



## Volunteer Cleanup of Abandoned Mines: Barriers & Liabilities

Presentation # 2 to the Workshop on Legal & Institutional Barriers to Collaboration

Ottawa – February 24, 2003

By

Joseph F. Castrilli  
Barrister & Solicitor  
Toronto, Ontario

1



## Introduction

- ◆ Presentation # 1 provided overview of July 2002 report on barriers, liabilities, & opportunities for collaboration in volunteer abandoned mine cleanup
- ◆ Presentation # 2 re-states the form taken by, & issues raised with respect to:
  - Legislative & institutional barriers; &
  - Liability disincentives

2



## Legislative & Institutional Barriers

- ◆ A barrier to volunteer abatement may be a requirement under statute/regulation that imposes obligation on volunteer to do, not do, or obtain something if want to proceed
- ◆ The thing may be a licence, permit, approval, or standard that applies generally to regulated industry
- ◆ Should volunteer meet same/different requirements as rest of regulated industry?

3



## Legislative & Institutional Barriers: Federal

- ◆ Potential barriers under federal law:
  - Licensing requirements under natural resource management laws in northern Canada
  - Regulations under Fisheries Act
  - Pollution prevention plans under CEPA
  - EA requirements under CEAA
  - Uranium mining requirements for abandoned sites under NSCA

4



## Legislative & Institutional Barriers: Provincial

- ◆ Potential barriers under provincial law include requirements for obtaining and complying with:
  - Approvals
  - Licences
  - Permits
  - Plans
  - Regulations

5



## Liability Disincentives

- ◆ A liability disincentive to volunteer abatement may arise from the violation of the common law (judge-made law), civil law, legislative, or regulatory provisions and may result in the imposition of fines, monetary compensation obligations, obligations to do, or refrain from doing, something or, in extreme circumstances, imprisonment

6



## Liability Disincentives: Types

- ◆ Three primary types of liability:
  - Administrative
  - Civil
  - Criminal/quasi-criminal/regulatory
- ◆ See Glossary for definitions

7



## Liability Disincentives: Scope

- ◆ Allocative
  - Obligation to provide compensation on the basis of level of contribution to problem
- ◆ Joint & Several
  - Obligation to provide 100% of compensation on each person found liable for any portion of problem

8



## Barriers & Liability: Some Issues

- ◆ Legislative barriers – should volunteer meet same/different requirements as regulated industry? What factors to be considered?
- ◆ Institutional barriers – are ad hoc approaches in absence of legislative reform adequate?
- ◆ Liability – should volunteer face same/different liability risks as regulated industry? What factors to be considered?