. In the years that followed, subsequent court cases were similarly decided in the industry's favour.

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<sup>6</sup> Donald Dewees, "The Efficiency of the Common Law: Sulphur Dioxide Emissions in Sudbury," *University of Toronto Law Journal* 42 (1992), 9.

<sup>7</sup> *Ibid.*, 8.

Although the courts proved sympathetic to their interests, the mining companies took further action to guard themselves from this threat to their operational autonomy. While the Mond Nickel Company voluntarily refrained from using its open-air roasting yards during the summer growing season when crops were most vulnerable, Canadian Copper refused to do the same. Instead, in 1915 it constructed a new roasting yard – the O'Donnell Yard, which measured an enormous 2,286 metres long by 52 metres wide – in an area removed from existing agricultural settlements. Next, the company urged the provincial government to withdraw the lands surrounding the roast yard from settlement, contending their soils were unsuitable for agricultural development. As the companies had it, the farmers' claims of damages were greatly exaggerated. In fact, to believe the nickel industry, "smoke farmers" were acquiring land in the Sudbury area not with the aim of starting a farm, but instead with the aim of winning lawsuits against the companies.<sup>8</sup> Although local farmers and the Sudbury Board of Trade disputed Canadian Copper's claims, the provincial government complied with the nickel company's requests. Initially, an area with a radius of ten miles was withdrawn from settlement, though subsequent requests by both Canadian Copper and Mond Nickel added to the total.<sup>9</sup> As Kuhlberg and Miller noted, "the province withdrew, on [Canadian Copper's] behalf, six entire townships and parts of seven other townships that encompassed an area of roughly 650 square kilometres."<sup>10</sup>

In addition to requesting the withdrawal of lands from settlement, the companies devised other methods to protect themselves from legal action. Purchasing "smoke easements" was one

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<sup>8</sup> "The Arrogance of Inco – by Val Ross (Originally Published in May 1979 – Part 4 of 4)," *Republic of Mining*, posted June 30, 2010, <https://republicofmining.com/2010/06/30/the-arrogance-of-inco-by-val-ross-originally-published-in-may-1979-part-4-of-4/>, (accessed 20 September 2019).

<sup>9</sup> Munton and Temby, "Smelter Fumes, Local Interests, and Political Contestation in Sudbury," 29.

<sup>10</sup> Kuhlberg and Miller, "'Protection to the Sulphur-Smoke Tort-feasors'," 239.

such method. With a one-time payment to landowners, the company purchased the right to pollute the designated property in perpetuity. The smoke easement remained in force even after title to the land was transferred to a new owner. Canadian Copper purchased the first such easement from Sudbury businessman and real estate developer Lawrence O'Connor in 1914. An excerpt from the contract read as follows:

The said transferee, for himself, his heirs, executors ... doth thereby accept the right thereby given ... on the express condition that neither he nor they shall have any right of action, or claim against the Transferor, its successors or assigns on any account of any annoyance, loss or damage which he or they may sustain resulting from sulphur smoke or any other resulting condition of the present or future operations of the said Company, its successor or assigns.<sup>11</sup>

Subsequently, smoke easements found their way into provincial legislation. In 1918, as war production continued its enormous expansion, the government enacted the *Industrial and Mining Lands Compensation Act*, providing a general legal framework for the sale and purchase of smoke easements.<sup>12</sup> The companies promptly took advantage of the new law, purchasing several easements from local farmers and various institutions throughout the Sudbury area. So too did the provincial government. After the First World War, pressure to release land for agricultural settlement grew, while Sudbury-area farmers became increasingly unsatisfied with the government's 1915 land withdrawal. In response, in 1921 the provincial government re-opened the formerly withdrawn lands, but in an effort to prevent legal action against the nickel industry, it inserted smoke easements into each of the new land transfer agreements it assigned.<sup>13</sup>

For all their initial success in the courts, the mining companies could not rest easy. An important turning point came in January 1920, when the Ontario Supreme Court issued a ruling

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<sup>11</sup> Quoted in Bray, "The Province of Ontario and the Problem of Sulphur Fumes Emissions in the Sudbury District," 83.

<sup>12</sup> The law remains on the statute books as of writing in 2020.

<sup>13</sup> Ibid, 83.

on an appeal of several earlier cases by local farmers. Although Justice William Meredith dismissed the appeals, perhaps more important than the ruling itself was an *obiter dictum* contained within it. Noting there was “still room for much more litigation,” and that the farmers were “firmly convinced that they suffer serious injury from the smoke and fumes,” Meredith suggested the provincial government appoint a commission of experts to investigate the impact of the smelter fumes on the region’s crops and soil. As Meredith explained, “I see no reason why there would not be governmental control of the processes and methods adopted by both companies in smelting ... their ores to the end that ... those living in the district ... should not be made to suffer inconvenience in person or injury to their property.”<sup>14</sup> To underscore the seriousness of his recommendation, Meredith forwarded a copy of his ruling to Premier E.C. Drury, requesting the new government pay particular attention to the court’s suggestion to strike an expert committee. With the Great War over, and the military’s immediate needs for nickel lowered, Ontario’s courts were no longer as willing to overlook citizens’ rights in the common law. In this new context, the industry’s structural power had waned.

Meanwhile, the election of the United Farmers of Ontario to government in 1919 had emboldened Sudbury’s farmers. Still more court challenges were launched, while Sudbury-area lawyer John H. Clary took the farmers’ cause directly to the new government, pressing Premier Drury to offer some relief to his fellow farmers. Yet, the mining companies responded in kind, as one of Canada’s leading corporate lawyers Wallace Nesbitt lobbied the new government on the industry’s behalf. Ultimately, the industry’s lobbying campaign triumphed. Soon after hearing the industry’s case, the UFO government drafted new legislation that would permanently remove the threat of the courts’ imposing a stop-work injunction against the nickel companies. With the

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<sup>14</sup> Quoted in Kuhlberg and Miller, ““Protection to the Sulphur-Smoke Tort-feasors’,” 243.



passage of the *Damage by Fumes Arbitration Act* in 1921, farmers lost the right to sue smelters for pollution-related damages to their properties. Instead, farmers had to plead their case before a government-appointed arbitrator, who was to decide whether pollution damage had occurred and whether farmers were owed compensation. Initially, the arbitrator's decision could not be appealed. No doubt the new law was to the industry's liking: the government's attorney general went so far as to provide a copy of the draft bill to the industry for revision before it was brought to the legislature.<sup>15</sup>

The return of the Conservative Party to power in 1924 further entrenched the industry's legal privileges. Howard Ferguson's government transferred supervision of the Act from the Department of Agriculture to the Department of Mines. A new provision was added requiring farmers to notify both the arbitrator and the offending company of the damages within seven days of their occurrence or face the possibility of receiving no compensation. The nickel companies were to be charged a maximum \$5,000 per year to cover the administration of the arbitration program. Finally, the new government appointed R.H. Murray to the position of arbitrator, a role he would keep until his retirement in 1957. Although historian Matt Bray suggested that Murray developed a reputation for fairness and impartiality, evidence discussed below indicates otherwise.

As Donald Dewees has shown, under Murray's administration awards to farmers "plummeted."<sup>16</sup> While the average value of the settlements awarded to farmers under the Department of Agriculture's supervision in 1921 was \$231, by 1925 this figure had fallen to \$29. Moreover, in his first year as arbitrator, Murray rejected 39 percent of the claims brought before him. Farmers contended that Murray underestimated the severity of damage, a charge supported

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<sup>15</sup> Ibid, 245.

<sup>16</sup> Dewees, "The Efficiency of the Common Law," 11.

by at least some evidence. For example, in 1915 the Department of Agriculture's Sudbury district representative had estimated damages of at least \$25,000 in just one of the many affected townships, indicating the companies' \$5,000 in administration fees were a worthwhile trade-off. Moreover, a federal government botanist "expressed bewilderment" with Murray's decisions, suggesting the arbitrator attributed crop damage to diseases "for what may be really smoke trouble."<sup>17</sup>

### *Amending the Damage by Fumes Arbitration Act*

Although the Ontario government treated the *Damage by Fumes Arbitration Act* as evidence of its commitment to controlling the sulphur pollution problem, the law and the government's leniency towards the smelters remained a point of contention among Sudbury-area farmers and residents through the 1940s and 1950s. In the industry and government's framing, the *Act* was in place to ensure the farming community received compensation for damages in a fair and timely manner. Much as was the case with taxation, Mines Minister Frost's public discourse on the pollution problem was indistinguishable from the industry's own. For instance, in March 1945, Frost offered the following account of the origins and purpose of the sulphur fumes arbitration system to the Legislature:

The situation a good many years ago was that all these sulphur fume cases were referred to division courts and the division courts in Sudbury and the northern parts of Nipissing were simply clogged with these cases. As a result of that situation and the fact that it was both very unsatisfactory and expensive to the farmers and settlers in that area to go to a division court ... a good deal of hardship existed until the Sulphur Fumes Arbitration Act [*sic*] came into effect, the purpose of which was to provide a ready method for people who had sustained damage by sulphur fumes to come before a body which would adjudicate quickly and inexpensively upon their claims.<sup>18</sup>

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<sup>17</sup> Ibid, 15.

<sup>18</sup> Ontario, *House Hansard*, 8 March 1945.

However, there is evidence to suggest the Sudbury area's farmers were not as satisfied with the arrangements as Frost claimed they were. One notable challenge emerged in 1943, when the Cooperative Commonwealth Federation's Robert Carlin was elected to represent Sudbury in the provincial Legislature. Upon taking his seat, Carlin made relief from smelter pollution one of his main policy priorities. Carlin made two key demands on behalf of Sudbury's farmers. First, the government should pass legislation to compel the nickel mining companies to remove the poisonous sulphur gases from their stacks, much as a joint Canada-US international tribunal had forced the Consolidated Mining and Smelting Company of Canada (Cominco) to do at its Trail, British Columbia lead-zinc smelter.<sup>19</sup> In Carlin's view, government was within its rights to compel the nickel companies to install gas extraction technologies at the smelter, even if such equipment did not optimize profitability. As Carlin had it, "You are working either for the farmers or the mining industry."<sup>20</sup> Second, in the short term, the government's arbitrator – R.H. Murray – should be removed from his position and replaced by a "proper board" with equal representation from both industry and agriculture.

Carlin won neither of his demands. Instead, the government responded to Carlin's pressure by passing an amendment of its own. In 1945, farmers won the right to appeal the arbitrator's decisions to the Ontario Municipal Board. No action was taken to limit emissions. Frost's reasoning in rejecting Carlin's proposals was noteworthy. In Frost's view, the mining companies had taken considerable action to control their emissions, voluntarily adopting new technologies since the days of open-heap roasting that had alleviated much of the cause for

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<sup>19</sup> As in the Sudbury area, the smelter's sulphur pollution caused considerable hardship to farmers, particularly those across the border in Stevens County, Washington. In 1941, the joint Canada-US tribunal that arbitrated the dispute between the farmers and the mining company ruled that the Canadian government was responsible for controlling the pollution. Despite the company's initial resistance, the control measures Cominco adopted, including conversion of the sulphur gases into fertilizers and acid, proved profitable. See Keith A. Murray, "The Trail Smelter Case: International Air Pollution in the Columbia Valley," *BC Studies* 15 (1972), 68-85.

<sup>20</sup> "Members Sitting Overtime for Session Speedup," *Globe and Mail*, 9 March 1946.

concern. As Frost explained it, “International Nickel and other companies have huge smokestacks which take fumes high in the air.”<sup>21</sup> Furthermore, Frost suggested, farmers were generally satisfied with the arbitration process available to them, Carlin’s complaints notwithstanding. As evidence, Frost pointed out that of the 573 claims made in 1943, only three required Murray’s services.<sup>22</sup> For Carlin, perhaps unsurprisingly, the amendment was “totally inadequate.”

Whether, as Frost had it, the farmers’ choice to deal directly with the companies indicated their satisfaction with the *Act* and its administration was questionable. In fact, farmers’ discontent with the government’s smelter policies surfaced again in 1955, a decade after Carlin’s efforts had won the amendment. In that year, the Ontario Farmers’ Union, an offshoot of the Ontario Federation of Agriculture, submitted a brief to the provincial cabinet, outlining the organization’s political priorities for the year. Relief for Sudbury-area farmers was among them. Carlin was involved again, as he was now acting as the Union’s organizer in the Sudbury area. In essence, the Union’s brief was a carbon copy of Carlin’s earlier recommendations. According to the brief, Union investigations had found that the existing arrangements were “not satisfactory.” Many farmers claimed that “they have accepted what they felt was a sum which represented only a fraction of the amount of damage that was done feeling that if they did not accept International Nickel Co.s [*sic*] offer, they would get nothing.” While, subsequently, Mines Minister J.W. Spooner depicted the “extremely rare” appeals to Murray’s findings as tribute to the arbitrator’s “knowledge and skill,” it appeared that many farmers did not have faith in Murray’s commitment to impartiality. From farmers’ perspective, he bungled evidence, and some of his reports contained “irregularities.” Appealing his decisions to the Ontario Municipal Board was thus

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<sup>21</sup> Ibid.

<sup>22</sup> “Can Base Appeal on Amendment To Mining Act,” *Globe and Mail*, 18 July 1945.

futile. Feelings ran high enough that in 1955 farmers circulated a petition demanding Murray be relieved of his position. Ultimately, the Union repeated the two demands Carlin had made a decade prior: Legislation to compel the companies to eliminate their sulphur gases, and the establishment of an “impartial board” to settle claims.<sup>23</sup> Again, neither demand was met.

### ***The Select Committee on Air Pollution and Smoke Control***

Not long after the Farmers’ Union submitted its proposals to the government, the nickel smelters faced yet another challenge. In the context of the rapid industrialization of the province’s urban centres to the south, public concern over air pollution grew. As a result, in 1955, the Conservative government struck the Select Committee on Air Pollution and Smoke Control, which sought remedies to the mounting urban air pollution problem. While the Committee focused mainly on the province’s major industrial centres in Southern Ontario, it also visited the Sudbury area to investigate the matter there.<sup>24</sup>

Reviewing the Select Committee’s proceedings is worthwhile for several reasons. Doing so offers a clear illustration of the multiple dimensions of the industry’s political power, and the clear parallels between the nickel industry’s political strategies and those of other industries subject to critical scrutiny, like the fossil fuel and tobacco industries. During the Committee’s hearings, the mining companies downplayed the severity of their operations’ environmental impact, casting doubt on the links between sulphur dioxide emissions and poor environmental and human health outcomes. In addition, the companies highlighted their tremendous economic contribution not only to the Sudbury region, but to Canada more broadly, not so subtly hinting

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<sup>23</sup> AO RG 3-23, Correspondence of Premier Leslie M. Frost, Box 126, Ontario Farmers’ Union, “Submission to the Government of Ontario,” 17 January 1955.

<sup>24</sup> Owen Temby, “Trouble in Smogville: The Politics of Toronto’s Air Pollution during the 1950s,” *Journal of Urban History* 39 (2012), 669-689.

that pollution control measures would undermine prosperity and employment. While other Sudbury-area interests, including farmers, participated in the hearings, they could not muster anything nearing the quality of the industry's policy interventions.

As for policy, the industry's priority was to maintain the *Damage by Fumes Arbitration Act* and prevent the passage of legislation that would compel it to alter its production processes. Meanwhile, although the Committee's social democratic MPPs criticized the nickel companies for their failure to control pollution, the Progressive Conservative Party members had clear sympathies for the business perspective, questioning the economic feasibility of abatement measures and accepting some measure of environmental degradation as inevitable. Notably, while the province responded to the Committee's recommendations by passing the *Air Pollution Control Act* in 1958, delegating pollution control authority to municipalities, ore smelters remained exempt and protected by the liberal provisions of the *Damage by Fumes Arbitration Act*.

The nine-member Select Committee carried out its work over a period of two years, travelling to 42 cities and six American states to study and learn about air pollution control measures adopted elsewhere. In addition, the Committee heard testimony from more than 200 scientists, as well as municipal representatives and a host of other interested parties. In late October 1955, the Committee traveled to the Sudbury area, where it heard from local politicians, union representatives, individual citizens and the nickel companies. The Committee also toured the area to witness firsthand the smelters' environmental impacts and visited Inco's Copper Cliff smelter.

Inco's submission to the Select Committee demonstrates the industry's readiness to disarm its critics. The company's arguments were three-pronged: Its smelter emissions were

benign; the company had already adopted the best-available technologies in its operations; and, finally, the nickel industry's positive contributions to the regional, provincial and national economies far outweighed any negative costs stemming from smelter fumes. According to Inco, the emission of sulphur dioxide had only a minimal impact on the Sudbury area's agriculture, its forests and the health of its residents. The company mobilized several scientific studies to make its case. Inco dedicated considerable effort to dismiss any connection between its operations and the Sudbury area's poor agricultural output. To believe the company, other culprits beside smelter emissions were to blame: the low quality of the region's soils and the inefficient practices of the local farming community primary among them. To bolster its case, Inco drew on a 1938 scientific study sponsored by the Department of Mines. As Inco pointed out to the Select Committee, a team of experts from the Ontario Agricultural College had concluded

that soil poverty and other unfavorable soil factors, unsuitable cultural methods practiced, insufficient attention paid to choice and use of good varieties and strains of crops, and lack of adequate measures for reducing losses incurred through disease and insect attack, are the main factors responsible for the low yields obtained by the great majority of the farmers of the Sudbury area.<sup>25</sup>

Inco marshalled similar evidence in support of its contention that its operations had little impact on the forests in the Sudbury area. As Inco had it, "prolonged exposure" to sulphur dioxide in "subtoxic amounts" had "no harmful effect" on plant growth. Only those few areas that were subject to prolonged sulphur exposures were at risk. According to the company, Sudbury's topography and its variable wind patterns allowed for the wide dispersal of the smelter fumes. As a result, "vegetation in a particular area [was] exposed to gas for only a small fraction of the total growing season. ... This [meant] that there [was] ample time for plants to recover

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<sup>25</sup> AO, RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0-229, Air Pollution, 1957, "Brief of the International Nickel Company of Canada Limited to the Select Committee on Air Pollution and Smoke Control," 27 October, 1955.

from the effects of single, injurious fumigations if the extent of leaf destruction [was] not too great.”<sup>26</sup>

Finally, Inco assured the Select Committee that there was little evidence to suggest that sulphur dioxide was associated with negative human health outcomes. In fact, relatively little was known about the impact of prolonged exposure to sulphur dioxide on human health, but Inco cited a detailed study that had been carried out by the Anglo-Iranian Oil Company on employees at the company’s oil refinery at Abadan, in what was then South Persia. According to that study, clinical examinations showed that workers exposed to the gas showed no discernible difference in respiratory function compared to their non-exposed counterparts.

The company also used its presentation to tout its voluntary commitment to improving its production processes and mitigating its environmental harm. In this respect, the company suggested that although open-heap roasting practices had indeed been harmful, modernized smelting practices and the use of tall stacks to release gases at high speeds and temperatures into the atmosphere alleviated any cause for concern. As Inco’s brief put it, “It should be stressed that the experience of the past 25 years is in marked contrast to the earlier period the nickel industry’s operations. The improvement has resulted from a continuous program of process development in which control has always been a consideration.” Inco proceeded to highlight several such process improvements, including the 1930 construction of the Copper Cliff smelter and the subsequent erection of a new smelter stack, “the tallest chimney in the British Empire.” It also discussed the introduction of a new oxygen flash smelting process to treat copper concentrates, a smelting method that not only allowed the company to reduce its coal consumption, but also, in conjunction with Canadian Industries Limited, to convert the sulphur gases to liquid sulphur

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<sup>26</sup> Ibid.



dioxide for sale to the pulp and paper industry. Yet, Inco also warned the Committee that legislation to force the pace of such process changes would be ill considered, and ultimately detrimental not only to the company, but more importantly, to the Canadian economy. “It must be realized,” the brief argued, “that only as new processes can be devised does it become feasible from the standpoint of capital outlay and operating costs to recover increasing amounts of sulphur or its compounds.”

To enhance its arguments, Inco reminded the Committee of its substantial economic contribution to Canadian society. The company produced more than \$350 million worth of metals per year. It employed 18,500 salaried and wage workers and purchased a wide variety of materials from other industrial sectors, including 540,000 tons of coal, 20,000,000 Imperial gallons of fuel oil, 42,000,000 board feet of lumber and timber and 20,000 tons of steel plate and shapes among other items. Inco’s message was clear: “Although some damage may be sustained from time to time as a result of sulphur dioxide, by comparison with the wealth which is being created it is submitted that such damage is small and is compensated for in a just and equitable manner.”

Inco’s claims to the contrary, the Committee hearings showed that air pollution remained a major concern among Sudbury-area residents, including among the area’s Progressive Conservative MPPs. For Sudbury MPP Gerald Joseph Monaghan, sulphur fumes from the mining industry were his constituents’ “No. 1 problem.”<sup>27</sup> According to Monaghan, when weather conditions were unfavourable, the tall stacks failed to serve their purpose: “There are days when the atmosphere is heavy and these gases descend to the ground. There are days when a light blue haze hangs close to the ground and people unaccustomed to the sulphur fumes find it

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<sup>27</sup> AO RG 49-136, Records of the Select Committee on Air Pollution and Smoke Control, *Proceedings of the Select Committee on Air Pollution and Smoke Control*, Vol. 12, 861.

a bit difficult to breathe.”<sup>28</sup> Rheal Belisle, a farmer from the Blezzard Valley and the PC MPP from Nickel Belt, expressed similar concerns, explaining to the Committee, “I know that you will realize after touring this vast district of Nickel Belt that it is of prime importance that your Committee on Air Pollution and Smoke Control find a possible solution to our problem.”<sup>29</sup> Belisle favoured transferring supervision of the *Damage by Fumes Arbitration Act* to the Department of Agriculture. For his part, the City of Sudbury’s solicitor Joseph Kelly made the case on behalf of Sudbury’s city council for a mandatory air pollution statute for the entire province.

Other Sudbury-area interests also expressed concern. Mine Mill Local 598 President Mike Solski emphasized the deleterious impact sulphur fumes had on the health of smelter workers exposed to the gases at close quarters and on the residents of the Sudbury area more generally.<sup>30</sup> During its tour of the area, the Committee met with the mayor of Coniston, Walter Kilimnik, whose comments spoke to the power imbalances in a company town:

This is all individual home owners here, and those over there, they only pay \$8.00 a month to INCO, and if they ‘squawk’, they get out. The people here ‘squawk’, because they own their own homes.<sup>31</sup>

The wife of a railroad employee and resident of Coniston described to the Committee what it was like to live close at hand to a smelter:

Well, here in the summer time the sand blows so bad you can’t even see across the street. You wash your clothes and take them in and have to wash them again. You have to do them early in the morning or you can’t do them at all. The gas is bad too. Even the furniture is damaged, it gets scratched. We have to keep the storm windows on the year around to keep the sand out.<sup>32</sup>

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<sup>28</sup> Ibid, 859.

<sup>29</sup> Ibid, 864.

<sup>30</sup> Ibid, 901-905.

<sup>31</sup> AO RG 49-136, Records of the Select Committee on Air Pollution and Smoke Control, *Proceedings of the Select Committee on Air Pollution and Smoke Control*, Vol. 13, 931.

<sup>32</sup> Ibid, 932.

Power imbalances were evident in other ways. While Inco officials could cite extensive scientific data in their presentation to the Committee, the Farmers' Union lacked the resources to prepare a proper brief. Instead, the Union's representative (and former CCF MPP) Robert Carlin submitted a resolution the Union's Sudbury section had recently passed, demanding government action to compel Inco to remove the poisonous gases from its emissions. When Progressive Conservative Committee Chairman Alfred Cowling pressed Carlin about "scientific proof" of sulphur gases' negative impact on human health, Carlin could only relate anecdotes about dairy cows losing milk production after severe exposures and apiaries producing low-quality honey, their bees going sterile.<sup>33</sup>

At several points during the hearings, Progressive Conservative Committee members deferred to the industry's position on the issue. One notable instance occurred during the Ontario Farmers' Union brief delivered in Toronto, which dealt exclusively with the Sudbury pollution problem. The Union reiterated its demand for pollution control legislation, suggesting that in light of the industry's large profits, any argument about prohibitive costs was "ridiculous." Yet, in Essex South MPP William Murdoch's view, it was not clear that Sudbury-area farmers had an interest in pollution control considering the compensation payments they received from industry. From Murdoch's perspective, compensation was "definitely a part of the farm activities." Other PC Committee members questioned the economic feasibility of investing in pollution abatement technologies. Others accepted as inevitable some measure of pollution and degradation. When Oshawa CCF MPP Thomas David Thomas pointed out the discomfort the sulphur fumes had caused Committee members on their tour of the Copper Cliff smelter, Hamilton East PC MPP Robert Elliot responded that it was never "actually proven" that sulphur dioxide harmed human

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<sup>33</sup> AO RG 49-136, Records of the Select Committee on Air Pollution and Smoke Control, *Proceedings of the Select Committee on Air Pollution and Smoke Control*, Vol. 12, 916-917.

health and that there was “bound to be some [discomfort] in any industry, no matter where you are.”<sup>34</sup>

Ultimately, despite the Conservative members’ reservations, the Select Committee made several recommendations to improve the problem of air pollution in the province. Notably, the Committee called for the immediate establishment of an Ontario Air Pollution Control Commission and the overhaul of the province’s existing “antiquated” air pollution legislation. The Committee was clear that no exemptions should be made “in any air pollution control legislation,” arguing that “advances in science” had made it “technically possible to eliminate, or satisfactorily to control, almost every kind of air pollution.” In contrast to Inco’s suggestions that sulphur dioxide was benign to human health, the Committee reported on an investigation of the London smog deaths of 1952, which found that the inhalation of sub-toxic concentrations of sulphur dioxide and sulphur trioxide could be “rapidly fatal” to both humans and other animals.<sup>35</sup> The Committee was also prepared for economic arguments, noting that it had discovered “no instance of an industry being prejudiced in its operation by being required to install adequate air pollution control equipment.” In any event, the Committee claimed, capital expenditures on air pollution control equipment was “money well spent” as there were many costs associated with inaction.

Nevertheless, when the government passed the *Air Pollution Control Act* in 1958, ore smelters were exempt from its provisions, as the law did not apply to operations designated by the *Damage by Fumes Arbitration Act*.<sup>36</sup> Publicly, Ontario policymakers continued to draw on

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<sup>34</sup> AO RG 49-136, Records of the Select Committee on Air Pollution and Smoke Control, *Proceedings of the Select Committee on Air Pollution and Smoke Control*, Vol. 22, 1602-1633.

<sup>35</sup> Ontario Select Committee on Air Pollution and Smoke Control, *Final Report* (Toronto: 1956) 47.

<sup>36</sup> W.R. Smithies, *Protection and Use of Natural Resources in Ontario* (Toronto: Ontario Economic Council 1974), 27.

industry discourse to justify their approach to smelter pollution, describing the *Damage by Fumes Arbitration Act* as a strong measure to address the problem. As Mines Minister J.W.

Spooner explained to the Legislature in 1958,

The bare and altogether desolate landscape that mars much of the naturally beautiful country around Sudbury stands as a grim memorial of the days (now happily past) when minerals were mined and smelted with a complete disregard of the well-being of other natural resources in the area, and the preservation of our natural heritage.

I said the days of such disregard are past – and one of the most important milestones in their passing was the incorporation of the *Damage by Fumes Arbitration Act* in 1921.<sup>37</sup>

After describing the open-heap roasting practices used when the mines were first developed,

Spooner proceeded to discuss the steps the companies took to remedy the air pollution problem,

“of their own volition”:

Now the fumes are discharged through great stacks, some of which tower more than 500 feet into the air. One stack is more than 600 feet high, the highest structure of its kind in the British Commonwealth. Methods of recovering the sulphur content have been greatly improved so that a great deal of it that formerly contaminated the atmosphere is now put to profitable use. The part of it that still escapes is so diffused in the upper atmosphere that before it returns to ground level its potential for damage is greatly reduced.<sup>38</sup>

### *Protest after the Select Committee*

In the decade after the Select Committee released its report, localized protest over sulphur pollution remained prevalent, not only in the Sudbury area, but also near Wawa, where Algoma Steel operated the Algoma Ore iron mining and sintering complex. As in the Sudbury area, environmental degradation in the Wawa area was severe. While Mines Minister Spooner suggested that, with the construction of three tall stacks, damage “to the surrounding forest [was]

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<sup>37</sup> AO, RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0311, Sulphur Fumes, 1957-1958, “Address by Honourable J.W. Spooner, Ontario Minister of Mines. Re: *Damage by Fumes Arbitration Act*. Session of 1958,” no date.

<sup>38</sup> Ibid.

being kept to a minimum,”<sup>39</sup> a 1958 report by the Department of Lands and Forests described a “fume kill area” covering 38,800 acres in which the “loss of native game and fish ... [was] well-nigh total and complete.”<sup>40</sup> Three years later, an evocative *Globe and Mail* report described the scene: “Here now is desolation, 350 square miles of nightmare forest with scarce a leaf, a touch of green or shade to soothe the soul and eyes.”<sup>41</sup> The Department of Mines’ new sulphur fumes arbitrator, Bruce Dreisinger, confirmed the validity of the newspaper’s report for then Minister of Mines, James Maloney.<sup>42</sup>

As in Sudbury, several Wawa area interest groups, including local businesses and tourist industry operators, pressed both industry and government for action to control the pollution. Initially, fishing and hunting lodge operators played a leading role. In the early 1960s, having passed a resolution on air pollution in the Wawa area at its annual convention, the Northern Ontario Tourist Outfitters Association took its concerns about the sintering plant directly to Premier Frost, urging him to “give this your personal attention, so that proper steps can be taken to ensure its control at an earliest possible date.”<sup>43</sup> The Tourist Outfitters received no response from Frost, but Minister of Mines James Maloney reassured the Association’s secretary-manager, “you may rest assured that this Department is deeply concerned and will do everything possible to have Algoma Ore Properties reduce the damage caused by sulphur dioxide fumes.” In the meantime, Maloney wrote, the Department would continue to monitor its various recording stations downwind from the sintering plant, and would “hope” that Algoma Ore’s recently hired

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<sup>39</sup> Ibid.

<sup>40</sup> AO, RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0311, Sulphur Fumes, 1957-1958, “Report on the Loss of Potential Revenue to the Crown from Damage Caused by Sulphur Fumes from the Algoma Ore Sintering Plant at Wawa, Ontario,” no date.

<sup>41</sup> Robert Turnbull, “Area of 350 Square Miles Killed by Sulphur Fumes,” *Globe and Mail*, 28 June 1961.

<sup>42</sup> AO RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-404, Mining Files, Pollution, 1961, B.R. Dreisinger to J.A. Maloney, 30 June 1961.

<sup>43</sup> AO RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-404, Mining Files, Pollution, 1961, E.L. Palmer to Leslie Frost, 9 January 1961.

sulphur control expert Dr. Morris Katz could devise a suitable control program to alleviate the distress for the upcoming growing season.<sup>44</sup>

The following year, the Tourist Outfitters reiterated its resolution, sending a letter of protest to Algoma Ore management, a copy of which and Algoma Ore's response were forwarded to the Department of Mines. While General Manager C.M. Beck sympathized with the Association, viewing "this problem with the deepest concern," the company contended that it was beset by "major problems" in its attempts to capture the sulphur. The gas going up the stacks was too diffuse to be easily converted into a useable by-product, while disposing of it was "difficult." Having "gone to considerable cost to try to find a solution," the company pleaded for patience as it continued in its efforts: "We hope that continued research may be allowed to be conducted with the tolerance and co-operation of all concerned in the recognition that the mining and sintering operations are very important to the national economy in general and to our community in particular."<sup>45</sup>

Through the rest of the 1960s, various interests in both the Sudbury and Wawa areas continued to press the government and industry for tangible action. In 1967, the Town of Capreol's council wrote to the Minister of Mines that its members "felt that more pressure should be brought upon these Companies [Inco and Falconbridge] to make further research, as such damaging gases have been almost completely eliminated in the Western Provinces."<sup>46</sup> Earlier that summer, the President of the Creighton-Lively Conservation Club wrote a letter of protest to new Ontario Premier John Robarts following a severe fumigation in mid-July. As the

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<sup>44</sup> AO RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-404, Mining Files, Pollution, 1961, James A. Maloney to E.L. Palmer, 18 January 1961.

<sup>45</sup> AO RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-612, Mining Files, Pollution, 1962, C.M Beck to R.A. Giles, 31 May 1962.

<sup>46</sup> AO RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-615, Mining Files, Pollution, 1967, Dorothy Burch George Wardrope, 6 September 1967.

letter put it, “The gas on this day was choking in our area.” The Club’s request was simple.

“Honourable Sir, we of the Creighton-Lively Conservation Club, would respectfully request your Government to take immediate and appropriate action to halt this type of pollution such as the Province of British Columbia has done at Trail, B.C.”<sup>47</sup> Like the Town of Capreol, the Township of Rayside passed a resolution calling on the provincial government “to make an immediate study within the Sudbury Basin to determine the extent and seriousness of air pollution and take action to relieve the situation.”<sup>48</sup> Similarly, in Wawa, the Chamber of Commerce complained of Algoma Ore’s continued intransigence in a private letter to Robarts. As far as the Chamber of Commerce could tell, the company was simply unwilling to make the necessary expenditures to control pollution. The letter complained, “So far, Algoma’s response has been that any saving device, e.g., a filter, would be ‘profitably unfeasible.’”<sup>49</sup> In another instance, after a particularly “severe burn,” an Algoma Ore worker and former Wawa town reeve persuaded hundreds of area residents to sign a petition calling on local PC MPP Bernt Gilbertson to take action to prevent such occurrences in the future.<sup>50</sup>

Despite these clear concerns among a wide range of interest groups, the government maintained its traditional policy of permitting pollution to continue unabated. As late as 1966, policymakers’ discourse was indistinguishable from what it had been in the 1940s and 1950s. As the report of the Select Committee on Mining put it, “At times in the past, damage has been caused by the excessive dispersal into the atmosphere of certain gases or fumes. However, with

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<sup>47</sup> AO RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-615, Mining Files, Pollution, 1967, Taisto Waine to John Robarts, 29 July 1967.

<sup>48</sup> AO RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-615, Mining Files, Pollution, 1967, “Resolution #67-50 of the Township of Rayside,” no date.

<sup>49</sup> AO RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-789, Pollution, 1968, Judy Richer to John Robarts, 11 July 1968.

<sup>50</sup> AO RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-789, Pollution, 1968, B.R. Dreisinger to D.P. Douglass, 5 July 1968.



improvements in technology and control, damage has largely been eliminated.” The Committee’s sole recommendation in respect of air pollution was “that constant vigilance be maintained to avoid pollution of atmospheric air.”<sup>51</sup>

### **The Rise of the Environmental Movement and the First Control Orders (1968-1978)**

Although smelter pollution had long been a source of local contestation in the Sudbury area, by the late 1960s air pollution took on a new salience. While earlier conflict had largely revolved around the smelters’ impacts on agriculture and the quality of life in the Sudbury area, from the mid-1960s onward, the environment itself became a focus of political attention. The publication of books like Rachel Carson’s *Silent Spring* and the broadcasting of the Canadian Broadcasting Corporation’s documentary *Air of Death* sparked considerable public concern over the unintended consequences of industrial technologies. In the context of a much broader questioning of traditional values and the emergence of new social movements among women, university students, consumer groups and others, a host of new organizations advocating for greater environmental protection were formed. Using novel protest actions to gain publicity, groups like Pollution Probe, formed at the University of Toronto in 1967, drew public attention to the environmental hazards of pesticides, detergents in the Great Lakes and industrial air pollution. The public’s shifting values were also reflected in the 1967 provincial election when the New Democratic Party won 20 seats, the Party’s strongest showing since its founding convention in 1961, or for its CCF predecessor since 1948. Meanwhile, environmental protection

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<sup>51</sup> Ontario, *Report of the Select Committee on Mining of the Ontario Legislature* (1966), 21.

emerged as a top-of-mind issue in public opinion polls for the first time, peaking in the early 1970s.<sup>52</sup>

In this context, the government responded with several legislative changes. Following the passage of the *Air Pollution Control Act* in 1958, which had delegated air pollution control to municipalities, the provincial government expanded its role. In 1963, the *Act* was amended to give the province authority to approve all new sources of industrial air pollution. However, by 1967, only four municipalities employed a full-time air pollution control staff. As a result, a subsequent amendment in 1967 transferred full responsibility to the province. Under the amended *Act*, the Department of Health (and subsequently the Department of Energy and Resources Management and Ministry of Environment) possessed “broad powers” allowing it to control all stationary sources of air pollution, to order the discontinuance of the emission of air contaminants considered a “serious danger to public health” and to initiate legal action for violation of the *Act*.<sup>53</sup> In addition, the *Damage by Fumes Arbitration Act* was repealed in 1970, although the *Industrial and Mining Lands Act* allowing for the purchase of “smoke easements” remained in force.

One of the most important instruments at the Minister of Energy and Resource Management’s disposal was the control order.<sup>54</sup> As David Estrin and John Swaigen explain in *Environment on Trial*, the Minister could issue a control order to the owner of a business

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<sup>52</sup> On the emergence of the environmental movement, see, for example, Judith I McKenzie, *Environmental Politics in Canada: Managing the Commons into the Twenty-First Century* (Don Mills: Oxford University Press, 2002), 61-62; J. Edward de Steiguer, *The Origins of Modern Environmental Thought* (Tucson: University of Arizona Press, 2006) 1-25. On the emergence of environmental protection as a top-of-mind issue in public opinion polling, see Mark Winfield, *Blue-Green Province: The Environment and the Political Economy of Ontario* (Vancouver: UBC Press, 2012), 21.

<sup>53</sup> David Estrin and John Swaigen, *Environment on Trial: A Handbook of Ontario Environmental Law* (Toronto: Canadian Environmental Law Research Foundation, 1978), 35.

<sup>54</sup> After the enactment of the *Environmental Protection Act* in 1971, authority for the issuance of control orders was transferred to the Ministry of Environment.

enterprise who disagreed either to submit a pollution abatement program voluntarily, or who submitted a plan the Minister deemed unrealistic. Through the control order, the Minister established an environmental clean-up program that he or she believed was “sufficient to prevent substantial pollution.”<sup>55</sup> However, as the Ministry of the Environment’s brief history of the province’s approach to air pollution control admitted, in those cases where there was “no practical method of sufficiently reducing the contaminant at source, a tall stack [was] permitted to disperse it over a wider area, thereby reducing ground level concentrations.”<sup>56</sup> The Ministry considered dispersion a temporary measure until more “practical” control methods were determined.

Like the Department of Mines when it came to standard setting, the Department of Energy and Resources Management and the Ministry of the Environment took a collaborative approach when it came to issuing control orders on industry. Both ministries considered coercion unlikely to promote a positive response from polluters, and thus employed their coercive powers only as a last resort. This was much to the mining industry’s liking. For instance, while Inco President Albert Gagnebin conceded that environmental control was “one of the most critical issues of our time,” he sounded the warning against “unrealistic anti-pollution laws” which “could stifle industrial activity and reduce production and employment.” Gagnebin favoured a “climate of industry-government cooperation” in which management could “respond ‘to the crucial challenge of pollution through the best use science and technology.’”<sup>57</sup> To ensure a positive reception to this approach, the OMA formed a special committee in 1967 “to liaise with those Departments of Government concerned with problems of pollution and to assist them in

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<sup>55</sup> Ibid, 35.

<sup>56</sup> Ontario Ministry of the Environment, *An Introduction to Air Pollution and its Control in Ontario* (Toronto: 1973), 15.

<sup>57</sup> “Abating Pollution ‘Critical Issue’ Says President,” *Inco Triangle*, June 1969.

every way possible in the execution of their programs.”<sup>58</sup> The mining industry did not appear to be troubled by the province’s new air pollution legislation. As the OMA’s acting president R.D. Lord wrote to Premier Robarts in December 1967, the mining industry “supports the efforts of your Government to restore [environmental] conditions to acceptable levels,” promising the government would receive the OMA’s “fullest co-operation.”<sup>59</sup>

While Health Minister Matthew Dymond promised the province’s new *Air Pollution Control Act* would “constitute a major assault on all sources [of air pollution],” his discourse was largely symbolic.<sup>60</sup> The government’s policy was to negotiate standards directly with businesses. The public did not participate in standard setting processes and had no way of knowing the content of control orders until after their issuance. While the Minister had the authority to issue stringent orders on a polluter, the polluter had the right to appeal any order to an Environmental Appeal Board and subsequently to the courts. Because the stipulations of the control order could not be imposed until after the resolution of such an appeal, which, if it made it to the courts, could take several years, the Minister had every incentive to negotiate a program acceptable to the polluter. This was very much evident in the control orders issued to Falconbridge and Inco. While a control order was also issued to Algoma Ore, that company met its terms by gradually winding down production as its iron ore reserves depleted. It did not install new pollution abatement technologies as a result of the order.<sup>61</sup>

Given the nickel industry’s contemporary interest in undertaking significant investments in modernization to meet the needs of its expansion programs, it is difficult to assess the impact

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<sup>58</sup> AO RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-615, Mining Files, Pollution, 1967, R.D. Lord to John Robarts, 22 December 1967.

<sup>59</sup> Ibid.

<sup>60</sup> “Dymond promises all-out attack on province’s air pollution sources,” *Globe and Mail*, 25 February 1967.

<sup>61</sup> Donald Dewees, “The Regulation of Sulphur Dioxide in Ontario,” in G. Bruce Doern (ed.) *Getting it Green: Case Studies in Canadian Environmental Regulation* (Toronto: CD Howe Institute, 1990), 135-36.

of the control orders on the companies' investment decisions. Neither Falconbridge nor Inco exercised their right to appeal the control orders, which suggests that neither company considered the programs especially inimical to their interests, particularly in light of their contemporary responses to the Carter and Benson White Paper recommendations on taxation. Moreover, both companies had already begun implementing many of the process changes that became part of their control order programs prior to their issuance.

For its part, Falconbridge's environmental improvement program had two main planks, both of which were clearly tied to the company's broader goals of expanding its annual Canadian nickel production. To meet this objective, the company would not only have to build a new facility to treat iron-bearing pyrrhotite, which to that point it discarded as waste, but it would also have to modernize its aging smelter so as to increase its productive capacity and improve its efficiency.

The new iron ore plant was the centrepiece of Falconbridge's short-term environmental program. The company stood to gain significant economic advantages if its successful pilot project could be put into full operation. As noted earlier, Inco had been treating iron-bearing pyrrhotite to produce iron ore pellets for the steel industry since the construction of its Iron Ore Recovery Plant in 1956. By contrast, Falconbridge lacked the technological capacity to do the same. The pyrrhotite was extracted from the mines, separated from the nickel- and copper-bearing minerals at the concentrator, and then discarded as waste in tailings. From the corporate perspective, such a process represented an inefficient use of capital, considering the heavy costs involved in extraction and separation. Worse yet, although composed mostly of iron and sulphur, the pyrrhotite also contained trace amounts of nickel, which, like the iron and sulphur, was discharged as waste. As early as 1954, shortly after signing its cost-plus contract with the US

government, Falconbridge began its efforts to develop methods of profitably treating pyrrhotite.<sup>62</sup>

However, it was not until 1967 that the company's research and development program made a breakthrough.<sup>63</sup> The following year, Falconbridge's board approved plans to construct a nickel-iron pelletizing plant, and obtained a license to use the West German "Lurgi" pelletizing process, which had been successfully piloted at the Steel Company of Canada Ltd.'s (Stelco) Hamilton operations. Falconbridge management had good reason for optimism. Not only would the new plant allow for the more efficient use of ore reserves – including the treatment of all pyrrhotite and the production of an additional 9 million pounds of nickel – but the resulting nickel-iron pellets represented something of a major innovation in steel-making technology. As the *Globe and Mail*'s business reporter Lyndon Watkins explained,

Unlike conventional iron ore pellets which first have to be converted into iron in a blast furnace, the iron-nickel pellets can be charged directly into an electric arc furnace for the production of steel. The nickel content permits their use in the production of alloy and stainless steel ... When continuously fed into an electric arc furnace, the pellets substantially increase steel throughput by reducing the melting time. Power consumption is, however, slightly higher.<sup>64</sup>

Falconbridge's vice-president of marketing detailed other benefits steelmakers could derive from the new pellet: "It has the advantage of a constant, predetermined metallurgical composition; it can be handled easily and reduces a steelmaker's reliance on scrap and his exposure to fluctuating prices."<sup>65</sup> The company apparently had no reservations about being able to sell the entirety of the plant's anticipated output of 300,000 tons.

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<sup>62</sup> "New Falconbridge Refinery: Port Colborne Site Purchased," *Globe and Mail*, 5 January 1954.

<sup>63</sup> "Falconbridge to decide soon on iron plant," *Globe and Mail*, 25 September 1967.

<sup>64</sup> Lyndon Watkins, "Falconbridge expects to sell all new plant's output," *Globe and Mail*, 24 July 1969.

