

ONTARIO'S MINING ACT

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**CCAB Roundtable
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Overview

Aboriginal Consultation requirements under Ontario's *Mining Act*

- Exploration Plans
- Exploration Permits
- Closure Plans
- Dispute Resolution
- Assessment Work Credits
- Sites of Aboriginal Significance

The Legal Duty to Consult

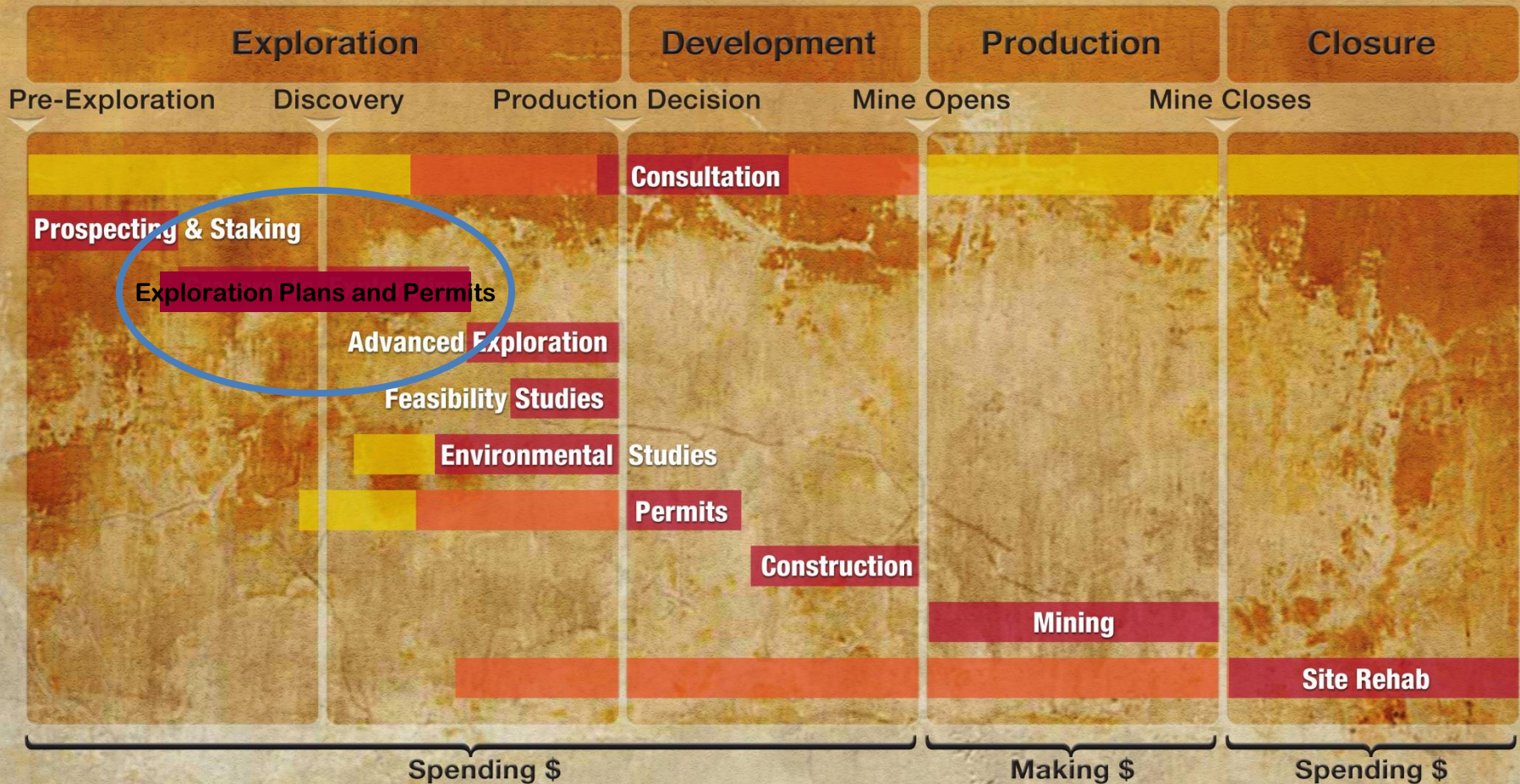
- **Section 35, *Constitution Act, 1982* recognizes and affirms existing Aboriginal and treaty rights of Aboriginal peoples of Canada**
- **Crown owes the legal duty to consult and may delegate procedural aspects of the duty to consult to proponents**
- **Actions by the Crown or proponent that potentially impact Aboriginal and Treaty Rights must consult with Aboriginal Peoples and accommodate where warranted**

