International
Comparative
Legal Guides

Mining Law 2021

A practical cross-border insight into mining law

Eighth Edition

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Canada is a constitutional monarchy, a parliamentary democracy and a federation comprised of 10 provinces and three territories. Canada's judiciary is independent of the legislative and executive branches of government. Responsibilities and functions under this democratic structure are distributed through a federal system of parliamentary government whereby the federal or central government shares governing responsibilities and functions with the provincial and territorial governments pursuant to the division of powers under the *Constitution Act, 1867* (see question 13.1). The Prime Minister, elected by the public, is the head of government in Canada.

Certain areas within the federal government's jurisdiction may affect a mining project, for example: Aboriginal rights; trade and commerce; railways; nuclear energy; and environmental matters that involve matters of federal jurisdiction, such as fisheries. However, most of the areas which will affect a mining project are within the provincial governments' jurisdiction.

1.2 Which Government body/ies administer the mining industry?

Pursuant to the division of powers under the *Constitution Act, 1867*, both the federal government and the provincial or territorial governments regulate mining activity in Canada (see question 13.1). Exploration, development and extraction of mineral resources, and the construction, management, reclamation and closure of mine sites are all primarily within the jurisdiction of the provinces of Canada, the Yukon and the Northwest Territories (with some exceptions). In Nunavut and certain areas of the Northwest Territories, public lands and natural resources are governed and administered by the federal government. Other than Nunavut, each province and territory has its own mining legislation and mineral tenure system, though certain mineral rights in the Northwest Territories are administered by the federal government. The provinces and territories (other than Nunavut) own the majority of the mineral rights in Canada, though mineral rights may also be held by private entities, by Aboriginal groups and by the federal government. In Nunavut, mineral rights are owned by the federal government, by Aboriginal groups or by private entities.

Federal government involvement in the regulation of mining operations is limited to those undertakings that fall within federal jurisdiction. These specific undertakings include uranium in the context of the nuclear fuel cycle (i.e., from exploration through to the final disposal of reactor and mine waste), mineral activities related to federal Crown corporations, and mineral activities on federal lands and in offshore areas. The manufacture, sale, use, storage and transportation of explosives used in exploration and mining also all fall within federal jurisdiction. These are regulated under the *Explosives Act* (Canada). Federal jurisdiction also covers the export, import and transit across Canada of rough diamonds, which is regulated under the *Export and Import of Rough Diamonds Act*. The federal *Extractive Sector Transparency Measures Act* creates stringent reporting standards for Canadian oil, gas and mining companies, in order to implement Canada's international commitments in combatting domestic and foreign corruption. All (i) entities that are listed on a stock exchange in Canada; and (ii) entities that have a place of business in Canada, do business in Canada or have assets in Canada and that meet certain thresholds must report payments including taxes, royalties, fees, production entitlements, bonuses, dividends and infrastructure improvement payments of 100,000 Canadian dollars or more, in the aggregate, to local and foreign governments; as of 2017, this includes sums paid to Aboriginal governments.

Any mining disclosure (whether oral or written, and including presentations to investors and disclosure on a mining company's website) made available to the public in Canada is governed by National Instrument 43-101, Standards for Disclosure in Mineral Projects. This instrument was developed by the Canadian Securities Administrators and is administered by the relevant provincial and territorial securities commissions.

1.3 Describe any other sources of law affecting the mining industry.

The areas of contract law and tort law are generally regulated by the provinces pursuant to their "property and civil rights" powers delineated under the *Constitution Act, 1867*. These bodies of law are mostly "common law" (i.e., "judge-made" law, rather than law created under legislation by Parliament or legislatures). Common law can be superseded or changed by subsequent legislation.

Québec, unlike the other provinces, is governed by civil law. Civil law is a codified law that is written into statutes (e.g. the Civil Code of Québec) which are then strictly interpreted by the courts.