<sup>65</sup> Ibid. See also, Lyndon Watkins, "Falconbridge plant puts company in lead," *Globe and Mail*, 1 February 1968.

Constructing the nickel-iron pelletizing plant entailed other processing efficiencies. Most notably, the new plant's pyrrhotite roasting process would generate sufficiently strong roaster gases to allow for the profitable capture of sulphur dioxide and its conversion into elemental sulphur, which could be sold as a marketable product. To that end, Falconbridge contracted with Allied Chemical Canada Ltd., which constructed an elemental sulphur plant adjacent to Falconbridge's new iron ore concentrator. (Falconbridge had been in discussions with Allied Chemical for this purpose years before the control order.)

In contrast to its plans for the treatment of pyrrhotite, Falconbridge's smelter improvement plans remained vague, at least in terms of what the company was willing to reveal to the government. However, the company clearly had economic incentives for investing in smelter modifications, beyond simply increasing capacity. As the company's submission explained it to Health Minister Dymond,

It should also be noted that Falconbridge has carried on with facilities that are obsolete by today's standards. We have continued to use expensive smelting methods (sinter machines and blast furnaces) through this period rather than building reverberatory or other furnaces less suitable for smelting high-grade nickel concentrates. We expect that we will have to make changes, perhaps major, to our present facilities.<sup>66</sup>

Still, Falconbridge considered smelter modernization to be part of its longer-term corporate plans, a project not to be completed immediately, but perhaps within a time frame of ten years.

In all, Falconbridge claimed, by 1973, with the nickel-iron plant in full operation, the company could reasonably reduce its sulphur emissions to something in the range of 153,000 tons per year. This would bring total emissions to the same level as they had been in 1954, when nickel production was less than half its anticipated 1973 output. In the longer term, the company

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<sup>66</sup> AO RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0-789, Pollution, 1968, Falconbridge Nickel Mines Limited, "An Assessment and Plan for Control and Abatement of Sulphur Pollution from Falconbridge Operations in the Sudbury District," 5 April 1968, 10.

expected its smelter improvements could bring a further reduction of an additional 53,000 tons, lowering total emissions to 100,000 tons by 1978.

Despite Falconbridge's optimism, its submission to Dymond reminded government officials of the industry's structural power, cautioning the Minister against taking unnecessarily stringent control measures. In short, the company required the greatest degree of operational freedom not only to achieve its pollution abatement objectives, but also to remain afloat in an increasingly competitive nickel market:

If company financial resources for carrying out the full program are depleted by excessive taxes, by implementing certain features of the Carter and Smith reports [on taxation], by unduly restrictive regulations or by the cost of installing and operating pollution abatement facilities prematurely or unnecessarily, the company, in order to survive in the short term, will be forced to 'high-grade' its ore reserves to the detriment of the interests of all concerned and to shorten the life of its operations and the communities dependent on them.<sup>67</sup>

To bolster its case, industry continued to downplay the severity of its operation's impact on the environment, much as it had in the past. That Sudbury's air was fresher than Toronto's was a common industry refrain.<sup>68</sup> Compared to other pollutants like monoxide, Falconbridge claimed, sulphur dioxide was "infinitely less hazardous." The company went so far as to attribute the growing attention towards and concern about smelter pollution to a "great deal of misunderstanding and confusion in the public mind." When it came to questions of pollution and public health, Falconbridge argued, "emotion tend[ed] to override and overlook fact."

Falconbridge's influence over the Department of Energy and Resource Management's 1969 control order is readily apparent when comparing the company's 1968 submission with the details of the order itself. If the company's plan was to limit sulphur dioxide emissions to

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<sup>67</sup> Ibid, 14.

<sup>68</sup> For example, "Companies maintain pollution level not as serious as some believe it is," *Globe and Mail*, 3 April 1968.



153,000 tons per year by 1973, the Department of Energy and Resources Management's control order called for Falconbridge to limit emissions to 154,030 tons per year – or 422 tons per day – by 1975. While Falconbridge's process changes would capture some 80 percent of the ore's sulphur content, there appears to be no rationale for this limit, environmental or otherwise, apart from the fact that it was what Falconbridge itself deemed economically feasible. Premier Robarts wrote personally to Falconbridge President Horace Fraser, praising the company's plan as "a major step forward in the control of air pollution in this Province," and noting that it "would appear that there are unlikely to be any serious objections" to its plans.<sup>69</sup>

Like Falconbridge, Inco also had a hand in shaping its initial control order, which was issued in 1970. In fact, it appears that Inco not only influenced the control order's emissions ceiling, at least in their earliest stages, but also its policy on maximum ground-level concentrations of sulphur dioxide, despite the fact that the Ontario government was aware Inco's proposals were insufficient to prevent damage to the environment. Inco's control order called for the stepwise reduction of the company's sulphur dioxide emissions from over 4,400 tons per day by 1974 to 3,600 tons per day by 1976 to 680 tons per day by 1978.

Compared to Falconbridge's submission, Inco's was guarded. Unlike its counterpart, Inco did not foresee itself adopting any major sulphur abatement technologies in the short term. Indeed, the company argued, its expert consultant, Dr. Morris Katz, had advised management that "at present the only practical solution is proper gas dispersal."<sup>70</sup> The stack gases generated at the company's Sudbury nickel operations were simply too dilute given the existing state of sulphur fixation technologies. As such, Inco's proposal was to construct a much higher stack –

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<sup>69</sup> AO RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-615, Mining Files, Pollution, 1967, John Robarts to H.J. Fraser, 13 April 1967.

<sup>70</sup> AO RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0-789, Pollution, 1968, F. Foster Todd to Matthew Dymond, 1 November 1968.

the so-called “Superstack” – to replace the three in operation at its Copper Cliff plant. The new stack, the ultimate height of which was as yet undetermined, would ensure that ground-level concentrations of sulphur dioxide would not exceed 0.3 parts per million for four hours, a standard that would “provide a considerable factor of safety” for even the most vulnerable plant species. Notably, the government was in possession of evidence to suggest that Inco’s proposed standard was optimistic. An Ontario Research Foundation document among the Minister of Mines’ correspondence files entitled “Pollution in Product” and dated October 1968 read, in part, “The destruction of vegetation, both horticultural and forest, by fumigation with sulphur dioxide at concentration levels as low as 0.1 parts per million has been amply demonstrated.”<sup>71</sup>

Inco could once again disarm its critics by wielding scientific knowledge, however incomplete, to its advantage. In light of the subsequent development of the “acid rain” problem, Inco’s rationale for developing the Superstack was remarkable. In a speech published in the *Globe and Mail*, Inco executive R.R. Saddington responded to critics who alleged that the new stack would simply spread pollution over a wider area and emit greater amounts of sulphur dioxide into the atmosphere. According to Saddington, “it [would] do neither.” He continued,

Sulphur dioxide survives only about four days in the troposphere, or lower atmosphere. It does not accumulate in the air as a poisonous layer in the earth’s atmosphere. Therefore, the problem is not so much the volume disseminated from a stack, but rather the ground level concentrations. We can minimize such concentrations and keep them within harmless limits by keeping waste gas aloft as long as possible and diluting it by effective vertical and horizontal diffusion.<sup>72</sup>

Much like Falconbridge’s pollution control strategies, the other elements of Inco’s pollution program would enable the company to improve productive efficiency. The second

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<sup>71</sup> AO RG 13-1 Correspondence of the Minister of Mines, RG 13-1-0-789, Pollution, 1968, Ontario Research Foundation, “Pollution in Product,” October 1968.

<sup>72</sup> R.R. Saddington, “How one company is trying to combat the problems of pollution,” *Globe and Mail*, 26 July 1971.

element of the program, the expansion of the Iron Ore Recovery Plant, was “already underway” by the time it submitted its brief to Dymond. With the construction of an improved concentrator – the Clarabelle mill – Inco could divert an additional 1,000 tons per day of pyrrhotite from the smelter to the Iron Ore Recovery plant, where, in conjunction with Canadian Industries Limited, Inco was planning to expand its acid production facilities. Already by 1967, the company’s employee newsletter was boasting of its recent achievements at the acid plant, “the largest metallurgical gas-based sulphuric acid plant in the free world.”<sup>73</sup> While Inco claimed that expanded acid production would entail losses as the company would have to ship the product to “uneconomically distant points,” assessing such claims are difficult without sufficient data. However, it is worth bearing in mind that as recently as December 1967, the company newsletter suggested that “growth of the market for sulphuric acid, especially in agricultural chemicals, has provided the opportunity for the current expansion.”<sup>74</sup> (In 1971, the company cancelled its plans to expand the iron ore plant and a subsequent plan to construct a new acid plant and reduced iron production in response to weakening market conditions.<sup>75</sup>)

Unlike Falconbridge, Inco did not provide firm emissions targets in its written submission, but there is no reason to think that the control order’s initial emissions ceilings were unacceptable to the company. Inco did not challenge the order, and the company achieved its early targets ahead of schedule. However, after meeting its 1976 targets in 1973, the company failed to make any further improvements. Notably, following the completion of the company’s expansion program, Inco’s new chairman Edward Grubb implemented a “drastic cost-cutting program” at the company’s Canadian operations, reducing capital expenditures, slashing the

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<sup>73</sup> “C-I-L Acid Plant Capacity now 1,500 Tons of Gas Daily,” *Inco Triangle*, December 1967.

<sup>74</sup> *Ibid.*

<sup>75</sup> Hugh Anderson, “Inco cancels plant, cuts back iron ore in pollution switch,” *Globe and Mail*, 21 May 1971.

workforce and eliminating overtime.<sup>76</sup> Meanwhile, as contemporary critics pointed out, Inco diverted resources that could have been spent on pollution control into new lines of business, including its \$234-million acquisition of the multinational battery manufacturer ESB Incorporated and its \$25-million purchase of the British precision machinery producer, Daniel Doncaster & Sons Limited in 1974. In addition, by the mid-1970s, some 80 percent of the company's capital expenditures were directed towards developing the company's new laterite projects in Indonesia and Guatemala.

Industry influence over the control orders was evident in other ways. Facing a host of economic challenges, Falconbridge received several amendments to its control order, extending the company's deadline to meet the emissions ceiling. A report submitted by Falconbridge concerning its smelter environmental improvement project to the Ministry of Environment offers an indication of the province's generally weak regulatory framework. While the Ministry had requested that Falconbridge report on its commitments to concrete measures to ensure that ground-level concentrations did not exceed 0.3 ppm per half hour, the company simply reported that "for various reasons" it was not prepared to do so. Instead, at an April 1975 meeting with MOE officials, the company proposed draft language for the next amending control order to the effect that, by year-end 1978, the company would have completed the necessary studies and have prepared for the preliminary plans" to ensure that "the emission of sulphur dioxide from your smelter shall not in the aggregate result in a concentration at a point of impingement greater than" 0.3 ppm over a thirty-minute period. According to the Falconbridge report, MOE officials

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<sup>76</sup> Anne Mette de Place Filippini and Joe Martin, "The End of Monopoly: A New World at Inco," in Joe Martin (ed.) *Relentless Change: A Casebook for the Study of Canadian Business History* (Toronto: University of Toronto Press, 2009), 210.

present at the meeting “indicated verbally” that such a commitment “would be acceptable to the Ministry if incorporated in a Control Order.”<sup>77</sup>

The control orders’ modest goals of mitigating local environmental harm met with partial success. While, as Raymond Potvin and John Negusanti have shown, “[t]he concentration of sulfur dioxide in the Sudbury area dropped immediately by at least 50% after 1972,” the same authors concede “severe, short-term ground-level fumigations still occurred under certain climactic conditions.”<sup>78</sup> MOE officials observed similar patterns. As the Ministry’s Manager, Industrial Abatement J.G. Fry explained to Regional Director C.E. McIntyre in late 1979, “To date, programing has been related only to achieving compliance with provincial air quality criteria (still regularly exceeded).” More concretely, in 1976 air quality monitoring stations recorded 526 hours in excess of the provincial criteria of 0.25 parts per million per hour, in 1977, 499 hours.<sup>79</sup> Yet, as critics had pointed out from its very inception, Inco’s preferred method – dispersion – did not solve the problem at all. Instead, it simply displaced it elsewhere. The critics’ point was brought home forcefully by the end of the decade.

### **Ending Inco’s “Acid Reign” (1978-1985)**

Public concern about the smelters’ environmental impact remained high through the 1970s, while the industry and government suffered from several politically embarrassing media scandals. In 1973, for instance, a Sudbury regional inspector for the Ministry of Environment publicly alleged that his superiors prevented him from carrying out his duties and that mining

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<sup>77</sup> AO RG 1-526, Division of Mines Executive Director’s files, 173.2.2, Falconbridge Nickel Mines Limited, “Smelter Environmental Improvement Project: 1975 Year-End Summary and Status Report,” 28 January 1976, 11.

<sup>78</sup> Raymond R. Potvin and John J. Negusanti, “Declining Industrial Emissions, Improving Air Quality, and Reducing Damage to Vegetation,” in Gunn (ed.) *Restoration and Recovery*, 52.

<sup>79</sup> AO RG 1-526, Division of Mines Executive Director’s files, 550.6.2, Vol. 1, J.G. Fry to C.E. McIntyre, 19 January 1979.

company officials bribed his colleagues.<sup>80</sup> The following year, the Sudbury Environmental Law Association, an offshoot of the Canadian Environmental Law Association, succeeded in securing the first ever prosecution against Inco for its air pollution when Judge Gerald Michel fined the company \$1,500 for emitting dense smoke from its Copper Cliff smelter in violation of the *Environmental Protection Act*.<sup>81</sup> More embarrassing still, when monitors in the small hamlet of Happy Valley near the Falconbridge smelter showed continual exceedances of the province's maximum permissible ground-level concentrations of sulphur dioxide, Falconbridge decided to buy out the hamlet's remaining residents with financial support from the provincial government rather than alter its production processes.<sup>82</sup>

Yet, the most damaging scandal came at the end of the decade. In 1978, just weeks after the *Toronto Star* had published an alarming account of the severe damages being wrought on Ontario's lakes and rivers by a seemingly new form of pollution – acid rain – the provincial Minister of Environment George McCague announced his decision to rescind the 1970 control order against Inco, extending the company's right to emit 3,600 tons of sulphur dioxide a day until 1982. As early as 1976, Inco had informed the Ministry of Environment of its inability to meet the terms of its control order. McCague's announcement provoked an outpouring of criticism from a wide spectrum of interests, including environmentalists, cottagers, anglers and tourist industry operators. Opposition party members called for McCague's resignation, while

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<sup>80</sup> "Pollution inspector who alleged payoffs says bribes were also offered to him," *Globe and Mail*, 21 July 1973.

<sup>81</sup> "Private prosecution brings first conviction: Inco fined \$1,500 for Sudbury air pollution," *Globe and Mail*, 4 May 1974.

<sup>82</sup> Marq de Villiers, "Who Killed Happy Valley: How a town withered and died while pollution soared and flourished," *Globe and Mail*, 19 October 1974. Weeks after the *Globe and Mail* ran its article, Falconbridge Manager of Technical Services W.L.W. Taylor wrote the newspaper a defensive letter to the editor, calling de Villiers' article "as good a piece of yellow journalism as has ever been published in an erstwhile honest publication." W.L.W. Taylor, "Happy Valley," *Globe and Mail*, 7 November 1974.

the *Toronto Star* and the *Globe and Mail* both published critical editorials immediately thereafter.

For most observers, McCague's decision marked the birth of the Canadian movement against acid rain, the most salient issue in environmental politics in the 1980s. Because of its status as North America's single largest point source of sulphur dioxide, much of the movement's attention focused squarely on Inco.<sup>83</sup> The acid rain dispute had all the hallmarks of a highly salient policy contest, which, from the pluralist perspective, would render business vulnerable to political defeat. Major news media gave the issue considerable attention. As Don Munton, Michael Keating and Adam Fenech have shown, the *Globe and Mail* published 1,134 articles on acid rain and related topics between 1977-1994, with coverage peaking at 419 articles in 1985.<sup>84</sup> The majority of the coverage had a political framing, and focused on whether government regulation should force major polluters like Inco to reduce its sulphur dioxide emissions. Both opposition parties in the Legislature mobilized support for their parties by criticizing the government's inaction. Adding to the pressure, at the international level US government officials continually pointed to Inco's high emissions, informing Canadian policymakers they would not act against American emitters without concomitant action against Inco.

In addition, several prominent non-governmental organizations dedicated much of their resources to acid rain, none more notably than the Canadian Coalition on Acid Rain (CCAR), founded in 1981. Initially focused on lobbying the US Congress, and funded by both the Ontario

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<sup>83</sup> Inco pointed out that while it was true its Copper Cliff smelter was the single largest point source, it noted that there were other corporate entities that emitted larger total tonnages. See "Acid Rain: A Complex Issue," *Inco Triangle*, November/December 1979.

<sup>84</sup> Don Munton, Michael Keating and Adam Fenech, "Canada: Elite Newspaper Reporting on the Acid Rain Issue from 1972 to 1992," in William C. Clark and Nancy M. Dickson (eds.), *The Press and Global Environmental Change: An International Comparison of Elite Newspaper Reporting on the Acid Rain Issue from 1972 to 1992* (CSIA Discussion Paper 95-12, Harvard University, 1995), B-8-B-9.

and federal governments, the CCAR shifted its aims in 1983 and sought to pressure Canadian governments to enact regulations to curtail domestic industrial emissions. The CCAR had significant political resources at its disposal, including financial resources, access to policymakers and journalists and broad public support. The coalition was an umbrella group of 56 individual organizations, including several business associations representing the agricultural, tourist and forestry industries. The coalition was also supported by some of Canada's most prominent business people, many of whom owned cottages in the Muskoka region north of Toronto, an area that was particularly sensitive to the ill effects of acid deposition.<sup>85</sup> Other environmental non-governmental organizations also mobilized around acid rain. For instance, Greenpeace bought Inco shares to attend the company's annual general meetings and present resolutions calling for investment in pollution abatement technologies.

Despite the depth and breadth of this opposition, however, the government's approach to policy remained essentially similar to what it had been in the late 1960s when it first began issuing control orders. While the government opened up different avenues for competing interest groups to participate in policy formation, including allowing the Standing Committee on Resources Development to hold a review of pollution abatement from Inco in 1979 and convening a joint federal-provincial task force on the issue in 1980, ultimately, it continued to set standards in private negotiations with the polluter. Recognizing Inco's considerable economic weight, the government was reluctant to impose conditions that would force the company to invest in non-productive abatement technologies, even if its Sudbury operations remained the world's lowest-cost nickel mines.

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<sup>85</sup> Owen Temby and Ryan O'Connor, "Property, Technology, and Environmental Policy: The Politics of Acid Rain in Ontario, 1978-1985," *Journal of Policy History* 27 (2015), 636-669.



For its part, Inco's political strategies also differed little from earlier disputes involving smelter emissions. In the main, the company continued to rely on its direct access to policymakers to lobby for favourable policy outcomes. Its arguments were familiar. Without denying the linkage between sulphur dioxide emissions and acid rain, the company downplayed the severity of its own emissions, contending that even if it were to suspend its smelting operations, the acid rain problem would continue. Similarly, the company highlighted the absence of concrete scientific evidence linking specific emissions levels to specific environmental outcomes, arguing, in effect, that there was no scientific or legal justification for forcing the company to lower its emissions. Moreover, while Inco admitted there were various technological fixes available, including some that could eliminate its sulphur emissions entirely, the company highlighted the extraordinary capital cost of such investments, which could not be justified on either environmental or economic grounds. For the company, controlling sulphur emissions had to adhere to the broader corporate goals of enhancing productivity and improving profitability. It was not something that should be done for its own sake.

Perhaps the most important difference between the issuance of the initial control orders and the subsequent debates about measures to alleviate acid rain in the late 1970s and early 1980s was the economic context in which they took place. Unlike in the late 1960s, when the company was undertaking an expansion, by the late 1970s Inco had no immediate economic incentive to invest in plant modernization. International nickel market dynamics had undergone a significant transformation in the decade that separated the two debates. As discussed in Chapter 2, the 1970s ushered in a period of weakened economic growth, while the early 1980s recession hit the North American base metal mining industry with considerable force. Facing glutted nickel markets, declining revenues and a considerable debt load, Inco had no interest in pursuing the

major investments in the smelter upgrade that would be required to lower its emissions to the levels demanded by the first control order. This context put the government in a bind. While in issuing the first control order it could simply demand that the company follow through on its own investment plans, by the late 1970s no such plans existed.

The rest of this section traces the tortuous passage from McCague's 1978 rescindment to the Progressive Conservative government's 1985 acid rain program, a program that was ultimately superseded by the coming to power of a new government. It focuses on the negotiations with Inco because, following the completion Falconbridge's "Smelter Environmental Improvement Project" in 1978, the other major nickel mining company had significantly reduced its sulphur emissions. Unlike Inco, Falconbridge did not contest the government's control orders.

As the company's deadline to meet the 1970 control order approached, Inco received considerable support from within the Ministry of Natural Resources as it did on other policy debates. In October 1977, Minister of Natural Resources Frank Miller wrote to Premier Bill Davis, warning him of the severe economic consequences of enforcing the control order as originally conceived. According to Miller, Inco could only achieve the 750 ton per day limit by constructing an entirely new smelter. But even this course of action entailed much uncertainty: "it is by no means clear that alternative technology is available. My staff tell me that, even if a proven alternative technology existed, the cost of such a plan is likely to make further extraction of sulphide ores UNECONOMIC in the Sudbury region, at least for four years."<sup>86</sup> While most contemporary observers considered Inco's Sudbury mines the lowest-cost nickel sources in the world, to believe Miller, the company's sulphide ores no longer commanded the premium they

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<sup>86</sup> AO RG 1-526, Division of Mines Executive Director's files, 550.6 Vol. 1, Frank Miller to William Davis, October 31, 1977, emphasis in original.

once did: “Alternative supply of sources for nickel in the world are now producing nickel cheaper than Inco’s Ontario plants.” With Inco carrying a massive inventory, capable of meeting at least two years of production at current sales rates, Division of Mines staff suggested that the control order simply incentivized production cutbacks in Ontario, in light of the “extreme financial pressure” the company faced to reduce its inventory. (According to Miller, maintaining the inventory involved a carrying charge of \$100 million per year.) The loss of as many as 15,000 direct and indirect jobs in the Sudbury region was a real possibility. Thus, Miller proposed that the justification for the order should be immediately reviewed, while “every consideration” should be given to extending the order to at least 1983.

The Ministry helped Inco in other ways. In December 1977, it released its fourth in a series of mineral policy background papers, *Towards a Nickel Policy for the Province of Ontario*. Reiterating many of the economic challenges noted in Miller’s letter above, the background paper warned of the unintended consequences of strict environmental controls. The costs involved in meeting regulatory standards represented a “growing ‘governmental’ burden,” which reduced “profit potential, after tax return on capital, and thus availability of investment capital for production maintenance and expansion. Care must be taken to see that this governmental burden is not made larger than absolutely necessary.”<sup>87</sup> However, the general tenor of the Ministry’s policy towards sulphur emissions was perhaps best captured by an internal paper jointly written by C.L. Warden of the Division of Mines and D.H. Bell of the Ministry of Labour.<sup>88</sup> Despite the significant productivity improvements both Inco and Falconbridge had

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<sup>87</sup> Mohide et al, *Towards a Nickel Policy for the Province of Ontario*, 75.

<sup>88</sup> It appears that at least part of the reason this paper was not released to the public was the reception it received within the Ministry of the Environment, which took strong exception with many of its findings. As J.G. Fry, the Ministry’s Manager, Industrial Abatement wrote to Erv McIntyre: “we cannot support the innuendo, interpretation and much of the ‘facts’ presented in the document, and suggest either major revision to the document or removal of any co-authorship suggestion.” See AO RG 1-526, Division of Mines Executive Directors’ files, 550.6.2, J.G. Fry to C.E. McIntyre, 19 January 1979.

achieved since implementing their modernization programs in the late 1960s and early 1970s, Warden and Bell treated the company's investments in pollution abatement as purely non-productive costs: "The sulphur dioxide and particulate emission control orders have without question resulted in reduced profits for Inco and Falconbridge."<sup>89</sup> Any further control requirement would entail large capital investments, increased operating costs and would thereby further reduce profits, negatively affect ore cut-off grades, reduce mine life and eat into the industry's funds for exploration and development. Warden and Bell downplayed the smelters' contribution to the acid rain problem, even if they were North America's largest point sources of sulphur dioxide: "The benefit of reducing or eliminating the SO<sub>2</sub> emissions from Sudbury would seem to be small or indeterminate at this time." Unilateral action on the nickel smelters, without concomitant action on emitters from the United States was thus futile. Indeed, Warden and Bell urged that a moratorium be placed on the existing control orders "until a continent wide international agreement of plans and programs is developed for industrial emission controls."

For its part, the MOE approached the matter conservatively. In response to the fallout from McCague's rescindment, Premier Davis appointed a new Minister of Environment, Dr. Harry Parrot from the southwestern Ontario riding of Oxford. Shortly thereafter, Parrot recommended that the Standing Committee on Resources Development consider Inco's abatement program as well as the problem of acid rain more generally during that body's deliberations on the Ministry's annual report. In their appearances before the Standing Committee, the MOE's officials explained how they arrived at their decision to rescind the control order. As legal scholar Robert Gibson has shown, the Ministry's underlying philosophy, the "known-effects" approach, was one that offered "some inherent economic efficiencies." In

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<sup>89</sup> AO RG 1-526, Division of Mines Executive Directors' files, 550.6.2, Vol. 1, C.L. Warden and D.H. Bell, "The Issues of SO<sub>2</sub> Emission [*sic*] From Sudbury," no date.

contrast to the “non-degradation approach,” which assumed that any “unnatural” discharge was potentially hazardous, the known-effects approach emphasized the control of recognized problems; that is, problems that were obvious, visible and well-supported by a body of scientific evidence. The known-effects approach assumed, in the absence of knowledge to the contrary, that “unnatural” discharges were harmless.<sup>90</sup> Despite their efforts since launching the so-called “Sudbury Environmental Study” in 1972 to establish a strong scientific link between smelter emissions and specific environmental outcomes in the Sudbury area so as to provide a rationale for further emissions reductions, Ministry scientists remained unsatisfied with the strength of their findings. As the minutes of one SES meeting put it, the study had yet to determine that “acidic precipitation in northeastern Ontario is due to the emissions from Sudbury  $x$  percent of the time.”<sup>91</sup> In that sense, the MOE’s regulatory reluctance enhanced Inco’s political power.

According to the MOE, Inco’s contribution to the acid rain problem was minimal. As the Ministry’s regional director for northeastern Ontario, Erv McIntyre, explained, “there is no technical basis for saying that the level should be any lower than is currently being emitted, because we know that the contribution from the current emissions is not significant to the problem (of local and long range acidic precipitation).”<sup>92</sup> Notably, while the ministry admitted it lacked “sufficient information on the location and seriousness of Inco emission effects on

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<sup>90</sup> For a comparison of the “known effects” and “non-degradation” approaches, see Robert Gibson, *Control Orders and Industrial Pollution Abatement in Ontario* (Toronto: Canadian Environmental Law Research Foundation, 1983), 23.

<sup>91</sup> Quoted in Don Munton, “Using Science, Ignoring Science: Lake Acidification in Ontario,” in Neil E. Harrison and Gary C. Bryner (eds.), *Science and Politics in the International Environment* (Lanham: Rowman & Littlefield, 2004), 147.

<sup>92</sup> Standing Committee on Resources Development, *Final Report on Acid Precipitation, Abatement of Emissions from the International Nickel Company Operations at Sudbury, Pollution Control in the Pulp and Paper Industry, and Pollution Abatement at the Reed Paper Mill in Dryden* (Toronto: The Committee, 1979), 39.

precipitation acidity,” McIntyre nevertheless confidently claimed that “if their (Inco’s) discharges were terminated, you would still have the same damages that you are having now.”<sup>93</sup>

Inco executives made similar claims. Bemoaning the public’s failure to recognise his company’s efforts to improve its environmental performance, Chairman Charles Baird explained to *The Globe and Mail*: “We’ve shown that our smelter in Sudbury accounts for only about 2 per cent of the acid rain problem and that, if all nickel operations in Sudbury were shut down, there would be little difference in its reduction.”<sup>94</sup> The company also stressed the high costs of technological adaptations, arguing that hasty pollution control legislation would undermine profitability to the detriment of the Sudbury community. For instance, in his address to the Action Seminar on Acid Precipitation in 1979, Inco’s vice-president of occupational health and environment Stuart Warner explained the numerous roadblocks involved in treating the smelter gases to produce either liquid sulphur dioxide, sulphuric acid or elemental sulphur. While the company could make acid from its Iron Ore Recovery Plant, smelters were “a different kettle of fish.” Their gas streams were simply too dilute for the purposes of sulphur fixation. The company spent \$22 million on a failed pilot project. Further, the market for liquid sulphur dioxide was “extremely limited.” The company could not find buyers for its sulphuric acid, and if it sold the product at a loss in the United States, it would face dumping penalties. As for elemental sulphur, Inco could not absorb the costs of purchasing the natural gas needed to produce it.<sup>95</sup>

Corporate interests in other jurisdictions further impeded market-based solutions. At various times, Warner urged the federal government to take action to regulate the mining of

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<sup>93</sup> Ibid, 43-4.

<sup>94</sup> Lawrence Welsh, “New Inco management to retain company goal,” *Globe and Mail*, 26 May 1980.

<sup>95</sup> Stuart Warner, “Working Toward a Remedy: Technological Options,” in *Proceedings of the Action Seminar on Acid Precipitation* (ASAP Organizing Committee, 1980), 188-89.

elemental sulphur so ore smelters could compete in sulphuric acid markets. Yet, Western Canadian natural gas producers (who produced sulphur as a by-product) were opposed to any such strategy, which would eat into their profits. Similarly, as the *Globe and Mail* put it, “the miners of elemental sulphur in the United States make up a powerful lobby in the southern states and already have succeeded in blocking cheap Mexican sulphur from entering on anti-dumping grounds. They are now making loud political noises about the possibility of excess Canadian sulphur being dumped on U.S. markets.”<sup>96</sup> While Inco had experimented with hydrometallurgical processes, which would eliminate sulphur emissions, these methods were rejected when it was found they produced only the same amount of nickel as existing smelting practices.<sup>97</sup>

For such reasons, Inco’s preferred short-term solution was to improve its milling process to prevent greater amounts of pyrrhotite from entering the smelter. While this practice would indeed reduce sulphur emissions, it would not do so to the extent mandated by the initial control order. According to Warner, pyrrhotite separation “is the most cost-effective technique [of pollution control] that we could possibly use ... It is a very sensible way to go because it doesn’t require nearly the capital of other techniques and, above all, it does not produce sulphuric acid, which we have too much of already.” He continued, “Panic in the Legislature and panic in the media are a waste of time. Making changes just to get more acid out of the smelter is a pure debit.” Thus, Warner urged the government to wait until the company had improved its pyrrhotite separation processes before taking any further action to regulate emissions controls.<sup>98</sup>

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<sup>96</sup> Robert Sheppard, “Acid rain: Sulphur politics the key to future of Ontario’s lakes,” *Globe and Mail*, 21 August 1979.

<sup>97</sup> Arthur Moses, “Sulphur recovery too expensive, Inco says,” *Globe and Mail*, 22 October 1979.

<sup>98</sup> *Ibid.*

This was the course of action the Davis government ultimately followed, despite the Standing Committee's recommendation to establish an emissions target of 1,500 tons per day by June 30, 1983.

A series of events in early 1980 laid the groundwork for the government's next move. In early March, journalist Mick Lowe reported that Inco had successfully piloted a new milling process that by improving pyrrhotite separation could reduce the company's sulphur emissions by 25 percent.<sup>99</sup> Shortly thereafter, federal Minister of the Environment John Roberts, who had recently returned from Washington to discuss transboundary pollution matters with the Environmental Protection Agency, suggested to the media that Inco could afford the capital investments required to reduce emissions by 50 to 60 percent within five years. As Roberts explained, "I believe the Inco operation in Sudbury is so profitable that they would be able to absorb the extra cost without great difficulty."<sup>100</sup> Roberts' claims reflected not only Inco's dwindling political legitimacy in the eyes of a significant portions of public opinion, but also pressure from American policymakers who refused to budge on acid rain until their Canadian counterparts did the same.

Within days of Roberts' statements to the media, Ontario Environment Minister Harry Parrot publicly announced his ministry's intention to issue a new control order against Inco. Under the draft control order, the company's permissible emissions levels would be lowered immediately from 3,600 to 2,600 tons per day before a further reduction to 1,950 tons per day by 1983. In addition, Parrot announced that a joint federal-provincial task force would be established to research abatement options and their costs, while Inco would be required to submit

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<sup>99</sup> Mick Lowe, "Inco encouraged by pilot tests to reduce its sulphur emissions," *Globe and Mail*, 5 March 1980.

<sup>100</sup> "Inco can afford to reduce emissions, new limits coming, Roberts says," *Globe and Mail*, 28 April 1980.



its own studies to the MOE on abatement strategies by the end of the year.<sup>101</sup> Inco strongly protested the government's proposals. During a press conference on May 1, Inco Chairman and CEO Charles Baird voiced his company's displeasure, and warned the government that given existing technologies, the proposal would limit nickel production in the Sudbury area to some 60 million pounds less than the company's already "environmentally restricted nickel capacity." Should nickel markets improve, Inco would have to compensate for its lost production outside Ontario. To compound the company's difficulties, it would be legally obliged to disclose to stock market regulators that its production capacity had been reduced.<sup>102</sup> A month later, during a public meeting in Sudbury to discuss the draft control order, Baird reiterated the company's position. For the first time in the decade of environmental controls, Inco signalled that it would challenge the provincial government.

Yet, the proposal was hardly as severe as Baird made it to be. As the *Globe and Mail's* Kirk Makin noted, "Inco won't have to do anything to meet the limit of 2,600 tons a day that will be in effect until the end of 1982, because the smelter produces approximately that much now. Some days its sulphur dioxide emissions are even less than 2,000 tons, while on others they go above 3,000."<sup>103</sup> With weak nickel markets, the company was running at less than full capacity. Moreover, the 1983 emissions ceiling was premised on the installation of the new milling process that Inco had announced in March. Still, when in July Parrot served Inco with notice of intent to impose the new control order, the company continued its protest. It submitted a 600-page document to the Ministry, arguing that the control order was beyond Ontario's

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<sup>101</sup> Douglas Charles Macdonald, "Policy Communities and Allocation of Internalized Cost: The Negotiation of the Ontario Acid Rain Program, 1982-1985," (PhD diss, York University, 1997), 154.

<sup>102</sup> AO RG 1-526, Division of Mines Executive Directors' files, 550.6.2, Vol. 2, C.F. Baird, "Opening Comments," 1 May 1980.

<sup>103</sup> Kirk Makin, "Order won't reduce Inco emissions," *Globe and Mail*, 30 April 1980.

constitutional powers, and threatened to challenge the order before the Environmental Appeals Board. In the meantime, as a result of its pressure campaign, Inco managed to arrange a private meeting with the Ontario cabinet.<sup>104</sup>

While not entirely clear, subsequent events appear to have been motivated largely by political posturing. According to Inco's Baird, he had a private meeting with Minister Parrot on August 19 during which he informed the Minister of the company's intention to meet the 1983 emissions target after all. By the end of the month, the company announced the same in public. Nevertheless, in early September, Parrot took "the unprecedented step of obtaining a Cabinet order to make Inco Ltd. meet tougher pollution emission levels in Sudbury by 1983." Unlike a control order, the Cabinet order was not subject to appeal. Yet the emissions limit was no more stringent than what Inco had agreed to at the August 19 meeting.<sup>105</sup> Moreover, Parrot dropped his stipulation that Inco submit studies on abatement options by year end, though the company decided to commission its own private study, conducted by Hatch Associates. The next day, when word got out of Baird's August 19 offer, opposition members denounced the Cabinet order as a "public relations ploy devoid of content."<sup>106</sup>

Following the September 1980 regulation, acid rain remained on the agenda, but concrete policy development slowed. It was not until February 1985 that the provincial government imposed a new emissions limit on Inco. In the summer of 1980, the governments of Canada and the United States agreed to a Memorandum of Intent, establishing five working groups to study the legal and scientific aspects of acid rain deposition. The groups released their initial reports in

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<sup>104</sup> Douglas Macdonald, *Business and Environmental Politics in Canada* (Peterborough: Broadview Press, 2007), 99-100.

<sup>105</sup> Kirk Makin, "Ontario Cabinet orders Inco to cut stack emissions," *Globe and Mail*, 3 September 1980.

<sup>106</sup> Kirk Makin, "Move on Inco empty ploy, opposition members claim," *Globe and Mail*, 4 September 1980.

February and March of 1981.<sup>107</sup> In the same year, the House of Commons' Still Water Report found that ore smelters in general, and Inco's Sudbury complex in particular, could achieve abatement at greater cost effectiveness than any other large point source in Canada. In 1982, the Ontario-Canada Task Force for the Development and Evaluation of Pollution Abatement Options for Inco Limited and Falconbridge Nickel Mines released its report. Based on extensive research and expert consultation, the report argued that Inco could improve its smelting process to reduce emissions to as low as 182,500 metric tonnes per year at a cost of \$519 to \$684 million over ten years.<sup>108</sup>

In his doctoral dissertation, Douglas Macdonald documented in extensive detail the federal-provincial negotiations which eventually culminated in federal Environment Minister Charles Caccia's March 1984 announcement that Canada would proceed with a unilateral program to reduce its sulphur dioxide emissions by 50 percent by 1994 so as to achieve a maximum wet acid deposition of 20 kg/hectare per year. While a full recounting of these negotiations is beyond the scope of this study, it is worth noting MacDonald's argument that the Ontario MOE's basic strategy during these negotiations was to limit to the greatest extent possible the imposition of additional costs on polluters inside its border. Ultimately, Ontario agreed to Caccia's 50 percent reduction – which was based on the Memorandum of Intent's study group findings – on two conditions: first, that federal financing be made available for smelter modernization; and second, that, rather than adopting specific emissions ceilings, the agreement should be based on the “least cost” allocation criteria. That is, emissions reductions

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<sup>107</sup> Doug Macdonald, *The Politics of Pollution* (Toronto: McClelland & Stewart, 1991), 249.

<sup>108</sup> Ontario/Canada Task Force for the Development and Evaluation of Air Pollution Abatement Options for Inco Limited and Falconbridge Nickel Mines Limited in the Regional Municipality of Sudbury, Ontario, *Report of the Ontario/Canada Task Force for the Development and Evaluation of Air Pollution Abatement Options for Inco Limited and Falconbridge Nickel Mines in the Regional Municipality of Sudbury, Ontario* (Toronto: The Task Force, 1982).

should be mandated according to relative cost. In any event, Macdonald noted, the federal-provincial agreement had little to do with the emissions ceilings ultimately imposed on Inco, while the company rejected federal financing on the grounds that it did not want to accept its pre-conditions. Instead, the MOE continued to negotiate directly with the company.

The Ministry of Environment and Inco came to agree to the terms of the company's subsequent emissions regulations over the course of private meetings held in 1983 and 1984. As early as April 1983, regulators within the MOE were aware of the results of Inco's private study, which showed that the company could reduce its sulphur dioxide emissions by 75 percent with an investment of about \$500 million. Advancing with this plan would have allowed Ontario to meet its objectives under the national plan mentioned above. Yet, while the company conceded the technical feasibility of such a reduction at a meeting with MOE regulators in July, Inco made it clear that it had no plans to follow through with it. Instead, facing no pressure from the MOE, Inco hinted of its intention to devise a program that would reduce its emissions by 50 percent to about 350,000 tonnes per year by 1994. Although the company hesitated initially to commit to this plan, it eventually did so at another meeting with the MOE in the fall of 1984. As Doug Macdonald has shown, this plan formed the basis of Ontario's contribution to the national acid rain program. However, given the MOE's leniency and its reluctance to impose more stringent reductions on Inco, the national program was 300,000 tonnes short of its goal. Content with the terms of its new order, Inco announced its plans to reduce its emissions by 50 percent as a voluntary measure, scoring a public relations victory against its environmental movement critics.<sup>109</sup>

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<sup>109</sup> John Partridge, "Inco to slash emissions by 50% modifying Sudbury plant," *Globe and Mail*, 25 April 1985.

### **“Countdown Acid Rain” (1985-1994)**

While Inco had achieved its major policy objectives with the Progressive Conservative government’s 1985 emissions controls, the company soon faced a setback. Just two months after having issued the new limits, the Progressive Conservative government lost its hold over the Ontario government for the first time in 42 years. As we have seen, the Liberal Party under the leadership of David Peterson formed a new government on the basis of an “Accord” with the NDP, which touched on several key policy areas, including a stronger commitment to tackling acid rain. With public support for environmental protection mounting, and a new government committed to effective policy action, Inco’s interests were under threat. However, while the company was forced to adopt a more stringent control program than it wanted, Inco managed to use its political power to weaken the regulations it faced.

As part of a broader effort to reinvigorate the province’s role in environmental protection, the new Minister of the Environment Jim Bradley re-opened negotiations with Inco immediately upon the new government’s taking power.<sup>110</sup> Bradley approached negotiations with a stronger commitment to wresting concessions from Inco than had his Progressive Conservative predecessors. During the Ministry’s first meeting with Inco, Bradley proposed a deeper emissions cut than what Inco had announced the previous April, suggesting a target of 150,000 tonnes by year end 1994. Bradley’s proposal had Inco executives “very, very concerned,” according to an MOE official present at the meeting.<sup>111</sup> Inco resisted the Minister’s proposal and instead offered a compromise: the company would move forward its deadline to meet the

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<sup>110</sup> As Mark Winfield has shown, the Liberal government’s “remaking” of the Ministry of the Environment entailed several reforms, including forging strong relationships with the province’s environmental organizations by increasing their project funding and recruiting individuals with experience in environmental NGOs to the Ministry’s staff; allocating greater resources to the Ministry’s regulatory functions; strengthening environmental assessment processes; and increasing the Ministry’s operating budget, among others. See Winfield, *Blue-Green Province*, 41-50.

<sup>111</sup> Macdonald, *Business and Environmental Politics in Canada*, 102.

350,000 tonne limit and conduct studies to determine the feasibility of a 175,000 tonne limit.

While the two sides did not reach an agreement, according to Doug Macdonald, Bradley proceeded to prepare a regulation imposing a 150,000-tonne limit to bring to a cabinet meeting in November. Yet, before he could do so, the figure was leaked to the public by an unknown source, potentially Inco itself or the Ministry of Northern Development and Mines.<sup>112</sup>

Subsequently, Inco made another move to resist Bradley's proposal. On December 4, 1985, Inco Chair Charles Baird and President Donald Phillips used a tool that company officials had relied upon frequently to influence government policy in the past: direct access to key decision makers within government. In this case, on December 4, 1985, the very day Bradley was to bring his proposal to cabinet, Inco Chair Charles Baird and President Donald Phillips met with Premier David Peterson – “reportedly over breakfast at the Sutton Place Hotel” – to discuss the company's emissions limit. In Macdonald's telling, the meeting gave Peterson “cold feet,” and so the issue was deferred at that day's cabinet meeting. Ultimately, MOE and Inco held another meeting, eventually agreeing to a compromise limit of 265,000 tonnes per year.<sup>113</sup> Inco also agreed to report on the feasibility of meeting a 175,000-tonne ceiling in the future. These conditions were announced in mid-December as one of four regulations under the Liberal government's “Countdown Acid Rain” program, which aimed to reduce sulphur dioxide emissions from the province's four major emitters from their 1980 levels of 1,772,000 tonnes to 795,000 tonnes by 1995.

In contrast to the first emissions ceilings announced in 1985, Inco did not greet Bradley's Countdown Acid Rain regulations warmly. Indeed, while Falconbridge described the regulations as “reasonable,” Inco's Charles Baird was “disappointed,” and “didn't know how to meet [the

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<sup>112</sup> Ibid, 102.

<sup>113</sup> Ibid, 102.

regulations] at a realistic cost.” According to Baird, the company could have met the initial ceiling with a relatively modest investment in refitting the existing smelter, but meeting the terms of Countdown Acid Rain would require a major investment in a new smelter and sulphuric acid plants. Baird said that the company would take the three years it had under the program to devise a solution, but he was not optimistic.<sup>114</sup>

Despite Baird’s initial pessimism, however, by the time the company revealed its plans to meet the regulation in late 1988, it was clear that Inco could achieve its goal of reducing its emissions while also enhancing productive efficiency. Inco’s plan was composed of two parts. First, in line with developments since the 1940s, the company once again improved its concentrating methods, rejecting a greater amount of pyrrhotite before it reached the smelter. The new milling process was expected to cost \$69 million, and, from the company’s standpoint, it was a “stand-alone economic program, with an estimated discounted cash flow of return of 22.5 per cent.” The second part related to the smelter itself. At an anticipated cost of \$425 million, Inco planned to treat both nickel and copper concentrates together (previously, they had been treated in two separate processes) using oxygen flash furnaces. Doing so offered important economic advantages, including “lowered energy costs, increased worker productivity, and the conversion of former emitted sulfur dioxide gases into saleable products.”<sup>115</sup> There were conflicting reports as to whether Inco would have adopted these precise practices in the absence of regulatory pressure. While Executive Vice President Roy Aitken claimed at the time that the new smelter was “justifiable only as a means to reduce SO<sub>2</sub> emissions,” former Inco executive Bo Statham opined,

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<sup>114</sup> “Most laud acid-rain plan but Inco ‘disappointed,’” *Toronto Star*, 18 December 1985.