Ontario's *Mining Act*

Purpose of the *Mining Act*

- “the purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution, 1982, including the duty to consult, and to minimize the impact of these activities on public health and safety of the environment” (*Mining Act*, s. 2)

Exploration and Development Sequence



Exploration Plans

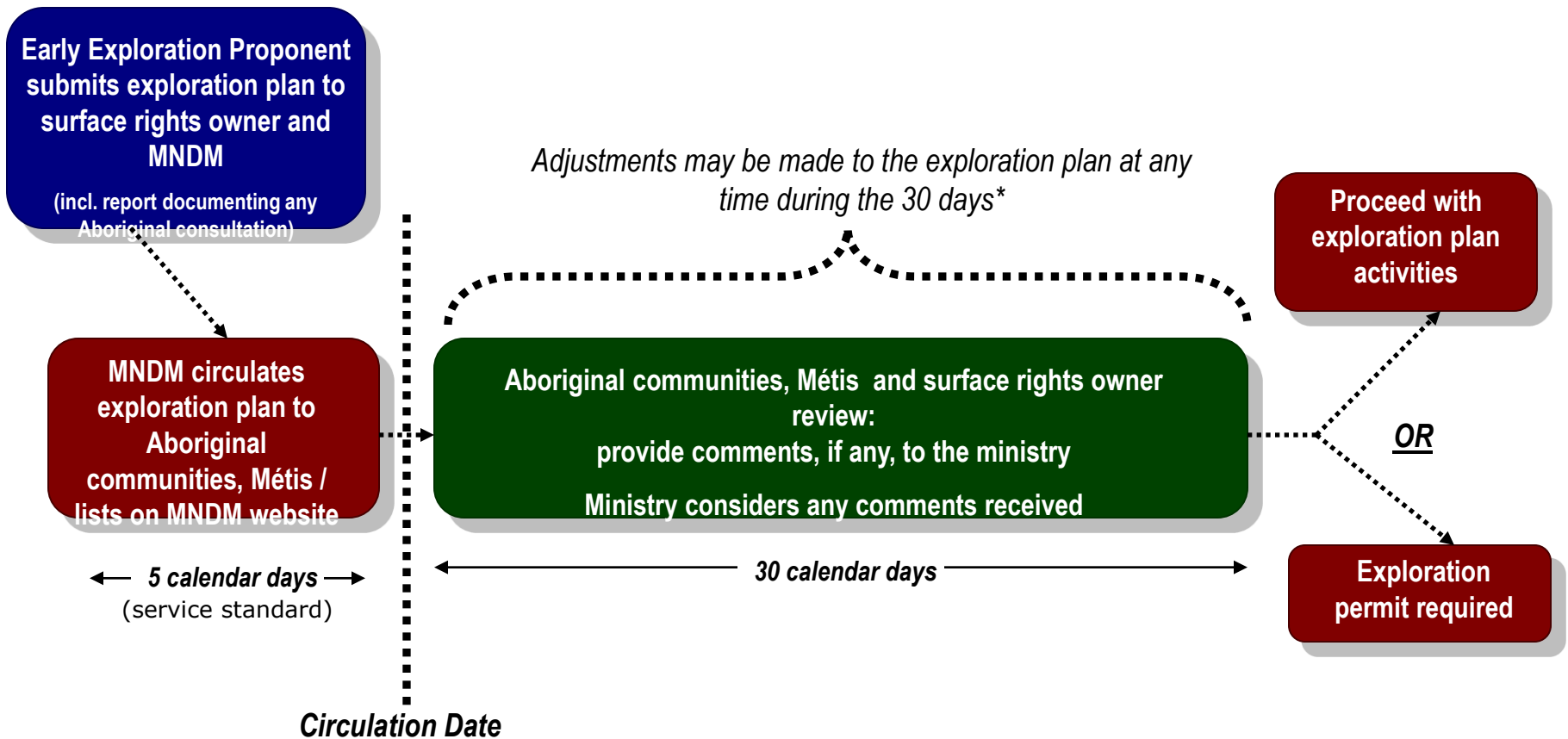
Required for any of the following activities