2 Recent Political Developments

2.1 Are there any recent political developments affecting the mining industry?

In March 2019, the Government of Canada announced the release of the Canadian Minerals and Metals Plan (CMMP), which is a

forward-looking framework, jointly authored by mining ministers across the country. The CMMP aims to address systematic challenges and issues in the mining industry, with a focus on: competitiveness; the participation of Indigenous Peoples; community benefits; respect for the environment; scientific and technological innovation; and global leadership. The first CMMP Action Plan, intended to be the first of a series of action plans designed to operationalise the CMMP, was released in March 2020. The 2020 Action Plan proposes strategising approaches and programmes and initiatives to enhance the Canadian mining industry's economic development and competitiveness, advance the participation of Indigenous Peoples in the mining industry, protect the environment, encourage scientific and technological innovation, deliver benefits for communities located near mining activities and strengthen Canada's position as a world leader in the industry. Further CMMP Action Plans will be released in 2021 and 2022, with subsequent editions following every three years, enabling Canada to adjust its approach and respond to future opportunities.

In August 2019, the new federal *Impact Assessment Act* came into force, replacing the previous *Canadian Environmental Assessment Act, 2012* (see section 9). Under the *Impact Assessment Act*, the Canadian Environmental Assessment Agency will be continued as the Impact Assessment Agency of Canada and will now be the single agency responsible for the management and coordination of federal impact assessments.

A recent trend in many Canadian jurisdictions has been the movement away from traditional ground-staking regimes towards more modern electronic mineral tenure registries. Provinces such as British Columbia, Ontario, Saskatchewan and New Brunswick have replaced their respective requirements for physical staking of mineral claims with electronic registration regimes. In Nunavut and the Northwest Territories, mining legislation amendments have been proposed to allow for the introduction of online mining rights administration systems. These developments have had the effect of reducing the cost of staking mineral claims in these jurisdictions, which may indicate a willingness to allow for more speculative staking of claims.

See question 11.3 for a discussion of recent political developments related to the COVID-19 pandemic.

2.2 Are there any specific steps the mining industry is taking in light of these developments?

The mining industry is a significant stakeholder and has been an active participant in consultations regarding the development of the new environmental assessment regime.

3 Mechanics of Acquisition of Rights

3.1 What rights are required to conduct reconnaissance?

Reconnaissance right requirements in Canada vary by jurisdiction. In the Northwest Territories, Nunavut, British Columbia, Manitoba, New Brunswick and Prince Edward Island, both individuals and companies are required to obtain a prospector's licence from the applicable provincial or territorial government in order to engage in prospecting for minerals, subject to certain exceptions. There are similar requirements in Ontario and Québec, though those provinces do not directly issue prospector's licences to corporations. In Nova Scotia, individuals and companies are required to register as a prospector and pay the prescribed fees, but no "licence" is required for preliminary exploration with no ground disturbance.

Prospector's licences (or their equivalent) can be obtained in the majority of jurisdictions by contacting the applicable provincial or territorial governmental authority, completing the requisite form and paying a small fee. In most cases, prospector's licences expire after a period of time (for example, one year in British Columbia), but can be renewed.

Prospector's licence requirements differ from jurisdiction to jurisdiction. In general, the government does not have the discretion to refuse to issue a licence; prospector's licences are granted automatically if the applicant meets the statutory criteria. However, it should be noted that a prospector's licence can be cancelled or suspended for a contravention of applicable mining legislation.

In the Northwest Territories and Nunavut, a prospector may also obtain a "prospecting permit", which grants the holder exclusive rights to explore and have mineral claims recorded within the assigned boundaries of a given permit area for a specified period of time. Similarly, in Saskatchewan, holders of permits issued by the Minister of Environment are granted the exclusive right to explore the lands in question and subsequently can convert the permit into a mineral claim.

Reconnaissance right requirements are less stringent in the Yukon, Alberta, Saskatchewan and Newfoundland and Labrador, as one can conduct certain prospecting activities without a licence or other formal registration.