<sup>115</sup> Dan F. Bouillon, “Developments in Emission Control Technologies/Strategies: A Case Study,” in Gunn (ed.) *Restoration and Recovery*, 280.

The fundamental reason for [Inco's] \$500 million smelter investment is basic economics. Its plant is antiquated and inefficient and it now has the money for a cost-effective improvement program. Roy Aitken and most of Inco's other senior managers are decent people. But they are not rated or paid based on their commitment to the public interest. They watch the bottom line.<sup>116</sup>

In any event, by the time the modernization program was complete at year end 1994, it was clear that Inco had "passed the acid test." As the *Toronto Star* reported, with its new smelting processes, the company achieved an estimated annual savings of \$70 million from productivity gains.<sup>117</sup>

## Conclusions

Reviewing the history of the government of Ontario's policies towards the emission of sulphur dioxide from ore smelters offers a compelling illustration of the mining industry's strength in policymaking. For decades, the province administered an arbitration system that permitted mining companies to pollute the environment and damage private property in exchange for nominal compensation payments. The industry leveraged its political power to shield itself from the threat of legal action, while decades of local protest among Sudbury-area residents and farmers did little to alter the government's lenient policies.

Even after the emergence of an increasingly powerful environmental movement, the industry's interest continued to shape the contours of the government's policy towards sulphur dioxide emissions. To be sure, laws like the *Damage by Fumes Arbitration Act* that blatantly favoured heavy polluters at the expense of other citizens could no longer command legitimacy and were rescinded. Yet it is difficult to escape the conclusion that the government's subsequent

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<sup>116</sup> Quoted in Ross Howard and Michael Perley, *Poisoned Skies: Who'll Stop Acid Rain?* (Toronto: Stoddart, 1991), 131.

<sup>117</sup> David Israelson, "Big polluters pass acid test," *Toronto Star*, 30 December 1994.



control orders did little more than codify environmental clean-up programs that industry itself had devised. For instance, both Inco and Falconbridge had signalled their intentions to carry out the bulk of the investments that ultimately formed the basis of their initial control order programs well before the Department of Energy and Resources Management's (and, subsequently, the Ministry of Environment's) interventions. In the context of rapidly expanding nickel consumption, the industry had every incentive to improve the efficiency of both its milling and smelting processes and increase capacity to meet growing demand. As the control orders aligned with their own interests, the nickel companies apparently saw no reason to challenge them. For government policymakers, the control orders had their own advantages. Under mounting pressure from opposition parties and an increasingly mobilized public seeking strong environmental protections, the government could meet public demands for action without unduly undermining the interests of a powerful industry.

Subsequent interventions followed a broadly similar pattern, even if Inco was more vocal in its opposition to both the Ministry of Environment's 1980 regulation and the subsequent Countdown Acid Rain program. Perhaps the key difference in this latter context was Inco's lack of an economic incentive to make immediate investments to upgrade its facilities. With nickel markets glutted and the company experiencing severe declines in revenue, Inco sought to delay having to make the major capital investments that were required to modernize its aging smelter. In this, the company succeeded. Although the Liberal government's Countdown Acid Rain program imposed more stringent emissions ceilings than what the company had initially agreed to with the previous Progressive Conservative government, Inco had the better part of a decade to meet its environmental obligations. When nickel markets strengthened in the late 1980s, Inco's financial standing improved markedly, and the company announced its intention to

upgrade both its concentrating and smelting processes. Despite the company's initial protests about Countdown Acid Rain, Inco not only achieved its regulated emissions targets, but also managed to improve the efficiency of its operations.

There is no question that the nickel industry has made significant improvements in its environmental performance. However, it is far from clear just how much these improvements should be attributed to the growing strength of the environmental movement versus how much they should be attributed to the industry's interest in profit maximization. At the very least, it must be borne in mind that the two main components of the industry's latest sulphur control program – rejecting pyrrhotite at the milling stage and improving smelting efficiency – long predated the emergence of the environmental movement. For instance, both of these practices were key parts of Inco's first postwar expansion efforts in the 1950s when, in 1952, the company adopted oxygen flash smelting to treat its copper concentrates, and in 1956, it opened the Iron Ore Recovery Plant to treat pyrrhotite separately from the other nickel- and copper-bearing minerals that it mined. In that sense, improvements in the industry's environmental performance were clearly linked to the availability of profit-enhancing technologies, not simply external political pressure.

Clearly, environmental interest groups and coalitions like the Canadian Coalition on Acid Rain did much to put Inco's sulphur dioxide emissions on the public agenda and undermine Inco's discourse about the unfeasibility and prohibitive costs of environmental control programs. Yet, even as external pressure mounted, Inco's lasting structural and instrumental power continued to shape government action. Policymakers showed a clear reluctance to impose standards that would undermine Inco's ability to expand production, and, on more than one occasion hesitated to act. In addition, Inco continued to negotiate its environmental control

programs in private meetings with regulators and took advantage of its access to leading politicians to beat back what it considered an onerous policy proposal. In sum, for more than a century, the mining industry exercised an unparalleled degree of influence over government policy towards sulphur dioxide emissions.

## Chapter 5: Occupational Health and Safety

### Introduction

Before the promulgation of regulations under the *Occupational Health and Safety Act* in 1983, there were no statutory exposure standards limiting Ontario mineworkers' exposure to silica, a toxic dust occurring naturally in the province's underground mines. When inhaled in sufficient quantities, silica causes silicosis, an incurable lung disease resulting from the "scarring" of the lungs' alveoli, causing shortness of breath, weakness and ultimately, death. By the time the regulation came into force, more than 1,800 Ontario mineworkers had succumbed to silicosis since its recognition as a compensable disease in 1926.

This chapter analyzes the politics of occupational health and safety (OHS) in the mining industry. Questions of power loom particularly large in OHS, for, as Charles Noble has noted, to protect workers' health and safety effectively, governments "must force corporate actors to change their behaviour." Because such changes entail not only increased operating costs, but often the transfer of a share of decision-making power to workers on the job, government efforts to defend OHS "usually run into concerted business opposition."<sup>1</sup>

The history of OHS in Ontario's mining industry provides a compelling illustration of this pattern, as the industry has put considerable effort into forestalling government intervention. Ontario's policies towards occupational health and safety in the mining industry can be divided into three periods. The first, dating from before the end of the Second World War until the mid-1960s, was one of industry dominance. Industry and its collective associations wielded tremendous influence over every aspect of policy, from legislative standard setting to the way

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<sup>1</sup> Charles Noble, "Regulating Work in a Capitalist Society," in Laureen Snider and Frank Pearce (eds.), *Corporate Crime: Contemporary Debates* (Toronto: University of Toronto Press, 1995), 268.

OHS problems were perceived. While workers and their unions challenged management's unilateral authority to design production processes, policymakers consistently deferred to the managerial viewpoint, insisting that management had unilateral responsibility for ensuring safety. The *Mining Act*, which governed the operation of mines and surface plants, instituted a "self-regulatory" system of safety management, in which mine owners and their managers had unilateral authority and responsibility to ensure compliance with the law's provisions.

The second period dates from the mid-1960s until the late-1970s. During this time, unions grew in power and their campaign to improve working conditions shifted from a secondary to a leading policy priority, particularly among the United Steelworkers of America (USWA) leadership. With the Ontario New Democratic Party emerging as a significant force in electoral politics after the 1967 provincial election, the unions won a strong ally in the Legislature, who made the Conservative government's leniency regarding OHS a key plank in its political strategies. But the joint union-NDP campaign alone was not enough to spur legislative change. Equally important was the broader shift in cultural attitudes towards health and the environment, reflected in the emergence of new forms of environmental and consumer-rights activism, not only in Ontario but throughout the industrialized world. Shocking revelations about growing incidences of lung cancer and other occupational diseases among the province's mineworkers undermined the industry's credibility. In this context, the Ontario government overhauled its health and safety legislation, adopting new tripartite models of governance premised on the joint responsibility and cooperation of management and labour.

The final period took hold after the enactment of the *Occupational Health and Safety Act* in 1978. Although unions kept the OHS movement alive through the 1980s, policymakers responded to this activism by insisting that unions accept their newfound responsibilities under

the “Internal Responsibility System” that informed the amended health and safety legislation, rather than by deepening reforms. Whereas union activists had treated occupational health and safety as a political issue, one that was fundamentally a question of power, government policymakers prodded the unions to focus on labour and management’s supposed shared interest in promoting safety on the job. By the end of the 1980s, the new governance approach had won legitimacy, and as mining companies restructured their work processes, severely curtailing mining employment, unions shifted their priorities elsewhere. Subsequent debates about OHS were filtered through the IRS framework.

### **Industry Dominance and Self-Regulation (1938-1965)**

Before the passage of the *Occupational Health and Safety Act* in 1978, mining companies dominated the OHS agenda. Legislated safety standards were governed by Part IX of the *Mining Act*. Although the *Act* established an extensive set of detailed operating requirements, industry had a large hand in shaping them. As the Ham Commission reported in 1976, “The legal framework for health and safety in the mines ... has resulted in a strong reliance being placed by the government on the self-regulatory initiatives of industry.”<sup>2</sup> The *Act* assigned to mine owners and their agents the primary responsibility for compliance, and gave to management “the freedom to achieve the required ends to the degree and by the means judged by him to be suitable.”<sup>3</sup> Despite the numerous health hazards present in the mining work environment, the *Act* did not contain legally enforceable standards controlling workers’ exposure to hazardous substances. Instead, in consultation with industry and, at times, the Department of Health, the Mines Engineering Branch issued non-legally enforceable “codes of requirements” in areas like

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<sup>2</sup> *Report of the Royal Commission on the Health and Safety of Workers in Mines*, 37.

<sup>3</sup> *Ibid*, 36-7.

dust measurement and ventilation for diesel engines. Until 1975, neither mineworkers nor their unions had the legal right to know about the nature or quantities of hazardous substances they confronted at work. Nor did they have any legislated mechanism to participate in managing safety policy.

The industry's hegemony was the product of several factors. Government officials responsible for establishing standards and enforcing compliance with the law were deferential to management's perspective. Located in the Department of Mines, the province's Mines Engineering Branch took a collaborative approach to its duties. The Branch looked to industry for advice in crafting the *Mining Act's* operating requirements and preferred "education" to coercion in promoting compliance. Indeed, while the *Act* conferred upon the MEB's inspectors broad discretionary powers to enforce compliance, including the power to order the immediate cessation of work, such powers were rarely used. Moreover, neither the MEB's inspectors nor other government policymakers showed much regard for workers' independent initiatives. While unions lobbied on several occasions for legislative changes incorporating mechanisms recognizing workers' right to participate in health and safety policy, policymakers continually rebuffed their proposals.

Industry also seized the initiative at the workplace. Mining companies designed on-the-job safety training programs and promoted company safety policies through various media. Together, these activities gave workers the impression that management held employee safety as its top priority and reinforced the industry's argument that management alone was responsible for ensuring safety. Finally, industry benefited from the prevailing wisdom that mining was a hazardous occupation, that a certain number of accidents were "inevitable." To bolster its case, industry deflected attention away from the nature and design of production processes, and

highlighted worker “carelessness” as the cause of accidents. This section illustrates how the industry maintained its hegemony by reviewing the revisions to the *Mining Act* in 1938-39, the industry’s in-plant safety initiatives, the joint government-industry response to union activism through the Special Committee on Mining Practices at Elliot Lake in 1957, and the process by which industry and government developed jointly occupational health standards.

### ***Revising the Mining Act, 1938-39***

Among the documents archived in the Department of Mines’ papers from the 1950s is the text of a speech delivered by Inco Vice President James Roycroft Gordon in 1950. Entitled “Responsibility of Management in Safety,” Gordon’s speech is revelatory not only of mine management’s attitudes towards safety policy, but perhaps more importantly, its role in shaping the *Mining Act*’s operating standards. As Gordon put it, “Management had a large share in early revisions of the Mining Act and, in each revision since, has taken a very active part with the Department of Mines and its inspectors.”<sup>4</sup> The archival record corroborates Gordon’s assessment.

The Liberal government’s 1938-39 revisions to the *Mining Act* provided industry with an important opportunity to exert influence over the province’s mine safety legislation. In carrying out the revisions, the Department of Mines took a collaborative approach. Chief Inspector D.G. Sinclair solicited proposals from the Department’s regional inspectors, and, having completed a working draft, sent a copy of the proposals to every operating mine in the province for comment. While mineworkers were also invited to offer their advice, the Department largely dismissed their concerns.

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<sup>4</sup> AO RG 13-20, Department of Mines reports, papers and proceedings, Container 3, Folder 43, J.R. Gordon, “Responsibility of Management in Safety,” 25 May 1950.



The OMA put considerable effort into reaching a consensus among the province's differently situated firms. The OMA urged its individual members to study the proposals and organized a series of local meetings in the province's various "mining camps" for further discussion. Each camp was encouraged to appoint a representative to act as a regional liaison at the Association's forthcoming annual meeting at the Bigwin Inn, where a broader discussion was planned.<sup>5</sup> Some local discussions appear to have been heated. As a representative of Argosy Gold Mines, Limited – a company that had only recently faced bankruptcy – wrote to Sinclair, "spirited discussion" concerning the Department's proposals "took place from eight in the evening until fourish in the morning" among the Larder Lake area's mining company officials. Large and small operators did not necessarily see eye to eye on every issue. The letter continued, "I might say that I fought for the interest of the smaller operators as they seemed to be overlooked in many places and the gentlemen present, being larger men, did not see the significance as regards the smaller fellow." Deflecting attention from working conditions to individual workers, the Argosy official suggested that the bigger operators seemed to "forget that the smaller operators got the boomers and the disaffected miners from the larger mines and men in general that [were] hard to control." Nevertheless, in the course of discussion, it appears that some form of compromise was achieved: "I note that most of the points I brought up have been covered."<sup>6</sup>

The OMA struck a three-person committee, chaired by Dome Mine manager Robert E. Dye, to coordinate the proposals from the various camps and to take the lead in liaising with Sinclair. Dye and Sinclair's correspondence reveals the Department's deference to the operators.

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<sup>5</sup> AO, RG 13-19 Mining Act amendment files (hereafter MAFF), Container 1, Folder 13, G.C. Bateman, "copy for Mr. Sinclair," 6 May 1938.

<sup>6</sup> AO, RG 13-19, MAFF, Container 2, Folder 17, C. Rutherford to D.G. Sinclair, 12 December 1938.

Sinclair adhered to the industry's view that management was best positioned to formulate safe working practices and that mine operators did so with the best interests of mineworkers in mind. One particularly striking example related to rules concerning the detection of carbon monoxide in underground work environments. In September 1938, Robert Savage, a twenty-six-year-old miner at the Paymaster mine in Timmins, died after having inhaled carbon monoxide that had formed after he and a co-worker had performed blasting operations. To avoid such occurrences in future, the coroner's jury that investigated Savage's death recommended that the *Mining Act* be amended to mandate miners be equipped with carbon monoxide detectors. Writing to Sinclair on behalf of the OMA's *Mining Act* amendment committee, Dye argued that while it was "imperative" that measures to avoid carbon monoxide poisoning be taken, the jury's recommendation was neither "practicable" nor "effective." That the *Mining Act* as it stood contained no specific mention of carbon monoxide, Dye suggested, "was no doubt due to the fact that incipient danger from these gases has been so long recognized and the means of dealing with it so universally known." Instead of the jury's recommendation, Dye proposed the OMA's version of dealing with this "incipient danger":

Men about to enter a mine or working in which recent blasting operations have taken place *shall first assure themselves* that sufficient air has been blown into the place to drive out or dilute to a safe degree the gases produced by the blast.<sup>7</sup>

That Dye's proposal clearly placed the onus for detecting carbon monoxide – an odorless, invisible gas – on workers did not dissuade Sinclair from accepting it. Two weeks after Dye had sent his letter, Sinclair responded, noting that he had "tentatively inserted" Dye's suggestion – with some slight word changes – into the draft legislation, where it was ultimately enacted.<sup>8</sup>

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<sup>7</sup> AO, RG 13-19, MAFF, Container 2, Folder 15, R.E. Dye to Paul Leduc and D.G. Sinclair, 25 October 1938, emphasis added.

<sup>8</sup> AO, RG 13-19, MAFF, Container 2, Folder 15, D.G. Sinclair to R.E. Dye, 4 November 1938. See *The Handbook of Rules Governing the Operation of Mines*, 1948, page 64: "Before returning to the scene of any blasting operation

Sinclair's attitude toward the *Act's* safety standards was revealed in other letters.

Matachewan Consolidated Mines Ltd. manager Geo. W. Mitchell wrote to Sinclair, suggesting that the Department's draft revisions had not provided enough freedom to individual inspectors in light of the unique conditions that held in different mines. In Mitchell's view, "[d]etails of carrying out general regulations can best be developed by the companies themselves after the fashion of [Inco's] 'Frood Standard Practices'."<sup>9</sup> In his response, Sinclair sympathized with Mitchell, but explained why the Department had opted to elaborate operating requirements with the precision it had:

it is of course impossible to draw up a set of regulations too minutely detailing operations and attempting to enforce them universally but it is felt, that for their *educational value* and to call to the minds of the men in operative positions the fact there are safe and unsafe ways of tackling practically all mine work that the regulations should be as detailed as it is possible to get them. In this connection *it should be borne in mind that machinery is always available for exempting any phase of operations from regulations* which are inapplicable to the work in hand or where an equally safe or safer way of doing the work is found.<sup>10</sup>

Workers' submissions showed that, for them, mine safety encompassed far more than effective operating rules and regulations. In addition to providing comments on the *Act's* various technical requirements, the Hollinger Employees Committee suggested several measures to promote worker health beyond the strict performance of work. In the Committee's view, the *Mining Act* should have mandated elected safety committees, chosen by mine employees, to make periodic inspections. Moreover, "in the interest of health and efficiency" the *Act* ought to accord every miner two weeks' paid vacation, and an underground miner's working day ought to

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every workman shall assure himself that sufficient air has been introduced into the working place to drive out or dilute to a safe degree the gases produced in the blasting operation."

<sup>9</sup> AO, RG 13-19, MAFF, Container 1, Folder 13, G.W. Mitchell to D.G. Sinclair, 7 June 1938.

<sup>10</sup> AO, RG 13-19, MAFF, Container 1, Folder 13, D.G. Sinclair to Geo. W. Mitchell, 10 June 1938, emphasis added.

be limited to six hours.<sup>11</sup> Other miners felt that what was required was not changes to the *Act*, but better enforcement of the legislation as it stood. This was the case made by one Kirkland Lake gold miner, who, fearing employer reprisals, wrote an anonymous letter to Mines Minister Paul Leduc, cataloguing an extensive list of safety concerns: toilets were left uncleaned for months at a time, cages to carry miners underground and back to surface were filled beyond capacity, the mine had no first aid kits, men were put to work just 15 minutes after blasting. In what would later become a common theme, the miner alleged that his employer was forewarned of mine inspections.<sup>12</sup> (Subsequently, in a private letter to Mines Minister P.T. Kelly in 1957, the OMA admitted that inspectors forewarned managers of their inspections.<sup>13</sup>) Other miners criticized the bonus system, as it emphasized speed over safety. Still other complained of their inability to bring their problems to management, lest they be fired or branded a “Red.” But not all the miners’ suggestions were “progressive.” At least some urged the government to limit non-Canadians from mining employment.<sup>14</sup>

In general, Sinclair was dismissive of the miners’ suggestions. Reviewing their proposals in memoranda to Minister Leduc, Sinclair noted that safety committees were “a matter for mine management to decide,” not a matter for legislation. Miners’ calls for a “qualified first aid man” to be on duty every shift was not “of general application to small operations.” To one miner’s idea to appoint a man “at each and every mine to see that everything is looked after by the Government, because the Mine Inspector cannot be every place at one time,” Sinclair simply

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<sup>11</sup> AO, RG 13-19, MAFF, Container 1, Folder 12, Hollinger Employees’ Committee, “Suggestions on Draught Mining Regulations,” no date.

<sup>12</sup> AO, RG 13-19, MAFF, Container 2, Folder 16, “Kirkland Lake Gold Miner,” no date. The Department’s inspector for the Kirkland Lake area, W.O. Tower, wrote a point-by-point refutation of each of the anonymous miner’s claims. See AO, RG 13-19, MAFF, Container 2, Folder 16, W.O. Tower to D.G. Sinclair, 1 December 1938.

<sup>13</sup> See AO, RG 13-1, Correspondence of the Minister of Mines, Container 11, RG 13-1-0-204, Ontario Mining Association to Philip T. Kelly, 7 February 1957.

<sup>14</sup> See AO, RG 13-19, MAFF, Container 2, Folder 16, Paul Leduc to D.G. Sinclair, 17 November 1938 and Paul Leduc to D.G. Sinclair, 21 November 1938.

scoffed: “Why at ‘each and every mine’? Why not go all the way and state at each and every working-place in a mine? After all if it is complete governmental supervision of operations that is aimed at the second suggestion above is the only way to have absolute control of the situation.”<sup>15</sup>

Perhaps the clearest indication of the industry’s ability to shape the *Mining Act*’s operating requirements to its satisfaction was the series of self-congratulatory letters Dye and Sinclair sent to one another once the revisions had been completed. There was no indication that the industry had any quarrel with the final draft. As Dye wrote to Sinclair in March 1939, “Personally I believe that the Act is something that the Department may well be proud of.” Dye acknowledged Sinclair and his colleagues’ “painstaking and sustained effort with which [they] expended in the work and [congratulated them] upon the results attained.”<sup>16</sup> Sinclair was equally complimentary in his reply to Dye, hinting that Dye and his OMA committee deserved most of the credit:

I fully realize that my efforts and the work of the Department as a whole constitute but a very small portion of the thought and energy which have been put forth in attaining the end which has been reached and that practically every operating mine in the Province has made a comparable contribution to the work. If any attempt were made to faithfully accredit the proportionate efforts expended in the matter I feel very certain your name would found in the place of prominence far above all others and I sincerely hope that the industry may be made to understand the thorough-going job you have done for it in this respect.<sup>17</sup>

### ***Corporate Safety on the Job***

Although government inspectors and policymakers proved deferential to management, the industry took several measures to retain the initiative. The industry and its collective

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<sup>15</sup> See AO, RG 13-19, MAFF, Container 2, Folder 16, D.G. Sinclair to Paul Leduc, 30 November 1938, November 10, 1938 and 14 November 1938.

<sup>16</sup> AO, RG 13-19, MAFF, Container 2, Folder 18, R.E. Dye to D.G. Sinclair, 13 March 1939.

<sup>17</sup> AO, RG 13-19, MAFF, Container 2, Folder 19, D.G. Sinclair to R.E. Dye, 18 March 1939.

organizations devised several methods to shape workers' perceptions about the nature of their work and the hazards they faced and to circumvent government intervention. Among the industry's collective associations, the Mines Accident Prevention Association of Ontario (MAPAO) played a critical role in this regard. While corporate membership in the MAPAO was mandatory under Section 119 of the *Workmen's Compensation Act*, the MAPAO was closely tied to the industry's voluntary trade association, the OMA. In fact, the two organizations shared the same executive director.<sup>18</sup> The MAPAO placed considerable importance on avoiding government intervention. As President G.A. Allen remarked to the Association's 1969 annual convention, "What happens if we in the industry fail to significantly reduce accidents? Besides the personal anguish of those injured and the heightened cost to operations, we also face the threat of increasing control of the industry by government agencies."<sup>19</sup>

The MAPAO carried out its work in several ways. Organizationally, it consisted of a number of regionally based safety and ventilation groups that brought together managerial and supervisory staff to share information and review best practices. Its Committee on Occupational Health, with a rotating membership made up of mine management, studied the effects of ventilation and air conditions on worker health. Its engineering and technical staff offered technical advice to the association's directors. The Safety Director assisted managers in the development of accident prevention programs for their workplaces, while MAPAO staff made on-site consultations, sponsored safety nights and distributed films and other media focusing on methods of accident prevention.<sup>20</sup>

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<sup>18</sup> *Report of the Royal Commission on the Health and Safety of Workers in Mines*, 5.

<sup>19</sup> Mines Accident Prevention Association of Ontario, *38<sup>th</sup> Annual Report*, 1969, 2.

<sup>20</sup> See, for example, Mines Accident Prevention Association of Ontario, *35<sup>th</sup> Annual Report*, 1966.

Individual companies also did their part, their efforts taking a variety of forms, from distributing some rather transparent propaganda to sponsoring safety competitions. Inco's company newspaper, the *Inco Triangle*, offers some important insights in this regard. The newsletter publicized the names, photographs and prizes of the winners of the company's safety reward program, which was awarded to those crews that accumulated 100,000 consecutive shifts without a lost time injury.<sup>21</sup> It published the winning poem of the company's annual Christmas-time "safety slogan contest," inaugurated in 1959.<sup>22</sup> The newsletter even contained a regular article prepared by the Safety Department giving tips on how to act safely off the job.<sup>23</sup> That workers were, in fact, safer on the job than they were off it was a common management theme.<sup>24</sup>

Companies engaged workers in safety instruction both on the job and after the end of the shift. During Inco's regular "on the job" demonstrations, shift bosses led their crews in training sessions. One worker demonstrated a particular job task as a group of his peers observed. Once completed, the observers offered their criticisms and suggestions, often producing a "lively discussion."<sup>25</sup> Inco supervisors were encouraged to provide their workers with "Personal Contact instruction," one-on-one lessons in various aspects of safe work.<sup>26</sup> Cochenour Willans Gold Mine Ltd. in Red Lake held monthly general safety meetings at the local community hall in the evenings. Attendance was encouraged by the lure of cash prizes, which were available only to

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<sup>21</sup> For example, see "Win Safety Award," *Inco Triangle*, April 1959.

<sup>22</sup> For example, see "George Petrina Wins Slogan Contest," *Inco Triangle*, January 1962. Petrina's slogan read, "A timely greeting this yuletide... Don't put safety rules aside..."

<sup>23</sup> For example, see Inco Safety Department, "Safety Outside the Home," *Inco Triangle*, May 1968.

<sup>24</sup> For example, see "Both New to Parker Final," *Inco Triangle*, May 1968: "It was significant of Inco's 'positive' approach to safety throughout its operations that in the calendar year 1967 a total of 23 employees lost their lives in 'off the job' accidents compared to four fatalities on the job, indicating that an Inco employee is six times safer at work than elsewhere."

<sup>25</sup> A.E. O'Brien, "Safety Practices at the Mines and Reduction Plants of the Mining and Smelting Division of the International Nickel Company of Canada, Limited," *The Canadian Mining and Metallurgical Bulletin*, January, 1956, 8.

<sup>26</sup> *Ibid*, 9.

those in attendance or those on duty.<sup>27</sup> The MAPAO maintained an extensive library of visual aids available for loan to member companies for such meetings. Topics ranged from eye protection, with movie titles like “Your Richest Gift, It’s up to You,” to falling ground and operating heavy duty trucks.<sup>28</sup>

Company, regional and national safety competitions reinforced the notion that worker safety was the industry’s top priority. Inco began a company-wide first aid competition, dubbed the Parker Shield, in the 1930s.<sup>29</sup> In 1941, the Canadian Institute of Mining and Metallurgy in collaboration with the Miners Safety Appliances Company inaugurated the John T. Ryan Trophy, named in honour of the latter company’s founder. The trophy was awarded to the Canadian mine with the best safety record, defined as “the lowest frequency of compensation accidents (more than six days [*sic*] duration) per thousand men employed throughout the year.”<sup>30</sup> In 1950, Timmins-area gold mining companies launched their own regional mine rescue team competition as part of the first Northern Ontario Exhibition. Eventually, the competition expanded to encompass all Ontario mines.<sup>31</sup>

### **The Special Committee on Mining Practices at Elliot Lake**

Despite industry’s efforts, OHS remained contested. In the mid-1950s, mineworkers’ unions submitted several briefs to the Mines Department, advocating legislation to mandate the type of joint safety committee envisioned by Justice Roach in his *Report on the Workmen’s*

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<sup>27</sup> J. Delaney, “Safety at the Cochenour Mine,” *Canadian Mining Journal*, September 1959, 84.

<sup>28</sup> Mines Accident Prevention Association of Ontario, *38<sup>th</sup> Annual Report*, Appendix C.

<sup>29</sup> “Both New to Parker Final,” *Inco Triangle*, May 1968.

<sup>30</sup> “The Trophy that Frood, Creighton are Shooting at,” *Inco Triangle*, January 1945.

<sup>31</sup> Mines Accident Prevention Association of Ontario, *35<sup>th</sup> Annual Report*, May 1966.



*Compensation Act* in 1950.<sup>32</sup> Once in late 1956, representatives of both Mine Mill and the Steelworkers wrote letters to Minister of Mines Philip Kelly, reiterating their demand to participate in the formation of safety policy. Kelly forwarded a copy of both unions' briefs to the OMA, which responded with a detailed commentary on their proposals. On health and safety committees, the OMA wrote, "[i]t is not suggested that safety committees have no value but it is suggested that no legislation can be effective in making such a committee a good committee in point of view of accomplishment."<sup>33</sup> Kelly's subsequent response to the unions was strikingly similar to the OMA's position: "We feel that the success of such committees depends on the full agreement and co-operation of both parties and that by passing legislation at present making such committees mandatory would not contribute to their success."<sup>34</sup>

More sustained organizing efforts by unions did little to shift the legislative balance of power. The rapid development of the uranium mining industry in the Elliot Lake and Bancroft areas in the mid-1950s generated concerns within the mineworkers' movement about the health effects of exposure to radioactivity. In 1956, the Mine Mill Western District Convention passed a resolution, urging the National Research Council to examine potential health hazards in the uranium industry.<sup>35</sup> In January 1958, the union convened a special safety conference in the Elliot Lake area that pressed the Ontario government for a public inquiry into uranium mining. In the

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<sup>32</sup> Ontario. Royal Commission in the Matter of the Workmen's Compensation Act, *Report on the Workmen's Compensation Act* (Toronto: B. Johnston, King's Printer, 1950), 91-2. Justice Roach criticized the *Workmen's Compensation Act* for not providing "any means which [would] ensure the active participation of labour in the work of accident prevention," and recommended joint health and safety committees to rectify this.

<sup>33</sup> AO, RG 13-1, Correspondence of the Minister of Mines, Container 11, RG 13-1-0-204, Ontario Mining Association to Philip T. Kelly, 7 February 1957.

<sup>34</sup> AO, RG 13-1, Correspondence of the Minister of Mines, Container 11, RG 13-1-0-204, P.T. Kelly to R.L. Stevenson, 19 February 1957 and P.T. Kelly to Eamon Park, 15 February 1957. The unions made several recommendations in addition to joint health and safety committees. Kelly rejected each of them on precisely the advice given him by the OMA.

<sup>35</sup> Dieter Grant Hogaboam, "Compensation and Control: Silicosis in the Ontario Hardrock Mining Industry, 1921-1975," (MA thesis, Queen's University, 1997), 145.

union's view, the uranium operators had sacrificed safety for profit in their rush to fulfill their contracts with Eldorado. The union had come across an industry-conducted report on dust exposure at Consolidated Denison Mines from May and June 1957, showing that workers there were exposed to dust concentrations sixteen times higher than the OMA's safety standards.<sup>36</sup> In 1957, ten Elliot Lake mineworkers were killed on the job. In early 1958, there were again several fatalities. After the union had pressed Prime Minister John Diefenbaker to strike a Royal Commission in April, Ontario Minister of Mines Wilf Spooner agreed to launch a special committee in May 1958. By this time, the death count for the year had reached twelve.

Consisting of Dr. R.G.K. Morrison of McGill University, Dr. A.V. Corlett of Queen's University and Dr. H.R. Rice of the University of Toronto, the committee was appointed "to study and report on the accident situation in the Elliot Lake district and on the mining methods employed at the mines there." In light of the several deaths caused by "fall of rock" and the mines' introduction of new, "trackless haulage" technologies, the committee was asked to give attention to ground support and underground transportation. Yet, the terms of reference excluded questions of dust control and radiation. The committee was tasked with making any recommendations that might improve the mines' safety performances.<sup>37</sup>

During the summer of 1958, the committee visited the Elliot Lake area, inspected the area's underground and surface operations and held discussions with both management and labour. The committee received seven briefs, including two from unions, four from the uranium operators and one from the OMA. The industry's briefs offer a clear illustration of the companies' strategies to minimize government control and to externalize the costs of safety. The

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<sup>36</sup> Ontario. Special Committee on Mining Practices at Elliot Lake, *Report of the Special Committee on Mining Practices at Elliot Lake, Vol. 1. Accidents and Related Representations* (Toronto: Department of Mines, Bulletin 155, 1959), 82.

<sup>37</sup> *Ibid.*, v.

mining industry made two broad claims: First, management accorded tremendous care to its responsibility for ensuring safe operations and was well aware of the best methods for doing so; and, second, the majority of accidents were the result of “unsafe acts,” rather than “unsafe conditions.”

The brief submitted by Rio Tinto Management Services Limited was typical in this respect. Rio Tinto highlighted its several commitments to worker safety. The company maintained an objective of “frequency zero for accidents and industrial diseases.”<sup>38</sup> It hired leading experts in ventilation to ensure that airborne radioactivity was kept below internationally recognized standards. Even its smallest mines were staffed with their own safety and first-aid directors, inspectors and supervisors. New miners went through several safety training exercises before commencing work, and were paired with their experienced colleagues to learn good habits. The company publicized its accident prevention programs through its internal magazine, workplace posters, radio broadcasts and educational films.

Rio Tinto was at pains to deflect responsibility for the accidents that did occur on its properties and in the Elliot Lake area more generally, emphasizing workers’ personal attitudes towards safety. As Rio Tinto had it, mining was a hazardous occupation unless workers exercised diligence. Yet, carelessness and recklessness were endemic in the frontier district of Elliot Lake, which had attracted any number of “undesirable persons.” As Rio Tinto put it, “Unfortunately we still have in the district too many workers who have little regard for the safety of themselves and others and for equipment and property. This is confirmed by numerous

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<sup>38</sup> Ibid, 102. The seven briefs submitted to the committee were attached in “Appendix B” of the final report.

automobile accidents, acts of violence, and difficulties of police authorities in maintaining law and order.”<sup>39</sup> In the company’s view,

Every accident has an element of carelessness, and most are completely the result of carelessness. An organization has to be built that protects the workers in spite of themselves. This requires a long drawn-out safety program with a high degree of organization and dissemination of data and attitudes down through the supervisors to the workers. It also requires the building of strict discipline.<sup>40</sup>

The company could bear no responsibility even for “fall of rock” or “fall of loose,” for, as the brief explained, no fatal injury could be attributed to such cause when workers had properly installed rock-bolts to control the loose ground. For its part, Denison Mines defended its rock-bolting practices, which the company had devised in collaboration with one of the techniques’ “fathers, [an expert] from a prominent company in the United States of America.” From Denison’s point of view, the problem was that workers did not always secure the bolts to their required torque. To ensure better practice in future, Denison planned “to be very severe for neglect both on the supervisory and workers’ level.”<sup>41</sup> Denison also complained of the area’s high labour turnover, the shortage of skilled miners and the fact that many miners had simply lied about their experience in their job applications.

Other factors, the industry suggested, contributed to the area’s “accident proneness,” as Rio Tinto President Robert Winters termed it. In a speech to the OMA’s annual gathering in Muskoka in June 1958, Winters stressed the anomalies in Elliot Lake that had made accident prevention challenging. The type of mineral deposit in the Elliot Lake area was “relatively new to Canadian mining exploration,” and operators simply needed time to adjust. The area suffered from a high labour turnover, and skilled miners were in short supply. That a large proportion of

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<sup>39</sup> Ibid, 108. The “undesirable persons” was a reference to a comment made by Ontario Attorney General Kelso Roberts, explaining his decision to send a detachment of the Ontario Provincial Police to the area.

<sup>40</sup> Ibid, 108.

<sup>41</sup> Ibid, 121.

the workforce spoke neither English nor French compounded the difficulties associated with proper safety training. Moreover, the uranium operators were under “extraordinary pressure ... to comply with the rigid requirements of the ‘crash’ development programmes.” With normal operations in place, Winters suggested, the accident rate was sure to decline. Thus, while Winters welcomed the appointment of the special committee, he left no doubt as to where ultimate authority lay: “we as entrepreneurs, under the free enterprise system, have the primary responsibility for the safety of miners and I can assure you that we are actively engaged in meeting and overcoming these problems of safety ourselves.”<sup>42</sup>

In its brief, the OMA took a broader view than the situation at Elliot Lake, and sought to defend the system of self-regulation embedded in the *Mining Act*. Its aim was twofold: to thwart the unions’ calls for greater participation in managing OHS problems, and to pre-empt any recommendation for greater government intervention. The OMA’s attitude toward the responsibility for enforcing mine operating rules was unequivocal: It was management’s alone. Referencing section 161(4) of the *Mining Act*, which established management’s unilateral responsibility for “control, management and direction of the mine or works,” the OMA wrote: “Mine management has accepted this responsibility and in its experience this responsibility cannot be delegated nor can it be shared with a union or with any other person or organization.” The OMA dismissed union calls for joint health and safety committees as unions were ill-suited for carrying out inspections of operations, even if several collective agreements had made provision for such. Because union members’ interest was in supporting and upholding their

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<sup>42</sup> AO, RG 13-1 Correspondence of the Minister of Mines, Container 17, RG 13-1-0-284, Robert Winters, “Address Delivered to Ontario Mining Association, Muskoka,” June 16, 1958. Winters was the federal Minister of Resources and Development in the Liberal government of Louis St. Laurent. He returned to politics in 1966 and served as Minister of Trade and Commerce under Prime Minister Lester Pearson. In his account of Canadian politics in the 1960s, *The Distemper of our Times*, Peter C. Newman described Winters as “an ultra-right-wing Bay Street tycoon.” (Winnipeg: Greywood Publishing, 1968), 86.

“fellow brothers at all times” union inspectors would focus their efforts not on the “human failings” – responsible, the OMA claimed, for 96 percent of accidents – but “mechanical failings,” responsible only for the remaining four percent.<sup>43</sup>

The Association reassured the commissioners that while the history of mining in Ontario was largely free of major disasters, those few that had occurred were met with vigorous remedial action. Elliot Lake would prove no different. Indeed, the OMA argued, the consistent reduction in the industry’s fatality rates over the years was the product of nothing other than the companies’ diligent commitment to enhancing the safety of their production processes: “The improvements in practice [introduced] were largely developed by industry itself and with a minimum of interference by government agencies.” As the OMA explained, the *Mining Act’s* extensive list of rules and regulations reflected practices the companies had initiated on their own accord: “changes in legislation which arose ... were largely confined to a recognition of practices already in general use in mines.”<sup>44</sup>

Much like the individual company briefs, the OMA extolled the virtues of its various safety training endeavours and highlighted the challenges involved in maintaining safe conditions for workmen, “in spite of themselves.” As the Association put it, “Men generally, and young men in particular, tend to be somewhat dare-devilish in nature and to have some measure of disregard for hazards which may cause bodily injury.” It was for this reason that the OMA and its sister organization, the MAPAO, had launched a “continuous campaign against occupational accidents.” In light of the industry’s demonstrated commitment to safety, not to mention the improvements that had already been made in Elliot Lake on a voluntary basis, the OMA offered the Committee a clear conclusion: “It is trusted that out of this experience at Elliot Lake no

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<sup>43</sup> *Report of the Special Committee on Mining Practices at Elliot Lake*, 125.

<sup>44</sup> *Ibid*, 124.

recommendation and no changes in any legislation will be deemed necessary which will, in any way, hamper or interfere with Management's responsibility to conduct mining operations in a safe manner."<sup>45</sup>

Despite the animosity between them, the two mineworkers' unions submitted essentially similar briefs. Both Mine Mill and the Steelworkers questioned management's rhetorical commitment to safety and challenged the industry's conception of its unilateral responsibility over the matter. In the unions' view, it was clear that management had designed production processes not on the basis of safety, but on the basis of cost-efficiency. As Mine Mill Eastern Executive Board Member Ray Stevenson put it, "It is our contention that the primary concern of management has been with meeting of contract production requirements, or more properly, production schedules, and that the safety and well-being of the men has come a poor second."<sup>46</sup> Both unions pointed to several areas of concern: Rock bolting, while far more cost effective than square set timbering, was an inadequate method of ground control, particularly in permanent haulage ways; management had failed to provide proper safety instruction to either supervisory or general staff; the introduction of trackless, mobile equipment had created a series of hazards, as workmen were not given adequate instruction on their proper use, and the vehicles lacked proper brakes for stopping on an incline; haulage ways were too large, creating ground control problems, while their use as travel ways for miners exacerbated the risk of accidents.

Both unions made several specific recommendations in relation to these particular hazards, but, more importantly, they reiterated their demand for the right to participate in the management of safety policy. Mine Mill took the careless worker theory head on, rejecting management's claims about the "carelessness" and "inexperience" of the workforce as a

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<sup>45</sup> Ibid, 126-131.

<sup>46</sup> Ibid, 85.

“specious argument.” It was simply an attempt by management “to evade its responsibility by pointing in other directions.” As it had in the past, Mine Mill demanded that miners be certified as a skilled trade, and the unions be granted the right to participate in joint safety committees. As the union explained,

[o]ur point of departure, different from management’s, is not towards the fulfilling of quotas of production, although we recognize the importance of this, but is based on the assumption that the protection of the lives, limbs and health of the men on the job comes first. We believe that without the recognition of this and without the enthusiastic support and participation of men on the job no safety program can succeed as it should.<sup>47</sup>

The Steelworkers, too, demanded that unions must be accepted as “equal partners” in safety.<sup>48</sup>

Although composed of independent experts, the Commission was deeply influenced by the prevailing ideology regarding the cause of accidents, acceptable levels of risk and managerial authority over production. The final report contained an exhaustive overview of the accident situation in Elliot Lake, comparing the district’s record to those of Ontario’s more established mining areas. In the first eight months of 1958, Elliot Lake mines registered far greater compensable injuries per million “man-hours” as compared to the provincial industry average.<sup>49</sup> Since 1955, fatal accidents had also been more frequent in Elliot Lake, greater than double the industry average. Moreover, the number of fatalities in Elliot Lake was disproportionate to the size of its workforce. While the area’s mines accounted for only nine percent of the provincial mining workforce, they accounted for 20 percent of the industry’s fatalities, and 25 percent of its fatalities from “fall of rock.” Nevertheless, in the Commission’s view, these detailed statistical analyses revealed a silver lining. The Commissioners compared accident frequencies with several variables – age grouping and previous experience of the workforce, housing and

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<sup>47</sup> Ibid, 86.

<sup>48</sup> Ibid, 93.

<sup>49</sup> Ibid, 7, Table II.



linguistic characteristics, mine depth, operating experience and milling capacity – and found only two correlations, namely operating experience and milling capacity. That is, the highest accident frequencies had occurred in the early stages of operations, “in the period between milling capacity becoming available and the stabilization of manpower and outputs.”<sup>50</sup> And, for the area as a whole, there was a “decreasing accident incidence with increasing man-hours worked – in other words, with experience.”<sup>51</sup>

The Commissioners stressed the several anomalies that had shaped Elliot Lake’s accident record. In a sense, they argued, it was “inevitable” that a development program as large and intensive as that which had occurred in Elliot Lake would result in a high number of accidents.<sup>52</sup> Moreover, there was no doubt that the extraordinary pressure to meet the delivery requirements in the operators’ contracts with Eldorado Mining and Refining had strained safety programs. Failure to meet a delivery contract would result in its cancellation, while the companies’ large debt financing necessitated operating revenues to repay the interest charges on their loans. Yet, the Commission rejected the unions’ contention that operators had put profit before safety, writing, “it would be wrong to infer that the companies balanced profits against accidents when the reverse was actually the case, and 65 percent of the compensable accidents were due to unsafe acts.”<sup>53</sup> Much as the industry contended, the Commissioners suggested that “social attitudes” prevalent in the region had contributed much to the area’s accident record. The several fatalities associated with roads, highways and construction – which accounted for 45 percent of the area’s total – were the clearest reflection of this attitude.

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<sup>50</sup> Ibid, 59.

<sup>51</sup> Ibid, 30.

<sup>52</sup> Ibid, 4.

<sup>53</sup> Ibid, 56.