- Geophysical activity requiring a power generator
- Line cutting, (where the width of the line is 1.5 meters or less)
- Mechanized drilling for the purposes of obtaining rock or mineral samples, where the weight of the drill is 150 kg or less
- Mechanized surface stripping (overburden removal) where area does not exceed 100 square m
- Pitting and trenching (of rock) greater than 1 cubic m but less than 3 cubic m

**The Exploration Plan must also include a
Aboriginal Consultation Report**

Exploration Plan Process

Ongoing industry and Aboriginal community consultation



* Proponent is able to make adjustments to an exploration plan within the 30 days in response to comments received from Aboriginal communities and surface rights owners.

Exploration Plans

- **Proponents submit an Exploration Plan under s. 78.2 of the Act**
- **Director notifies Aboriginal communities; if comments received, may require proponent to consult**
- **Exploration activities may commence within 30 days of notice unless Director determines a permit is required**
- **Exploration Plan expires after 2 years**

Exploration Permits

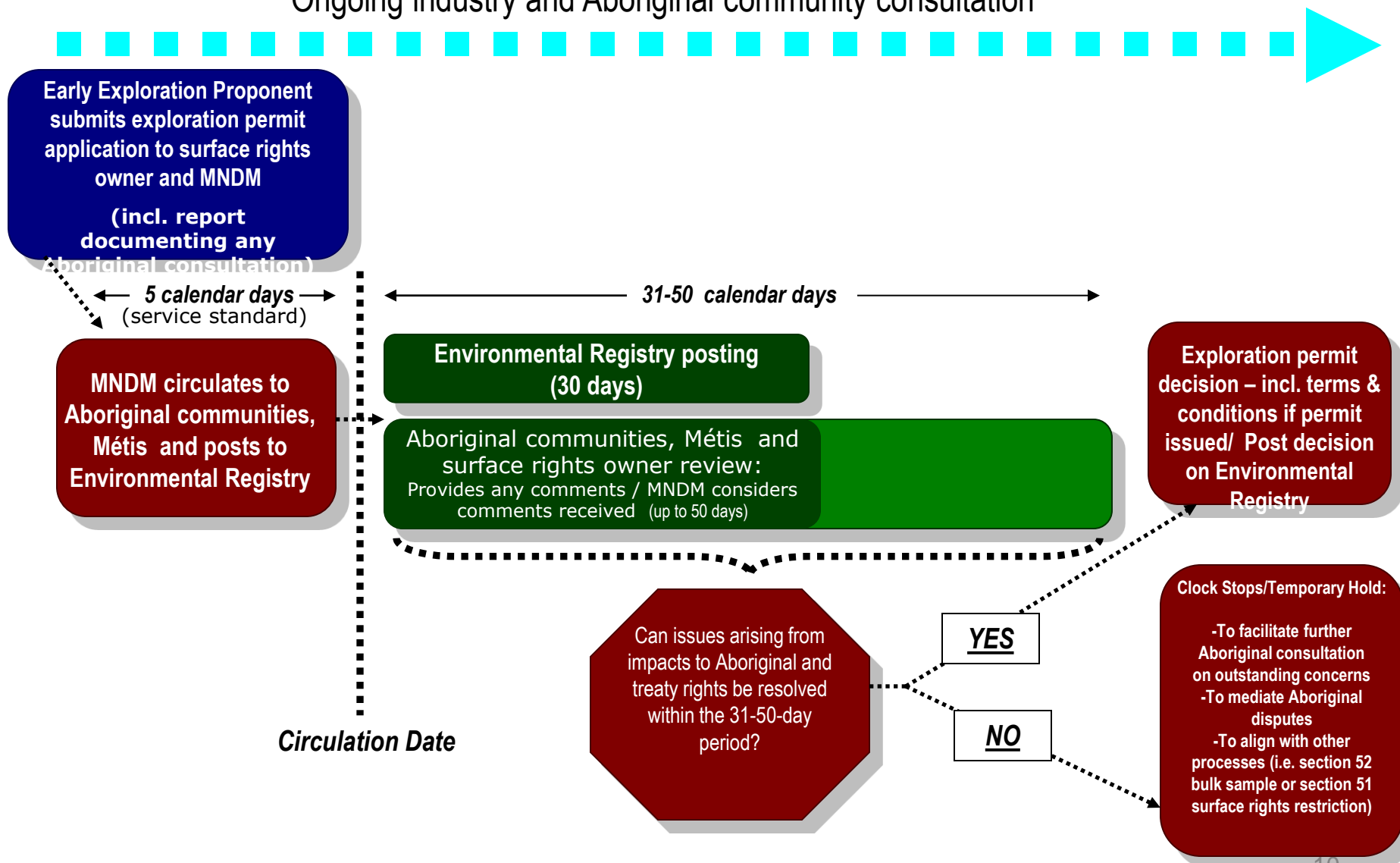
Required for any of the following activities