3.2 What rights are required to conduct exploration?

In Canada, any significant exploration by a prospector will require that prospector to hold the mineral rights to the area of interest. Mineral rights are obtained by "staking" a mineral claim, or "licence" or "permit" in some jurisdictions. The permitted methods for staking a claim vary from jurisdiction to jurisdiction, and include physically staking a claim on the ground, on a map or through an online computer registration system. Applicable fees and documents are often required to complete the staking and recordation process and in some jurisdictions (for example, the Yukon), there may be a requirement to notify or engage with Aboriginal groups prior to recordation or prior to conducting exploration programmes on recorded claims.

The provinces and territories (other than Nunavut) each have their own mineral tenure system, though certain mineral rights in the Northwest Territories are administered by the federal government. Nunavut (except with respect to Inuit-owned lands) utilises a mineral titles system administered by the federal government.

With respect to federally owned lands within the provinces, the federal *Public Lands Mineral Regulations* regulate the issuance of exploration and mining rights (in the form of a lease). The federal regulations differ from the provincial systems in that they provide for a competitive bidding process for mineral claims.

In order to retain a mineral claim, prescribed amounts of work must be conducted thereon. In addition to exploration, an "assessment report" describing the exploration and its costs must be filed each year with the relevant mining recorder. If the prescribed exploration costs are not incurred, most jurisdictions permit a claim holder to pay an amount of money *in lieu* of incurring exploration costs. If the assessment report is not filed, or if money is not paid *in lieu*, the claim will be forfeited by the holder.

The duration of a claim will differ from jurisdiction to jurisdiction. In some jurisdictions (such as British Columbia), a mineral claim may be renewed indefinitely. In other jurisdictions, a mineral claim may only be held for a limited period of time. For example, in the Northwest Territories and Nunavut, a mineral claim may be held for a maximum of 10 years and after such time,

it will expire, unless it has been converted into a lease or an extension has been granted by the relevant mining recorder.

In general, a mineral claim or licence only entitles the holder to the right to conduct exploration and not any additional mining operations, subject to certain exceptions. The Yukon is an exception to this general proposition.

A mineral claim holder will generally have rights of access to explore the claim; however, if the surface is privately owned, a notice to, or an agreement with, the surface owner will usually be required. The legislation in most provinces and territories provides for some form of tribunal or other dispute resolution mechanism to resolve disputes between the holders of mineral claims and surface rights owners (see question 8.2). If there are parties who hold other rights to the land, notice to such parties may also be required.

The above describes the situation where minerals are held by the applicable government. However, minerals may also be held by private entities and originate from either Crown grants or patents or freehold tenures that were issued as part and parcel of another type of grant, such as historic railway grants. The owner of such privately held minerals is entitled to conduct reconnaissance and exploration activities and develop those minerals, provided that he or she obtains the necessary surface access (in cases where the surface is separately held).

In some cases, Aboriginal groups may hold the surface rights and/or mineral rights, in which case it is necessary to negotiate with the applicable Aboriginal group the terms on which one can access the lands and conduct exploration activities thereon. Surface access may take the form of a licence or exploration lease and exploration activities may be governed by an exploration agreement.

3.3 What rights are required to conduct mining?

Generally, mineral claims must be replaced by mining leases prior to commencing mining activities, the Yukon being an exception. A mining lease is a longer-term and more secure form of tenure than a mineral claim.

Mining leases permit full exploitation of the resource (subject to obtaining other required permits and authorisations for mining activities) and, depending on the jurisdiction, generally have a term of 10 to 30 years and provide that rent is payable annually to the government that issued the lease. Mining leases are renewable for further periods, provided annual rent is paid and the terms and conditions of the lease are complied with.

The same comment as set forth above regarding privately held minerals is applicable to mining activities.

A mineral operator must acquire a government permit approving the proposed mining project. For a major mining operation, the mineral operator will be required to submit a detailed mining plan and reclamation plan, and may also be required to submit an environmental assessment (see question 9.1).