The Commissioners also endorsed the industry's view that management alone was "morally, legally and financially responsible for accidents to workmen directly under its control and must reserve to itself the necessary authority to carry out that responsibility." This was not to say that unions had no role in contributing to safer workplaces. Yet, the commissioners rejected the unions' calls for legislated joint health and safety committees, even if management and unions "[stood] on common ground" in safety. Such committees, the Commissioners suggested, were "certainly not a matter for legislation or recommendations by this Committee." There were more suitable ways than legislated safety committees for unions to promote their members' well-being. Here, too, the Committee's attachment to the reigning ideology was clear, for promoting safety was largely a matter of education and discipline of the workforce, not the design of work processes. As the report put it, "the unions can assume a moral responsibility for the education of their members in safe practices and also for disciplining them for unsafe acts, which throughout industry represents a high proportion of all accidents."<sup>54</sup>

Ultimately, the Commission made several recommendations, most of which conformed to the OMA's request to not "hamper or interfere with Management's responsibility to conduct mining operations in a safe manner." The Commission advised management to pay particular attention to several areas of concern, including the provision of training facilities for new employees, the issuance of safety instructions to the workforce and the competence of supervisory staff in matters of safety, as well as many technical considerations. There appears to have been little push back from the industry on these particulars, though one recommendation no doubt went unheeded. The Commission's suggestion to publish trends in radiation and dust counts in the Department of Mine's annual report was not implemented.

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<sup>54</sup> Ibid, 58.

## ***Occupational Health***

Much as industry dominated the agenda around accidents, so too did it dominate the agenda around occupational health and disease. Occupational health raised a different set of challenges from management's perspective, for unlike "accidents," prevalent occupational diseases in mining – silicosis, lung and nasal cancer, deafness and Raynaud's syndrome, among others – could not simply be ascribed to careless workers. Generated as a result of conditions in the workplace environment, occupational diseases were clearly beyond the control of individual workers. And, as Robert Sass has pointed out, if the structure of capitalist political economies incentivizes managers to privilege cost savings over worker safety, "management has even less of an incentive to moderate the negative health effects flowing from the workplace, since very few of the costs associated with industrial illness are absorbed by the industry that produces them."<sup>55</sup> In general, industry had two strategies to manage the political aspects of occupational health hazards: downplaying the severity of the hazards workers faced, and controlling workers' access to information. In both these strategies, the Department of Mines supported industry.

The *Mining Act* was a unique body of law in that, unlike other health and safety legislation, it was not accompanied by an associated set of regulations made by order-in-council. Instead, the Mines Engineering Branch's (MEB) Chief Engineer had the authority to issue "codes of requirements," interpretations "of general requirements of the Mining Act in the form of specific practices acceptable to the chief engineer and to the industry."<sup>56</sup> Like the *Act*'s technical requirements, such codes were adopted in consultation with industry representatives,

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<sup>55</sup> Robert Sass, "The underdevelopment of occupational health and safety in Canada," in William Leiss (ed.), *Ecology versus Politics in Canada* (Toronto: University of Toronto Press, 1979), 73.

<sup>56</sup> *Report of the Royal Commission on the Health and Safety of Workers in Mines*, 37.

and, at times, representatives from the Department of Health and outside experts. The codes did not have the force of law. A review of the industry and the MEB's approach to managing silica dust and radiation, two of the most important occupational health hazards faced by mineworkers, offers an illustrative example of the industry's power to shape policy.

Although silicosis had been recognized as a compensable disease by the Workers' Compensation Board as early as 1926, and the *Mining Act* had mandated annual lung examinations for miners since that time, the MEB did not once issue a code of requirements concerning the control of silica dust. The *Mining Act* stipulated that "ventilation in every mine shall be such that air in all its workings ... shall be free from dangerous amounts of noxious impurities."<sup>57</sup> Yet, industry, rather than government, effectively determined what constituted such "dangerous amounts." Industry began concerted efforts to tackle the dust problem with the formation of the MAPAO in 1930. By the mid-1950s, the MAPAO had developed a set of guidelines, according to which a dust count of 100 to 300 particles per cubic centimetre was "good," readings of 500 to 800 were "fair," while counts over 1000 were "poor." These guidelines were based on three sources: "best practices" in Ontario gold mines, a review of practices in effect in South Africa, and an OMA study of the record of the development of silicosis in Ontario. In their periodic inspections, the MEB's inspectors "tacitly accepted" the MAPAO's guidelines as the basis for their recommendations.<sup>58</sup> Although the Elliot Lake area's ores contained far greater amounts of free silica than the average Ontario gold mine – free silica in the Elliot Lake mines ranged from 60 to 70 percent while the average gold mine ranged from fifteen to 35 percent – neither industry nor government initially adopted new guidelines adapted for this context.

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<sup>57</sup> Ibid, 36.

<sup>58</sup> Ibid, 40.

It was not until after the development of the uranium mines in the mid-1950s that an industry-wide dust survey was undertaken. In his review of “dust and the responsibility system” in the *Report of the Royal Commission on the Health and Safety of Workers in Mines*, Commission Chair James Ham established the series of events that led to these surveys. Meeting to discuss their concerns about the potential combined hazards of dust and radiation exposure in the newly developing uranium mines, industry and government officials agreed that the MAPAO should carry out an initial survey of conditions in the Elliot Lake and Bancroft area mines. Industry representatives expressed clear concerns about public perceptions of having their own association conduct the measurements, and sought assurances from the Department of Mines that it would offer industry its support should “a question [be] ... raised in the House or in another manner” about the survey’s validity. The Department’s representative responded that “his Department would have full confidence in the work of the Association and would do its best to support the work in public.”<sup>59</sup>

The results of these initial surveys prompted Chief Inspector W.E. Bawden<sup>60</sup> to issue a code of requirements calling for the measurement of dust and radiation in uranium mines on a quarterly basis. In drafting this code, Bawden worked closely with Rio Tinto ventilation engineer Reuben Yourt and the MAPAO safety director C.S. Gibson. While the code required uranium mine operators to submit their reports to the Department of Mines, it did not establish a standard of exposure for either silica or radiation. In fact, for Bawden, the code was designed less to enforce optimal standards than it was “to furnish much valuable information in arriving at the required air volume and standards necessary for the protection persons in addition to the good

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<sup>59</sup> Ibid, 41.

<sup>60</sup> Prior to his appointment as Chief Inspector, Bawden had worked at Inco’s Frood safety department. See “Frood,” *Inco Triangle*, March 1937.

work already done by the Mines Accident Prevention Association. The records will also be proof of the effort made by the operators in this direction.”<sup>61</sup>

Similarly, the Department delegated responsibility to industry for conducting dust surveys in the province’s non-uranium mines. By the late 1950s, public concern about miners’ health had been raised by the discovery of significantly higher incidences of lung cancer among fluorspar miners in Newfoundland. Eventually, the miners’ ill health was linked to their exposure to radiation underground. Studies conducted on non-uranium miners in Ontario revealed similar concerns. While in the period 1925 to 1959 cancer rates of all types among miners were lower than expected, cancers of the lung, bronchus and trachea were higher. Moreover, as OMA Executive Director J. Beattie wrote in a confidential memo to his fellow directors, “[t]he incidence rate for cancer is mounting year by year. In Ontario, for males 45 years of age and over it is now doubling every ten years.”<sup>62</sup> In light of these findings, officials in the departments of Health and Mines were keen to know more about the presence or absence of radiation in Ontario’s mines. Beattie suggested to Bawden that such a survey should be carried out under the auspices of the OMA, to which Bawden agreed. Both Health and Mines would receive copies of the OMA’s surveys for “their confidential information,” and the government departments agreed that should they receive any request for information, they would “endeavour to relate survey data to mining area rather than to individual mines.”<sup>63</sup>

The MEB did not issue a code of requirements establishing a standard for exposure to radon and its daughters until the end of 1967, the code taking effect in 1968. Prior to this, both

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<sup>61</sup> AO, F 1352-5, Records of Ontario Mining Association Committees, F 1352-5-0-12, W.E. Bawden to J. Beattie, 16 January 1957.

<sup>62</sup> AO, F 1352-5, Records of Ontario Mining Association Committees, F 1352-5-0-13.2, J. Beattie to Directors of the Ontario Mining Association, 30 November 1960

<sup>63</sup> Ibid.

the MAPAO and the MEB “appeared” to have endorsed the International Commission on Radiological Protection’s (ICRP) recommendation to limit exposure to radon and its daughters to 100 picocuries per litre of air, or 12 “working level months” (WLM) per year as guidelines in 1957.<sup>64</sup>

A decision by the ICRP in late 1959 to reduce by a factor of three its recommendation was the cause of some concern among industry and government officials. In late 1960, Bawden convened an “informal conference on airborne radioactivity in uranium mines,” inviting representatives from the US Public Health Service, Atomic Energy of Canada Limited, Eldorado Mining and Refining, the Canadian Department of National Health and Welfare, the OMA as well as the departments of Mines and Health to discuss whether there was an “urgent need” to revise Ontario’s code of requirements in light of the ICRP’s changes. In a report drawn up for the meeting’s participants, the problem was stated rather bluntly: “it has been a struggle to keep daughter concentrations, in certain types of location, close to the target level. What expense or effort would be involved in meeting a new, lower target is difficult to say at this point, but it might be substantial.” Government officials were also concerned about the impact of a downward revision on the mindset of workers, unions and the public:

It is of the nature of things that a tightening of radiation levels will cause a stir among occupational groups where a similar revision of permissible exposures to mercury and lead would pass unnoticed. A workman may feel cheated or even endangered if he has in the past been exposed to levels which are now suddenly considered too high. Neither the Department of Mines nor the Department of Health desire to withhold information, nor will knowingly place workers in jeopardy, but they feel that there is more to this question than meets the eye. A uniform policy decision would be of benefit to all concerned.<sup>65</sup>

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<sup>64</sup> *Report of the Royal Commission on the Health and Safety of Workers in Mines*, 88-9.

<sup>65</sup> AO, F 1352-5, Records of Ontario Mining Association Committees, F 1352-5-0-12, “Informal Conference on Airborne Radioactivity in Uranium Mines,” 3 November 1960.

While, as the Ham Commission showed, industry and government arrived at “an informal consensus that it was desirable to shift to the lower guideline over a period five years,”<sup>66</sup> ultimately, it was not until 1975 that the revised standard was adopted. In the meantime, industry publicly questioned the validity of the ICRP’s revisions and maintained its strategy of downplaying the hazards posed by the combination of radiation and silica in the uranium mines. A few months after the ICRP’s revision was announced, Rio Tinto’s G.R. Yourt gave a speech to the Annual Mines Ministers Conference in October 1960, reassuring the audience that Ontario’s uranium operators followed stringent protocols to minimize exposure to health hazards. As Yourt had it, the OMA’s uranium advisory council’s extensive studies into the potential hazards stemming from the combined effects of exposure to silica and radiation toward the incidence of either lung cancer or silicosis had “resulted in no suggestion that there may be a relation.” As for the ICRP’s recently revised recommendation, it had “not fully been interpreted, appear[ed] to have a generous safety factor, and [was] based on an exposure of more than 40 hours per week for 50 years, which [was] far above the probable exposure of miners in Ontario uranium mines.”<sup>67</sup>

Both industry and government tightly restricted workers’ access to information about conditions in their workplaces. The results of the industry’s quarterly dust and radiation surveys were not made available to either the workforce or the public more broadly. Industry officials reacted with hostility to the potential dissemination of information that undermined their narrative about the safety of their operations. For example, John Kostiuk, president of Denison Mines, vehemently opposed the distribution of the U.S. Department of Health, Education and

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<sup>66</sup> *Report of the Royal Commission on the Health and Safety of Workers in Mines*, 89.

<sup>67</sup> AO, F 1352-5, Records of Ontario Mining Association Committees, F 1352-5-0-13.2, G.R. Yourt, “Control of Radiation in Ontario Uranium Mines, Presented at 17<sup>th</sup> Annual Mines Ministers Conference Chateau Frontenac, Quebec City, 17-19 October 1960,” 13-4.



Welfare's pamphlet "Uranium Miners – Your Ounce of Prevention" among his company's workforce as "This is not a booklet that would encourage a young man to go to mining. It appears that they are selling the dangers of mining instead of instructing how these dangers are being overcome by the operators."<sup>68</sup> Similarly, George Jewett – then in the employ of Rio Tinto, but later Executive Coordinator of the Ministry of Natural Resources' Mines Division – cautioned Mr. G. Gerow, Secretary of the Institute of Mining & Metallurgy, against publishing a student's paper on radon gas and ventilation in the Institute's journal, even if it was "well written, well presented, and certainly ... of general interest." Writing on behalf of members of the OMA's Uranium Mining Committee, Jewett felt publishing the paper without "the inclusion of full information" would throw the Blind River area "into bad light."<sup>69</sup> The Mines Department shared the industry's attitude. Responding to Mine Mill's recommendation that dust measurements be made available to workers, Bawden advised Mines Minister Spooner, "To publicize all dust counts would create endless bickering by ignorant persons which would do more harm than good, in that, it would tend to avoid the taking of such counts."<sup>70</sup>

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<sup>68</sup> AO, F 1352-5, Records of Ontario Mining Association Committees, F 1352-5-0-13.2, J. Kostiuk to J. Beattie, 3 May 1960.

<sup>69</sup> AO, F 1352-5, Records of Ontario Mining Association Committees, F 1352-5-0-12, G.A. Jewett to Mr. G. Gerow, 4 March 1957.

<sup>70</sup> AO, RG 13-1, Correspondence of the Minister of Mines, RG 13-1-0-257, Mines Inspection re: Accidents, 1958, W.E. Bawden to Wilf Spooner, 6 May 1958.

## **The Rise of the OHS Movement and the Making of the *Occupational Health and Safety Act* (1965-1978)**

As the preceding section showed, the mining industry dominated the OHS agenda well into the 1960s, consistently thwarting unions' proposals for greater worker participation in managing OHS problems. As late as 1966, the Select Committee on Mining reported that the requirements of the *Mining Act* provided "adequate coverage" to avoid accidents and injuries.<sup>71</sup> Yet, soon, the industry was on the defensive. By the end of the decade, the labour movement had adopted a newfound activism towards OHS, turning their once "sporadic" efforts into a sustained militancy.<sup>72</sup> Under constant pressure from the labour movement and its New Democratic Party allies in the provincial Legislature, the industry's credibility suffered.

This section analyzes the impact of the rise of the OHS movement from the late 1960s until the enactment of the *Occupational Health and Safety Act* in 1978. It shows how sustained union activism forced the government to respond to its demands, as the province overhauled its health and safety legislation. It also focuses on shifting public attitudes about health and safety hazards on the job. Amidst a booming economy, the introduction of new technologies and chemicals in workplaces sparked growing concern about their deleterious impacts on worker health, not only among unions but also among important segments of public opinion. The 1976 release of the *Report of the Royal Commission on the Health and Safety of Workers in Mines* undermined public confidence in both industry and government, intensifying pressure for reform. This section also shows that institutional factors contributed to the ultimate policy outcome, as

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<sup>71</sup> Ontario, *Report of the Select Committee on Mining of the Ontario Legislature* (1966), 25.

<sup>72</sup> Robert Storey, "Activism and The Making of Occupational Health and Safety Law in Ontario, 1960s-1980," *Policy and Practice in Health and Safety*, 3 (2005), 44.

the NDP leveraged its status as the official opposition to wrest concessions from a reluctant government.

Industry success in shaping OHS policy waned during this time, but its defeat was not absolute. The *OHS*A's inclusion of mandatory joint labour-management health and safety committees (JHSC's), workers' right to refuse unsafe work without fear of discipline and statutory exposure standards to hazardous substances amounted to the industry's most important losses. Yet, as the following sections will show, industry lobbying watered down the severity of the province's standards in respect of hazardous substances, while the Ministry of Labour's subsequent enforcement regime proved favourable to industry. The section begins with a brief review of the rise of the OHS movement.

### ***The Rise of the OHS Movement***

The emergence of the occupational health and safety movement had complex origins, reflecting, in part, a growing anti-authoritarianism, a widening discontent with work and mounting concerns about the deleterious impact of new technologies on human health and the environment. For Nicholas Ashford, increasing attention to OHS reflected not only the increasing severity of workplace accidents and fatalities, but also changes in the composition of the workforce. Younger, better educated workers, earning higher wages than their predecessors, reconsidered their goals and elevated health and safety among unions' bargaining priorities.<sup>73</sup> Concerns about OHS were hardly restricted to Ontario's mines. Across the industrialized world, pressure for

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<sup>73</sup> Nicholas Askounes Ashford, *Crisis in the Workplace: Occupational Disease and Injury: A Report to the Ford Foundation* (Cambridge: MIT Press, 1976), 46-7. Ashford's research focused on the United States, but there were notable increases in Canadian accident and fatalities rates as well. See Vivienne Walters, "Occupational health and safety legislation in Ontario: an analysis of its origins and content," *Canadian Review of Sociology & Anthropology*, 20 (1983), 418.

reform mounted. The Nixon administration's signing into law of the Federal Coal Mining Health and Safety Act of 1969 and the Occupational Safety and Health Act of 1970 in the United States, the 1972 launch of the Committee of Inquiry on Safety and Health at Work (the Robens Committee) in the United Kingdom and the 1976 publication of the Ford Foundation-commissioned *Crisis in the Workplace: Occupational Disease and Injury* signaled similar patterns elsewhere.

In North America, the United Steelworkers of America deserve much of the credit for mobilizing the OHS movement. As Charles Noble has shown, leadership on the issue came from the very top of the union hierarchy. Faced with growing discontent from within its own ranks, the union's Pittsburgh leadership viewed promoting OHS and other "quality of life" concerns as effective ways of rebuilding rank-and-file support. Union President I.W. Abel played an important role in putting OHS and other environmental concerns on the both the union's and the public agenda. Under Abel's leadership, the USWA held conferences on air pollution, urged its members to become involved in the environmental movement and encouraged its locals to prioritize OHS in their collective bargaining campaigns.<sup>74</sup>

Seen in that light, it is perhaps unsurprising that the OHS movement emerged in the Sudbury area, home to the largest USWA local in Canada. In labour studies scholar Robert Storey's view, while OHS activism had marked miners' unions in the 1950s, in the 1960s the unions' "sporadic" actions "took on a more patterned character."<sup>75</sup> Activism took several forms. Unions teamed with researchers to overcome employers' monopoly on scientific knowledge about the health effects of exposure to toxic substances. They lobbied policymakers for

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<sup>74</sup> Charles Noble, *Liberalism at Work: The Rise and Fall of OSHA* (Philadelphia: Temple University Press, 1986), 75-76.

<sup>75</sup> Storey, "Activism and The Making of Occupational Health and Safety Law in Ontario," 44.

regulatory change. They formed health and safety committees at the local level and formulated their own codes of safe work practices. In some cases, they engaged in illegal “wildcat” strikes to protest their poor working conditions.<sup>76</sup>

Initially, attention focused on conditions in Inco’s Copper Cliff smelter, making it difficult to disentangle the early OHS movement from the emergent environmental movement. In its efforts to improve the plant’s working conditions, USWA Local 6500 allied with Sudbury-area business owners and conservationists who opposed Inco’s external pollution.<sup>77</sup> When the Air Management Branch refused to publish its SO<sub>2</sub> readings from the smelter, Local 6500’s safety committee responded by installing a monitor on the smelter’s roof and publicizing its readings.<sup>78</sup> In addition, workers covertly tested gas levels in the plant, recording carbon monoxide levels 24 times and SO<sub>2</sub> levels eight times higher than the MEB’s guidelines.<sup>79</sup> The union publicized the plant’s poor conditions, surreptitiously inviting journalist Mark Starowicz to tour the plant and record his impressions for a broader audience.<sup>80</sup>

Following the 1967 provincial election, which returned 20 NDP MPPs, the union drew on its close relations with the party, pressuring not only Inco but also the provincial government. Yet, the Conservative government continued to defer to Inco. In 1970, Minister of Northern Affairs and Mines Leo Bernier refused the union’s request to issue a ministerial order allowing workers to exit the plant should gas conditions be hazardous. Similarly, the NDP’s Sudbury East MPP Eli Martel’s proposed amendment to the *Mining Act* for the same purpose was defeated.<sup>81</sup>

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<sup>76</sup> Laurel Sefton MacDowell, “The Elliot Lake Uranium Miners’ Battle to Gain Occupational Health and Safety Improvements, 1950-1980,” *Labour/Le Travail* 69 (2012), 91-118.

<sup>77</sup> Brian Walker, “The Politics of Occupational Health and Safety: Ontario’s Mine Workers and Government Regulation of Environmental Hazards at the Workplace, 1965-1978,” (PhD diss, University of Toronto,) 1988, 91.

<sup>78</sup> *Ibid*, 96.

<sup>79</sup> *Ibid*, 88.

<sup>80</sup> Mark Starowicz, “Company claims charges ‘impossible’: Inco workers say they’re breathing poison,” *Toronto Star*, 10 December 1968.

<sup>81</sup> Walker, “The Politics of Occupational Health and Safety,” 95.

A September 1970 letter from then Minister of Mines Alan Lawrence to the Local proved particularly revealing. In it, Lawrence dismissed the health and safety committee's complaints about hazardous gas conditions in the smelter as unfounded. Yet, the following year, NDP MPP Morton Shulman revealed to the Legislature that Lawrence's letter was an essentially verbatim rewriting of a letter Inco had written to the MEB's district engineer.<sup>82</sup> The MEB had not carried out its own investigation into conditions, but instead relied on the company's findings.

Following the construction of the Superstack and the modernization of the Copper Cliff smelter in 1972, gas conditions in the plant improved markedly. While Local 6500 continued its OHS campaign, the movement's centre of gravity shifted to Elliot Lake, where, with the signing of contracts with Spanish and Japanese utilities, the uranium mines were booming again.<sup>83</sup> Here, grievances centred on the industry and government's persistent refusal to inform workers about environmental conditions in the mines. Concerns about the combined effect of exposure to radiation and silica were also pronounced, and, given the companies' long-standing inability to meet the industry's own self-defined exposure standards, justified.

In a context of growing labour shortages, activists like USWA Environmental Representative Paul Falkowski urged prospective workers to consider their health before signing up to work in the uranium mines, drawing the ire not only of the mine operators, but of many Elliot Lake residents whose livelihood depended on the mines.<sup>84</sup> In 1973, the USWA pressed the federal Ministry of Health to conduct health surveys on all 1,500 workers employed in the area's uranium industry. In response, the Ontario Ministry of Health agreed to survey 900 workers in a

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<sup>82</sup> Storey, "Activism and The Making of Occupational Health and Safety Law in Ontario," 44; Walker, "The Politics of Occupational Health and Safety," 97.

<sup>83</sup> Walker "The Politics of Occupational Health and Safety," 99.

<sup>84</sup> "The tortured future of Elliot Lake – by Lloyd Tataryn (Saturday Night, June, 1976)," *Republic of Mining*, posted March 28, 2011, <https://republicofmining.com/2011/03/28/the-tortured-future-of-elliott-lake-%E2%80%93-by-lloyd-tataryn-saturday-night-june-1976/>, (accessed 16 October 2019).

study of their respiratory health.<sup>85</sup> Notably, Ontario government officials had been aware of the emergence of a previously unknown form of pneumoconiosis (lung dust disease) among Elliot Lake's miners since 1966. In November 1970, the Minister of Mines had appointed a committee to investigate the problem, without informing the miners or their unions.<sup>86</sup> In fact, it was only when union representatives attended an international OHS conference in France that the USWA learned the government knew of the direct linkages between Elliot Lake workers' exposure to radon gas and silica and their ill health. According to the study, deaths from lung cancer among the area's uranium miners were three-times higher their expected rate.

Tensions reached a boiling point on April 18, 1974 when, protesting their poor working conditions, miners at Denison Mines staged a wildcat strike. Initially, the Conservative government downplayed the strikers' health concerns, suggesting they had struck "over demands for a 15-cent-an-hour pay increase."<sup>87</sup> In contrast, the NDP offered the strikers its support, organizing mass meetings in Elliot Lake, conducting interviews with affected miners and bringing their grievances and demands to the Legislature. In a moving speech to the Legislature's Standing Committee on Resources Development, NDP Leader Stephen Lewis accused the Ministry of Natural Resources and the mining industry of "criminal negligence," and called for Minister Leo Bernier's resignation. Shortly thereafter, the Conservative government agreed to strike a Royal Commission to make a comprehensive study of the health and safety question in the mines.

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<sup>85</sup> Walker, "The Politics of Occupational Health and Safety," 136-7.

<sup>86</sup> Hogaboam, "Compensation and Control," 162. Hogaboam notes also that the committee recommended a thorough research programme, but its proposed study was never carried out.

<sup>87</sup> "Health and safety hazards at Denison mine exaggerated by strikers, Bernier decides," *Globe and Mail*, 26 April 1974.

***The Royal Commission on Health and Safety of Workers in Mines: Hearings, Final Report and Bill 139***

The government announced the striking of the Royal Commission to be chaired by University of Toronto engineering professor Dr. James Ham on June 6, 1974. The Commission's broad mandate was to "investigate all matters related to health and safety involved in the working conditions and working environments in mines in Ontario." As part of his inquiry, Ham visited nine mining communities, commissioned expert studies and heard testimony and received briefs from labour, industry, government officials and health and safety experts.

Briefs to the Royal Commission were, in many respects, predictable. Despite mounting negative publicity, the industry remained committed to the principles of industrial self-regulation. As OMA President Norman Wadge argued, "[t]he association believes the present approach to health and safety in this province is proper and basically sound and that the industry has made, and is continuing to make, substantial progress."<sup>88</sup> While it would later backtrack, the OMA made one surprising recommendation, suggesting that JHSC's should be mandatory at every workplace.

In its briefs, industry defended its safety record, deflected concerns about the scope and severity of workplace hazards and reiterated management's unilateral responsibility for enforcing standards. The industry saw little reason for legislative change. The first company to appear before the commission, the uranium mining company Rio Algom, offered only one recommendation in its 203-page brief: "to consider making certain safety and health practices legally mandatory for the miners."<sup>89</sup> Similarly, most of Inco's brief was dedicated to

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<sup>88</sup> Gerald Seniuk, "Brief to probe: Sick miners' smoking is queried by industry," *Globe and Mail*, 30 May 1975.

<sup>89</sup> Gerald Seniuk, "High dust and radiation levels prior to 1960: Mining industry's explanation of industrial disease outbreak challenged at public inquiry," *Globe and Mail*, 16 January 1975.



summarizing the company's various commitments to safety, from its comprehensive training programs to improvements in its reported injury statistics.<sup>90</sup>

The industry continued to downplay concerns about occupational health hazards. Despite admitting that radiation levels in their mines exceeded recommended standards, Denison Mines officials rejected alarm. According to company vice-president Mario DeBastiani, Denison continued to operate its mines in the early 1960s when both dust and radiation levels "were well above what the company itself considered acceptable," not because it was indifferent to workers' health, but because it lacked knowledge about the risk factors. Industry-backed experts supported DeBastiani's claims. Queen's University engineering professor and Denison consultant R.W. Thompkins challenged the validity of the recently amended radiation exposure limits. According to Thompkins, there was little evidentiary basis for the threshold limit values (TLVs), which he described as "off-the-shelf values" that had been "steadily reduced 'in spite of all the contrary evidence.'"<sup>91</sup>

Union representatives, individual mineworkers and their family members aired an extensive list of grievances, insinuating, as they had in the past, that both industry and government put profit ahead of worker health and safety. In the view of USW Local 6409 (Kirkland Lake) safety committee member William Reeze, the Mines Engineering Branch was inclined to the managerial viewpoint: "It has long been the contention that mining inspectors have been more representative of the mining companies than of the Mining Act."<sup>92</sup> For Local 6500's safety committee chairman Colin Lambert, the main function of the inspectorate was "to look for evidence that will find the company not guilty."<sup>93</sup> Unions offered severe criticisms of

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<sup>90</sup> "Inco doesn't reply to charges, stresses safety record, practices," *Globe and Mail*, 29 January 1975.

<sup>91</sup> Gerald Seniuk, "Denison mine radiation levels over limits, company admits," *Globe and Mail*, 17 January 1975.

<sup>92</sup> "Open-pit mine," *Toronto Star*, 4 February 1975.

<sup>93</sup> "Record 'like a wartime casualty list' cited in union criticism of Inco safety," *Globe and Mail*, 28 January 1975.

what they considered to be the industry's lax safety programs. Lambert could recall no time that a worker had failed to pass Inco's week-long safety training course.

Several workers presented briefs detailing the industry's poor working conditions. Inco miner Thomas Taylor described the challenges of working at depth, where temperatures ranged from 100 to 130 degrees Fahrenheit.<sup>94</sup> Chairman of Local 6500's sintering plant action committee Jean Gagnon testified that conditions in Inco's old sintering plant were "so bad there that some men assigned there 'just looked in and then just walked off the job.'"<sup>95</sup> Rosemary Speirs of the *Toronto Star* reported on Gus Frobel's appearance before the commission at Elliot Lake. Frobel, who had mined uranium for eleven years, was "totally disabled with lung cancer," and "told the commission he gets a Workmen's Compensation Board pension of only \$120 a week to support his family of four."<sup>96</sup> Another uranium mineworker, Origene Tellier, whose poor health had reduced him to 80 pounds, "was brought into the hall in a wheelchair by his wife Cecile to talk about the silicosis and arthritis which crippled him in 1969, after 13 years of uranium mining."<sup>97</sup>

USW District 6 Director Lynn Williams laid out the union's policy priorities in his 140-page brief. The union advocated for the separation of the Mines Engineering Branch from the Ministry of Natural Resources and the establishment of a new government agency dedicated to occupational health and safety. Williams reiterated the union's longstanding demand for the establishment of worker safety committees, with the power both to monitor workplace hazards – like dust and noise levels – and to participate in the formation of corporate safety policy. Additionally, the USW argued that workers ought to have the right to refuse work they deemed

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<sup>94</sup> "Miners question Inco at inquiry about heat, training and bonuses," *Globe and Mail*, 30 January 1975.

<sup>95</sup> "Record 'like a wartime casualty list' cited in union criticism of Inco safety," *Globe and Mail*, 28 January 1975.

<sup>96</sup> Rosemary Speirs, "Ailing miners appeal for help 'to live in dignity'," *Toronto Star*, 15 January 15, 1975.

<sup>97</sup> Ibid.

unsafe. Finally, Williams advocated a precautionary approach to the question of chemicals and compounds in the workplace, suggesting the law should prohibit their introduction until studies had proven that they were safe.<sup>98</sup> Earlier, USW national representative Ken Valentine had similarly called for legislation to enforce exposure limits to dangerous substances.<sup>99</sup>

The Ministry of Natural Resources' brief was perhaps the most surprising among the submissions. While, like the industry, the Ministry defended its strong record and reiterated its commitment to the principles of self-regulation, its brief departed from its earlier stance. Central to the Ministry's brief was Minister Bernier's promise to introduce a new mining code, inspired by the concept of industrial self-regulation as established by the 1972 Robens Report in the United Kingdom. Under the mining code, self-regulation, rather than external oversight, would remain the operating principle. Yet, unlike the past, unions would henceforth be invited "to participate fully in the making and monitoring of arrangements for their health and safety." Successful health and safety programs depended on "co-operation and mutual respect," they could not be treated as a bargaining tool. Concretely, Bernier proposed several specific changes. The new code would require employers to include worker representatives in the formulation of health and safety programs; to post their ventilation plans, and to inform workers of the amount of air reaching each section of the mine. It would also establish an "Ontario Mining Council," composed of equal representatives of labour, management, and officials from the ministries of health and natural resources. Finally, the code would allow the Ministry of Health to set standards of exposure to workplace hazards.

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<sup>98</sup> "Miners' union wants a ministry to handle safety," *Toronto Star*, 18 February 1975.

<sup>99</sup> Gerald Seniuk, "Outbreak of disease is 'a monstrous crime', mine safety probe told," *Globe and Mail*, 18 January 1975.

Yet, there are reasons to question the sincerity of the Ministry's seeming about-face. In fact, the Ministry hired a public relations consultant, Doug Scott of Scott & Withrow, to assist in crafting its message for the Ham Commission. Scott's strategy was divided into two main parts: a plan to develop "clear communication of the facts" "to respond to the anxieties at Elliot Lake," and a written draft for the Ministry's brief to the Ham Commission. The communication plan for Elliot Lake was extensive. It involved conducting on-site research and interviews with local leaders in media, churches and social service clubs; reaching out with personalized letters to each of the individual miners examined in the government's health study; purchasing full-page newspaper advertisements highlighting facts about silicosis, lung cancer and the Ministry of Health's special clinics; and purchasing additional newspaper advertisements to highlight the arrival of each new MEB engineer. These would include a "display ad about each man, showing a photograph of him so he will be recognised as he does his job." Further, the agency recommended, "including some direct quotes from this man; this will help people feel that they know him, and we are all more inclined to trust and co-operate with people we feel we know."<sup>100</sup> As for the brief to the Ham Commission, Scott's plan was equally detailed. Its basic outline was set out in a letter accompanying the initial draft:

the brief is intended to pre-empt much of the ground now occupied by our critics. This involves an admission of the central shortcoming of our policies to date in that they did not adequately involve the miners themselves in determination of questions of health and safety.

The Ministry has recognized this, and has clear forward policies to rectify it. In view of this, there is no reason not to make these admissions.

Because we are making sound changes, we will be able to emerge as 'reformers' while our critics remain merely critics.<sup>101</sup>

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<sup>100</sup> AO RG 1-526, Division of Mines Executive Director's files, Box 1, Ham Commission – Comments, "Proposed Agreement Between Ministry of Natural Resources and Scott & Withrow," 13 April 1975.

<sup>101</sup> AO RG 1-526, Division of Mines Executive Director's files, Box 1, Ham Commission – Occupational and Environmental Health – Royal Commission Part A, Doug Scott to George Jewett, 8 May 1975.

Other documents attest to the Ministry's lasting deference towards management and its dismissiveness of organized labour. MEB engineer W.A. Hoffman gave a report to McCrodan on the Ham Commission hearings in Thunder Bay and Sault Ste. Marie. For Hoffman, "The *brief of Noranda Mines, Geco Division* was an excellent brief and well presented by the manager." He described Algoma Ore's brief as a "short treatise." But when it came to workers' briefs, Hoffman's tone and language was different. One "old-time shaftman ... gave a rambling brief blaming management for most of the ills in the mining industry." Another "complained," while another "renewed his attack" against Steep Rock Iron Mines. Notably, the one worker who received praise from Hoffman was being considered for promotion to supervision.<sup>102</sup> The Mines Division's summary of the Ham Commission briefs was similar. If Dickenson Mines' brief was "excellent," one that "should be read in full," USW Local 6500 Health and Safety Chairman Colin Lambert's was a "tirade."<sup>103</sup>

The Royal Commission released its final report in August 1976. Ham's criticisms of the Ontario's health and safety legislation centred on the issues of accountability and openness. While the Mines Engineering Branch was ultimately responsible for the enforcement of OHS standards, the Ministry of Health's Occupational Health Division also played a limited and, for the most part, subordinate role in setting standards and monitoring health outcomes. To clarify these conflicting lines of responsibility, Ham recommended centralizing OHS responsibilities

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<sup>102</sup> AO RG 1-526, Division of Mines Executive Director's files, Box 1, Ham Commission – Letters Sent – File #1 Part B, W.A. Hoffman to P.B. McCrodan, 28 January 1975, emphasis in original. There were some exceptions. In his report on the Elliot Lake hearings, C.M. Barrett proved far more open to the union's claims. As he put it, "In my opinion, the engineers in Elliot Lake have not been aggressive in looking into Union complaints and making fast decisive settlements. Also, I feel that the inspectors should have corrected many conditions before they became complaints." See C.M. Barrett to P.B. McCrodan, 22 January 1975.

<sup>103</sup> AO RG 1-526, Division of Mines Executive Director's files, Ham Commission, "Summary of Briefs Given at Ham Commission, Jan. – Feb. 1975," no date.

under a single government agency. Ham also criticized the way in which the legislation denied workers' individual and collective right to effective participation in managing OHS problems.

Ultimately, the Report offered 117 concrete recommendations. Ham was particularly concerned about the lack of statutory measures in regard to dust control in an industry in which dust had long been recognized as a clear danger. Thus, the report advocated statutory standards to limit exposure to silica and ionizing radiation. With reference to participatory schemes, Ham recommended a statutory provision for the establishment of joint health and safety committees and the election of "worker auditors" with powers to inspect workplaces. On the right of work refusal, Ham proposed minor amendments, rather than a complete overhaul, of the existing provisions.

Both industry and labour were generally supportive of the Report and its recommendations, broadly endorsing its principles, though both had their qualms. For the Steelworkers, the Report vindicated their allegations of industry and government indifference. Yet USW Director Lynn Williams was disappointed that the Report had failed to endorse the union's suggestions on work refusal and the testing of new chemicals and that it had paid little attention to the relationship between the incentive system and the rate of accidents.<sup>104</sup> For its part, after a two-day strategy session, the OMA divided the Report's 117 recommendations into five categories: 63 proposals were accepted; 26 required "some modification;" while the final 28 required either "major modification" or were "altogether impractical." The OMA was particularly dissatisfied with the Report's recommendations on radiation exposure. In a speech to the Northwest Territories Mine Safety Association in January 1977, Norman Wadge suggested the Commission's findings with respect to radiation were "so contrary to the international

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<sup>104</sup> Victor Malarek, "Ham report disappointment: Miners 2<sup>nd</sup> class without safety right, union man says," *Globe and Mail*, 26 October 1976.

scientific community's understanding of radiation effects that the Canadian uranium industry hired two experts to review that aspect of the report." MIT Professor Emeritus of physics Robert Evans and pathologist Geno Saccomanno's analysis, Wadge suggested, "raised serious fundamental questions about the structure of the research study, the interpretation of data and the conclusions reached." The OMA delivered a copy of the report to both Labour Minister Stephenson as well as the AECB.<sup>105</sup>

The extensive media coverage of both the Royal Commission hearings and the question of mineworkers' health and safety in general undermined the industry's credibility and public trust in the *Mining Act*. It was difficult to escape the conclusion that large, profitable mining companies knew of the extensive hazards their operations posed to workers and did little to correct them. If media reports were any indication, the unions had won the battle for public opinion, at least to a point. The Report received near universal support in the press. Newspapers of varying political sympathies – the *Globe and Mail*, the *Toronto Star* and even the normally conservative *Toronto Sun* – endorsed the Report's proposals, and called on the government to make good on its recommendations.

The minority Conservative government was quick to act on several of its recommendations. In October, the government tabled Bill 139, the *Employees' Health and Safety Act*, an "interim" measure until a comprehensive "omnibus" bill consolidating all provincial health and safety legislation into a single law could be passed in the near future. Bill 139 ran to only eight pages in length. It met Ham's recommendation to centralize all health and safety responsibilities within the Ministry of Labour. It also granted the Minister of Labour

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<sup>105</sup> Sefton MacDowell, "The Elliot Lake Uranium Miners' Battle to Gain Occupational Health and Safety Improvements, 1950-1980," 114; Lawrence Welsh, "Mines accept safety proposals with few changes," *Globe and Mail*, 15 January 1977.

discretionary authority to establish joint health and safety committees in particular workplaces and to appoint worker representatives to investigate accidents. In one important respect, the law exceeded the Ham Report's proposals, granting workers the right to refuse any work they believed dangerous without fear of penalty.

### ***Bill 70: The Occupational Health and Safety Act of 1978***

Still more sweeping changes were introduced following the enactment of the *Occupational Health and Safety Act* in late 1978. The new law included several provisions that met the demands of the miners' unions. Like Bill 139, the *Act* protected workers who refused unsafe work. Unlike Bill 139, instead of allowing the Minister to order the establishment of a joint committee, it made them mandatory in every workplace with more than 20 employees. In addition, the law established procedures for controlling the use of hazardous substances, increased penalties for violations of the *Act* and established a host of tripartite advisory bodies to oversee policy formation. Yet, what was perhaps most striking about the process leading to the passage of the *Act* was the government's reluctance to advance legislation that did not meet the express approval of the province's largest employers.

In April 1977, representatives of industry and labour provided their input on the omnibus legislation at public hearings convened by the Ministry of Labour in several mining centres across the province. For union activists, the right to refuse unsafe work was paramount. For instance, USW Local 6500 underground health and safety chairman David Cochrane argued that Ontario needed to follow the example of Saskatchewan, where the law recognized workers' right to refuse unsafe work: "Until we get that right, the whole Mining Act is useless."<sup>106</sup> While

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<sup>106</sup> Mick Lowe, "Unions want choice to refuse unsafe work," *Globe and Mail*, 24 August 1976.



mining industry employers conceded that no worker should be forced to work in a situation he considered unsafe, they were adamant that management must have the right to discipline workers who abused any such provision. For employers, unless the Act explicitly referenced management's power to discipline cases of frivolous misuse, "social misfits" and activists would use the new law to undermine the *Labour Relations Act's* "no-strike clause" to score collective bargaining points mid-contract. As the president of Johnson Matthey & Mallory Limited, a gold refining operation, J.H. Lutley wrote to Premier Davis, Bill 139 had left employers "defenseless ... against those few who will use every opportunity to harass their employer."<sup>107</sup> Employers consistently highlighted the large costs involved in work stoppages, particularly in the context of integrated production systems. Again, as Lutley wrote to Davis, once production stops,

We must find other work for that employee or pay him for doing nothing until such time as an inspector arrives and makes his decision. That could take several days. Meanwhile, other employees employed on work stations later in the production process are laid off for lack of output ... A delivery date is lost and a customer inconvenienced and perhaps lost also. Overhead costs continue all this time.<sup>108</sup>

The industry had other concerns. The assistant to Inco's vice-president of administration and engineering Robert Brown alleged that Bill 139 had placed "too much emphasis on Government inspections and management fault, and not enough on encouraging company training programs." Noranda's James Pirie argued that "the relationship between workers and management should be free of government interference." Cliffs of Canada's John Merrill suggested that union members were "waiting until the comprehensive law [was] adopted before abusing their right to refuse work."<sup>109</sup> Although the OMA had recommended mandatory health

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<sup>107</sup> AO RG 3-57, Premier William G. Davis correspondence files, Employee Health and Safety Act – Bill 139 – Against – Johnson, Matthey & Mallory Limited, J.H Lutley to W. Davis, 22 November 1976.

<sup>108</sup> Ibid.

<sup>109</sup> "Frivolous complaints by workers cited: Safety law undermines improvement efforts, Inco says," *Globe and Mail*, 1 April 1977.

and safety committees to the Ham Commission, by this time, the industry reverted to its traditional position, likely to forge a united front with employers in the manufacturing and construction industries. Thus, mining industry representatives argued that health and safety committees would be effective only if they were voluntary, not mandated by legislation.

Early indications suggested that employers' concerns about frivolous misuse of the provisions were overstated. An October 1977 Ministry of Labour study found that of 62 cases of work refusal since Bill 139 had come into force the previous December, 42 were justified, nineteen unjustified but not frivolous, while one other remained under investigation.<sup>110</sup> Moreover, when Labour Minister Stephenson requested a legal opinion from her staff, the Ministry's Director of Legal Services Paul Hess advised her that the bill need not make explicit reference to management's right to discipline, simply because it was "unnecessary." "Such a right," he continued, existed "without making provision therefor."<sup>111</sup> Assistant Deputy Minister G.W. Adams made precisely the same point in another memorandum, this one responding to the Chamber of Commerce's call to make explicit reference to managerial discipline, as was the case in Manitoba's OHS legislation. Adams wrote, "the same disciplinary rights will be available to an Ontario employer under the *Employees' Health and Safety Act* as presently drafted, and [therefore] it is unnecessary to enact a provision comparable to Manitoba's."<sup>112</sup>

Nevertheless, when Stephenson set to work crafting the new omnibus legislation, she sought to meet industry's expressed preferences over both key issues. After the first round of public hearings in April, the PC Party had secured another minority government in the June 1977

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<sup>110</sup> Victor Malarek, "Lewis upset: No standards in bill for asbestos, uranium," *Globe and Mail*, October 19, 1977.

<sup>111</sup> AO, RG 7-1, Minister of Labour general correspondence and subject files, Employees Health and Safety Act 1976 (Bill 139), Briefing Material for Bill 139 Committee Hearings, Paul Hess to Bette Stephenson, 1 November 1976.

<sup>112</sup> AO, RG 7-1, Minister of Labour general correspondence and subject files, Employees Health and Safety Act 1976 (Bill 139), Briefing Material for Bill 139 Committee Hearings, G.W. Adams to Bette Stephenson, 23 November 1976.

general election, gaining an additional seven seats over its 1975 showing. The government appeared to have met the threat from the left: After having won official opposition status in the 1975 election, the NDP lost five seats, returning to its longstanding role as the third party. Shortly after the election, NDP leader Stephen Lewis resigned from the Legislature.