- Line cutting, (where the width of the line is 1.5 m or more)
- Mechanized drilling for the purposes of obtaining rock or mineral samples, where the weight of the drill is greater than 150 kg
- Mechanized surface stripping (overburden removal) where area does exceeds 100 square m
- Pitting and trenching (of rock) greater than 3 cubic m

The permit application must also include a Aboriginal Consultation Report

Exploration Permit Process

Ongoing industry and Aboriginal community consultation



Exploration Permits

- **Proponents submit an application for an Exploration Permit under s. 78.3 of the Act**
- **Director notifies Aboriginal communities**
- **Within 50 days of notice, Director determines whether to issue the permit or temporary put on hold to resolve impacts to Aboriginal and Treaty rights**
- **Permits effective for 3 years from the day issued**

Dispute Resolution Process

- **Minister may designate an independent third party to hear Aboriginal consultation disputes, including**
 - Setbacks from active harvesting sites related to the right to hunt, fish or trap
 - Appropriate seasonal and other restrictions relating to the rights to hunt, fish and trap, and gather
 - Rehabilitation of flora related to traditional gathering places
- **Not available for: disputes between Aboriginal communities; disputes about quantum of benefits; determination of Aboriginal rights**

Closure Plans

- **Closure Plan required prior to advanced exploration and mining**
- **Aboriginal consultation required prior to submitting closure plans and closure plan amendments**

Assessment Work Credits

What's covered?

- Document preparation
- Travel expenses; meeting costs
- Technical/professional expertise
- Honoraria
- Administration (actual costs)
- Expenses clearly linked to consultation with those communities identified by MNDM

[Proponents must seek direction from MNDM as to what costs are covered – see MNDM Policy: Assessment Work Credits]

Sites of Aboriginal Significance

- **Director may identify lands as sites of Aboriginal cultural significance for the purposes of protection under the Mining Act, including the withdrawal of such lands from prospecting, staking and sale and lease**
- **25 hectares in area or less can be withdrawn**
- **Land that is strongly associated with the Aboriginal community for social, cultural, sacred or ceremonial reasons (examples: burial grounds, places of worship; traditional teaching site, pictographs)**
- **Excluded: hunting grounds, include trap-lines, hunting or fishing grounds, wildlife migration routes, travel or trade routes, and waterways**

Questions?

- **Uncertainty**
- **Consultation challenges faced by both proponents and Aboriginal communities**
- **How to move forward?**

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