Stephenson tabled Bill 70, the *Occupational Health and Safety Act*, in October. Compared to Bill 139, Bill 70 entailed important revisions to the provisions concerning the right to refuse unsafe work. While the escalating procedure from reporting an unsafe condition to joint investigation to ultimate work refusal remained the same as in the previous legislation, Bill 70 explicitly prohibited the “frivolous misuse” of the right, precisely as industry had demanded. Like Bill 139, the new *Occupational Health and Safety Act* did not render joint health and safety committees mandatory, but again granted the Minister of Labour discretionary authority to establish them in workplaces where certain criteria were met.

While employer groups welcomed the new bill, organized labour contested it. After second reading, the bill was referred to the all-party Standing Committee on Resources Development for public hearings and clause-by-clause review. The committee received 53 briefs from business, labour and other interested parties, and sat for six full days of debate before completing its consideration of the bill on February 17, 1978. That Stephenson had sought to accommodate business concerns was evident in the competing responses of different interests. For the United Auto Workers, the bill was “an obvious attempt to win a popularity contest with employers.” For the Canadian Union of Public Employees, it was “discriminatory, anti-union, ineffective, callous, intimidating, unscientific and lacking in sincerity and competence.”<sup>113</sup> Yet, the Canadian Manufacturers’ Association endorsed Bill 70:

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<sup>113</sup> “Safety bill called bid to court employers,” *Globe and Mail*, February 2, 1978.

We concur with the approach taken by the Government on many of the items contained in Bill 70, especially those pertaining to safety committees and the right of refusal to work.

The Government's discretionary and flexible approach to the establishment of safety committees and to the appointment of health and safety representatives not only demonstrates a general confidence in Ontario's employers, but reflects the spirit in which Bill 70 was introduced. In addition, the Association believes the approach to a worker's right to refuse work where he believes his health or safety is in danger, is appropriate, and clarifies the rights and responsibilities of both employees and employers. Therefore, the Association commends the constructive way in which the Government proposes to deal with these matters.<sup>114</sup>

However, holding only a minority in the Legislature, the government did not command control of the Standing Committee proceedings. The NDP took advantage of this power imbalance, and with the support of the Liberal Party, introduced several amendments, effectively rewriting the government bill. Coverage under the Act was extended to all workplaces in the province rather than those previously covered by the *Industrial Safety Act*, the *Construction Safety Act* and the *Mining Act*. Joint health and safety committees were made mandatory in all workplaces employing twenty or more workers. The committee also amended the section on the right to refuse work. In contrast to the government bill, under the amended draft a worker would be able to refuse work *before* reporting the reason for refusal to a supervisor, and crucially, the amended version removed mention of an employer's right to discipline employees for frivolous misuse of this right.

Industry groups reacted with hostility to the Standing Committee's bill, creating much uncertainty within the government as to how to proceed on such a politically sensitive file. Soon after the Standing Committee released its amended bill, OMA Executive Director J.M. Hughes wrote to Stephenson, strongly protesting the proposed legislation:

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<sup>114</sup> AO, RG 7-1, Minister of Labour's general correspondence and subject files, Occupational Health and Safety Act – Bill 70 – Briefs/Submissions to Resources Development Committee, Ontario Division of the Canadian Manufacturers Association, "Submission to the Standing Committee on Resources Development on Bill 70, The Occupational Health and Safety Act, 1977" 31 January 1978.

The purpose of this letter is to impress upon you the belief that the Bill, as amended, is regressive legislation, is completely unworkable, and to urge its serious reconsideration. As one example, all the proposed amendments dealing with mandatory joint health and safety committees and the frivolous exercise of the right to refuse unsafe work will only contribute to the adversary principle between management and labour, when our economy cries out for co-operation in attaining common goals.

The amended Bill incorporates a serious imbalance. The language of the Bill is such that it assumes that employers are indifferent to health and safety and that they must be dealt with harshly. It is a Bill that, in addition to putting employers on the defensive, will unnecessarily impinge on their ability to manage; indeed, their very inclination to do so.<sup>115</sup>

Stephenson's response showed that the government continued to support the mining industry's position toward health and safety legislation, and that it would seek to override the Standing Committee's amendments:

Since the concern expressed by you regarding these amendments parallels my own, I would urge you to send a copy of your letter to the Chairman of Caucus of each of the two opposition parties who were, indeed, responsible for the amendments you find unacceptable.

I am still hopeful that we shall be able to develop a Bill which combines optimum protection of the workers with effective delineation of the dual responsibility for health and safety shared by employers and employees within a framework of appropriate and realistic legislative structure.<sup>116</sup>

Behind the scenes, Stephenson immediately set her ministerial staff to work to overcome the Standing Committee's changes. In March, Deputy Minister of Labour T.E. Armstrong contacted Paul Hess. While Armstrong's initial request to Hess was not among the documents available in the archives, its contents become clear when reading Hess' reply dated March 30, 1978. Hess wrote, "I spoke with [Senior Legislative Counsel for the Province] Arthur Stone and he in turn has spoken to Roderick Lewis, Clerk of the House. The following appear to be what

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<sup>115</sup> AO, RG 7-1, Minister of Labour's general correspondence and subject files, Occupational Health and Safety Act – Bill 70 – Ontario Mining Association, J.M. Hughes to Bette Stephenson, 6 March 1978.

<sup>116</sup> AO, RG 7-1, Minister of Labour's general correspondence and subject files, Occupational Health and Safety Act – Bill 70 – Ontario Mining Association, Bette Stephenson to J.M. Hughes, 29 March 1978.

can be done.” Hess then listed three ways that the Minister could prevent the amended version of Bill 70 from becoming law. First, “the Minister could move in the House to discharge the Order referring Bill 70 to the Committee of the Whole.” It seems that the Minister, or possibly the Deputy Minister, did not favour this option, as “detectable” is scratched in ink beside it. Second, “Bill 70 could not be called in the order of business;” and finally, “the Minister could in the Committee of the Whole, bring only those amendments to restore the Bill to what the Government believes it can administer and with which it agrees.” Were these amendments to fail, “the Minister could then move that the Committee rise and report. This motion would have the effect of leaving the Bill before the Committee and not report it out to the House for third reading.”<sup>117</sup>

To be sure, the government’s opposition to the Standing Committee’s amendments did not reflect the mining industry’s power alone. Indeed, most every employer group in the province was united in opposition to the NDP’s amendments, including public sector employers. For the next five months, employers and organized labour and their respective allies in the Legislature continued to debate which segments of the workforce should be covered by the Act, whether joint committees should be mandatory or voluntary and what kinds of conditions should be attached to the right to refuse unsafe work. In this context, the Liberal Party held the balance of power. Fearing the government intended to simply let the bill die rather than allow the Standing Committee’s version to become law, in May Liberal Party leader Stuart Smith retracted his party’s support for some the bill’s most contentious provisions, including the coverage of the agricultural sector, the inclusion of retail and office workers in the requirements around health and safety committees and the right of certain workers – like police officers and firefighters – to

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<sup>117</sup> AO, RG 7-1, Minister of Labour’s general correspondence and subject files, Occupational Health and Safety Act – Bill 70 – Correspondence, Senior Staff, Paul Hess to T.E. Armstrong, 30 March 1978.

refuse unsafe work. In taking the middle ground, the Liberals were no doubt motivated by electoral considerations. The Party's most important constituency was southwestern Ontario's farmers, who strongly opposed extending the Act's coverage to the farming workforce.<sup>118</sup>

Still, the government delayed. Stephenson refused opposition demands to introduce the bill for third reading, contending that she would first have to consult with the several interests who now had a stake in the amended bill, including the various public sector employer and employee groups covered by the bill.<sup>119</sup> When the Legislature rose for summer recess at the end of June, the government had yet to table the bill.

In August, Premier Davis shuffled Stephenson from the labour file, replacing her with neurosurgeon and lawyer Dr. Robert Elgie, a rookie in the cabinet. On taking the post, Elgie promised to make introducing Bill 70 his priority for the fall session.<sup>120</sup> The NDP maintained pressure on the government throughout the fall session, repeatedly pressing Davis and Elgie to reveal when they intended to introduce the bill for third reading. Finally, in December 1978, more than one year after the bill had passed second reading, Elgie brought Bill 70 back to the Legislature, but not without tabling significant amendments to the Standing Committee's version. Recognizing that explicit reference to employers' right to discipline workers who frivolously refused to work would not receive the Legislature's support, Elgie refrained from including it in the bill. Ultimately, the Liberal's earlier concessions had settled it. The Act did not offer coverage to domestic servants, police officers firefighters and agricultural workers, while several sectors – construction projects, offices, retail stores, and "low-risk" workplaces

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<sup>118</sup> Wilfred List, "Retreat on safety bill political move to prevent Tory withdrawal: Smith," *Globe and Mail*, 5 May 1978.

<sup>119</sup> Stan Oziewicz, "Liberals, NDP fear Tories might kill worker safety bill," *Globe and Mail*, 31 May 1978.

<sup>120</sup> Stan Oziewicz and Barbara Yaffe, "McCague, Baetz are demoted in Cabinet shuffle," *Globe and Mail*, 19 August 1978.

like restaurants and hotels – were excluded from the provisions concerning joint health and safety committees.

### ***Regulating Toxic Substances***

The passage of the OHSA proved that the industry's power had its limits. The Legislature provided space for non-business interests to translate their preferences into policy outcomes. Yet, with the new law in force, another dispute rose quickly onto the agenda. In light of the *Mining Act's* long-standing silence on toxic substances, the Ham Commission had recommended the government enact legal standards limiting workers' exposure to hazardous substances in the workplace. The USWA's call to test potentially hazardous substances before their introduction in production processes was defeated, but in July 1978, the government released for public comment its first proposed regulation governing workers' exposure to silica.

Ultimately, the Ministry of Labour's regulation was promulgated in 1983 after a heated five-year debate. Much like other industries facing potentially costly regulations, the Ontario mining industry stridently contested the proposals, while its arguments mirrored those adopted by others in similar contexts.<sup>121</sup> According to industry representatives, there was no scientific evidence to support the proposals, which would require such expensive engineering controls that the industry would suffer grave competitive disadvantages. The costs would be so high that the industry would have to suspend several operations prematurely. While the regulation was designed to protect worker health, industry sought to reframe the debate to highlight its negative implications for employment. The industry's campaign was a partial success. While it opposed

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<sup>121</sup> For example, see Susanna Rankin Bohme, John Zorabedian and David S. Egilman, "Maximizing Profit and Endangering Health: Corporate Strategies to Avoid Litigation and Regulation," *International Journal of Occupational and Environmental Health* 11 (2005), 338-348.



legal standards, favouring instead non-binding “guidelines,” industry pressure managed both to delay the regulation’s promulgation and to weaken its protections for workers. Like the control orders on sulphur emissions, the silica regulations codified existing conditions in the industry, thereby prioritizing industry’s concerns about cost control over the risks to workers’ health.

The Ministry of Labour’s initial proposal was significant in several respects. Drafted by the Ministry’s recently established Occupational Health and Safety Division under the leadership of Dr. Rodney C. May, the proposed regulation was premised on the American Conference of Government and Industrial Hygienists Threshold Limit Value (ACGIH TLV) for respirable quartz. The proposal established a time-weighted average (TWA) exposure limit of  $0.1\text{mg}/\text{m}^3$  for respirable quartz, and  $0.05\text{mg}/\text{m}^3$  for silica flour and called for air sampling to be performed during work hours at no greater than three-month intervals. Sampling would require the use of gravimetric sampling techniques, a relatively new method in the industry.

Traditionally, the industry had used a device known as a “konimeter” to measure dust counts, but a konimeter provided only a “snapshot” of dust counts in a particular time and place. It was ill-suited for determining total exposures over the course of a working shift.<sup>122</sup> In cases where concentrations exceeded the limit, the proposal mandated the stepwise elimination, control, and limitation of the substance by engineering controls, work practices, and administrative controls. Were those methods to fail, or if they were not “immediately practicable,” a Ministry official could permit “from time to time” the use of suitable respiratory equipment.”<sup>123</sup> Although Dr. May developed a reputation for his commitment to impartiality, in releasing his proposals he made it clear that he considered industry an important partner in the regulatory process, promising a MAPAO luncheon in the summer of 1979 that “We will co-operate with industry in

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<sup>122</sup> *Report of the Royal Commission on the Health and Safety of Workers in Mines*, 39.

<sup>123</sup> *Ontario Gazette* (Toronto: Queen’s Printer for Ontario, 22 July 1978), 3546-3557.

every possible way,” and that his agency would “use the enforcement procedures as only a last resort.”<sup>124</sup>

The industry and its organizations had ample opportunity to comment on the proposals. May provided the OMA with a draft of the proposal as early as March 1978, inviting the trade association to deliver a formal presentation in April, three months before the proposal was released for public comment in the *Gazette*.<sup>125</sup> The OMA’s presentation made several recommendations. Most notably, the OMA argued the TLVs should continue to be used as guides rather than legal standards, that the Ministry should conduct “thorough epidemiological studies” with a view to establishing “a realistic standard for silica,” and that there should be no separate guide for silica flour. According to the OMA, adopting the TLVs as legal standards was “contrary to the concept of their existence,” for as the ACGIH warned, “The TLV-TWA should be used as guides in the control of health hazards and not as fine lines between safe and dangerous concentrations.” The OMA attacked the credibility of the initial study of dust conditions in Vermont granite sheds that had formed the basis for the TLVs, pointing to what it considered methodological errors. It took issue with the use of gravimetric sampling to measure silica volumes, suggesting it was ill-suited for metal mines. The OMA emphasized the proposal’s scientific uncertainty, pointing to the absence of “meaningful epidemiological studies ... directly linking respirable siliceous dust measurements by mass with silicosis statistics.” Finally, the OMA argued the standard was simply not feasible in Ontario’s high quartz operations. In the industry’s view, with improvements in engineering controls, indications were that a

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<sup>124</sup> On May’s reputation, see Tee L. Guidotti, “In Memoriam: Clifford Rodney May (1922-2008),” *Archives of Environmental & Occupational Health* 65 (2010), 245. Richard Fish, “Employee education key to success of OH&S act,” *Canadian Mining Journal*, July 1979, 36.

<sup>125</sup> Section 22 of the Act required the Minister to publish a notice of intent to regulate prior to designating a toxic substance. See Eric Tucker, “The Determination of Occupational Health and Safety Standards in Ontario 1860-1982: From Markets to Politics to...?,” *McGill Law Journal* 29 (1984), 289.

concentration of 0.25 mg/m<sup>3</sup> “may be achievable.”<sup>126</sup> In any event, the OMA claimed, a legal standard was not necessary given the strides industry had made in controlling dust conditions and reducing the incidence of silicosis on a voluntary basis. Ironically, although the industry questioned the reliability of gravimetric sampling methods, the MAPAO itself had urged its member organizations to adopt the method as part of their dust monitoring programs in 1976.<sup>127</sup> Moreover, the MAPAO had also adopted the TLV as a guideline for its members.

The Division of Mines was equally opposed to the proposed regulation. As one Division official wrote to Executive Coordinator George Jewett, the proposed regulation was “of gravest concern and implication to the mining industries ... which are once again suffering at the hands of authorities who don’t understand the industry nor appreciate the cost of what they propose on idealistic grounds.”<sup>128</sup> For Jewett, the potential negative economic consequences of imposing the standard were serious enough to warrant a countermeasure from MNR. As he put it to Deputy Minister Keith Reynolds, “Every effort must be made to have the standards changed before they are considered by the Regulations Committee of Cabinet.”<sup>129</sup> Jewett proposed forming an inter-ministerial committee, with representatives from MNR, Industry and Tourism and Northern Affairs, to draft a report on the standard’s economic effects, and more importantly “*to review and comment on the process by which the proposed standard was developed.*”<sup>130</sup> Some Division officials offered advice to industry on how to give greater effect to their economic impact

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<sup>126</sup> AO, RG 7-123, Correspondence of the Provincial Coordinator for Professional and Specialized Services and predecessors, Ontario Mining Association, Ontario Mining Association, “Presentation re: Proposed regulation under the Occupational Health and Safety Act for Silica,” 19 April 1978.

<sup>127</sup> William Schabas, “Accident Prevention meeting stresses dust control and employee training,” *Canadian Mining Journal*, July 1976, 49.

<sup>128</sup> AO, RG 1-526, Division of Mines Executive Director’s files, 510.4, Vol. 8, James Robertson to G. Jewett, 13 August 1981.

<sup>129</sup> AO, RG 1-526, Division of Mines Executive Director’s files, 190.4 Vol. 1, G. Jewett to Dr. J.K Reynolds, 22 November 1978.

<sup>130</sup> Ibid, emphasis in original.

studies. Policy Advisor Cal Warden urged the Canadian Foundry Association's executive vice-president to emphasize the number of plants that would be shut down; the regulation's effect on tax payments, future capital expenditures, and productivity improvements among other concerns.<sup>131</sup>

The Conservative government's economic impact statement process provided industry with further opportunity to comment on the proposals. This process had been adopted in an effort to rationalize Cabinet decision making, and the proposed silica regulation was among the first major policy decisions subject to its purview. In drafting its impact statement for Cabinet consideration, the Ministry of Labour was to take into consideration several factors, including the regulation's effects on market structure and competition, employment and productivity, consumers, business, and, finally, employee health. Thus, in another similarity to the government's policies towards sulphur emissions, its policies towards exposure to silica contained important economic biases that favoured industry.

Predictably, the companies used their economic impact studies to reiterate their concerns about the regulation's onerous costs. Some, like Texas Gulf, sent their studies to individual MPPs for added effect. According to Texas Gulf, its economic impact study indicated "a need for capital expenditure of over \$18 million for added ventilation in an exceptionally well ventilated mine." The company was "sure that the proposed silica standards will be a barrier to some new mining ventures or some expansions in the industry," while "the economic consequences to the community ... are likely to be considerable."<sup>132</sup> In total, the OMA estimated that if the Ministry of Labour permitted no excursions over the standard, complete compliance

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<sup>131</sup> AO, RG 1-526, Division of Mines Executive Director's files, 510.4 Vol. 3, C.L. Warden to J.L. Reade, 10 April 1979.

<sup>132</sup> AO, RG 7-1 Minister of Labour's general correspondence and subject files, Occupational Health and Safety Act – Bill 70 – Regulations, General Correspondence, M. Leahy to Alan Pope, 7 November 1978.

would entail \$100 million in capital costs, and \$30 million in additional annual operating costs.<sup>133</sup>

The “Silica Action Team” within the Occupational Health and Safety Division reviewed the submissions it received in response to the proposed regulation and, with the assistance of outside experts, provided guidance to the Minister of Labour. After 22 meetings, the Action Team presented eight recommendations, including advising the government to publish the exposure limits as guidelines rather than standards, at least in the interim.<sup>134</sup> This recommendation was adopted when the first silica regulations were promulgated in 1979, but by August 1980, the Ministry released a second draft proposal, similar in most important respects to the first. Once again, industry groups “objected strenuously” to the proposal, arguing their earlier objections had “[fallen] on deaf ears.”<sup>135</sup> The Ministry’s reluctance to meet the mining industry’s demands appears to have been grounded in two concerns. First, in the newly established tripartite Mining Legislative Review Committee, labour representatives refused to budge on the standard, rejecting industry’s calls for leniency. Second, and perhaps more importantly, officials within the Ministry of Labour doubted the credibility of the industry’s capital cost estimates, which varied extensively from firm to firm.<sup>136</sup>

In fact, there was a notable contradiction at the very core of the industry’s arguments. Apart from the irony involved in rejecting as scientifically groundless a standard the MAPAO had adopted as a guideline for its members, the industry’s claims were beset by a difficulty: If

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<sup>133</sup> AO, RG 1-526, Division of Mines Executive Director’s files, 510.4 Vol. 8, “Briefing paper for the Deputy Minister,” 14 April 1982.

<sup>134</sup> AO, RG 1-526, Division of Mines Executive Director’s files, 510.4 Vol. 8, OMA, “Brief to the Ministry of Labour on Proposed Silica Standard,” 22 February 1982.

<sup>135</sup> Ibid.

<sup>136</sup> AO, RG 1-526, Division of Mines Executive Director’s files, 190.4, Vol. 2, C.L. Warden to Jewett, 11 September 1980.

gravimetric air sampling methods were as unreliable as claimed, then their cost estimates to achieve the standard were equally suspect.<sup>137</sup>

Nevertheless, the industry maintained its pressure campaign. Casting doubt on the standard's scientific basis remained central to its strategy. During a pair of heated meetings in the summer of 1981, industry groups invited medical experts to question the legitimacy of the government's proposal. The industry sought to exploit the inherent uncertainties of medical science to its advantage, pointing to the lack of concrete evidence linking the standard to particular outcomes in the unique circumstances holding in different environmental contexts. For instance, the OMA's February 22, 1982 brief to the Ministry quoted McMaster University's Dr. David Muir, who noted, "I think the problem is that the medical people have failed to produce convincing evidence on which your own committee and anybody else could really make very firm decisions."<sup>138</sup>

Yet, by this point, the industry had beat a strategic retreat. Recognizing its credibility was on the wane, industry sought to cut its losses. In the meantime, it had lost a key ally in the Canadian Foundry Association, which had consented to the initial standard.<sup>139</sup> Thus, it proposed a compromise, recommending the exposure limit be increased from 0.1 to 0.2 mg/m<sup>3</sup>. As Policy Advisor Cal Warden explained, the higher standard was one the mining companies "know they can live with and will not increase operating costs appreciably."<sup>140</sup> In fact, as the Advisory

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<sup>137</sup> As Jewett explained to Deputy Minister, MNR W.T. Foster, "In essence, the mining companies [*sic*] costs estimates cannot be supported if you accept their arguments that gravimetric sampling instruments are inaccurate. They do not know whether they can, or possibly are, meeting the proposed standard now." See AO, RG 1-526, Division of Mines Executive Director's files, 510.4 Vol. 8, G.A. Jewett to Mr. W.T. Foster, 24 March 1982.

<sup>138</sup> AO, RG 1-526, Division of Mines Executive Director's files, 510.4 Vol. 8, OMA, "Brief to the Ministry of Labour on Proposed Silica Standard," 22 February 1982.

<sup>139</sup> AO, RG 1-526, Division of Mines Executive Director's files, 510.4 Vol. 8, G.A. Jewett to Mr. W.T. Foster, 24 March 1982.

<sup>140</sup> AO, RG 1-526, Division of Mines Executive Director's files, 510.4 Vol. 8, C.L. Warden to G.A. Jewett, 7 April 1982.

Council on Occupational Health and Occupational Safety reported in its sixth annual report, more than 90 percent of the province's operating mines maintained exposure levels below the TLV. Despite the industry's strong opposition to the initial standard, three quarters of the province's operating mines achieved silica exposure levels below 0.1 mg/m<sup>3</sup>.<sup>141</sup> In the Mining Legislative Review Committee, labour unions consented to the industry's compromise offer.

Ultimately, the Ministry of Labour's silica regulation was promulgated in 1983. It was no doubt a compromise, but, in light of the circumstances, one in which the mining industry did well. Employers were henceforth required to take all necessary measures "to ensure that the time-weighted average exposure of a worker to airborne silica is reduced to the lowest practical level *with a view to achieving at least 0.10 milligrams of silica per cubic metre of air by volume*, and in any event, *shall not exceed 0.20 milligrams of silica per cubic metre of air.*" No reference was made to silica flour, which was removed from the designated substances. And whereas the OHSD's initial proposed regulation in 1978 allowed for an MOL "Director" to *permit* the use of respiratory equipment "from time to time," the 1983 regulation stated that in those instances where standards could not be achieved, "the employer shall provide a worker with respiratory equipment which shall be used by the worker." Reference to a Director's permission was omitted, while a legal obligation was also imposed on workers.

Subsequently, the industry scored other regulatory victories. In 1983, the OHSD developed plans to add arsenic and cadmium – two toxic substances affecting the mining industry – to the list of designated substances. While the MOL did ultimately promulgate a regulation concerning arsenic, it provided a blanket exemption for underground mines; a regulation concerning cadmium (as a designated substance) was never promulgated.

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<sup>141</sup> Advisory Council on Occupational Health and Occupational Safety, *Sixth Annual Report* (Ontario, 1984), 72-3.

### **Consolidating the Internal Responsibility System (1979-)**

The mining industry's efforts to eliminate mandatory JHSC's, make explicit reference to management's right to discipline employees for "frivolously" refusing unsafe work, and prevent the enactment of statutory exposure standards rather than guidelines failed. The industry's political power had its limits. With the support of its social democratic allies in the Legislature, the labour movement secured an important victory. Yet, it was not long before the labour movement began to question the adequacy of the new *Occupational Health and Safety Act* and to criticize the Ministry of Labour for its perceived leniency in enforcing the law.

This section analyzes OHS politics after the passage of the *OHS Act*. Specifically, it focuses on the Ministry of Labour's efforts to promote the "Internal Responsibility System" (IRS), the enforcement regime initially proposed in the Ham Report and modeled on the United Kingdom's 1972 Report of the Committee on Health and Safety at Work. Under the IRS, primary responsibility for ensuring OHS fell directly to employers and employees. The Ministry of Labour's role was secondary. Rather than "policing" workplaces, the Ministry's inspectors sought to facilitate cooperative relations between labour and management. The labour movement was not satisfied with IRS, and, with the support of the NDP, lobbied the government for more stringent enforcement. For the most part, the movement's efforts failed. Although the OHS movement remained active until the end of the 1980s, the movement's actions did not translate into significant policy change. In fact, with the exception of a few amendments, the post-Ham OHS governance model has remained stable until the time of writing. Neither the 1990 election of the social democratic NDP nor the subsequent 1995 victory of the ideologically right-wing



Progressive Conservative government brought significant legislative change, while the subsequent Liberal government remained committed to the IRS.

For critics of Ontario's post-Ham OHS governance model, there was a notable disconnect between the *Occupational Health and Safety Act* as it was written and the Ministry of Labour's approach to enforcement. Although the text of the legislation appeared to empower the Ministry of Labour's inspectors, conferring upon them significant coercive powers to enforce the law, leniency was inscribed in the philosophy of the Ham Report. Ham had drawn clear inspiration from Great Britain's Robens Committee Report, which Jeffrey Hilgert described as the first "major postwar effort to reconceptualize the trajectory of labor policy on workers' health and safety."<sup>142</sup> Struck in 1970 and chaired by the Lord Robens of Woldingham, a former Labour Member of Parliament and Chairman of the National Coal Board, the Robens Committee argued that the "first and perhaps the most fundamental defect of the statutory system is simply that there is too much law." In Robens' view, Britain's OHS policies privileged state intervention at the expense of "personal responsibility and voluntary, self-generating effort." The state could not be relied upon to enforce "detailed prescriptions" involving "innumerable day-to-day circumstances." Instead, its task was to influence attitudes, and to foster "a framework for better safety and health organization and action by industry itself."<sup>143</sup> Insofar as the Robens Committee's emphasis was on voluntary, industrial-self regulation, it was clear that its aim was not to empower trade unions or the state's inspectors.

Robens' philosophy left a clear imprint on the Ham Commission, which visited Great Britain as part of its fact-finding mission. Hilgert goes so far as to suggest that the Ham Report

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<sup>142</sup> Jeffrey Hilgert, *Hazard or Hardship: Crafting Global Norms on the Right to Refuse Unsafe Work* (Ithaca: Cornell University Press, 2013), 121.

<sup>143</sup> Quoted in *Ibid*, 124.

adopted “a razor-sharp tone against unions and collective bargaining” in its elaboration of the Internal Responsibility System.<sup>144</sup> For the Ham Commission, OHS issues were decidedly not suitable for collective bargaining, as the “confrontational character of Canadian labour-management relations has deterred the creation of sensible arrangements for worker participation.” Instead, Ham advocated for a “carefully-defined framework,” encouraging a “new measure of labour-management co-operation.”<sup>145</sup> In line with the Robens Report, external state enforcement was clearly secondary to self-regulation. Accident prevention was best promoted by improving the “quality of human relations” in workplaces. For Ham, a “well-founded internal responsibility system in which labour and management co-operate to control occupational hazards ought to exhibit a high measure of self-regulation for which mines inspection and openly reported environmental and epidemiological reviews can provide the necessary external evaluation.”<sup>146</sup> Underlying the Ham Report’s emphasis on cooperation was the contestable assumption that management and labour had a shared interest in OHS issues.

Under the guise of the Internal Responsibility System, the Robens philosophy became central to the Ministry of Labour’s enforcement regime. Neither sustained OHS activism nor a spate of workplace accidents and fatalities through the 1980s swayed the Ministry. Perhaps the clearest evidence of this was offered by the *Report of the Joint-Federal Provincial Inquiry Commission into Safety of Mines and Mining Plants in Ontario* published in 1981. Chaired by labour arbitrator Kevin Burkett, the Commission was struck in response to union pressure stemming from a significant spike in injuries and fatalities in 1980. In the Burkett Commission’s view, to properly fulfill their role in the new OHS regime, unions had to eschew the “adversarial

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<sup>144</sup> Ibid, 128.

<sup>145</sup> Quoted in Ibid, 128.

<sup>146</sup> Quoted in Ibid, 128.

mentality” that characterized collective bargaining, and instead approach safety matters “in a spirit of consultation and co-operation.” To the extent that unions treated safety as a political issue, to the same extent they would fail to contribute to meaningful solutions at their members’ expense. A union’s attitude toward joint committees was crucial, as these committees were the central mechanism to “insulate the health and safety effort from the other more adversarial aspects of the [labour-management] relationship.” In this vein, Burkett recommended the barring of union activists from committee membership. As the report explained,

The purpose of our recommendation is to de-adversarialize and to depoliticize these committees as much as possible. If the local union is to play the positive role expected of it, it must embrace this recommendation. It must ensure that its appointments are on the basis of interest and qualifications and that its appointees are instructed to work in a co-operative manner in order to preserve the integrity of the committee. The union members of the joint health and safety committee must be allowed to operate without local union interference.<sup>147</sup>

In effect, the Commission advised unions to relinquish their independence from management, asking them to champion management’s safety policies. The Commission identified several ways unions could do so. Through their internal communications, unions could “describe the company [safety] effort in favourable terms,” refrain from defending members disciplined for safety infractions, recognize the first line supervisor – not the health and safety committee – as the key contact in resolving workplace “anomalies,” and, finally, commit to treating the JHSC’s “in a spirit of co-operation and consultation.”

Even when the Commission recommended an expanded participatory role for workers in the IRS, their role was clearly subordinated to management. The Commission’s recommendations concerning full-time worker safety representatives is a case in point. Although such representatives would be appointed by the union, under Burkett’s plan they would “work

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<sup>147</sup> Kevin M. Burkett, *Towards Safe Production: The Report of the Joint Federal-Provincial Inquiry Commission into Safety in Mines and Mining Plants in Ontario* (Toronto: 1981), 89.

within the area of responsibility of the facility manager.” More specifically their duties would entail working “closely with the company’s safety department,” and reporting “all workplace anomalies to first line supervision and to the safety department.” Like other joint committee members, the safety representative was “not [to] be permitted to hold any union office or to engage in partisan union political activity of any kind.”<sup>148</sup>

The Burkett Commission’s attitude towards the MHSB’s inspectors was also noteworthy. Shortly after the proclamation of the *OHSA*, the MHSB enhanced its enforcement capacities, increasing its inspections, issues ordered, and prosecutions, much to the chagrin of management. The branch hired more personnel, which grew from 58 in 1977-78 to 90 in 1979-80.<sup>149</sup> While unions conceded “grudgingly” that they no longer considered the inspectors to be “captured” by management after the post-Ham reforms, the Burkett Commission criticized the MHSB for its inattention to the interpersonal aspects of the new compliance regime. Indeed, in the Burkett Commission’s view, insofar as the MHSB devoted most of its resources to ensuring compliance with the “technical and engineering requirements of the law,” it failed to perform its most important duty: facilitating cooperative relations between employers and employees. A crucial task of the MHSB was thus to identify those relationships that had broken down and strive to repair them.

The Burkett Commission Report was hardly alone in advocating for labour-management cooperation in OHS. In his critical assessment of the Ministry of Labour’s enforcement of the *Act* at Hamilton’s Westinghouse plant, Richard Fidler cited the Ministry’s official guidebook accompanying the *Act* as follows: “The Act is based upon the principle that hazards can best be

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<sup>148</sup> Ibid, 88.

<sup>149</sup> G. Bruce Doern, Michael Prince and Garth McNaughton, *Living With Contradictions: Health and Safety Regulation and Implementation in Ontario* (Toronto: Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, 1982), Table 3.1, 3.58.

dealt with in the workplace itself through communication and co-operation between employers and workers.” It continued, “Fundamental to the Act is the concept that employers and workers must share responsibility for occupational health and safety and that both must actively seek to identify hazards and develop resources to protect workers.”<sup>150</sup>

In his study for the 1984 Royal Commission on Asbestos, Bruce Doern made similar observations about the Ministry’s emphasis on facilitating joint labour-management cooperation. As Doern noted, the official view from within the Ministry of Labour was that the *OHSA* “[did] not create a heavy handed group of government officials who [went] about issuing instructions, orders and penalties with reckless abandon, but because of the concept of mutual concern place[d] the emphasis on the establishment of an internal responsibility system within the workplace.”<sup>151</sup> Further, the establishment of an effective IRS was “an essential first step to prevent injury or health deterioration.” The Ministry’s ultimate objective was to transition from what it termed “enforced compliance” – in which inspectors used legal action to compel employers to abide by the law – to “ethical compliance,” which involved “the least intervention by the inspectorate.” In this context, inspectors would no longer have to issue orders as “employers and employees working together in workplace committees come to understand the law, acknowledge its legitimacy, and strive to go beyond the minimal requirements stipulated in the regulations.”<sup>152</sup> It was “an article of faith within the Ministry that ethical compliance must be relied upon for the effective implementation of the law.” The Ministry considered the use of legal action against an employer as a failure.

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<sup>150</sup> Quoted in Richard Fidler, “The Occupational Health and Safety Act and the Internal Responsibility System,” *Osgoode Hall Law Journal* 24 (1986), 317.

<sup>151</sup> Doern et al., *Living With Contradictions*, 3.42.

<sup>152</sup> *Ibid*, 3.42-43.

From the OHS movement's perspective, the IRS was flawed in several respects, even if most activists considered it an improvement over the previous enforcement regime. Criticism centred first on the issue of enforcement and second on the role and responsibilities of JHSC's. Discontent with the new law was immediate. Three years after the *Act* came into force, the Ontario NDP launched a task force chaired by Eli Martel investigating the efficacy of the new law and visiting ten industrial cities throughout the province. The task force's final report, entitled *Not Yet Safe, Not Yet Healthy*, illustrated labour's disillusionment with the IRS:

The Task Force was told repeatedly that the Internal Responsibility System did not work. The imbalance of power between workers and management meant cooperation and information-sharing often broke down to the detriment of workers' health and safety. As long as management enjoys a monopoly over final decisions to clean up the workplace, health and safety conditions can never be improved to the satisfaction of workers.<sup>153</sup>

Similarly, at its 1984 annual convention, the Ontario Federation of Labour passed a policy statement reading, "the effectiveness of the [Occupational Health and Safety] Act has been crippled by the Ministry of Labour's lack of enforcement."<sup>154</sup> The task force report proposed several measures to enhance the OHS regime. One was to give worker JHSC members the unilateral right to shut down unsafe operations. Another was to change the purpose of the *Act* so as to provide every worker the *right* to a healthy and safe workplace.<sup>155</sup> Still others focused on protecting group work refusals, extending protections to include a broader definition of hazards and entrenching into the *Act* the International Labour Organization's standard of "the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations."<sup>156</sup>

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<sup>153</sup> Quoted in Hilgert, *Hazard or Hardship*, 137.

<sup>154</sup> Quoted in Fidler, "The Occupational Health and Safety Act and the Internal Responsibility System," 318.

<sup>155</sup> Ibid, 349.

<sup>156</sup> Quoted in Hilgert, *Hazard or Hardship*, 137.

For labour, insofar as the IRS failed to address the inherent power imbalance between employers and employees, the new participatory mechanisms were “deceptive.” As the Dupré Commission noted,

Labour feels that the [IRS] is deceptive in that it has an appearance of protecting workers, while in practice it provides both management and the government with an excuse for doing as little as possible. Specifically, labour is critical that the committees may appear to give workers an involvement in health and safety while denying them the power actually to accomplish anything. Labour is also concerned that the Ministry uses the IRS to avoid the necessity of action. ... Labour claims that the powerless of workers in a ‘work it out yourselves’ situation results in what is, in effect, collusive inaction between management and the government.<sup>157</sup>

Labour’s persistent criticism of the IRS had little impact on the Ministry of Labour’s commitment to the IRS, though it did eventually result in some important policy changes. However, these changes reinforced the IRS and its underlying philosophy of self-regulation and ethical compliance. Further, employer opposition blocked some of labour’s most important proposals. In 1987, the Liberal government passed amendments to the *OHSA* extending workers’ “right to know” by incorporating the Workplace Hazardous Material Information System into the legislation. In 1990, another round of amendments enhanced the capacities of JHSCs by requiring employers to respond in writing to committee recommendations and by mandating that at least one worker- and one employer-member be trained and certified in health and safety practices. To that end, the amendments established a new bipartite Workplace Health and Safety Agency to provide training to committee members. Meanwhile, corporate directors and officers were made directly responsible for infractions, facing potential jail time, while the maximum fines for corporations was increased from \$25,000 to \$500,000. Still, the government retreated from its initial proposal to extend workers’ right to refuse unsafe work under stiff opposition

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<sup>157</sup> Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, *Report of the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario*, Vol. 2 (Toronto: 1984), 522.

from business.<sup>158</sup> While there have been some further amendments to the *OHSA* since this time, none altered the underlying structure of the IRS.

## Conclusions

The history of Ontario's policies towards OHS in the mining industry offers another compelling illustration of the industry's political power. For decades, industry actors dominated the OHS agenda, controlling policy developments, and shaping public perceptions of OHS issues. Industry-controlled organizations seized the initiative in standard-setting processes, ensuring provincial policy prioritized cost effectiveness over workers' health. In managing the OHS policy agenda, industry undertook a concerted effort, maintaining close relations with regulators, producing a steady stream of OHS research, and directing a considerable propaganda effort towards mine workers. Meanwhile, industry benefited from the prevailing wisdom – which it no doubt helped to propagate – concerning the inevitability of “accidents” at hazardous workplaces and the carelessness of workers, especially those drawn to adventurous jobs like mining.

The passage of the *Occupational Health and Safety Act* signalled the demise of the industry's hegemony and initiated a period of bargaining and compromise. Winning newfound rights at the workplace and a seat at the table in the province's new tripartite OHS policy committees, labour succeeded in ending the industry's unilateral control over OHS issues. Yet, much like air pollution control, it took far more than lobbying for non-business interests to achieve a policy victory. Labour's persistent efforts to persuade policymakers to accord unions a greater role in managing OHS problems went unheeded until broader shifts in the cultural climate undermined the legitimacy of the traditional approach in which management exercised

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<sup>158</sup> Eric Tucker, “And Defeat Goes On: An Assessment of Third-Wave Health and Safety Regulation,” in Laureen Snider and Frank Pearce (eds.), *Corporate Crime: Contemporary Debates*, 252-253.



unilateral control. Neither industry nor labour got everything it wanted from the new *Act*. The right to refuse unsafe work was carefully circumscribed, while the joint health and safety committees lacked the power of decision. Although the industry was forced to concede the first statutory standards limiting workers' exposure to toxic substances at mining workplaces, the industry's pressure campaign managed to delay and water down the Ministry of Labour's initial regulations covering silica as well as win the industry blanket exemptions from a similar regulation cover arsenic.

While the industry has yet to regain its prior hegemony, in the period after the enactment of the *OHSA*, the province adopted an enforcement regime much to the industry's liking. The Internal Responsibility System prioritized industrial self-regulation over external state enforcement. Henceforth, employers and employees were encouraged to resolve OHS problems in a spirit of cooperation rather than the adversarialism that characterized manager-labour relations more generally. As for the province's inspectors, their primary role was not to "police" workplaces for infractions of the law, but instead to facilitate cooperation between employers and employees and promote the smooth functioning of the IRS. For critics, far from empowering workers in relation to their employers, the IRS reinforced workers' powerlessness and undermined the state's regulatory capacities, much to the benefit of employers.

## Chapter 6: The *Mining Act*

### Introduction

Thus far, this dissertation has examined Ontario's policies towards mining taxation, air pollution, and occupational health and safety and has shown that, in each of these issue areas, the mining industry has exercised a predominant influence in shaping the province's policies. Much the same can be said of the final issue to be examined: access to public (and, at times, private) lands for the purposes of mineral exploration and development. Since its enactment in 1906, Ontario's *Mining Act* has established a "free entry" system of mineral disposition, a system "more completely designed to encourage mining activity" than any other resource disposition system.<sup>1</sup> As several critics have suggested, in conferring upon licensed prospectors the statutory rights to enter onto and lay claim to any land not explicitly withdrawn from staking, free entry treats mineral development as the optimal use of public land by default.

This chapter analyzes policy debates around Ontario's *Mining Act*, the legislation that governs the disposition of the province's mineral resources. Despite the industry's persistent complaints about overregulation, it is difficult to identify a single instance in which the industry suffered an unambiguous defeat, including those cases in which the *Act* was amended to provide greater public oversight over mineral exploration and development activities. In general, the province's approach to amending the *Act* was to do so in direct consultation with industry representatives. The *Act*'s underlying premise – that government ought to promote to the greatest extent feasible the development of the province's mineral resource base – has not been significantly challenged.

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<sup>1</sup> Barry J. Barton, *Canadian Law of Mining* (Calgary: Canadian Institute of Resources Law, 1993), 163.

Since 1906, major legislative changes to the *Mining Act* have been rare. This chapter analyzes three of the most notable such instances. The first major revision occurred in 1989, a time of heightened public sensitivity to environmental issues. Following the release of the Ministry of Northern Development and Mines' *Green Paper on Mines and Minerals*, the *Act* was amended to require that mine operators deposit financial assurances with the government prior to commencing production so as to cover the costs of environmental remediation and to undertake "progressive rehabilitation" of their mine and tailings disposal sites. Yet, while most observers viewed the changes as enhancing the province's environmental oversight over the industry, there is no question that the industry played a predominant role in shaping the requirements. The changes are best understood as a strategic intervention on the industry's part. In actively participating in the making of the new legislative framework, the industry was able both to improve its public reputation and, more importantly, to forestall the enactment of potentially more onerous legislation in future.

The second major revision came a short time after the first. As part of its broader efforts to cut regulatory "red tape" and enhance the province's investment climate, the Progressive Conservative government under Premier Mike Harris introduced a series of amendments in 1996 that established a self-regulatory framework for mine closure and rehabilitation. Government oversight was reduced, as industry itself was given greater responsibility for both planning and approving closure and remediation plans. In addition, the requirements around the deposit of financial assurances were loosened. While the industry did not get everything it wanted from the new law, the direction of the policy changes was clearly in its favour.

The final revision came in 2009. In a context of rapidly rising mineral prices, an influx of mineral explorationists staked a record number of claims throughout the province. Exploration

activities in culturally and ecologically sensitive regions sparked a series of high-profile conflicts, pitting both Indigenous communities and rural property owners against mining firms. The arrest and subsequent imprisonment of several Indigenous activists undermined the legitimacy of the province's mining legislation. In response, the Liberal government pledged to "modernize" the *Mining Act*. While the amendments contained important concessions to both Indigenous peoples and rural property owners – including the *Act*'s explicit recognition of Aboriginal and treaty rights and the withdrawal of privately owned land from staking in Southern Ontario – industry pressure kept the lid on several proposed reforms. Before addressing these policy debates, however, the chapter briefly reviews the political economy of mineral exploration, the environmental impacts of mine development and the key aspects of the free entry system.

### **A Political Economy of Mineral Exploration**

Among the several stages of the "mining sequence," mineral exploration carries with it the greatest risk to mining companies and their financial backers. The reasons for this are easily understood. No exploration project is guaranteed success. Despite notable advances in geochemical and geophysical techniques, "proving out" an orebody – that is, considering the full range of factors to determine whether a mineral deposit can be developed profitably – remains fraught with uncertainty. In the short term, exploration work is a pure debit from the mining company's perspective as exploration activities generate no immediate revenue. In fact, as political economist Michael Tanzer has noted, exploration projects "that cost millions of dollars often [fail] to bear fruit."<sup>2</sup> That said, it is the very scarcity of economic mineral deposits that lays

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<sup>2</sup> Michael Tanzer, *Race for Resources: Continuing Struggles over Minerals and Fuels* (New York: Monthly Review Press, 1980), 56.

the basis for profitable development in the first place. Simply put, the greater the scarcity of a given mineral commodity, the greater the reward that comes with finding and developing it.

Much mineral exploration work is carried out by a particular type of firm: the “junior” mining company. Unlike their “senior” or “major” counterparts, junior mining companies do not operate producing mines. As a result, juniors do not generate revenue streams. Instead, their primary aim is to make a profit by selling proven deposits to seniors that will bring them into production. In the short term, juniors rely on the sale of company shares on venture capital markets to finance their activities. Because of their risk profile, juniors are largely shut out of the market for bank loans. While the junior sub-sector has a long history in Canada, it was not until the 1980s that the sector emerged as a major force in the industry. Seeking to cut extraneous costs to weather the market turmoil of the time, senior firms shed much of their internal exploration staff, many of whom went on to found independent firms.<sup>3</sup> With the rapid rise in the price of gold in the mid-1980s, junior exploration spending mushroomed to parallel that of the seniors. In fact, during the 2000s commodities boom, junior spending outpaced senior spending in Canada, peaking at 67.3 percent of the total in 2007. Thereafter, the juniors’ share began to decline, and hovered around 50 percent until 2015.<sup>4</sup>

The historical record indicates a clear correlation between rising metal prices and rising expenditures in mineral exploration and vice versa. According to a 2002 study published by Natural Resources Canada, in the period 1947-2002, mineral exploration was depressed in 1947-49, 1958, 1973, 1992 and again at the end of the twentieth century. Apart from the years 1947-49, each of these periods corresponded with a downswing in the world business cycle and lower

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<sup>3</sup> Chambers, “Environmental Policy and Metal Mining in Ontario in the 1990’s,” 63-66.

<sup>4</sup> Natural Resources Canada, “Canadian Mineral Exploration Information Bulletin,” <https://www.nrcan.gc.ca/mining-materials/publications/17762>, (accessed 16 September 2019).

metal prices.<sup>5</sup> Such spending patterns are neither economically rational nor efficient. Because of the volatility of mineral prices and the long lead time between exploration and ultimate mine development, short-term price changes do not necessarily provide a reliable indicator of future demand prospects or profitability. Yet, most metal mining companies lack the strategic expertise to forecast long-term trends, a reality well demonstrated by Inco and Falconbridge's late-1960s expansion programs discussed in Chapter 2. As a result, firms tend to spend heavily on exploration only when prices are high.

There are other reasons why exploration spending tends to decline when metal prices fall. Lower metal prices have a negative impact on profitability, and since, for the most part, new discoveries are not required to maintain operations in the short term, most companies cut back on spending. In addition, low metal prices make it difficult for junior firms to sell company shares to finance their activities. While the correlation between the metal prices and exploration spending is far from perfect, it is nevertheless clear that rising metal prices tend to generate greater exploration expenditures.

Two other trends that characterized Canadian mineral exploration over the postwar period are worth noting. Although the data set runs only from 1946-1990, it is clear that average annual exploration expenditures increased significantly over this time. More importantly, the value of the metals discovered per dollar spent on exploration decreased by a large margin over the same time. While the ratio in the early 1950s was close to 400:1, by the end of the 1980s this figure had fallen to well below 100:1. In other words, mineral exploration became an increasingly expensive project over the postwar period.<sup>6</sup>

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<sup>5</sup> Donald A. Cranstone, *A History of Mining and Mineral Exploration in Canada and Outlook for the Future* (Minister of Public Works and Government Services Canada, 2002), 15.

<sup>6</sup> Ibid, 13, 16.

These factors – the uncertainties in proving out an orebody, the risk of spending large sums of money only to come up empty, and the sheer difficulty of finding a valuable mineral deposit – have long underpinned the mining industry’s basic approach to policy towards the disposition of mining lands. In general, the industry has had three basic aims: first, to receive public subsidies to mitigate financial risks, second, to maintain security of tenure to mining claims so as to attract risk capital and finally, to ensure that the widest possible land base remains open to exploration. Regarding the latter, former gold mine executive and Chair of the Royal Commission on the Northern Environment J.E.J. Fahlgren put the matter succinctly: “Given that the industry has no control over location, special consideration in the matter of land use is necessary. Whenever and wherever economic ores are found, serious consideration should be given to their development. Mines do not come easily!”<sup>7</sup>

### **Mineral Development and the Environment: An Overview**

The mining of metallic ores carries with it the risk of severe environmental degradation. Modern mining is a capital-intensive industry that requires the construction of a large physical infrastructure. As the Organization for Economic Cooperation and Development notes, mineral extraction involves, as the name suggests, “permanently removing natural resources from the ground.”<sup>8</sup> The environmental impact of mining varies depending on the metallic ore mined, the mining method used and the existing geography and ecology at the mine site.

The mining industry is perhaps the world’s largest producer of waste, much of it toxic. The reasons for this are straightforward. Valuable minerals make up only a small portion of the

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<sup>7</sup> Ontario. Royal Commission on the Northern Environment, *Royal Commission on the Northern Environment: Final Report and Recommendations*, (Toronto: Ontario Ministry of the Attorney General, 1985), 6-11.

<sup>8</sup> OCED, *Mining and Green Growth in the EECCA region* (pre-publication version), (OECD: April 2019), 10. [https://www.oecd.org/environment/outreach/20190413\\_Mining%20and%20Green%20Growth%20Final.pdf](https://www.oecd.org/environment/outreach/20190413_Mining%20and%20Green%20Growth%20Final.pdf).

ore-bodies that mining companies extract from the earth. In some cases, the ratio of waste rock to valuable mineral is huge: The average gold mine generates only two-tenths of one *ounce* of gold for every 5,000 *tonnes* of ore extracted. Furthermore, milling processes used to separate the valuable minerals from the host rock use a variety of chemical reagents, including cyanide, kerosene, sulphuric acid, and others. The waste generated in this process is known as “tailings,” which are composed of a finely ground slurry of waste rock, water and chemicals. Because of their toxicity, tailings must be stored and monitored until well after the mine has been closed. The size of some tailings disposal sites in Ontario give an impression of the magnitude of the problem. The Kidd Creek Mine’s tailing disposal site near Timmins contains more than 100 million tonnes of acid-generating waste and measures 1.2 kilometres wide by 25 metres high.<sup>9</sup> Tailings failures can result in the uncontrolled release of mine waste, leading to environmental and social catastrophes as in Brumadinho, Brazil in early 2019.

In addition to waste management, the most pressing environmental concern stemming from mine development is acid mine drainage (AMD). AMD occurs as the result of the oxidization of sulfide minerals. When sulfides are exposed to either water or air, the ensuing reaction produces sulfuric acid, which, if not properly contained, can leach into the surrounding environment. While such processes can occur naturally over geological time, mining and milling processes hasten their development by exposing greater amounts of sulfides to the atmosphere. Exposing large amounts of sulfides to the atmosphere undermines the capacity of the surrounding environment to absorb the high concentrations of acid. It is particularly important to prevent AMD from occurring, for, according to a 2008 study by the Reclamation Research

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<sup>9</sup> Rike Burkhardt, Peter Rosenbluth and Jule Boan, *Mining in Ontario: A Closer Look* (Ontario Nature, 2017), 8.



Group for the US Fish and Wildlife Service, there are “no hard rock surface mines today that can demonstrate that AMD can be stopped once it occurs on a large scale.”<sup>10</sup>

The Kam Kotia copper-zinc mine near Timmins, which operated intermittently from 1942 until 1972, stands as perhaps Ontario’s most infamous case of acid mine drainage. During the mine’s productive life, more than 6 million tonnes of “strongly acid-generating” tailings were disposed of in an uncontrolled manner over an area covering 500 hectares, exposing the surrounding Kamiskotia river system directly to the toxic waste. The tailings devastated nearby ecosystems. As the Environmental Commissioner of Ontario described the scene in his annual report for 2000/2001, “The Kam Kotia area is very unsightly, with no vegetation growing on the mine tailings and waste rock. A large ‘vegetation kill zone’ caused by the tailings and run-off is covered with dead trees and parts of the site are coloured orange from the contamination.”<sup>11</sup>

Because the company that operated the mine in the 1960s and 1970s went bankrupt, land ownership reverted to the Crown. Thus, the Ontario public was forced to absorb the costs of rehabilitating the area, described as “one of the most significantly challenging sites in Canada to rehabilitate.” In 2008, *Northern Ontario Business* reported that the MNDM had spent \$47 million on the site, and anticipated expenditures of an additional \$12 million. The firm contracted to carry out the work predicted it would take 50 years to completely remove the contaminants.<sup>12</sup>

Kam Kotia was far from the only ecologically destructive mine operation in Ontario. In 2012, the government declared that arsenic levels in Long Lake in the Sudbury area exceeded the

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<sup>10</sup> S.R. Jennings, D.R. Neuman and P.S. Blicher, “Acid Mine Drainage and Effects on Fish Health and Ecology: A Review,” (Bozeman, MT: Reclamation Research Group, 2008), 19.

<sup>11</sup> Environmental Commissioner of Ontario, *Having Regard: Environmental Commissioner of Ontario, Annual Report 2000/2001* (Toronto: ECO, 2001), 89.

<sup>12</sup> Kelly Louiseize, “Cleaning up the Kam Kotia mine site,” *Northern Ontario Business*, 15 January 2008.

province's water quality objectives. The high levels of toxicity stemmed from a mining operation that had ceased some 70 years prior. During its productive life, the Canadian Exploration Company gold mine discharged about 200,000 tonnes of tailings directly into the environment. Clean-up costs for this site also fell to the public.<sup>13</sup> In all, since it began compiling the information in 1993, the MNDM has identified some 4,400 abandoned mine sites containing over 15,000 hazards – physical or environmental – throughout the province. Yet, according to the Auditor General's annual report in 2015, the Ministry had no estimates of the total clean up costs, nor did it have a long-term strategy for rehabilitating the known hazards. Ministry estimates pegged the rehabilitation of the 56 “highest-risk” sites at \$372 million, but in the four years prior to 2015, the Ministry budgeted only \$4 million per year for clean up.<sup>14</sup>

The problems associated with the control of acid mine drainage and other mine wastes are similar to those associated with smelter emissions and occupational health and safety. Effective measures to prevent the occurrence of AMD and to restore former mine sites to their previous ecological condition are expensive, effectively requiring mining companies to undertake environmental management programs in perpetuity. Profit-seeking mining companies, particularly smaller, cash-poor firms, have every incentive to underestimate the potential for AMD to occur and to avoid incurring any liability resulting therefrom. These problems are compounded by the fact that monitoring and reclamation must take place after the mine has closed and thus no longer generating revenue. As former Environment Canada official Keith Ferguson once explained, “the problem [of AMD] is difficult to arrest, and the costs associated with long-term pollution abatement can turn a once-profitable mine into an expensive liability.”<sup>15</sup>

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<sup>13</sup> Darren MacDonald, “Cleanup of toxic tailings at former Sudbury mine site could begin soon,” *Northern Ontario Business*, 2 April 2019.

<sup>14</sup> Auditor General of Ontario, *2015 Annual Report*, 444.

<sup>15</sup> Quoted in MiningWatch Canada, *Mining in Remote Areas: Issues and Impacts*, (2001) 7.

In fact, several mining companies have declared bankruptcy to avoid incurring liability for clean up, including the Canadian gold mining company Pegasus Gold, which operated the Zortman-Landusky mine in Montana from 1979 until the mid-1990s. Three years after having agreed to pay compensation costs of \$36 million to nearby property owners, an Indigenous community and the state government to avoid a lawsuit, the company's directors voted themselves more than \$5 million in bonuses, transferred the company's profitable assets to a new corporate entity they had created, and declared Pegasus bankrupt. Only 15 percent of the mine site had been reclaimed.<sup>16</sup>

As will be detailed below, the Ontario government amended the *Mining Act* in 1989 to ensure that mine operators would remain liable for rehabilitation costs even in cases of bankruptcy by requiring operators to deposit a financial assurance prior to starting mine production. However, these provisions were only in force for a period of five years before the newly elected Progressive Conservative government under Premier Mike Harris significantly weakened them as part of that government's broader "Common Sense Revolution."

### **The *Mining Act* and the Free Entry System**

Since its enactment in 1906, Ontario's *Mining Act* has disposed of mineral rights using the "free entry" system. According to mining law expert Barry Barton, a free entry system confers upon miners three distinct legal rights: the right to enter lands containing minerals reserved to the Crown; the right to acquire a claim; and the right to a lease and to enter into production.<sup>17</sup> Below,

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<sup>16</sup> Jared Diamond, *Collapse: How Societies Chose to Fail or Succeed* (New York: Viking, 2005), 456.

<sup>17</sup> Barry J. Barton, *Canadian Law of Mining*, 114-209. This section draws heavily on Barton's description. For a critical overview of free entry from the perspective of environmental law, see Karen Campbell, *Undermining our Future: How Mining's Privileged Access to Land Harms People and the Environment* (West Coast Environmental Law, 2004).

I review each of these rights and their implications for government policy and land-use management.

A free entry system grants licensed prospectors the right to enter onto any lands – private or Crown – to explore for minerals where subsurface rights have been reserved to the Crown. Only lands that have been explicitly withdrawn by statute or ministerial declaration are not open for mining activities. Thus, free entry’s underlying assumption is that, unless it is expressly withdrawn, the optimal use of any land is mineral development, irrespective of competing ecological, economic or social values. As for prospecting licenses, the government has no discretion to refuse an application, and thus, with a payment of a nominal fee, any individual over the age of 18 may become a licensed prospector. In that sense, licensed prospectors need not have any special expertise or training.

Until amendments passed to the *Public Lands Act* in 1989, Ontario’s statute books allowed for the “entirely unrestricted” use of Crown land during the exploration stage. These amendments required miners to acquire a work permit from the Ministry of Natural Resources before carrying out certain activities, mainly involving the use of heavy equipment, like clearing trees, stripping the land of “overburden” to expose bedrock, bulk sampling, and diamond drilling and blasting. The Ministry could refuse such permits only if the planned activities were inconsistent with its resource management plans. However, work permits were not required for work on lands where the claim holder held title to the surface rights. As part of its broader efforts to “cut red tape,” the Progressive Conservative under Premier Mike Harris eliminated these requirements with the passage of the omnibus *Savings and Restructuring Act* in 1996.

The *Mining Act* has long established in detail several types of land that were explicitly withdrawn from claim staking. For example, the 1957 edition of the government of Canada’s

*Digest of Mining Laws* noted that Ontario's *Mining Act* did not allow prospectors to stake claims on lands reserved for town site purposes, railways, summer resorts, or lands certified as required for water-power or highway purposes among others, although some such lands could be staked with the Minister's consent.<sup>18</sup> In 1955, Ontario changed its provincial parks policy to prohibit commercial mineral exploration and development within park boundaries, activities which had previously been permitted.

The issue of mineral exploration within parks has remained a contentious one since this time, and government policy has shifted on several occasions. Clearly, however, the government has been careful not to unduly limit the land base open for staking. Indeed, as Ross Hynes noted in his review of Ontario's mineral policies for Queen's University's Centre for Resource Studies in 1977, "it [has been] the province's practice to conduct thorough mineral surveys before establishing a provincial park." As a result of one such survey, the government altered the boundaries of Polar Bear Provincial Park before its establishment in 1970.<sup>19</sup> In 1983, the government permitted mineral exploration in 48 of its 155 newly created provincial parks, the area open for staking amounting to 80 percent of the total protected area. In 1988, the Liberal government reversed this policy, once again prohibiting claim staking in these parks, though claims in good standing were unaffected by the decision.<sup>20</sup> Under the Progressive Conservative government's "Lands for Life" process in 1999, the government declared its intention to protect from development 12 percent of the lands in a designated planning area in Central and Northern Ontario. Yet, the Ministry of Northern Development and Mines announced that existing mining

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<sup>18</sup> H.A. Graves and G.R.L. Potter, *Digest of Mining Laws of Canada, Fifth Edition* (Department of Mines and Technical Surveys, Ottawa: Queen's Printer, 1957), 95.

<sup>19</sup> Hynes, *Provincial Mineral Policies*, 3-4.

<sup>20</sup> Barton, *Canadian Law of Mining*, 176.

claims in the new parks would remain valid, and that the Ministry would continue to permit prospecting and exploration therein.<sup>21</sup>

In Ontario, licensed prospectors have the right to enter to privately owned lands where mineral rights are owned by the Crown. Prospectors need not first gain the private landowner's permission to enter, but must provide notice prior to beginning assessment work. The Ministry of Northern Development and Mines' policy is to "strongly encourage" operators to give notice to land owners before entering their property to prospect, begin mine construction or mineral extraction, but this is not mandatory.<sup>22</sup> At the time of Barton's writing, operators could begin assessment work the day after having provided notice, and did not need to gain the landowner's consent. That said, in the absence of an agreement between the operator and the land owner, the province's Mining Commissioner can demand the operator pay compensation and prohibit further assessment work until the payment is made. Nevertheless, the Commissioner cannot set conditions on the operator's use of the land.<sup>23</sup>

The second pillar of free entry is the right to acquire a mining claim. So long as the licensed prospector complies with the legislated requirements around claim staking, the government's mining recorder *must* register the claim and grant the prospector the exclusive right to conduct further exploratory work. Government has no discretionary authority to reject the registration of a claim. Thus, miners acquire title to land by virtue of their own actions, not the actions of government. In this way, the free entry system is unique among methods of acquiring natural resources from the Crown, for only miners can do so by going out and laying

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<sup>21</sup> Mark Winfield and Greg Jenish, *Ontario's Environment and the Common Sense Revolution: A Four Year Report* (Canadian Institute for Environmental Law and Policy, September 1999), 1-13.

<sup>22</sup> Ontario Ministry of Northern Development and Mines, "Surface Rights Holders," 29 January 2018. <<https://www.mndm.gov.on.ca/en/mines-and-minerals/mining-sequence/consultation/surface-rights-holders>>. (16 September 2019.)

<sup>23</sup> Barton, *Canadian Law of Mining*, 192-94.

claim to them. Proponents seeking to acquire any other natural resource – timber, oil and gas, fish among others – may do so only at the Crown’s discretion.

Finally, free entry grants registered claims holders the rights to go to lease and to enter into production. In this respect, should a miner discover an economic deposit on the claim in question, once he or she has carried out specified work requirements, the government *must* grant a mining lease to enter into production. Again, neither government nor the Minister responsible for mining has any discretion to approve or refuse a lease, so long as the application is made correctly. Until the free entry system came under severe criticism following a series of high-profile disputes involving junior exploration firms and Indigenous peoples and private landowners in the early 2000s, the mining industry has long interpreted this final pillar of the system as “the right to mine.”

While the mining industry has long upheld the virtues of free entry, critics assert that the system raises several problems for public policy, particularly as it relates to effective resource and land use management. Moreover, as much recent mineral exploration has been conducted in regions subject to Aboriginal land claims, still others have raised concerns about free entry’s impact on the rights of Indigenous peoples, as mining activities may interfere with existing Aboriginal rights.<sup>24</sup> A host of challenges stem from the government’s lack of discretionary authority. Under free entry, government is unable to impose terms and conditions, whether social, economic or environmental, upon particular mining leases. Moreover, free entry’s principle of “first-come first-served” prevents government – the resource’s owner – from

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<sup>24</sup> Nigel Banks and Cheryl Sharvit, *Aboriginal Title and Free Entry Mining Regimes in Northern Canada* (Canadian Arctic Resources Committee, July 1998); Karen Drake, “The Trials and Tribulations of Ontario’s *Mining Act*: The Duty to Consult and Anishinaabek Law,” *McGill International Journal of Sustainable Development Law & Policy* 11 (2015), 183-218; Sophie Thériault, “Aboriginal Peoples’ Consultations in the Mining Sector: A Critical Assessment of Recent Mining Reforms in Québec and Ontario,” in André Bélanger and Martin Papillion (eds.), *Canada: The State of the Federation 2013: Aboriginal Multilevel Governance* (Montreal & Kingston: McGill Queen’s University Press, 2013), 143-162.

choosing among potential applicants to develop any particular deposit. Thus, mining companies with poor social or environmental track records have the same rights as those with stronger histories.

Critics also point to flaws in the government's most effective tool to control the pace of mineral development, namely the withdrawal of land from staking. As Barton notes, government can withdraw land only "if the legislation makes the power available for the particular purpose required and if it is resorted to in time." Often it is not clear that a particular area is unsuitable for mineral development until *after* a claim has been recorded, by which time government no longer has any discretion, and the claim holder's rights must be respected. This is the case despite the fact, as Barton says, "there may be excellent reasons why there should be no mineral activity in a given district or in a particular place."<sup>25</sup> For such reasons, critics assert that free entry impedes public land use planning. Once a mining claim has been registered, the government simply cannot weigh the costs and benefits of allowing mineral development to proceed or not. In effect, free entry allows mining to trump all other land uses.

### **Revisions to the *Mining Act* (1906-1989)**

For most of the twentieth century, the politics of the *Mining Act* conformed to what Pepper Culpepper has referred to as "quiet politics."<sup>26</sup> The *Act* was subject to little public scrutiny, did not engender significant public controversy, and was largely formulated on the basis of quiet, closed-door negotiations between industry representatives and government. Indeed, the initial introduction of the *Act* can be traced to a December 1905 government-sponsored mining

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<sup>25</sup> Barton, *Canadian Law of Mining*, 164.

<sup>26</sup> Pepper D. Culpepper, *Quiet Politics and Business Power: Corporate Control in Europe and Japan* (Cambridge: Cambridge University Press, 2011).



convention that followed on the heels of the Cobalt silver rush from 1903-1905. The legislation largely accorded to recommendations received from representatives of the prospecting and mining industries. Industry representatives sought a uniform, province-wide free entry system, administered at a regional level, with no “discovery requirements” to register a claim.<sup>27</sup> Only this latter aspect was not incorporated into the initial legislation. In resisting the industry’s demands in this regard, the government aimed to prevent speculative “blanket staking” as had taken place during the Cobalt rush.<sup>28</sup>

Thereafter, until 1989, the *Mining Act* only underwent minor amendments. In their reviews of Ontario’s mining legislation, both Hynes and Barton agree that changes to the *Mining Act* were essentially technical in nature, doing little to alter the *Act*’s free entry principles. To the extent that changes were made, they reflected the increasingly complex and capital-intensive nature of modernized mineral exploration projects. Whereas early twentieth-century prospectors could discover significant mineral deposits by identifying outcroppings on the surface, the gradual exhaustion of the province’s most accessible deposits required explorationists to adopt more sophisticated and expensive exploration techniques, like airborne electromagnetic surveying. Politically, the government’s main challenge was to strike a balance between the industry’s need to conduct exploration surveys over ever-wider tracts of land with the ability of relatively capital-poor junior firms to compete with the cash-rich majors.

In his review of Canadian mining law, Barton provided a summary of some of the most notable legislative changes. In 1921, an amendment eliminated the discovery requirement. In 1955, the holder of a mining claim was given the option of taking a perpetually renewable lease

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<sup>27</sup> “Discovery requirements” essentially require the claim staker to prove the discovery of an economic mineral deposit on site before registering the claim.

<sup>28</sup> These speculative practices and the government’s response thereto are described in H.V. Nelles, *The Politics of Development: Forests, Mines & Hydro-Electric Power in Ontario* (Toronto: Macmillan of Canada, 1974), 157-59.

on a mining property, rather than a patent in fee simple. The issuance of patents in fee simple was further restricted in 1963. On several occasions, the limits on the number of claims a licensed prospector could hold was loosened, before finally being eliminated in 1969. Although the requirement that claims holders perform a minimum of 200 “man-days” of work assessments over a period of five years before being granted permission to go to production was maintained from its introduction in 1921, various revisions were made to reflect changing exploration methods and technologies.<sup>29</sup>

The *Act*’s most notable constraint aimed to prevent the idle holding of mining land, a principle endorsed by the industry. One method of doing so was the “acreage tax,” a small fee payable to government against each mining claim held. Should payments fall into arrears, claims reverted to the Crown. Periodically, the level of the acreage tax was raised. For example, following an amendment in 1968, the tax stood at 50 cents per acre, whereas it had previously stood at 10 cents an acre, and only five cents an acre prior to the Second World War.<sup>30</sup>

Industry reacted strongly to the slightest hint that free entry would be eroded. One particularly telling episode occurred in 1957, when the government proposed several amendments without first receiving industry’s consent. The proposed amendments empowered the Minister of Lands and Forests to reserve surface rights on mining claims for purposes other than mineral exploration or development. Prior to the amendment, a mining claim holder who performed the requisite work requirements became owner of both *surface* and mineral rights upon receiving his patent. The government’s intention was hardly to stifle mineral development. Instead, it was to rein in what appeared to be a rather widespread abuse of the *Act*’s provisions

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<sup>29</sup> Barton, *Canadian Law of Mining*, 132-6.

<sup>30</sup> Hynes, *Provincial Mineral Policies*, 5.

by non-mining interests. As the provincial Mining Commissioner J.F. McFarland explained to T.C. Clarke, an official in Premier Frost's office,

over the years many thousands of acres of Crown lands have been alienated ostensibly for mining purposes on which no sincere endeavour has been made to explore and develop the mineral possibilities. Prior to 1957, there are instances where desirable summer resort ground within easy access of large urban centres has been staked under The Mining Act and mining operations as provided in The Mining Act performed, in order to obtain large areas for summer resort or private recreational purposes. As the law existed at the time, title to both surface and mineral estates could not be refused. It was in order to prevent abuses of this kind that the 1957 amendment was made and to afford time for careful study of the whole matter of land disposition.<sup>31</sup>

Nevertheless, the mining industry challenged the proposed changes. The industry's main concern was that the amendment empowered the Minister of Lands and Forests to "encroach upon rights belonging to the mining industry." As the *Northern Miner* editorialized, the amendment entailed "the abject surrender of the Department of Mines to the Department of Lands and Forests. If the amendments go through the Lands and Forests officials will be dictating to the Department of Mines on matters that strike right at the roots of efficient and economical mine development."<sup>32</sup> The industry also raised concerns about the difficulties in knowing with any certainty what portion of a given mining claim's surface area would be required for profitable development. Arriving at such knowledge often required many years of geophysical and geochemical exploration work. Thus, in a united effort, the industry's trade associations, the Prospectors and Developers Association and the Ontario Mining Association, campaigned against the amendments in the press and before the Legislature's mining committee.<sup>33</sup> To assuage the industry, Premier Leslie Frost struck the Public Lands Investigation Committee, which heard testimony from industry representatives. It was this Committee's

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<sup>31</sup> AO, RG 3-23, Premier Leslie M. Frost general correspondence, Box 47, 87-G Fahlgren, J.E.J., J.F. McFarland, to Mr. T.C. Clarke, 25 September 1959.

<sup>32</sup> "Go Slow Mr. Kelly, Go Slow," *Northern Miner*, 21 February, 1957.

<sup>33</sup> "Proposed Changes In Ont. Mining Act Cause Indignation," *Northern Miner*, 28 February 1957.

recommendation that led to the restriction on the issuance of patents in 1963 mentioned above. It appears that the industry was less concerned about reverting surface rights back to the Crown and more about ceding government oversight to the Department of Lands and Forests, an agency with greater independence from mining than the Department of Mines. As gold mining executive J.E.J. Fahlgren wrote to Premier Frost, “Industry will, I am sure, welcome legislation that continues to provide title to surface rights on mining claims for mining, and at the same time binds them to transfer any part thereof back to the Crown if the occasion arises for the need of such for other than mining purposes.”<sup>34</sup>

### **Greening the *Mining Act*? (1989-1995)**

As we have seen, throughout the twentieth century, the industry exercised an unparalleled degree of influence over the shape of the *Mining Act*, the way mining lands were disposed and the regulatory environment concerning mining’s ecological footprint. In the eight decades following its enactment, the *Mining Act* had institutionalized the free entry system and its associated set of rights and entitlements for mining firms. In the view of most industry observers, it was not until the enactment in 1989 of new provisions on mine reclamation that the provincial government significantly curtailed the free entry system. The coming into force of Part VII of the *Act* – which introduced “the most comprehensive mine reclamation process in Canada” – eroded the right to mine.<sup>35</sup> Following the amendments, only those firms that submitted detailed mine closure plans as outlined in the *Mine Rehabilitation Code of Ontario* alongside realizable financial assurances including cash, bonds or letters of credit prior to commencement of advanced exploration

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<sup>34</sup> AO, RG 3-23, Premier Leslie M. Frost general correspondence, Box 47, 87-G Fahlgren, J.E.J., J.E.J. Fahlgren to Leslie Frost, 12 December 1959.

<sup>35</sup> Chambers, “Environmental Policy and Metal Mining in Ontario in the 1990’s,” 100.

activities could proceed to mine development. The new regulations imposed a real financial burden on the industry, particularly on its smaller firms, and the stringent rules safeguarding the environment were understandably welcomed by the province's environmental movement. (Prior to the 1989 amendments, the *Mining Act* required tailings areas to be stabilized by vegetation "to the satisfaction of the district Engineer of Mines." Companies had to submit reclamation plans to the district engineer one year prior to closure. The Chief Engineer of Mines had the authority to require a security deposit, but there were "no regulations or guidelines for determining the amount of the security, or when it should be repaid."<sup>36</sup>)

Although the new regulations cannot be dismissed as inconsequential, nor can they be said to represent a complete rupture in the patterns of influence described in this chapter. Indeed, the mining industry and its leading actors continued to exercise significant influence over government policy. Far from challenging the mine reclamation provisions, the industry's largest corporations championed them, even if some juniors complained that the new laws imposed an inequitable burden upon them. As OMA President Patrick Reid opined once the bill had received Royal Assent, "if you can't assure that you are going to clean up after yourself, then the deposits probably shouldn't be developed."<sup>37</sup> Moreover, a string of other amendments passed in tandem with those on mine closure clearly reflected the industry's calls for measures to enhance investment security.

Thus, the 1989 amendments are best understood as a reflection of the mining industry's shifting political strategies. Recognizing the public's growing concern about the environment, the industry took advantage of its close relationship with the provincial state to advance a policy

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<sup>36</sup> Federal/Provincial/Industry Sub-Committee on Mine Waste, *Report on the Economic and Policy Aspects of Acid Drainage* (Intergovernmental Working Group on the Mineral Industry: 1988), 49-50.

<sup>37</sup> Shawn McCarthy, "Ontario to force mines to clean up their waste," *Toronto Star*, 25 October 1989.

proposal it could tolerate, rather than risk the possibility of other actors pressing for more stringent policies in future. As Inco's Roy Aitken explained, "If you sit on the sidelines you'll eventually end up with the regulations you deserve. And those, typically, will be punitive with multimillion-dollar fines and jail terms."<sup>38</sup> While the industry largely succeeded in achieving the proposals it put forward, it moved to do so only in light of changes in the political environment. To reiterate, while predominant, the industry's power is not absolute. The rest of this section traces the development of the amendments from the government's release of the *Green Paper on Mines and Minerals* in 1988 to their ultimate promulgation in 1991.

Two factors contributed to the *Green Paper's* release. First, the 1980s saw the emergence of the "second wave" of environmental activism. Much like the late 1960s and early 1970s, in the late 1980s the environment became a top-of-mind issue in public opinion polls, forcing the issue onto the policy agenda. Second, the industry had concerns of its own. A series of legal disputes over title to mining claims unnerved industry representatives who wanted government to enact clear provisions to ensure security of title.<sup>39</sup> In addition, few prospectors adhered to the *Act's* specified requirements around proper staking methods. Because non-compliance with the *Act's* requirements could result in the forfeiture of a claim, industry representatives pressed the government to provide legal recognition to staking practices that had been developing in the field. An earlier attempt to bring about the industry's desired changes in 1985 stalled when the PC government fell as a result of the Liberal-NDP Accord. Following its 1987 election victory, the majority Liberal government promised in its initial speech from the throne to address the industry's concerns.

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<sup>38</sup> Robert Collison, "The Greening of the Board Room," *Report on Business*, 16 June 1989.

<sup>39</sup> The most high-profile dispute pitted International Corona Resources Ltd. against LAC Minerals Ltd. over a gold mining property in the Hemlo district. See Bud Jorgensen, "Hemlo decision adds \$787 million to Corona's value," *Globe and Mail*, 6 October 1987.

As public concern about the environment continued to grow, the mining industry adopted new tactics. Long recognized as one of North America's most notorious polluters, by the late 1980s Inco began to position itself as a champion of environmental management and sustainable development. Executive Vice-President Roy Aitken figured prominently in Inco's newfound environmentalism. In 1987, Aitken served as co-chair of the federal government's National Roundtable on the Environment and the Economy, which unanimously endorsed the Brundtland Report's concept of sustainable development as a basis for federal environmental policy. Subsequently, Aitken made frequent public appeals for government action on the environment, at times even bemoaning Ottawa's failure to translate its "high-powered rhetoric" into action.<sup>40</sup> According to a study by the environmental NGO National Survival Institute, Inco's 1987 annual report contained "some of the strongest expressions in corporate interest in the environment" among Canadian corporations, while Falconbridge was one of just a few firms that admitted to failing to meet obligations under environmental regulations.<sup>41</sup> While Aitken and other mining industry executives criticized punitive, "command-and-control" style regulations, favouring instead tax incentives and other measures that made green business profitable, it appears as though the industry's endorsement of new mine closure and reclamation provisions was motivated by its campaign to win public favour on environmental issues. In any event, as

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<sup>40</sup> Ross Howard, "'High-powered rhetoric': Little to show on the environment," *Toronto Star*, 18 March 1989. Notably, Inco sought to tout its environmental commitment to its workforce. In 1990, for instance, the company teamed with Environment Canada to produce a booklet containing "hundreds of tips and suggestions on environmentally friendly habits" and delivered copies to each of its 10,500 Canadian employees to mark its "Environment Week." See "Environmental efforts demand company, employee cooperation," *Inco Triangle*, June 1990.

<sup>41</sup> Ross Howard "Reports show budding environmental interest: Major firms cite new concern," *Toronto Star*, 14 June 1989.

contemporary press reports make clear, large companies like Inco were clearly trying to use their tailings reclamations efforts to construct themselves as environmentally friendly actors.<sup>42</sup>

A year before the Ministry of Northern Development and Mines released its *Green Paper*, the Intergovernmental Working Group on the Mineral Industry released its *Report on the Economic and Policy Aspects of Acid Drainage*. Drafted by a joint committee of government and industry representatives, the *Report* laid the basis for the *Green Paper*'s policy approach as well as the subsequent regulations under the *Mining Act*. The committee was composed of two representatives from the federal government, nine from various provincial and territorial governments and two from industry. Only one government representative – Saskatchewan's Ron Barsi – came from an environmental ministry.<sup>43</sup> The *Report* detailed the various components of an "ideal reclamation law." In the *Report*'s view, closure and reclamation legislation should be administered with a "single-window approach" with a lead administrative agency guiding mine operators through the approvals process. Reclamation planning should commence early in the approvals process, but it should also allow sufficient "flexibility" in respect of changing environmental and technical circumstances. Closure plans should be periodically reviewed and updated as necessary. Some discretion was needed with respect to environmental standards, as legislation had to achieve the "appropriate balance between economic and environmental objectives." Mine operators should have primary responsibility for monitoring decommissioned sites and ensuring the relevant environmental conditions were met. Finally, as a result of the "very high costs" associated with the reclaiming of acid-generating mines, which the *Report*

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<sup>42</sup> For example, see "Inco's tailings reclamation has won over our toughest critics: the birds," *Inco Triangle*, February 1990.

<sup>43</sup> Federal/Provincial/Industry Sub-Committee on Mine Waste, *Report on the Economic and Policy Aspects of Acid Drainage*, "Appendix B," 31-32.



estimated at \$125,000 per hectare, legislation should enforce compliance by mandating financial assurances “as a matter of course.”<sup>44</sup>

The MNDM’s *Green Paper* reflected the context in which it was released. In the light of the public’s growing concern about environmental issues, the *Green Paper* promised a “new approach” to regulating mineral exploration and development in the province, one that recognized the “unintentional legacies of the past,” and incorporated the public’s growing concern about conflicts over land use. It acknowledged the “scars” left behind by the long history of mining in Ontario, the abandoned mine hazards, the denuded landscapes, the old mills on the verge of collapse and the unconfined sulphide tailings that threatened to contaminate water systems. It argued that this “legacy of potential hazards must be addressed and eliminated.”<sup>45</sup> Nevertheless, it was also clear that promoting a sound investment climate remained the Ministry’s central priority. Much of the *Green Paper* sought to address the industry’s concern around security of title, focusing in particular on staking procedures, dispute settlement mechanisms and work assessment practices. To this end, the *Green Paper* recommended updating the *Act*’s staking requirements, which had not “kept pace” with changes in the field. It also recommended measures to restrict disputes over claims, including disallowing disputes over claims that had been in good standing for a year, as well as raising the fees and administrative requirements to file a dispute. Finally, the *Green Paper* recommended updating the *Act*’s work assessment sections so as to “adequately compensate” claims holders for “costly new techniques” not well recognized by the existing “man days” system.

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<sup>44</sup> Ibid, 15-20.

<sup>45</sup> Ontario Ministry of Northern Development and Mines, *Ontario’s Mines and Minerals Policy and Legislation: A Green Paper* (Toronto: 1988), 1-2.

In public, the industry responded favourably to the *Green Paper*, including to its provisions around mine closure. In an interview with *Mining Life & Exploration News*, OMA President Patrick Reid said, “Hopefully it will be turned into legislation.”<sup>46</sup> The article noted that Reid was particularly pleased with the *Green Paper*’s recommendations on land tenure, dispute settlements, perimeter and map staking and its “one-window” approach, in which MNDM would lead mine operators through the regulatory process. PDAC President John Larche was similarly satisfied. As the *Timmins Press* reported, Larche welcomed the new requirements on mine closure: “Larche said the industry has no problem with the proposal and, in fact, would like to see safety standards established within the mines act, again making sure when a property is vacated, it is left safe.”<sup>47</sup> Prominent industry journals, including the London, England-based *Mining Journal*, also applauded the recommendations: “This Green Paper proposes some of the most sensible and well balanced legislation to appear for many years. It should be required reading for those responsible for both established and emerging mining industries everywhere.”<sup>48</sup>

In private, the industry was more candid about its policy objectives. In the broadest terms, the industry’s priorities were as follows: to minimize public intervention in mine permitting decisions, to minimize industry liability for environmental harm and to participate in any standard-setting processes. In a letter dated February 8, 1989, the OMA’s Patrick Reid spelled out these and other concerns to Minister of Northern Development and Mines Sean Conway.<sup>49</sup> According to Reid, the OMA’s “first and strongest recommendation [was] that the

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<sup>46</sup>AO, RG 68-26, Records of the Deputy Minister of Northern Development and Mines, Mining Act – Green Paper, “Industry is very pleased with recommendations,” *Mining Life & Exploration News*, January 1989.

<sup>47</sup> AO, RG 68-26, Records of the Deputy Minister of Northern Development and Mines, Mining Act – Green Paper, “Mine Act responds to industry,” *Timmins Press*, 15 December 1988.

<sup>48</sup> AO, RG 68-26, Records of the Deputy Minister of Northern Development and Mines, Mining Act – Green Paper, “Ontario’s Green Light,” *Mining Journal*, London, Volume 312, No. 8001, 6 January 1989.

<sup>49</sup> AO, RG 68-26, Records of the Deputy Minister of Northern Development and Mines, Mining Act – Green Paper, Patrick Reid to Sean Conway, 8 February 1989. The subsequent direct quotes are taken from this same letter.

new Mining Act be based on the ‘right to mine,’ as in the previous Act.” Reid proceeded to detail several specific concerns. First, the OMA had “major concerns” about the recommendation relating to the requirement to have discovered a “substantial mineral deposit” before registering a claim. Second, the OMA questioned the idea of the Minister’s issuing a mining permit once a company had met all stipulated regulatory requirements. While the OMA appreciated the Ministry’s intention was to provide a positive signal to the “investment community” that a project had received the green light, Reid feared that leaving such decisions to the Minister’s discretion would enable “pressure and interest groups” to “delay or stop the Minister from providing a permit.” For this reason, the OMA suggested that any such permit ought to be granted automatically. Third, Reid suggested that, to protect the “right to mine,” the *Mining Act* had to take primacy over the *Planning Act* as well as any law enacted at the municipal or regional level. Fourth, the OMA supported the proposal that MNDM take the lead agency approach in guiding the industry through both regulatory and public consultation processes. Yet, the OMA insisted that there had to be an “end and finality to the public consultation process so that individuals and interest groups aren’t coming in at the eleventh hour and trying to stop a permit being issued by the Minister.” Thus, public consultations had to have clear time limits.

Furthermore, while the OMA agreed that there should be some provisions in the *Act* around mine closure and rehabilitation, Reid suggested that the rules had to provide mine operators with the necessary “flexibility” to adapt to changing circumstances and unforeseeable events. Notably, Reid came out strongly against any potential establishment of an industry-wide reclamation fund, a policy that had not been mentioned in the *Green Paper*. In Reid’s view, the mining industry could not be held liable for rehabilitating previously abandoned mine hazards:

We see this as a broader industrial policy that should be dealt with elsewhere other than in the Mining Act for those mines that were operated and shut down according to the

society which benefited from the jobs, and wealth created should not be a burden on today's or the future in the mining industry [*sic*]. These are costs that should be shared by society as a whole.

The OMA also insisted that industry must have ample opportunity to review the draft legislation “before it goes to the legislature.” As Reid reminded Conway, “[t]his has been the practice in the past and we believe it will resolve a great many problems before legislation is introduced.” Finally, in light of the *Green Paper*'s recommendation to transfer many of the *Act*'s administrative requirements – like the detailed instructions on claim staking and work assessments – from the body of the legislation to its regulations, Reid endorsed the Paper's recommendation to strike a Minister's Advisory Committee on regulations to oversee present and future regulatory changes.

The Ministry of Northern Development and Mines was no doubt sympathetic to Reid's concerns. Even before the OMA had sent its letter to Conway, the Ministry's Director of Mineral Lands and Policy John Gammon wrote to Deputy Minister Brock Smith, “I have mentioned previously that I would like to involve the industry in this exercise [the detailed drafting stage] – they would be then aware of the extent of the progress, be gratified by the consultation and have their ‘fingerprints’ on the resulting product. I am very anxious to get started with this.”<sup>50</sup> Gammon proposed the Ministry establish small “working groups” of industry representatives to deal with particular issue areas, and that any submissions received within the 90-day public discussion period envisioned by the *Green Paper* should be “channeled to the appropriate group for their consideration in reaching the final product.” Gammon was just as receptive to the idea of forming a permanent advisory committee to monitor the need to update the *Mining Act*. To Smith he proposed the formation of a “Ministers' Advisory Committee on the Ontario Mining

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<sup>50</sup> AO, RG 68-26, Records of the Deputy Minister of Northern Development and Mines, Mining Act – Green Paper, John Gammon to Brock Smith, 15 December 1988.

Act,” with a “‘high-profile’ and credible membership” consisting entirely of industry representatives, apart from a delegate from each from Nature and Outdoor Tourism and the Association of Mining Municipalities of Ontario.

Subsequent consultations showed that the OMA’s main concerns were shared among a wider cross-section of the industry. In all, the MDNM received 86 submissions, the vast majority from industry representatives, including individual prospectors, individual mining companies and industry associations. By contrast, only two First Nations groups – Nishnawbe-aski Nation and the Sibogama Tribal Council – and one environmental organization – the Canadian Environmental Law Association – submitted briefs. Nature and Outdoor Tourism also submitted a brief, which criticized the *Green Paper* for its failure to attempt to “integrate mining exploration activities with other crown land interests.”<sup>51</sup> Labour unions did not participate.

Industry representatives unanimously rejected three proposals, each of which were dropped before the government brought the bill to the legislature: The recommendation to require prospectors to pass a simple test to obtain a license was viewed as “an unnecessary intrusion,” and thus not included in the draft legislation. The recommendation that the Minister of Mines should issue a “Mining Permit” as recognition that mine operators had met all provincial requirements was seen as “an unnecessary complexity that served no useful purpose.” Worse, some feared it may trigger an environmental assessment. Finally, industry reaction to the *Green Paper*’s recommendation to withhold the issuance of a mining lease until the operator had demonstrated a “significant deposit” in place was “universally negative,” and therefore not

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<sup>51</sup> “NOTO Responds to Green Paper on Mining Industry,” *Nature and Outdoor Tourism Ontario*, [http://noto.ca/theoutfitterarchives/noto\\_responds\\_green\\_paper\\_mining\\_industry](http://noto.ca/theoutfitterarchives/noto_responds_green_paper_mining_industry), (accessed 18 September 2019).

included in the bill.<sup>52</sup> The recommendation to introduce map staking was contested, forcing the Ministry to broker a compromise. In line with their interests, prospectors' groups opposed the proposal, while the OMA and the majors offered moderate support. Ultimately, the Ministry allowed map staking in certain designated areas, including subdivided townships in southern Ontario ("where surface rights are very contentious"); within the remote, Hudson Bay-James Bay lowland area; and within large bodies of water like Lake Superior.<sup>53</sup>

Once the *Act* passed third reading – with the support of both opposition parties – the MNDM established three working groups to draft the regulations. One working group focused on the operation of mines, including the requirements on closure plans. Among the members of this working group were three representatives from the OMA, three from PDAC, nine from MNDM, five from Environment, three from Natural Resources and two from Labour. Another working group focused on claim stake procedures, while a final focused on work assessment credits.<sup>54</sup>

Notably, the first vocal opposition to any of the amendments arose only after these working groups released their first draft recommendations. Yet, it was not the industry's major corporations that protested. Instead, leading the charge was Michael Malouf, the president of a string of junior firms, an actor seemingly far removed from the industry's true centre of power. Malouf focused his critique on two aspects of the draft regulatory framework: the provisions on mine closure and reclamation, and the updated regulations on work assessments. In March 1990,

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<sup>52</sup> AO, RG 68-26, Records of the Deputy Minister of Northern Development and Mines, Mining Act – Green Paper, Ministry of Northern Development and Mines, "Draft Cabinet Submission Amendments to the Mining Act," 21 April 1989, 6;9.

<sup>53</sup> AO, RG 68-26, Records of the Deputy Minister of Northern Development and Mines, Mining Act – Green Paper, Ministry of Northern Development and Mines, Draft Cabinet Submission Amendments to the Mining Act, 21 April 1989, 7.

<sup>54</sup> For the composition of each working group, see AO, RG 68-26, Records of the Deputy Minister of Northern Development and Mines, Mining Act – Green Paper, John Gammon to Recipients of Recommendations Made by Industry-Ministry Working Groups on Regulations, 25 July 1990.

Malouf purchased a two-page advertisement in the *Northern Miner* to voice his displeasure with the idea of posting financial assurances prior to mine development. It read in part,

Ready to start mining? Before you start you must now pledge enough funds with the ministry to close the mine down and restore lands to their original condition. How about that for stacking the cards in the majors' favour? [MNDM Mineral Lands and Policy Branch Director John] Gammon says he had to do this to satisfy the environmentalists. Nonsense, the environmentalists don't care 'who' cleans it up as long as it gets cleaned up.<sup>55</sup>

Perhaps not surprisingly, neither the majors nor Malouf's colleagues in leadership positions among the junior firms rallied to his defence. Instead, the Prospectors and Developers Association responded to Malouf's public criticisms with a paid statement of its own. In it, the PDAC praised the Ontario government's "open and comprehensive" consultation process, and commended "the Minister of Mines and his officials for their continuing efforts in this regard."<sup>56</sup>

Still, in an effort to assuage Malouf's protest, MNDM invited him to join the working group on work assessments. Malouf's experience on the working group shows just how much influence industry officials continued to exercise over policy. As he wrote in a letter to the Directors of the Prospectors and Developers Association, Gammon had told him that

[the Act's] associated rates and regulations [had] been *authored and proposed by the 'committees' of our own associations. (PDAC, OMA & OMEF)*. This was very hard for me to believe so I took the liberty of obtaining and studying all three submissions. I found that the submissions of the PDAC, OMA, and OMEF were practically identical in form and content with many sentences and paragraphs being 'word for word.'<sup>57</sup>

Nevertheless, many of Malouf's substantive concerns were factually incorrect, while at least some of his proposed alternatives were, in fact, already incorporated within the regulation. For instance, Malouf railed against a \$750 administration fee for mining leases, when in fact the

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<sup>55</sup> Quoted in Chambers, "Environmental Policy and Metal Mining in Ontario in the 1990's," 103.

<sup>56</sup> Quoted in Ibid, 104.

<sup>57</sup> AO, RG 68-26, Records of the Deputy Minister of Northern Development and Mines, Mining Act – Green Paper, Michael Malouf to the Directors of the Prospectors & Developers Association of Canada, 12 December 1990.

proposed fee was only \$50. Similarly, Malouf denounced the idea that a mine operator should have to prove a significant mineral deposit in order to bring the claim to lease. But as we have seen, this proposal was dropped in response to industry opposition. At times, Malouf's charges were inconsistent with his general argument that the new regulations were too expensive for juniors. For instance, he complained that the \$600 per year assessment requirement were *too generous*, when prospectors were permitted to charge \$150 per day for their work. Finally, Malouf's recommendation that the "man-day system" be converted to a "equivalent dollar system" with rates adjusted for inflation was precisely what the proposed regulation entailed. As John Gammon explained to PDAC President Robert Ginn, "The ironic thing is that he doesn't seem to realise that we have *done exactly that!* The rates have been adjusted from 1969 levels, when they were last set, to current values."<sup>58</sup>

Ultimately, while it is clear that industry played an important role in shaping the *Act* and its regulations, the new provisions around mine closure were generally interpreted as an improvement in environmental governance. The amendments contained several notable requirements for mine operators that restricted corporate autonomy and imposed additional costs on mine operators. Prior to commencing advanced exploration activities, companies had to submit detailed mine closure plans in accordance with the *Mine Rehabilitation Code of Ontario* as established in regulation. Such activities were not permitted until after the closure plan had been reviewed and approved by the Director of Mine Rehabilitation, who consulted with representatives from the ministries of environment, labour and natural resources. Closure plans were subject to public notice and comment. Companies were required to undertake "progressive rehabilitation" of the site during the entire life of the project, in order to return the lands to "their

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<sup>58</sup>AO, RG 68-26, Records of the Deputy Minister of Northern Development and Mines, Mining Act – Green Paper, John B. Gammon to Robert Ginn, 3 January 1991.



former use or condition,” or to a use deemed appropriate by the Director. To protect the public from having to incur environmental liability, the amended *Act* required companies to deposit funds specifically earmarked for mine closure and reclamation with the MNDM.

That said, industry did secure much of what it wanted from the *Green Paper* process, including several measures to enhance investment security. And while by the late 1980s the Ministry of Environment (which participated in the working group process) had developed stronger ties to the province’s environmental movement, other public interest groups were effectively shut out of the working group discussions.

Moreover, there is considerable evidence that the province’s largest mine operators welcomed the new closure and rehabilitation regulations at least in part because they reflected their pre-existing practices. Inco’s efforts to publicize its tailings reclamation efforts as part of its broader corporate “greening” campaign are especially relevant in this regard. Inco’s Agricultural Department had been developing various techniques of “progressive rehabilitation” of its tailings disposal sites since the early 1960s, when the company began an experimental rye farming project at its Copper Cliff disposal site.<sup>59</sup> As early as 1976, the company designated a part of the tailings disposal area the “Copper Cliff Wildlife Management Area.” From the company’s perspective, such programs were a tremendous success. By the late 1980s and early 1990s, the company’s internal newsletter boasted of the considerable progress the company had made in transforming the once-barren disposal site into a vibrant ecosystem supporting a variety of plant and animal life.<sup>60</sup> According to one report from June 1989, Inco’s reclamation efforts fell “along the lines of what we [the Ministry of Natural Resources] are trying to encourage,” as the

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<sup>59</sup> “Reaper-To-Sower Is Game Winning Double Play at Tailings Farm,” *Inco Triangle*, September 1963.

<sup>60</sup> “Greenery coaxed from refuse sparks the return of wildlife,” *Inco Triangle*, January 1990.

Ministry's Sudbury district Visions Coordinator said at a staff visit to the Copper Cliff site.<sup>61</sup> Moreover, as Colin Chambers noted in his dissertation, both Inco and Falconbridge were also prepared for the new law's provisions concerning financial assurances. Prior to the amendments, both Inco and Falconbridge had started to carry reclamation costs on their books in anticipation of legislative change.<sup>62</sup>

### ***The Savings and Restructuring Act (1996-2000)***

While industry players led the charge in bringing about the amendments to the *Mining Act* in 1989, it was not long before many of the changes that environmentalists had welcomed were rescinded or modified. With the election of the Progressive Conservative government under Premier Mike Harris in 1995, Ontario government policy underwent a dramatic transformation. While, in some respects, the Liberal and NDP governments had bucked the trends of state retrenchment that had characterized policy in most other liberal democratic jurisdictions at the time, the same could not be said for the new PC government. As Mark Winfield has argued, the 1995 election ultimately brought about "the most significant changes to legislative and institutional infrastructure for environmental and natural resource management in Ontario since its establishment in its modern form."<sup>63</sup> Policies towards mining were no exception. With the enactment of the omnibus *Savings and Restructuring Act* in 1996, public oversight and authority over mine closure and reclamation was dramatically weakened.

In pressing for an overhaul of the *Mining Act*, the industry took advantage of the new context in which it found itself. Three factors were particularly relevant. First, in the midst of the

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<sup>61</sup> "Focusing on tailings by ministry," *Inco Triangle*, June 1989.

<sup>62</sup> Chambers, "Environmental Policy and Metal Mining in Ontario in the 1990's," 101-102.

<sup>63</sup> Winfield, *Blue-Green Province*, 90.

major recession of the early 1990s, public interest in the environment as a top-of-mind issue waned. Second, by the mid-1990s, the industry's structural power had been enhanced by developments in the international political economy. Notably, more than 100 states liberalized their mining policy regimes to promote mineral investment during the 1980s and 1990s. These developments reinforced concern among Ontario policymakers that the province could lose out in international competition unless it offered attractive conditions for investors. Third, and perhaps most importantly, the Harris government came to power on a pro-business platform, committed to "cutting red tape" and improving the investment climate by reducing the role and size of government. Adopting a neoliberal policy framework, the PC government treated environmental regulations like those found in the *Mining Act* not as safeguards to the public and the environment, but as impediments to economic development.

The new government's amendments to the *Mining Act* were sweeping, and, initially, introduced without public consultation. While the *Environmental Bill of Rights* proclaimed by the NDP government in 1994 had mandated the posting of proposed environmental legislation on the electronic environmental registry for public comment, the PC government made no such posting.<sup>64</sup> Instead, industry and government officials discussed the proposed amendments in the context of the Minister's Mining Act Advisory Committee, the industry-dominated body that had been established during the earlier round of amendments.<sup>65</sup> The amendments were included within the omnibus Bill 26, the *Savings and Restructuring Act*, which affected 47 separate pieces of legislation. In response to intense pressure from both the opposition and public interest

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<sup>64</sup> Environmental Commissioner of Ontario, *Keep the Doors Open to Better Environmental Decision Making: Annual Report 1996* (Toronto: ECO, 1997) 30.

<sup>65</sup> The records and minutes of the Advisory Committee's minutes are not available to the public. However, in Committee hearings on Bill 26, OMA President Patrick Reid admitted that most of the proposed changes had been discussed by the Advisory Committee.

groups, the PC government conceded to holding public hearings on the bill. However, despite opposition from the province's environmental movement, the amendments to the *Mining Act* went ahead as originally conceived.

In the broadest terms, the aim of the amendments was to introduce a self-regulatory approach to mine closure and decommissioning, transferring considerable oversight from the public to the private sector. Whereas the initial mine closure legislation had required closure plans to receive the certification of the MNDM's Director of Mine Rehabilitation who, in reviewing applications, acted in consultation with officials from other government ministries, under Bill 26, responsibility for certification fell to the industry itself. Closure plans were to be deemed certified when approved by a professional engineer and signed by a senior officer of the corporation that had developed the plan. That said, government oversight was not eliminated. Closure plans had to conform to the *Mining Rehabilitation Code of Ontario* as established in the *Act's* regulations, and the Director of Rehabilitation had the authority within 45 days of receiving a plan either to accept it as written or to order amendments. However, the government's wider policy of budget cuts and staff reductions reinforced industry self-regulation, as the Ministry's closure and rehabilitation staff was reduced from 18 to five.<sup>66</sup>

Public oversight was restricted in other ways. A provision mandating companies submit an annual report detailing the implementation of their closure plans was eliminated. Moreover, the information mining companies provided to government relating to financial assurances was exempted from freedom of information requests. Other important changes centred on the issue of financial assurances, as the government sought to allow "financially secure" companies to self-assure, rather than deposit an assurance with the government. In addition, there were changes

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<sup>66</sup> Environmental Commissioner for Ontario, *Keeping the Doors Open*, 30.

involving questions of environmental liability. Mine operators who surrendered their closed-out mine sites to the Crown were exempted from any future environmental liability under the *Environmental Protection Act*, even if harm arose as a result of their actions. In addition, mining claims holders were exempted from liability for any pre-existing hazards on their claims.

In hearings before the legislative committee reviewing the bill, the OMA's Patrick Reid endorsed the changes, suggesting they would "improve the investment climate for mining in Ontario."<sup>67</sup> In a direct challenge to the industry's critics and "misinformation in the press," Reid argued that self-regulation posed no threat to environmental standards. In fact, the OMA suggested, the proposals promised to strengthen environmental performance and improve industry accountability. As Reid explained to the Committee, the OMA had "no trouble with reasonable, scientific-based, risks-assessed environmental standards," and the industry "pride[d] itself on [its] environmental record in Ontario." To bolster the industry's case, Reid distributed copies of the OMA's booklets entitled "Sustainable Mining in Ontario" to the Committee members. In Reid's view, the bill offered several other advantages, including "improved flexibility to mining companies in terms of financial assurance, closure and return of title to the crown." Finally, Reid hinted that the amendments would help to overcome the problem of capital leaving Canada as a result of "overregulation and contradictory legislation" in favour of greener pastures elsewhere.

PDAC representatives were especially concerned about issues of liability. As PDAC Director Wally Rayner told the Committee, "Prospectors need to have confidence that they can

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<sup>67</sup> Legislative Assembly of Ontario, "Standing Committee on General Government Transcripts," 19 December 1995, <https://www.ola.org/en/legislative-business/committees/general-government/parliament-36/transcripts/committee-transcript-1995-dec-19>, (accessed 21 October 2019).

go out and find mines and not be liable for the hazards of the past.”<sup>68</sup> Environmental organizations objected strongly to the proposals, though their protest did little to alter the government’s course. As the Canadian Environmental Law Association pointed out, for instance, the government’s proposals considerably narrowed “the concept of liability under environmental law.” More specially, CELA noted, under the proposed amendments, the Crown would have to bear the clean up costs for environmental problems caused by companies who were in a position to prevent hazards, but for financial reasons or otherwise, opted not to.<sup>69</sup>

Although the direction of policy change initiated by Bill 26 clearly favoured industry, the mining companies did not achieve all of their goals. Notable in this regard was the issue of financial assurance. While the OMA’s Patrick Reid had lobbied for self-assurance on behalf of the industry’s “smaller operators,” ultimately, it was the industry’s largest, most profitable firms that won the most important concessions. When, after a lengthy, three-year discussion the regulations covering financial assurance were promulgated, they established a “corporate financial test,” under which companies whose credit ratings met certain minimum standards could self assure for either half or the entire life of the mine, depending on their credit rating. Companies that met the test that had previously deposited a financial assurance with the Ministry were eligible to receive a reimbursement once the test came into force. However, most companies did not meet the criteria. These companies continued to have to deposit a more stringent form of assurance up front, though the government retained discretion to allow firms to offer softer forms of assurance, including a pledge of assets, a sinking fund or per-tonne

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<sup>68</sup> Legislative Assembly of Ontario, “Standing Committee on General Government Transcripts,” 21 December 1995, <https://www.ola.org/en/legislative-business/committees/general-government/parliament-36/transcripts/committee-transcript-1995-dec-21>, (accessed 21 October 2019).

<sup>69</sup> Legislative Assembly of Ontario, “Standing Committee on General Government Transcripts,” 18 December 1995, <https://www.ola.org/en/legislative-business/committees/general-government/parliament-36/transcripts/committee-transcript-1995-dec-18>, (accessed 21 October 2019).

royalties.<sup>70</sup> As Colin Chambers, who acted as the representative of the Conservation Council of Ontario on the Minister's Mining Act Advisory Committee, observed, the most important obstacle to the industry's lobbying was not the environmental groups that had opposed self assurance, but the Ministry of Finance. As Chambers put it, while the industry pressed to allow the greatest number of firms meet the corporate financial test, "it was the Ministry responsible for handing over the funds to clean-up existing abandoned sites that jammed the process."<sup>71</sup>

More than a decade after the amendments, there remained evidence of weakness in monitoring, enforcement, and compliance. According to a 2015 report by the provincial auditor general, a third of the industry's closure plans had not been updated in over ten years. As a result, the province had a \$63-million shortfall in reclamation funding. Moreover, in 2013-14, inspectors visited 62 mine sites and found that 45 percent of closure plans were either non-compliant or required additional financial assurance. Following these inspections, only one company provided additional financial assurance in response to the Ministry's recommendations.<sup>72</sup> Responding to the Auditor General's criticisms of the MNDM's mine closure policies, in 2015 the government made the industry's financial assurance information available to the public for every mine site in the province, though the rest of the self-regulatory system was left intact.

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<sup>70</sup> Canada's Ecofiscal Commission, *Responsible Risk: How putting a price on environmental risk makes disasters less likely* (2018), 40, <https://ecofiscal.ca/wp-content/uploads/2018/06/Ecofiscal-Commission-Risk-Pricing-Report-Responsible-Risk-July-11-2018.pdf>.

<sup>71</sup> Chambers, "Environmental Policy and Metal Mining in Ontario in the 1990's," 126.

<sup>72</sup> Canada's Ecofiscal Commission, *Responsible Risk*, 61.

### **“Modernizing” the *Mining Act* (2002-2015)**

Following the passage of the *Savings and Restructuring Act*, the *Mining Act* did not return to the public agenda in a significant way for another decade. Yet, unlike in 1995, it was not industry, but non-business interest groups who brought the issue back onto the agenda. In the midst of booming commodities prices, Ontario saw a staking rush like it had not seen in decades. As mining explorationists blanketed the province with claims, they came into conflict with a host of forces – Indigenous peoples, cottagers and other rural property owners, and environmental NGOs – who challenged the industry’s unencumbered right to lay private claim to public mineral rights. Several flashpoints emerged, most infamously near the remote First Nation reserve of Kitchenuhmaykoosib Inninuwug (KI), which had declared a moratorium on mining activities on its traditional territories. Under significant pressure from a host of interests, the Liberal government passed perhaps the most important amendments to the *Mining Act* since its introduction in 1906, offering significant concessions to both private property owners and Indigenous peoples.

Nevertheless, a careful examination of the policy process shows that industry influence continued to predominate. It must be stated clearly from the outset. By 2009, the government of Ontario had little choice but to amend the *Mining Act*. A string of landmark Supreme Court rulings in the mid-2000s – *Haida*, *Taku River Tlingit* and *Mikisew Cree First Nation* – had redefined the Crown’s obligations in respect of Aboriginal and treaty rights. Thus, insofar as the province’s *Mining Act* permitted mining activities that negatively impacted Aboriginal and treaty rights without first consulting affected First Nations, the province failed to meet its constitutional obligations as defined by the Supreme Court. The growing discontent of other public interest groups – cottagers, naturalists, and environmentalists – simply added fuel to the fire.



In that sense, two basic questions were at issue: Would the provincial government simply do what was legally required of it as dictated by contemporary understandings of the Crown's duty to consult and accommodate First Nations, or would it adopt a policy regime that exceeded these minimum standards and adhered to Indigenous peoples' calls for legislation premised on their right to "free, prior and informed consent"? Further, would the government heed the growing chorus of calls from civil society to curtail the mining industry's almost unimpeded access to culturally and ecologically sensitive lands, or would it leave the free-entry system intact? In reviewing the policies advocated by the various interest groups involved in the debate, this section shows that the government opted largely to maintain the status quo. In effect, industry groups set the limits of compromise.

Before examining the debates, it is first necessary to provide a brief review of the context in which the *Mining Act* found its way onto the agenda in this period. Two issues in particular need to be highlighted: the evolving understanding of Aboriginal and treaty rights as established in section 35 of the *Constitution Act*, and the growing tensions between mineral exploration firms on the one hand and First Nations communities as well as propertied interests on the other.

### ***Aboriginal and Treaty Rights: The Duty to Consult and Accommodate***

Section 35 (1) of the *Constitution Act* reads, "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." In a series of key rulings, the Supreme Court has given substantive meaning to the otherwise vague terms "existing" and "recognized and affirmed."<sup>73</sup> In *R. v. Sparrow* (1990), the Court interpreted the phrase "recognized and affirmed" liberally. In effect, the Court asserted that Aboriginal and treaty rights

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<sup>73</sup> This section draws from Peter W. Hogg, "The Constitutional Basis of Aboriginal Rights," *Lex Electronica* 15 (2010), 177-196, <https://www.lex-electronica.org/s/300>.

were constitutionally guaranteed, and therefore section 35 nullified legislation that abridged such rights. This ruling was significant insofar as, in contrast to section 35, section 1 of the *Charter of Rights and Freedoms* “guarantees” the rights set out within it. *Sparrow* eliminated this ambiguity that had worried Aboriginal rights advocates. Nevertheless, the Court also affirmed that Aboriginal and treaty rights were not absolute. Legislatures could limit section 35 rights by statute so long as the law in question had a “compelling and substantial purpose.” In the same ruling, the Court defined “existing” to mean “unextinguished.” Thus, those rights that were recognized prior to the enactment of the *Constitution Act* in 1982 were guaranteed.

*Van der Peet* (1996) provided a more complete definition of Aboriginal rights. Writing for the majority, Chief Justice Lamer argued that “in order to be an aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group asserting the right.” The Court defined an “integral” practice as one that was “of central significance” to the Aboriginal society. Further, the practice had to be a “defining characteristic ... that made the society distinctive.” Finally, any such practice had to have developed prior to “contact” with European societies, though the Court did recognize that such practices could evolve. In *Van der Peet*, while the Court affirmed Aboriginal fishing rights, it also ruled that such rights did not extend to the commercial sale of the catch, as such commercial activities were not “integral” to Van der Peet’s Aboriginal society.

Subsequent rulings clarified that section 35 conferred constitutional status upon a “special relationship” between the Crown and Aboriginal peoples. Under this relationship, the Canadian state was obliged to uphold “the honour of the Crown” in its dealings with Aboriginal peoples. In *Haida Nation v. British Columbia* (2004), the Court ruled that maintaining the honour of the Crown entailed a “duty to consult, and, if necessary accommodate the interests of,

the aboriginal people, before authorizing action that could diminish the value of the land our resources that they claim.” While the Crown may delegate “procedural aspects” of this duty to third-party proponents, ultimate responsibility rests with the Crown alone. In this case, the Haida Nation challenged the British Columbia government’s decision to issue forestry licenses to the Weyerhaeuser Company, permitting the company to cut trees on lands subject to an unresolved land claim. Notably, the Court ruled that the extent of the consultation and accommodation would be “proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon the right or title claimed.” That is, the extent of consultation and accommodation was to vary according to the specific circumstances involved in a case. For instance, where the potential infringement was considered minor or the Aboriginal title claim considered weak, the Crown’s duty may be limited “to give notice, disclose information, and discuss any issues raised in response to the notice.” Yet, in more pressing cases, the Crown may be obliged to undertake “deep consultation ... aimed at finding a satisfactory interim solution.”<sup>74</sup> It is in the context of such deep consultation that the duty to accommodate may be triggered. As Sophie Theriault has explained, accommodation may involve substantial modifications to a project so as “to avoid irreparable harm” or to “minimize the effects” of the infringement.<sup>75</sup> In *Mikisew Cree First Nation v. Canada* (2005), the Court ruled that the Crown had a similar duty even in those instances where a First Nation had entered into a treaty agreement with the federal government, ceding territories for settlement and resource extraction.

Nevertheless, the Court has also made it clear that section 35 does not confer upon Aboriginal peoples a veto power over government decisions affecting their rights. In *Taku River*

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<sup>74</sup> Quoted in Thériault, “Aboriginal Peoples’ Consultations in the Mining Sector,” 147.

<sup>75</sup> Ibid, 147.

*Tlingit First Nation v. British Columbia* (2004), the Court asserted that the Crown had fulfilled its constitutional obligations despite the fact that the First Nation remained unsatisfied with the provincial government's decision to allow a mining company to reopen an old mine on its traditional territory. In reaching its decision, the Court pointed to the fact that the permitting process had been subject to a three-and-half-year environmental assessment in which Taku River Tlingit had participated. The First Nation had had the opportunity to express its concerns, which had received a hearing in "good faith." The provincial government's permit contained conditions to address the First Nation's concerns. As a result, although Taku River Tlingit remained unsatisfied with the outcome, the Supreme Court ruled that the provincial government had discharged its constitutional obligations.<sup>76</sup>

Ultimately, the Supreme Court's interpretation of Aboriginal and treaty rights remains the subject of heated debate. For several Aboriginal rights advocates, the Court's rulings have not done enough to advance meaningful reconciliation between Indigenous societies and the Canadian state. For others, the Court remains wedded to its longstanding colonial heritage of dispossession and oppression of Indigenous societies.<sup>77</sup> There are no doubt important truths in these criticisms. Yet, it must be admitted that from the perspective of policymaking, the evolution of section 35 has had a significant impact on government decision-making processes, including, as discussed below, on policies associated with Ontario's *Mining Act*.

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<sup>76</sup> Hogg, "The Constitutional Basis of Aboriginal Rights," 192-193.

<sup>77</sup> For example, see Gordon Christie, "A Colonial Reading of Recent Jurisprudence: Sparrow, Delgamuukw and Haida Nation," *Windsor YB Access* 23 (2005), 17-53.

## Free Entry under Fire

In the early 2000s, the free entry system came under considerable public scrutiny. In the midst of the ongoing commodities boom, rising mineral prices attracted explorationists to areas normally considered marginal for mining purposes, including the “Far North” (that region of Ontario roughly located north of 51° latitude) and Southeastern Ontario’s “cottage country.” The rapid influx of explorationists, operating under the *Mining Act*’s free-entry principles, generated a host of severe conflicts that undermined the *Act*’s legitimacy. Opposition to the *Act* was widespread, but, in the main, three groups of actors challenged the *Act*: Indigenous peoples, rural property owners and ENGOs.

Several high-profile disputes attracted considerable media attention, none more so than the struggle of KI First Nation to defend its traditional territories from unwanted mineral exploration activities. Despite KI’s having declared a moratorium on mining activities on its territories in October 2005, the Toronto-based junior mining company Platinex Inc. sought to conduct exploratory drilling on a claim it had registered near KI at Nemeigusaibins Lake in February 2006. While Platinex initially withdrew its drilling crew and equipment after receiving an eviction notice from KI’s chief and councillor, the company soon filed an injunction against the First Nation, seeking a court order to prevent the community from interfering with the proposed drilling program. However, the court initially granted KI an interim injunction, ordering Platinex to suspend its drilling for five months while consultation took place. Yet, several court orders calling on the parties to come to terms failed to overcome the impasse. When Platinex finally received a court order allowing it to proceed with its drilling activities in June 2007, eight KI community members were found guilty of contempt of court and sentenced to six months in prison for their preventing Platinex from entering the lands. The prison sentence

drew widespread criticism from Canadian civil society and international human rights organizations, including Amnesty International and the Archbishop of the Anglican Church. Meanwhile, Platinex proceeded to sue the Ontario government for \$70 million, alleging the government had failed to enforce the *Mining Act* while the government eventually paid the company a \$5 million out-of-court settlement.<sup>78</sup>

Another flashpoint erupted at Sharbot Lake, north of Kingston where property owners and Indigenous peoples banded together to contest Frontenac Ventures Ltd.'s proposed uranium exploration project. The company's claims not only encompassed lands subject to Ardoch Algonquin and Shabot Obaadjiwan First Nations' ongoing land claim disputes with the federal government, but also covered the entirety of the Rideau River/Canal system, a major tourist attraction and a recently designated UNESCO World Heritage Site. Local residents formed the Community Coalition against Uranium Mining (CCAMU) – with branches in Ottawa, Kingston and Peterborough – to protest the company's activities and challenge Ontario's lenient mining laws that permitted uranium exploration without special conditions, despite the dangers the mineral posed to human health and the environment. The CCAMU received widespread support. Twenty-two municipal councils in eastern Ontario endorsed its proposal for a moratorium on uranium exploration. So too did more than 30 civil society organizations, including the conservative Ontario Landowners' Association. The CCAMU also organized a "citizen's inquiry" and held public hearings in Kingston, Ottawa and Peterborough to discuss the environmental and health impacts of uranium mining. Several leading environmental NGOs – Greenpeace Canada, the David Suzuki Foundation, the Sierra Club of Canada, among others – endorsed the hearings or participated as expert witnesses. Others took direct action, erecting

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<sup>78</sup> On the dispute at KI, see, for example: Drake, "The Trials and Tribulations of Ontario's *Mining Act*: The Duty to Consult and Anishinaabek Law," 191-192.

blockades at Frontenac's worksite, preventing the company from carrying out its drilling program. One local resident, Donna Dillman – a 53-year-old grandmother of four – waged a 66-day hunger strike at the worksite, calling on Premier Dalton McGuinty to intervene on the community's behalf. Several protestors were sentenced to prison time for their part in occupying the worksite, including Queen's University professor and Ardoch elder Robert Lovelace, whose initial six-month sentence was overturned on appeal.

The surge in mining activity elsewhere in southern Ontario also prompted resistance from property owners. There were signs as early as 2002 that rural property owners were growing increasingly concerned about mining firms' right to enter privately owned lands. In that year, the Minister's Mining Act Advisory Committee struck a working group to make recommendations to resolve conflicts between explorationists and rural property owners. The working group recommended that explorationists provide property owners with prior notice of their intent to stake claims on private property, a recommendation ardently rejected by the Prospectors Developers Association and thus not adopted. As PDAC wrote to Wally Rayner, the Advisory Committee's Chairperson, "introducing the concept of requiring a notice to stake ... prior to entry is a dangerous and unfortunate precedent that could serve to permanently erode the free entry system." Requiring prior notice, PDAC claimed, "would place the province at a distinct disadvantage to other Canadian and global jurisdictions."<sup>79</sup> Thereafter, conflict intensified, and local home- and cottage-owners formed a host of citizens' organizations to protest the influx of explorationists: Fight Unwanted Mining and Exploration (FUME), Bedford Mining Alert, the Coalition for Balanced Mining Act Reform, Cottagers Against Uranium Mining and Exploration, the Citizen's Mining Advisory Group, among others. While most activism was centred in

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<sup>79</sup> "Text of a letter from the PDAC to Mr. N.W. Rayner, Chairman, Minister's Mining Act Advisory Committee (Ontario)," 28 October 2002.

Southern Ontario, property owners in Northern Ontario shared similar concerns, endorsing many of their southern counterparts' proposals.

Meanwhile, in his 2006-07 annual report, Environmental Commissioner for Ontario Gord Miller fueled demands for reform with his critical assessment of the free entry system. For Miller, the "century-old" regulatory system was out of sync with modern ecological values, failed to account for the cumulative impacts of mining development, inhibited sound land-use planning strategies and was premised on unjustifiable assumptions about the primacy of mineral development over alternative land uses, particularly in the Far North. As Miller wrote in his report, "With very few constraints on where mining claims may be staked in the north, the Ontario government effectively confers preeminent status to mineral development. The Mining Act treats much of the province essentially as a vast frontier freely open to mineral exploration and development."<sup>80</sup> For Miller, these and other concerns amounted to "strong arguments" in favour of reforming the Mining Act and its associated regulations.

It was in this context that, in December 2007, Premier McGuinty promised to update the province's *Mining Act* so as to "reflect the aspirations of a progressive society here in Ontario." To that end, in August 2008, the Ministry of Northern Development and Mines released a discussion paper, *Modernizing Ontario's Mining Act: Finding a Balance*. The discussion paper invited public comment on several issues: the "mineral tenure system" and security of investment; Aboriginal rights and interests; the introduction of regulatory processes for exploration activities on Crown land; and conflict between surface rights and mining rights.

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<sup>80</sup> Environmental Commissioner of Ontario, *Reconciling our Priorities: Annual Report 2006-2007*, 54.



## Public Consultations

According to the Environmental Registry, the MNDM received a total of 209 written comments on its discussion paper, 157 of which remained available for public viewing online at the time of writing.<sup>81</sup> A variety of interested parties participated in the consultation, including Indigenous groups, private landowners' associations, environmental NGOs, human rights organizations and mining industry representatives. In addition to inviting public comment on its discussion paper, the MDNM also held several community-based discussions with Aboriginal political organizations, tribal councils, the Métis Nation of Ontario and hosted several private meetings with industry.

Although non-industry participants represented a broad spectrum of interests, not to mention political ideologies, their policy priorities coalesced into a coherent set of demands. Property owners wanted the *Act* to ensure greater protections against unwanted mining activities not only on private property, but also on Crown lands located adjacent thereto. To that end, cottagers and other property owners advocated three key measures: the reunification of surface and mineral rights on those private lands where they were divided; the implementation of mandatory environmental impact assessments on mineral exploration activities prior to their commencement; and finally, the extension of municipal planning powers to include the ability to restrict mining activities. (As it stood, the MNDM had the authority to override those official plans that limited mining activities. It will be recalled that the OMA had demanded that the *Mining Act* override other legislation like the *Planning Act* during the debates on the *Green Paper*.)

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<sup>81</sup> Ministry of Northern Development and Mines, "Modernizing Ontario's Mining Act," *Environmental Registry*, posted August 11, 2008, <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTA0MjUy&statusId=MTU5NjY2&language=en>, (accessed 28 April 2020).

Despite the fact that Minister of Mines and Northern Development Michael Gravelle had chosen to exclude the issue of uranium mining from the review process on the misleading ground that the regulation of uranium was a federal matter, those coalitions of environmentalists and property owners that had formed to protest the influx of uranium projects in eastern Ontario continued to press for a moratorium. Failing a moratorium, they urged the government to enforce special provisions governing uranium exploration in light of the particular hazards the mineral posed to human health and the environment. In other respects, the coalitions' demands mirrored those advanced by other property owners, with calls for greater protections for private property, more robust environmental regulation of mining activities and the reunification of surface and mineral rights. Environmental NGOs and industry watchdogs like Ecojustice, the Canadian Institute for Environmental Law and Policy and MiningWatch Canada offered support to both property owners and the anti-uranium activists. In addition, environmental NGOs expressed concerns beyond the discussion paper's scope of review, and continued to press the government to eliminate the corporate financial test as a mechanism of providing financial security for mine closure and reclamation and challenged the government's lenient approach to the regulation of mine waste more generally.

Indigenous groups and First Nations communities had priorities of their own. Their submissions were not among those available for viewing on the Environmental Registry, but several representatives of Indigenous groups appeared before the Standing Committee on General Government, which held public hearings on the draft of Bill 173 in early August 2009. It is important to emphasize that, despite the severity of the conflicts at KI and Ardoch Algonquin, Indigenous organizations were far from monolithically opposed to mineral development on their traditional territories. Several First Nations representatives spoke favourably of the economic

benefits they derived from mining activities. For instance, Windigo First Nation Council's Frank McKay described his council's Impact and Benefits Agreement with Goldcorp at the Musselwhite Mine as an example of "sustainable development" for other First Nations and mining companies to emulate.<sup>82</sup> Similarly, Sagamok Anishnawbek's Chief Paul Eshkagogan reported on the mineral development strategy his First Nation had developed in 2007, as well as the several agreements his community had reached with mining companies, including an Impact and Benefits Agreement with Vale Inco concerning its proposed Totten nickel mine. Attitudes such as McKay and Eshkagogan's are perhaps best appreciated in light of the dire economic challenges confronting their communities. As Eshkagogan told the Standing Committee, among his reserve's population of 1,450 people, 120 families depended on social assistance for their livelihood while 60 percent of its adult population was unemployed.<sup>83</sup> For reasons like these, mining capital enjoyed a privileged position in relation to First Nations communities just as much as it did with the provincial state.

Yet, despite their generally positive attitude towards the potential benefits to be gained from mineral development, Indigenous organizations pressed for important legislative reforms. Their demands can be grouped into three broad categories. The first touched on the issue of consent, while the second and third focused on the distribution of economic benefits and the question of environmental performance respectively. Indigenous groups were effectively unanimous in their call for the legislation to enshrine the United Nations' Declaration of the Rights of Indigenous Peoples' principle of "free, prior and informed consent" (FPIC). Compared to Aboriginal and treaty rights as established in section 35 of the *Constitution Act*, the principles

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<sup>82</sup> Legislative Assembly of Ontario, "Standing Committee on General Government Transcripts," 6 August 2009, <https://www.ola.org/en/legislative-business/committees/general-government/parliament-39/transcripts/committee-transcript-2009-aug-06>, (accessed 24 April 2020).

<sup>83</sup> Ibid.

of free, prior and informed consent offer far more extensive protections to Indigenous peoples. That is, while section 35 guarantees Aboriginal and treaty rights, like fishing, hunting and trapping so long as such practices are “integral” to the Aboriginal society, the principles of FPIC are linked to the right of self-determination and the principle enshrined in international law that “all peoples have the right to freely pursue their economic, social and cultural development.”<sup>84</sup> Adopting the FPIC principles as a basis for the *Mining Act* would enshrine Indigenous peoples’ right to exercise control over their traditional territories and ensure that no mining activity could proceed without their consent. Importantly, Indigenous groups repeatedly emphasized the need to ensure consent was granted from the earliest stages of the mining sequence, that is prior to the staking of a claim. As will be seen below, while industry groups agreed that consultation with affected First Nations was necessary, they adamantly opposed the idea of beginning consultation prior to staking a claim.

As for the distribution of economic benefits, Indigenous groups made several proposals. For instance, Matawa First Nations called for resource revenue sharing, mandatory Impact and Benefits Agreements, capacity building at the community level and monetary compensation for the private sale of mining claims on Aboriginal traditional territories. Finally, like property owners and environmental NGOs, Indigenous groups also called for stronger environmental oversight of mining activities.

Industry’s comments on the discussion paper and subsequent submissions to the Legislative committee offered some surprises. Despite its long-standing and well-documented hostility to government intervention, the mining industry *welcomed* new regulations at the exploration stage. In this respect, the industry’s position mirrored the stance it had taken leading

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<sup>84</sup> Food and Agricultural Organization of the United Nations, *Free Prior and Informed Consent: An Indigenous Peoples’ Right and a Good Practice for Local Communities* (FAO: 2016), 11. <http://www.fao.org/3/a-i6190e.pdf>.

up to the amendments passed in 1989. Recognizing the clear shifts in the political environment, industry sought to advance a “second-best” policy option. In advancing its own regulatory scheme, the industry could both alleviate the public’s growing concern about its seemingly undue privileges while avoiding the far more onerous proposals coming from other organized interest groups.

Much as they had in the past, industry associations emphasized the widespread economic benefits Ontario derived from maintaining an attractive investment climate for mining. Yet, there were some notable shifts in the industry’s discourse. In light of the extensive criticism of the “free entry” system, industry groups sought to reframe the language used to describe how mining claims were acquired. As PDAC’s submission had it, “free entry” was a misnomer, for, far from granting mining companies the “right to mine,” federal and provincial laws required lease holders to obtain several permits before commencing mine development. Free entry was “an ambiguous and misleading term” that did not appear anywhere in legislation. Thus, PDAC encouraged the government to be more precise in its language, as continued use of the term “promote[d] confusion, misunderstanding and conflict as to how mineral tenure [was] acquired in Ontario.”<sup>85</sup>

Industry associations sought also to reshape the debate about the mining industry’s relationship with First Nations. Insofar as the conflicts at KI and Ardoch and the subsequent jailings of Indigenous leaders had undermined public trust in mining, the industry was keen to rebuild its reputation. In its response to the government’s discussion paper, PDAC highlighted its commitment to the “responsible development” of mineral wealth, which involved “full and fair

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<sup>85</sup> Ministry of Northern Development and Mines, “Modernizing Ontario’s Mining Act,” *Environmental Registry*.

opportunities for ... First Nations people to participate in all phases of the exploration and mining cycle.” What was more, in PDAC’s view, mineral development represented

the only economic activity that is capable of creating significant wealth and delivering the employment, training and business development opportunities that First Nations communities so urgently need in order to narrow the gap between their standards of living and that of Canadians generally.<sup>86</sup>

As for particular policy proposals, despite their newfound reluctance to use the term “free entry,” industry associations expressed confidence in the ability of the existing “mineral tenure system” to strike the balance the government sought. Industry preferred “administrative and procedural changes” to an overhaul of the legislative framework. From the industry’s perspective, the Minister’s authority to withdraw sensitive lands from staking was sufficient to address the concerns of private landowners and, in some cases, First Nations communities. As industry contended, government initiatives that raised “the spectre of denial or loss of mineral tenure,” whether land use planning or environmental impact assessments, would put Ontario at a “severe competitive disadvantage” and divert exploration dollars to other jurisdictions where greater security of tenure was available.<sup>87</sup>

Industry conceded that the *Mining Act* had to do a better job protecting Aboriginal and treaty rights. Yet, in this regard, the industry had two main priorities: first, ensuring the legislated duty to consult was triggered only in very particular circumstances, and second, seeking government assistance in fostering legal certainty as to the rights and responsibilities of all parties involved. Industry groups advocated for a consultation policy “consistent with leading court decisions,” in which “the extent of consultation [was] proportionate to the potential for exploration activities to infringe Aboriginal or treaty rights and the significance of those rights to

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<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

the Aboriginal community in question.” In the industry’s view, those activities that entailed “minimal risk” to Aboriginal or treaty rights ought to “fall at the very low end of the threshold for consultation and accommodation,” while those activities with greater impact ought to trigger a deeper form of consultation. In other words, industry associations advocated the very step-wise approach to consultation that Indigenous organizations had resisted. Whereas Indigenous groups argued that consultation ought to commence prior to claim staking, industry groups pressed for a more lenient approach to consultation.<sup>88</sup>

Relatedly, industry groups also called on the provincial government to take several measures to ensure greater legal certainty around Aboriginal and treaty rights. To that end, PDAC argued, it was

essential that the provincial government accord the highest priority to developing and implementing an official policy or regulatory scheme that clearly defines the role of government departments and agencies as well as the procedural aspects of consultation that proponents are expected to address.<sup>89</sup>

Further, the association pressed the government to develop “a comprehensive database that describe[d] Aboriginal and treaty rights in areas that [were] open to exploration of Crown owned minerals.” Such information was “essential in order to ensure a balanced and objective process for identifying, assessing and mitigating any infringement of Aboriginal or treaty rights that may result from exploration activities.”

### ***The Amendments***

By the time the government released its proposed amendments to the *Mining Act*, it was clear that industry groups had achieved many of their priorities, even if the new *Act* offered some

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<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

important concessions to other interest groups. In line with industry demands, the amended *Mining Act* relied primarily on “administrative and procedural changes” to address the concerns raised by private property owners, while the free entry system and its associated set of entitlements were left largely intact. When the *Mining Amendment Act* received Royal Assent in December 2009, Ontario became the first province to recognize Aboriginal and treaty rights in its mining legislation, but even in this matter, industry exercised a predominant influence.

Perhaps the most important changes involved the requirement that mining companies submit “exploration plans” or apply for “exploration permits” prior to commencing certain prescribed exploration activities. Under the previous legislation, mining companies did not need the government’s permission to conduct exploratory work on their claims, and thus, in the view of most industry observers, the new permitting processes were particularly significant measures. Yet, it is nevertheless clear that the general structure of the permitting process mirrored industry’s preferences. Centring on the duty to consult with First Nations, the permitting process represented the provincial government’s approach to meeting its constitutional obligations to First Nations and providing a modicum of legal security to mining firms in a climate of uncertainty. As the OMA’s Chris Hodgson admitted to the Standing Committee on Government, given a clear delineation of duties and an appropriate set of aims, the industry was “prepared to accept the added regulatory burden of exploration plans and permits.”<sup>90</sup>

Precisely as industry groups demanded, the permitting process involved a step-wise approach to consultation, in which a company’s obligations varied according to the potential severity of the impact of its proposed activities. The precise details of the scheme were

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<sup>90</sup> Legislative Assembly of Ontario, Standing Committee on General Government, “Transcripts,” 11 August 2009, <https://www.ola.org/en/legislative-business/committees/general-government/parliament-39/transcripts/committee-transcript-2009-aug-11>, (accessed 21 October 2019).



established in the *Act*'s regulations, following another round of lengthy discussions with interested parties. In addition, the MNDM released a policy document, clarifying the Ministry's approach to consultation and outlining the responsibilities of industry, government and First Nations.<sup>91</sup> Under the new policy, there was no requirement for companies to seek the consent of First Nations prior to staking a claim. Instead, the MNDM provided notification of the claim staking to potentially affected First Nations and advised the mining company of nearby communities with whom the company may seek to build a relationship. Thus, the law conferred upon mining companies the right to lay claim to lands on Aboriginal traditional territories. In the view of several critics, such a policy was unconstitutional, but, ultimately, the matter was one for the courts to decide.

The step-wise approach to consultation was enshrined in other aspects of the permitting process. Companies seeking to undertake "lower-impact" activities were required only to submit an exploration plan to the MNDM's director of exploration. Once received, the director sent a copy of the proposed project to affected First Nation communities, who had a 30-day window to provide written comments regarding the plan's potential adverse impacts. At this stage, the director "*may* require the early exploration proponent [that is, the mining company] to consult with the community as directed," but consultation was not required. Moreover, the mining company had the discretion to withdraw or modify its proposal in response to comments from First Nations communities, but was under no obligation to do so. Once the 30-day period for comments closed, the mining company could start its project.<sup>92</sup>

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<sup>91</sup> Ministry of Northern Development and Mines, "MNDM Policy: Consultation and Arrangements with Aboriginal Communities at Early Exploration," 2012, [https://www.mndm.gov.on.ca/sites/default/files/aboriginal\\_exploration\\_consultation\\_policy.pdf](https://www.mndm.gov.on.ca/sites/default/files/aboriginal_exploration_consultation_policy.pdf).

<sup>92</sup> Thériault, "Aboriginal Peoples' Consultations in the Mining Sector," 154.

Exploration permits were comparatively restrictive. While the notification process was similar to the process described above, when it came to exploration permits the director had greater authority over company activities. Here, companies had a formal obligation to consult with First Nations communities as per the director's directions. Moreover, unlike an exploration plan, an exploration permit was not granted automatically. The director had the power to "order further consultations, to temporarily put a pending application on 'hold' ... or deny a permit altogether." The decision to issue a permit was to be made within 50 days of the initial application.<sup>93</sup>

The *Act* recognized Aboriginal rights in other ways. It contained provisions for a new dispute settlement mechanism, empowering the Minister to appoint a neutral third party to mediate disputes concerning Aboriginal consultation. In addition, the amendments enabled the Minister to withdraw from staking sites of "Aboriginal cultural significance," the definition of which was left to the regulations. Finally, the *Act* put a blanket ban on claim staking on lands designated as inconsistent with mineral development as per First Nations community-based land use plans under the *Far North Act*. However, until such plans were completed, the Far North was to remain open for staking subject to no special conditions. Moreover, the validity of claims registered prior to the completion of a land use plan would be unaffected by any such plan regardless of its content, while the Lieutenant Governor in Council was given the authority to override any plan and permit a mine should doing so be in the "social and economic interests of Ontario."

While surface rights owners won some concessions, the government's desire not to restrict unduly mining activities was evident. In Southern Ontario, (south of the French River)

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<sup>93</sup> Ibid, 155-156.

mineral rights on privately owned land were withdrawn from staking. However, existing claims on private property remained valid. To believe Garry Clark of the Ontario Prospectors' Association, this withdrawal would probably not have a major impact on the industry. As he told the *Ottawa Citizen*, "If it's not staked now, odds are pretty good it's because it's moose pasture, not really important [for minerals]."<sup>94</sup> In Northern Ontario, surface rights owners could apply to have mineral rights withdrawn from staking, but in deciding upon such applications the province would first consider the land's "mineral potential." As in Southern Ontario, existing claims in the North remained valid. Other protections for private property owners were similarly subject to ministerial discretion. For example, on cottage lots less than one hectare in area or any land subdivided by the Ministry of Natural Resources for summer resort purposes, mining claims were henceforth only to be registered with the consent of the Minister. Yet, if a prospector registered a claim on such land without first obtaining the Minister's consent, section 29 (2) provided for the Minister's granting retroactive consent, so long as "he or she is satisfied that the failure to obtain prior consent was inadvertent."<sup>95</sup> Surface rights owners had no power to veto claim staking on their property, and prospectors were required only to give confirmation of the claim registration to the surface rights owner within 60 days.<sup>96</sup>

Private property owners did not achieve any of their three main policy objectives. Surface and mineral rights were not re-unified, mining activities remained exempt from environmental assessment and municipalities were given no power to control mining activities in their official plans. Anti-uranium activists' concerns also went unaddressed. Not only did the government reject the calls for a moratorium on uranium exploration, but it also chose not to impose any

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<sup>94</sup> Lee Greenberg, "Ontario to Change Laws Governing Prospecting on Private Property," *Ottawa Citizen*, 30 April 2009.

<sup>95</sup> *Mining Act, R.S.O. 1990*, c. M. 14, Section 29 (2), <https://www.ontario.ca/laws/statute/90m14>.

<sup>96</sup> *Mining Act, R.S.O. 1990*, c. M. 14, Section 46 (1), <https://www.ontario.ca/laws/statute/90m14>.

special conditions on uranium exploration projects. Finally, the amendments did not address environmentalists' concerns about financial assurances regarding mine closure and rehabilitation.

In short, in “modernizing” the *Mining Act*, the provincial government continued to defer to industry representatives and sought above all to meet the concerns of non-industry stakeholders in ways that did not unduly restrict the industry's access to land. In line with industry demands, the government used “administrative and procedural changes” to address the concerns of rural property owners rather than overhaul the *Act*. While the *Act*'s purpose section recognized Aboriginal and treaty rights and the Crown's duty to consult, it was silent on the comparatively more onerous issue of “accommodation.” Moreover, the *Act*'s purpose continued to be to “encourage” mining activities, rather than to “regulate” or “manage” them. The industry's ability to secure most of what it wanted was all the more striking in light of the breadth of its opposition and the issues at stake. The mining industry defeated not only Indigenous peoples and environmentalists, but also private property owners, motivated by the liberal principle to dispose of their property as they saw fit.

## **Conclusions**

In the period after the Second World War, the government of Ontario has maintained a remarkably consistent policy in respect of access to mineral lands. In its simplest terms, the province's overriding policy priority has been to facilitate the private acquisition of public mineral resources for the purposes of profitable economic development. In achieving this aim, government policy has stood on two main pillars. First, the legislation governing the disposition of mineral resources has provided for the industry's liberal access to lands where mineral rights

are reserved to the Crown. Prospectors have faced few restrictions in their search for valuable mineral deposits. The enshrinement of the principles of the free entry system in the province's legislation has conferred upon mineral explorationists a host of statutory entitlements that have undermined public authority in several policy areas, most notably in land-use planning and in the scope and pace of economic development. In treating mineral extraction as the optimal use of "virgin" land, Ontario's *Mining Act* has tightly circumscribed the rights of other actors, including private property owners, limiting their capacities to challenge the industry's prerogatives. As human rights lawyers Penelope Simons and Lynda Collins have put it, the *Mining Act* "was systematically designed to encourage and facilitate mining, and conversely, to avoid and/or preclude any significant opposition to this economic activity."<sup>97</sup>

Second, the government has offered a host of direct and indirect subsidies to transfer much of the financial risk of mineral exploration from the private to the public sector. These measures have taken a variety of forms: the construction of extensive infrastructure development in remote but mineral-rich regions; the provision of geological mapping services through the field work of the Geological Survey; and the granting of public funds to offset the costs of individual exploration projects, to name the most important. Despite the public sector's significant role in facilitating the discovery of mineral deposits, the idea of establishing a publicly operated firm to provide greater public control over mineral development did not once arise on the policy agenda in the period under study.

These policies did not arise in a vacuum. Industry actors exercised tremendous influence in shaping the government's policies towards mining lands. Much as was the case with taxation, the mining industry achieved a remarkable degree of success in moulding the public discourse

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<sup>97</sup> Penelope Simons and Lynda Collins, "Participatory Rights in the Ontario Mining Sector: An International Human Rights Perspective," *McGill Journal of Sustainable Development Law and Policy* 6 (2010), 183.

around mineral exploration. Industry consistently highlighted the unique risks mining firms faced in seeking out their raw materials. The underlying message was clear: To maintain a vital mining industry, government had to construct an especially sensitive policy climate, for unless mining companies could easily replace their “wasting assets,” their mills, smelters and refineries would fall idle and the industry collapse. To further their cause, industry frequently reminded both policymakers and the public at large of the fundamental role mining had played in opening up vast new frontiers of economic development. As the industry had it, without mining, the provincial north would remain a wasteland, its enormous wealth squandered.

Industry groups played a key role in drafting the original *Mines Act* enacted in 1906 and in the subsequent revisions to the *Act* over time. Through the postwar period, industry groups had ample opportunity to provide further recommendations in both formal and informal settings. As we have seen, the industry-dominated *Royal Ontario Mining Commission* effectively set the tone for postwar mining policy. The 1957 Public Lands Investigation Committee, the 1964 Select Committee on Mining and the 1973 *Report of the Advisory Committee to the Ministry of Natural Resources on the Revision of the Mining Act* provided industry with similar opportunities to advance policy proposals. The striking in the late 1980s of the Minister’s Advisory Committee on the Mining Act established a permanent link between industry and government to oversee changes in policy.

For most of the twentieth century, the industry saw few challenges to its privileged access to the land. Deprived of their rights and marginalized from the rest of Canadian society, Indigenous peoples lacked the organizational capacities to mount effective political campaigns in defense of their interests. As for the public at large, there was little indication that the mining industry’s privileges were a matter of much concern. Gradually, with the emergence of new

conceptions of nature and the environment, these attitudes began to change. Shifting perceptions of the inherent value of the “wilderness” and growing interest in new forms of outdoor recreation began to undermine the industry’s hegemony. But policy change came slowly and incrementally. While mining activities were restricted in provincial parks in the 1950s, government clearly made efforts to avoid undue restrictions on the industry’s access to the land. Outside the park system, the industry maintained its former privileges.

In this new context, industry took measures to stay ahead of the game. At no point was this more evident than in the late 1980s, when public interest in environmental issues reached new heights. Fearing the growing strength of the environmental movement, the mining industry moved to propose a string of measures to mitigate the industry’s ecological footprint. In doing so, the industry aimed to beat the environmental movement to the punch. By advancing its own policies, the industry avoided a potentially more onerous policy regime, one advanced by actors with a lesser commitment to economic growth and a greater concern for ecological integrity. When recession hit, public interest in the environment waned and a new, ideologically driven government came to power, the industry was happy to see some of these regulations eased.

For the most part, the industry avoided any major direct confrontations with other actors over the issue of land access, but with the coming of the commodities boom in the early 2000s, conflict emerged. As we have seen, in the context of a series of high-profile disputes involving junior mining firms and growing public pressure for reform, the government felt compelled to “modernize” the *Mining Act*. Yet, despite the breadth of the public interest groups pressing for change, the amended *Mining Act* retained much of its original form. Industry lobbying beat back several of the key demands advanced by other actors, and its own proposals largely shaped the new *Act*. Moreover, the Minister’s wide discretion over several key issue areas call into question

the strength of the reforms. While the *Act*'s provisions concerning consultation with First Nations represented an important departure from its free entry heritage, such changes reflected less the initiative of the provincial government than they did the evolving reality of Canada's constitutional law, itself shaped by the re-emergence of a resurgent political movement among Indigenous peoples. How far the amended *Act* will manage land-use conflict and provide industry with the legal and security it desires remains to be seen.



## **Chapter 7: Conclusions**

### **Introduction**

This dissertation has critically examined the history of the government of Ontario's policies towards the mining industry in order to analyze how concentrated economic power affects political processes in liberal democracies. Its aim was to examine the extent to which one of the province's largest and most influential industries has shaped public policy, paying special attention to contentious policy debates in which the mining industry has come into open conflict with competing interests. This dissertation also sought to contribute to the long-standing debate among pluralists, historical institutionalists and Marxists concerning the scope and reach of business' political power and its relationship with the state.

The central contention of this dissertation can be stated as follows: Through its close working relationship with the ministry of mines, the Ontario mining industry has been able to translate its commanding economic power over Northern Ontario into political power over public policy. The industry enjoys two political resources of unparalleled advantage in its disputes with its opponents. Owing to the industry's strategic economic presence in the rural North where alternative investment opportunities are generally absent, the mining industry's structural power over the Ontario provincial state looms especially large. The regional repercussions of a "capital strike" in the North would be especially severe, as mining is a high-wage industry that forms the bedrock of much of the Northern economy. But its ripple effects would be felt in the South, too, where a considerable network of legal and financial professionals depend on mining to sustain their livelihood. In short, provincial policymakers are particularly susceptible to the mining industry's lobbying, as the industry's instrumental power is enhanced by the structural context of Ontario's regionally divided political economy.

Yet, structural power alone has not determined Ontario's policies; government decisions have not flowed directly from the industry's commanding economic position. In fact, the industry has taken advantage of its structural power, consistently mobilizing its instrumental resources to shape both policymakers' and the public's perceptions of the type of policy framework required to sustain a viable mining industry and, by extension, a viable provincial economy. No instrumental resource has been as significant as the industry's relationship with the provincial mining ministry, which has acted as the industry's political arm within the state, consistently defending its interest against its opponents. In sum, Ontario's policies towards the mining industry reflect not simply the industry's economic dominance over the North, but its active strategies to take advantage of that dominance. While the industry's structural power has served as an "essential policy consideration," the favorable treatment it receives from the Ontario state has not come about automatically.

This can be readily appreciated when reviewing policy developments affecting the industry over the postwar period. The industry's close relationship with the mining ministry has not always been replicated in its relations with other state agencies. Although the Ministry of Finance (then known as Treasury) supported the industry in its late-1960s tax reform battles against Ottawa, by the mid-1970s the Ministry had shifted in response to the emergence of new concerns about the structural vulnerabilities of the Canadian economy. It was Finance that devised the much-contested foreign processing disallowance provisions, which it favored retaining despite the industry's mounting protests. Similarly, it was Finance that obstructed the industry's efforts to extend the use of financial self-assurance to smaller mine operators when the Harris government overhauled the *Mining Act's* mine closure regulations. Other government agencies have also resisted the industry's lobbying. Despite the industry's protests, the Ministry

of Labour devised statutory standards regulating workers' exposure to silica, while the Ministry of the Environment enacted more stringent emissions control regulations than what Inco had initially desired. In short, the industry's influence over the state, while predominant, is not absolute. Because of the public ownership of mineral resources and the mining industry's generation of severe negative externalities, the threat of state action restricting the industry's autonomy and curtailing its profitability is real. For that reason, the industry must undertake concrete political action to keep this threat in check.

In this, the industry has enjoyed much success. As Chapter 3 showed, the industry exercised considerable influence over Ontario's fiscal policies, extracting several lucrative concessions and blocking reforms it strongly opposed through the postwar period. Constructing itself as both an engine of regional economic development and an especially risky industry requiring special treatment to remain viable, the industry succeeded in making itself the province's most-favorably taxed industrial sector, a position it retained without challenge until the late 1960s. The rise of a renewed economic nationalism put an end to the industry's hegemony over fiscal policy, but as the scope of conflict expanded, the industry successfully drew upon a wide range of political resources, including its close relations with Ontario politicians, to thwart the proponents of tax reform. Resilient economic nationalism combined with surging industry profits in the mid-1970s undermined the industry's traditionally cozy fiscal relations with Ontario, as the province enacted tax penalties to encourage greater domestic mineral processing. Yet, the industry took advantage of the sudden collapse in commodities markets, as mining's waning profitability and its adoption of drastic cost-cutting measures convinced policymakers that relief was necessary. The province's abandonment of the foreign processing disallowance marked the triumph of industry hegemony. In a context of a neoliberal

globalization, the industry reasserted its power, winning new concessions from both Liberal and Progressive Conservative governments in the 1980s and 1990s.

Chapter 4 showed the industry's inordinate power to shape government policy over the emission of sulphur dioxide from ore smelters, ensuring that the bulk of the industry's pollution costs would be externalized. For half a century, Ontario government policy blatantly favoured polluters, as, at the behest of mining companies, legislation barred negatively affected parties' recourse to the legal system and instituted an industry-friendly arbitration system. Persistent protest from Sudbury's agricultural community was insufficient to overcome this arrangement. Only with the emergence of the environmental movement in the 1960s did the province reform its policies, imposing control orders on smelters beginning in 1969. Yet although these orders reduced pollution in the Sudbury area, perhaps their most notable characteristic was how closely they aligned with the industry's own modernization plans. Imposing these initial control orders, then, did not prove politically challenging, as they minimally impaired corporate autonomy. Subsequent policy debates in a context of heightened public concern over acid rain proved more difficult. Facing weak commodities markets, industry lacked the short-term interest in making major capital investments in its smelters. While the Progressive Conservative government deferred to the industry's economic interest, David Peterson's newly elected Liberal government sought to extract greater concessions to satisfy both its more activist political constituency as well as its Accord partner, the NDP. While the government had some success, Inco took advantage of its access to the Premier's office to block the Ministry of the Environment's more ambitious proposals. Moreover, given the lengthy timeframe the company received to improve its environmental performance, Inco successfully developed smelting processes that not only reduced emissions, but also improved productivity. In that sense, while the government's

regulations contributed to enhanced environmental outcomes, they were designed in ways that minimally impaired corporate autonomy and profitability.

Chapter 5 examined the industry's longstanding hegemony over OHS, epitomized in the *Mining Act's* self-regulatory framework. This arrangement was undermined only with the emergence of the OHS movement that gained momentum through the 1970s. Sustained worker activism combined with a series of shocking revelations of industry and government neglect forced the government's hand, and ultimately brought about the overhaul of the province's OHS legislation. Yet, the government remained deferential towards management, and the final shape of the *Occupational Health and Safety Act* was much the result of the opposition parties' holding the balance of power in the Legislature. Compromise was the order of the day. Labour won newfound participatory rights at the workplace and a seat on tripartite policy review committees, but power of decision remained squarely in management's hands. Moreover, while the government enacted its first statutory standards limiting workers' exposure to toxic substances, industry pressure succeeded in delaying and watering down the Ministry of Labour's initial regulatory proposals. Since the enactment of the *OHS Act*, OHS policy has undergone only minor reform. But for critics, the Ministry of Labour's enforcement regime – the Internal Responsibility System – privileges management over labour, as the IRS' overriding objective is to encourage cooperation and contain labour-management antagonisms. In that sense, the industry has succeeded in containing the impact of what was one of its most substantial policy defeats during the period under study.

Finally, Chapter 6 showed how Ontario's *Mining Act* has long privileged mineral development over alternative land use strategies. Ontario's free entry system of mineral disposition confers upon licensed prospectors a host of statutory entitlements that undermine not

only the state's planning authority, but also the rights and privileges of other private property owners. The industry dominated policy development over the *Mining Act* through the twentieth century, as policy debates were largely kept off the public agenda. Ironically, it was industry itself that advanced the first major amendments that restrained free entry, as, in a context of growing public concern about the environment, new regulations governing mine closure and rehabilitation were enacted in the late 1980s. The industry's major players welcomed these new regulations for two main reasons: Not only did the laws enhance public perceptions of the industry and the province's environmental regulations, but the industry's biggest companies were well prepared to meet the new requirements, having developed both the technical and financial capacities to manage reclamation effectively. Subsequently, heightened conflict between junior firms and both Indigenous peoples and rural property owners during the early 2000s commodities boom forced the government to "modernize" the *Mining Act*, but the resultant regulatory framework conformed largely to the industry's preferences. Concerns about Aboriginal and treaty rights, the rights of private property owners, and effective land use planning were subordinated to maintaining free entry, and thereby promoting an investment climate suitable for mineral exploration.

### **Implications for Competing Theories of Business Power**

How well do the theoretical perspectives outlined in the opening chapter of this study explain the research findings presented above? This section returns to the theoretical debates about business power in liberal democracies, weighing the strengths and weaknesses of the contending approaches. While this dissertation cannot offer definitive proof of the superiority of one

perspective over another, it is suggested that the power structure approach offers the most compelling framework to analyze the province's policies towards the mining industry.

We begin with pluralism. Recall the basic tenets of the classical pluralist perspective: In liberal democracies, political power is dispersed, fragmented and competitive. No organized interest group – including large-scale corporate enterprise – commands any special resource that confers upon it a unique advantage in policy-making processes. Business' financial resources, for instance, can more than easily be matched by the alternative political resources of its opponents. For its part, the state is seen as a neutral arbiter among the varied interests in society, mediating their disputes to achieve a level of political equilibrium. The state's actions do not systematically favour some groups over others. In policy debates, then, groups may win or lose, depending on their capacity to skillfully mobilize their political resources. And while some interests may enjoy consistent success in certain issue areas, they are unlikely to exercise much influence in others. It is in this sense that Robert Dahl defined political power in liberal democracies – or “polyarchies” – as “non-cumulative.”

In short, from the pluralist perspective we would anticipate the mining industry's influence over government policy to be severely restricted, its power constrained by the competing power of its opponents. This is all the more noteworthy in the light of the many and varied interests that have mobilized politically to pressure the provincial state to steer the course of mineral development and to mitigate mining's negative externalities – whether environmental groups, tourist operators or farmers calling for legislation to control air pollution, First Nations demanding restrictions on exploration activities on traditional Indigenous territories, or rural property owners pressing for protections against the incursion of mining companies on their private property. Given the wide range of interests with a clear stake in these and other issue

areas, pluralism would suggest that the mining industry would be unlikely to exercise an undue or pervasive influence over policy, nor would it expect policymakers to privilege the industry's priorities over those of its opponents.

In that light, pluralism fails to offer a realistic framework to assess the policy developments examined in this study, even if Ontario policymakers have responded to non-business demands and societal pressures. Consider developments in one salient issue area, air pollution control. As we have seen, from the early twentieth century the industry's smelting practices generated considerable political opposition, and, over the course of several decades, numerous constituencies mobilized to pressure policymakers to enact legislation to control the noxious "smelter fumes" and limit their environmental harm. These efforts failed. True, a pluralist would suggest, there is no reason to expect the industry's opponents to have won, but only that competing on equal footing with its opponents, industry was no more likely to get its way than its competitors. Given the historical record, however, this contention cannot be sustained. Not only did the province's policies offer statutory protections to metal ore smelters, but the constituencies who opposed the province's laws – Sudbury area farmers, for instance – faced considerable obstacles in getting their issue onto the political agenda. With its command over economic resources, industry was able to thwart reform efforts, countering its opponents' claims with both expert knowledge and an alternative discourse emphasizing the smelters' seemingly benign environmental impacts alongside their signal contributions to the Canadian economy. For much of the twentieth century, some groups – perhaps most prominently First Nations – remained absent from the debate entirely, despite facing real hardship as a result of industry's practices. This speaks to a major shortcoming in the pluralist approach, namely the claim that non-business groups compete on equal ground with business opponents. As this study



has shown, the mining industry enjoyed tremendous advantages over its competitors in terms of the scale of the resources at its disposal, its access to key decision makers, its control over critical technical expertise and its capacity to formulate compelling policy proposals among a host of others.

Further, the claim that the provincial state acted as a neutral arbiter in weighing the disputes between the industry and its opponents cannot withstand scrutiny. We have examined the longstanding interpersonal linkages connecting the provincial mining ministry with the industry and showed how that department became, in essence, a bridgehead of industry influence within the state, its officials supporting the industry's political aims irrespective of the state of public opinion. Successive generations of Progressive Conservative, Liberal, and, more recently, New Democratic Party politicians have adopted the industry's claim that mining is a unique driver of economic development. In addition, agencies less inclined to the industry's worldview were hardly neutral. Several examples could be cited, but the Ministry of the Environment's initial policy stance towards air pollution serves to illustrate the point. In adopting the "known-effects" approach to pollution control over the "non-degradation" approach, the Ministry tacitly prioritized the industry's economic interest in cost efficiency over other concerns, whether the impact of smelter emissions on human health, private property or affected ecosystems. In that sense, promoting capital accumulation was inscribed into the Ministry's mandate of safeguarding the environment. Further, the Ministry's policy to negotiate standards directly with polluters explicitly excluded non-business actors from voicing their concerns in the policy process, reinforcing the industry's advantages. In this we see another major shortcoming of the pluralist approach: The mere existence of several competing groups does not mean that government will give each an equal hearing.

Yet another shortcoming of the pluralist approach is its neglect of the socio-economic context in which policy debates occur. As we have seen, pluralism rejects the contention that resource inequalities provide some groups with undue political privileges in relation to others. But equally importantly, pluralism fails to consider how economic structures – most notably, the imperatives of extended capital accumulation – delimit state capacities. As these structural limits figure so prominently in neo-pluralist and structural Marxist analyses, we will consider them in more detail below. Here it is simply crucial to note that in positing the relative equality of all contending societal interests, pluralism ignores the critical role that private business plays in sustaining economic vitality and the implications this has for policymaking.

Like pluralism, state autonomy theory is beset by limitations in its explanatory power regarding the issues studied in this dissertation. Recall that state autonomy theory positioned itself as a corrective to prevailing “society-centred” analytic frameworks – pluralist and Marxist alike – that read public policy as reflecting conflicts external to the state. These perspectives, state autonomy theory suggested, neglected to consider the independent structuring effect of state institutions and state actors themselves. From the perspective of state autonomy theory, far from merely serving as an arena in which social conflict plays out, the state is an independent political force in its own right. Because of their monopoly on the legitimate use of the means of violence and their critical role in maintaining social order, states exercise power independently of any dominant socio-economic group, while state managers are motivated to maximize their own interests.

How far any given state exercises its authority against powerful social interests, however, varies from case to case and can only be determined through historically delimited empirical case studies. State autonomy theorists concede that some states are “stronger” – that is, have greater

capacity to act against the interests of powerful social interests – than others. Those states staffed by professionalized, career officials without close interconnections with dominant economic groups are considered stronger than their weaker counterparts whose institutions are largely penetrated by such groups.

At best, the research findings examined in this dissertation are consistent with a “weak” statist conception. State managers played a decidedly secondary role in policy formation and appeared hardly motivated to expand their own influence independently of social actors. Policy proposals that did originate within the state were consistently subject to modification by social actors, with industry groups exercising by far the greatest influence. Two instances of tax reform originating within the state – one successful, one failed – illustrate this point. It was the Department of Mines that initiated the reform measures adopted in the 1969 amendments to the *Mining Tax Act* that formalized the calculation of domestic processing allowances. Yet, as we have seen, these measures were adopted only after then Minister of Mines Allan Lawrence consulted with and gained the support of leading industry representatives, who understood the proposals furthered their economic interest. With the industry’s support, this state-led reform succeeded. In contrast, TEIGA’s efforts to penalize overseas mineral processing to promote domestic production capacity failed after running into stiff industry opposition. Clearly, the decisive factor in both cases was the level of industry support – not the “strength” or “weakness” of the state agency that initiated the measure. Returning to theory, the biggest problem with adopting even this “weak” statist perspective is that it hardly presents a challenge to the society-centred theories it is meant to displace. A weak state penetrated by powerful business interests is well within the explanatory ambit of “instrumental Marxism,” or power-structure research. The

extent of the ministry of mine's penetration by mining interests further calls into question the utility of adopting the statist paradigm.

What of those perspectives inspired by the structural dependency thesis, namely neo-pluralism and structural Marxism? These theoretical approaches emphasize the systematic constraints imposed upon policymakers by a socio-economic system premised upon the private control of productive resources. In capitalist economies, the state must perform certain functions to foster capital accumulation and sustain economic vitality. Those states that fail to maintain "business confidence" in the investment climate risk provoking economic chaos, thereby threatening their own popular legitimacy and hold on power. As such, business' control over investment confers upon it a "privileged position" in relation to the state, as policymakers' dependence on the private accumulation of wealth and resources gives them every reason to prioritize business' economic interests over other group demands. In this way, capitalism severely restricts the realm of democratic policymaking, systematically limiting the state's ability to pursue the policy goals that non-business interests seek of it.

To reiterate, the structural dependency thesis conceives of business' "privileged position" mainly in economic terms. Market signals, like the withdrawal or the slowing of private investment, drive state action. Impersonal, structural forces are thus the central determinants of policy. Policymakers privilege business over other groups not because businesses directly control the state or its agencies, but because doing so conforms to policymakers' own independent interests, irrespective of their interpersonal connections with the business world. Structural dependency theory, Lindblom reminds us, requires no "conspiracy theory" of politics.

In many ways, structural dependency theory offers a compelling explanation of the patterns examined in this study. Clearly, Ontario's policies towards the mining industry were influenced by policymakers' recognition of the industry's structural power and its dominant economic position in the provincial north. The withdrawal of investment from Northern Ontario, so heavily dependent on a single industry, would clearly entail severe consequences for the region's economic vitality and would affect the legitimacy of the government in power. Under capitalism, there are systemic constraints that no policymakers can ignore. Concerns about the impact of various proposals on the investment climate were evident in most every debate examined in this study. We have seen, for instance, how the Robarts government mobilized against the Carter Report's mineral taxation proposals for fear, in part, of their impact on new mining investment projects, and how the Davis government hesitated to impose pollution control regulations on Inco and Falconbridge during the acid rain debates for fear of undermining employment in the Sudbury area. Other examples could be cited. Yet, it must be stressed the state's structural dependence on capital accumulation alone was not enough to ensure that the industry would achieve its aims in any of these disputes. Herein lies a crucial limitation of the structural dependency thesis – namely its neglect of the specifically political mobilizations that business groups undertake to promote and defend their interests. Put simply, business cannot – and does not – rely upon its privileged position alone to get what it wants from the state.

Indeed, a striking aspect of the policy debates studied in this dissertation was the intensity with which the industry mobilized to defend and advance its priorities. Take, for example, the industry's campaign against tax reform in the late 1960s. By all accounts, it was the industry's enormous propaganda and lobbying effort that was the decisive factor in forcing the federal government to retreat from its reform proposals. Industry lobbying and pressure campaigns were

important not only in such defensive efforts, but also in positive ones, as the mobilization behind the 1944 Royal Ontario Mining Commission showed. The point is not that structural dependency does not shape policy possibilities. Instead, the point is that structural dependency does not determine policy outcomes automatically. The state's structural dependence is, as discussed in the opening chapter, an "essential policy consideration." As such, structural and instrumental factors are best understood as interdependent and mutually reinforcing mechanisms of influence. Robert Gardner has explained this well, noting that the pressure that structural factors "impose upon state policy and intervention are only given concrete expression through the political action of organized groups and class interests." Extended capital accumulation, he continues, is compatible with a wide range of policy choices, the precise limits of which are defined not by "imminent economic laws," but by the very groups who control capital. Thus, because "only business can identify the conditions necessary to maintain its confidence and define that nature of a beneficial climate for investment, the state must be highly responsive to the advice, interests and demands of organized business."<sup>1</sup> This formulation is useful insofar as it allows researchers to balance structure and agency, the imperatives of capital accumulation and the dynamics of interest group activity.

In their own ways, each of the perspectives reviewed thus far play down the direct influence of business interests on the state. For pluralists, power resources are dispersed throughout society so that no group exercises undue political influence. For state autonomy theorists, focusing on business' role in policy formation is to neglect the all-important structuring effect of state institutions, which operate according to their own uniquely political logic. Without ignoring business' "privileged position," both neo-pluralists and structural Marxists centre

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<sup>1</sup> Gardner, "Tax Reform and Class Interests," 255.

impersonal structural forces in their analyses. Business need not mobilize to get what it wants: The state's dependence on business to maintain a healthy economy is enough to ensure a pro-business policy framework.

Yet, by any measure, the most striking findings in this dissertation were how closely Ontario's policies towards mining aligned with the expressed political preferences of industry actors themselves and how difficult it was for non-business groups to achieve their aims. Clearly, the industry was not simply one interest group like any other, but a dominant force in shaping policy. At no point did industry actors step back and allow market forces to decide policy outcomes, but instead maintained a constant stream of pressure on the state. For reasons such as these, a class-based power structure research approach offers the most compelling framework to understand the policy patterns analyzed in this study.

Because this approach has been so roundly criticized for its supposedly crude instrumentalism, it is worth restating its basic claims. Fundamentally, power structure theorists argue that, under normal circumstances, business' command over a wide array of power resources alongside its central role in maintaining economic vitality confer upon it unparalleled advantages in the policy process. Speaking in terms of social class, state policy serves the interests of the capitalist class because that class wields its resources to dominate the state. The criticisms of this approach are well known: Power structure researchers treat the state as the mere instrument of an all-powerful corporate elite, capable of ensuring public policy always serves to guarantee the long-term reproduction of capitalist social relations. As such, power structure researchers overemphasize the coherence and unity of the capitalist class, underestimate the state's autonomy from capital and play down the power resources of subordinate social forces, like the organized working class and other social movements. Yet, such criticisms are premised

upon only a caricature of this perspective. In fact, power structure research allows for a more nuanced analysis than its critics suggest.

To begin, to suggest that the corporate elite dominates the state is not suggest that the state is its mere instrument. Indeed, power structure researchers begin from the analytic assumption that state power and class power are separate. In a context of liberal democracy, the relationship between business – or the capitalist class – and the state is a historically contingent one that cannot be assumed from the outset. Because state power is, in a certain sense, *sui generis*, it is important to analyze precisely who commands state institutions and to what ends they are directed. Business dominance of the state is not inevitable. Moreover, power structures do not assume the unity of business actors, but instead seek to analyze it empirically. The claim that business interests cannot form a cohesive political force because individual capitalists prioritize their own narrow interests over the general interests of capital can be tested, and there is much evidence to suggest that in fact business groups can unite. As we have seen in this dissertation, industry associations like the OMA and the PDAC were more than capable of forging internal unity around several policy priorities, even if, at times, they failed to do so.

The separation between state and class power is important for several reasons. For one, implicit within it is the assumption that non-business social forces can indeed capture state power and use it for their own purposes. For example, the election of a social democratic party to government carries with it the possibility that the state's institutions will be redirected towards advancing policy goals inimical to business' interests, including the non-market provision of welfare services, the empowerment of trade unions or the redistribution of wealth via higher levels of corporate taxation. As we have seen, the social democratic NDP's electoral strength in the mid- to late-1970s was a crucial factor in explaining the outcome of policy debates around



OHS. Further, power structure researchers recognize the crucial importance of legitimacy: Policymakers cannot ignore pressure from below if they hope to maintain the confidence of voters and have a chance at winning re-election.

Still, neither the possibility of non-business interests capturing state power nor winning concessions from below means that power structure researchers view policymaking as an open-ended interest group competition. In contrast to the criticisms levelled against it, power structure research recognizes the structural constraints that capitalism imposes on policymakers. Yet, even if business is privileged by the state's dependence on capital accumulation, policy outcomes do not arise automatically. Policymakers cannot be assumed to know what is best to maintain business confidence or how to resolve every policy dispute so as to further accumulation. As a result, business groups must mobilize their resources to achieve their policy aims. In that sense, Luger explains, power structure researchers' "understanding of state dependence offers a perspective that balances a focus on interest group activity with that of the privileged position of business."<sup>2</sup> Although business must exert pressure to win accommodations from the state, it is precisely because of the state's structural dependency that policymakers are vulnerable to business demands.

Finally, power structure research's emphasis on business mobilization draws attention to the close interconnection of economic and political power and reminds us that large corporations are not only economic but also political actors.

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<sup>2</sup> Luger, *Corporate Power*, 28.

## **Avenues for Future Research**

This dissertation has not exhausted potential research projects on the mining industry's political power. Comparative research offers perhaps the best way to flesh out the scope and reach of the industry's power. Three avenues in particular seem especially fruitful. First, it would be worthwhile to examine Ontario's mining policies in comparison with other Canadian provinces. There are at least some indications that Ontario has been uniquely open to the industry's influence, particularly in light of the tax reform episode of the mid-1970s when western provinces asserted far greater public authority over the conditions of mineral development than did Ontario. Researchers could examine the factors that rendered the western provinces more open to challenging the industry's interest than was Ontario: Did these differences reflect the provinces' varying class and industrial structures, or were they mainly about the partisan composition of the differing provincial governments of the day? Such questions could be applied more broadly to compare the industry's power across a range of different issues across the provinces.

Second, it would be useful to compare the mining industry's power over Ontario relative to that of other major industrial sectors, whether auto, forestry or high-tech. By some measures, it appears as though mining exercises greater power over the province than other industries, its longstanding preferential tax treatment standing as perhaps the most notable indicator of this. But without greater comparative analysis of how often other industries have been able to get what they want from the province, conclusions about mining's power relative to other industries can only be tentative. It is possible, for instance, that Ontario's direct and indirect subsidies to the auto industry more than compensate for the comparatively higher tax rate it pays to the province. Moreover, it is worth bearing in mind that the tax question looms especially large for mining for

reasons of the public ownership of mineral resources. The price mining companies pay to acquire their raw materials is negotiated directly with the state, providing a means of influencing the state that most industries do not enjoy.

Third, it would be particularly illuminating to examine the industry's role in policy debates of a comparatively greater scope than those analyzed in this study, particularly those touching on the interests of Canadian "big business" more broadly. Has the mining industry been especially influential in major policy debates like the shift to continental free trade? Have its representatives been among the leading proponents of the broader shift towards neoliberal modes of governance and its associated policies of state retrenchment and fiscal austerity? What role does the mining industry play in sustaining Canada's major pro-business think tanks like the C.D. Howe Institute and policy planning organizations like the Business Council of Canada? Examining such questions would be useful not only in delineating the industry's power relative to other major industrial sectors, but also in analyzing the political cohesion and power of the Canadian business elite more generally.

### **Proposals to Improve Public Policy**

Although the aim of this dissertation was to analyze the relative power of contending social interests in shaping policy, in light of the industry's preponderant influence, it is clear that a series of reforms to enhance and protect the public interest in respect of mining are needed. While policy measures strongly opposed by the industry will not come easily, it is worth bearing in mind that the provincial state has considerably more room for manoeuvre than the industry suggests it does, a fact that has been recognized by at least some of the province's leading policymakers. For instance, as Premier Leslie Frost noted in a 1956 memorandum to an official

in the Department of Mines regarding the industry's tax payments: "the mining interests should pay more taxes both provincially and municipally. They have been living and operating in a sheltered position for far too long."<sup>3</sup> To be sure, Frost's comments date from a period preceding the widespread internationalization of mining investment. Yet, even in an era of globalization, the provincial state has policy space, including in the realm of taxation.

Following the enactment of the *Extractive Sector Transparency Measures Act* in 2014, researchers and policymakers now have a better sense of the impact of different jurisdictions' fiscal regimes on the distribution of mineral wealth between government and industry. As a report by the *Narwhal* found, Ontario remains one of the world's lowest tax jurisdictions for mining. For instance, in 2017 Barrick Gold paid taxes totalling \$503 per ounce of gold mined in the Dominican Republic, \$117 in Peru, but only \$73 in Ontario.<sup>4</sup> There is a significant body of literature detailing the weakness of tax incentives for fostering economic growth and innovation.<sup>5</sup> At the very least, the rate of taxation is but one of many factors mining companies take into consideration when making investment decisions. Ontario has several other advantages beyond its fiscal regime that make it an attractive destination for investment, including a skilled and knowledgeable workforce, proximity to major markets in the United States, transportation infrastructure and a strong geological potential, among others. In any event, a growing economy with a strong demand for metals is a far more important spur to new mining investment than are tax concessions. Ensuring a "fair return" to the public for the use of its non-renewable resources is one of the most pressing requirements of policy reform.

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<sup>3</sup> AO RG 3-23, Premier Leslie M. Frost general correspondence, Box 111, 193-G Mines, Dept. of General Correspondence Leslie Frost to Malcom, 29 November 1956.

<sup>4</sup> James Wilt, "Canada's Mining Giants Pay Billions Less in Taxes in Canada than Abroad," *The Narwhal*, 16 July 2018, <https://thenarwhal.ca/mining-pay-less-taxes-canada-abroad/>, (accessed 11 November 2019).

<sup>5</sup> For example, see Nathan M. Jensen, "Job Creation and Firm-Specific Location Incentives," *Journal of Public Policy* 37 (2017), 85-112.

Just as Ontario has policy space in relation to its fiscal regime, so too does it have space in relation to other policy areas. For instance, while the industry insists a free entry regime is vital to maintain a viable mining sector, other jurisdictions have used different mineral disposition systems without eliminating their mining industries. In a research paper for the Canadian Arctic Resources Committee, Malcolm Taggart highlighted some of the potential benefits of what he termed the “Greenland Model,” the system of mineral disposition instituted in Greenland in 1991. The Greenland Model provides governments with considerable authority to control the pace of mineral development to recognize competing land-use values. Prospective mine operators acquire mineral title in a three-step process and must receive permission from the government before carrying out prospecting, exploration and extraction activities. As part of the licensing model, operators must submit reports detailing their financial and technical capabilities as well as their track record in Greenland. The discovery of a mineral deposit by a licensed prospector does not confer title to the minerals found, while the government retains the right to deny a license at any stage. As part of the application for an exploitation license, an operator must provide information as to the delineation of the orebody and have completed a bankable feasibility study, an environmental assessment report and a mine closure plan. As Taggart shows, Greenland’s adopting this model did not undermine its mineral exploration industry, as exploration activities increased in each of the years after its introduction until 1997.<sup>6</sup> The adoption of such a model would enable the province to enhance its land-use planning policies and ensure that mining activities did not proceed in areas deemed unsuitable for mineral development.

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<sup>6</sup> Malcom Taggart, *The Free Entry Mineral Allocation System in Canada’s North: Economics and Alternatives* (Canadian Arctic Resources Committee: 1998), 34-36.

The provincial government's promotion of the junior sector in particular raises other questions about the provincial government's promotional activities more broadly. Namely, to what extent should government policies aim primarily to incentivize further mineral investment and development activities within the province? As this dissertation has shown, industry representatives have often touted mining's seemingly unparalleled capacity to generate widespread economic prosperity. Yet, there are several reasons to question these claims. At the very least, the notion that mining investment is an unambiguous social good is far from certain. There is a considerable literature on the so-called "resource curse," which shows that those economies that rely on mineral extraction and development as their primary economic activity fare poorer on a range of socio-economic indicators compared to their resource-poor counterparts.<sup>7</sup> Similarly, other studies have shown that mining-dependent rural areas have no better socio-economic development patterns than their non-mining dependent counterparts.<sup>8</sup> Moreover, as a capital-intensive industry, mining does not generate significant employment, and as recent trends in underground robotics and automation indicate, the industry has every intention of further reducing its dependence on labour.

There are also questions that stem from mining's environmental impact. As discussed above, the mining industry is one of the world's largest generators of toxic waste. As ore grades decline, the amount of waste generated increases. In light of recent trends in base metal prices, a significant proportion of Canadian mineral exploration spending is geared to uncovering gold deposits, perhaps the least socially useful of any of the major metallic commodities. Given the

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<sup>7</sup> The classic statement on the "resource curse" is provided by Richard M. Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (London: Routledge, 1993).

<sup>8</sup> William R. Freudenburg and Lisa J. Wilson, "Mining the Data: Analyzing the Economic Implications of Mining for Nonmetropolitan Regions," *Sociological Inquiry* 77 (2002), 549-575; Richard C. Stedman, John R. Parkins and Thomas M. Beckley, "Resource Dependence and Community Well-Being in Rural Canada," *Rural Sociology* 69 (2004), 213-234.

fact that almost all the gold that has been mined in world history is still available, the case for expanding gold production is weak at best. With pressing needs to finance major investments in “green infrastructure” to pave the way for a post-carbon future to avoid the worst of the possible climate change scenarios, it is reasonable to question whether incentivizing expanded gold mining production is a useful public policy.

There are a host of other pressing policy reforms required in the short term. Eliminating the “Corporate Financial Test” and ensuring that mining firms absorb the full costs of their environmental liabilities is one. Putting a price on the risk of mining disasters like tailings dam collapses is another. As the 2014 collapse of the Mount Polley tailings dam in British Columbia showed, the possibility of such disasters is real. Should a tailings spill occur in Ontario and the company responsible go bankrupt, current legislation offers no financial protection to the public. Given its significant environmental impact, mining’s long-standing exemption from provincial environmental assessment legislation cannot be justified. While it is still too early to evaluate, British Columbia’s recent adoption of the United Nations Declaration of the Rights of Indigenous Peoples may offer a viable model for Ontario to follow. Doing so in tandem with the adoption of an alternative model of mineral disposition would not only alleviate conflict between mining firms and Indigenous peoples, but also amount to a much-needed effort towards reconciliation. In light of mineworkers’ lasting poor health outcomes, the *OHSA*’s exemption of mining from regulations concerning workers’ exposure to arsenic should be reconsidered.

It is also worth reconsidering how mining policy is made and the role of the Ministry of Mines and Northern Development. There needs to be greater public accountability over bodies like the Minister’s Mining Act Advisory Committee, which operates free from effective public oversight. The Doug Ford government’s recent establishment of a “Mining Working Group” is a

step in the wrong direction. While the former Advisory Committee made room for non-industry stakeholders (even if they were outnumbered), the Mining Working Group is composed entirely of business representatives and chaired by the Minister of Northern Development and Mines. Given the Ministry's long-standing closeness with the industry, the Ministry's policy mandate, staffing and role as the "lead window" for mining firms in the policy process need to be re-assessed.

Ultimately, whether any of these policy reforms will be enacted is a question of the political capacities of non-business actors to reshape the political and ideological climate. In light of the industry's long-standing ability to block policy measures it strongly opposed, including those advanced by relatively powerful political actors like cottage owners, the prospects for significant reforms in the short term seem dim. It is no secret that progressive forces, including the labour movement and social democratic parties, have been at a low ebb for some time. Yet, a reinvigorated, broadly based public interest movement can wrest concessions from the mining industry. It seems especially important that progressive forces break from their siloed approach to mining policy issues and find bases of unity. Doing so will not be easy, as, for instance, the immediate interests of Indigenous communities facing down an intransigent junior do not necessarily align with unions seeking to improve their working conditions. Promoting broad-based public discussions about mining's role in the economy, the tensions between Indigenous sovereignty and the political structures of liberal democracy and the rights accruing to the private owners of capital stand as perhaps the most important part of building a movement that can challenge the industry's power.



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