Where Aboriginal groups hold the surface rights and/or mineral rights, land tenure may take the form of a lease and the right to develop the minerals may take the form of a production lease. The Aboriginal group and mining company will frequently negotiate another agreement in parallel with these agreements: an impact and benefit agreement. This agreement offers a negotiated means to mitigate detrimental impacts of the project and to provide economic benefits for the Aboriginal group and its members. It documents the basis on which the mining company has acquired its "social licence to operate".

3.4 Are different procedures applicable to different minerals and on different types of land?

Generally speaking, there are different sets of rules depending on the type of substances being mined, and there are varying requirements depending on the type of land under which the minerals are located.

The rules governing hard rock minerals (including precious metals), placer minerals, coal and industrial minerals are often set out in different legislation. The federal *Export and Import of Rough Diamonds Act* provides for controls on the export, import or transit of rough diamonds across Canada, and for a certification scheme for the export of rough diamonds, which was established to meet Canada's obligations under the Kimberley Process adopted by the United Nations General Assembly in 2000. The regulation of uranium and thorium includes additional rules with respect to their production, refinement and treatment. These rules are within federal jurisdiction for purposes of national security and to fulfil Canada's international obligations in respect of such minerals.

There are also varying regimes depending on the owner of the land under which the minerals are located. The surface land may be owned by a private entity, by Aboriginal groups or by the Crown, and may be subject to Aboriginal rights.

Where there is private ownership of the land, the recorded holder of the mineral claim will usually be required either to: (i) issue a notice of access to the surface owner; (ii) come to an agreement for access with the landowner; or (iii) obtain an order from the provincial or territorial authority. Generally, the recorded holder of the mineral claim will also be required to compensate the surface rights owner for the access granted. Depending on the jurisdiction, where the parties cannot agree, compensation may be determined either by a dispute resolution mechanism provided for in the legislation, by reference to the competent tribunal, or by application to court. Exceptionally, in Québec, where an agreement cannot be reached, the holder of mining rights will then have to resort directly to expropriation procedures.

Aboriginal groups may also own the land over which the minerals are found. Where this is the case, permission for access must be acquired from the Aboriginal group. For example, Inuit-owned lands in Nunavut require that surface access be obtained from the Regional Inuit Association and may require a licence or lease.

With respect to Crown-owned land, a recorded holder of the mineral claim or lease will generally be permitted to access the surface of the land for the purposes of mining activities, though land-use permits or leases may be required in some instances. However, where land is subject to Aboriginal rights, Crown consultation and accommodation of the affected Aboriginal groups will dictate access rights and requirements of mining proponents. The extent of consultation and accommodation will vary depending on the affected groups and their recognised rights. While consultation and accommodation is a Crown obligation, it is often the practice of mining companies to negotiate impact and benefit agreements with Aboriginal groups in order to obtain community support for the project.

3.5 Are different procedures applicable to natural oil and gas?

In Canada, oil and gas licences or leases, which provide the holder with the right to produce oil and gas, are issued by the provinces

and territories (and the federal government, with respect to Nunavut) through a competitive bidding process. This differs from the first-come, first-served basis on which mineral rights are obtained.

4 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

4.1 What types of entity can own reconnaissance, exploration and mining rights?

In jurisdictions where a prospector's licence is required, individuals who have reached the age of majority, and corporations, may generally apply for and hold such a licence. Ontario and Québec are exceptions, in that they do not directly issue prospector's licences to corporations. Some jurisdictions, such as British Columbia and Prince Edward Island, specify that partnerships may also hold a licence.

4.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Individuals and corporations are generally entitled to hold mining rights. In some jurisdictions, however, such as the Northwest Territories and Nunavut, partnerships and limited partnerships are not permitted to acquire mineral claims or mining leases in their name.

Generally, there are few restrictions on mining rights being directly or indirectly owned by a foreign entity. Most jurisdictions require corporations to be registered or otherwise authorised to carry on business in the jurisdiction in order to acquire a prospector's licence (or the equivalent). The Northwest Territories previously imposed Canadian citizenship and ownership requirements on the grant of mining leases, but these restrictions no longer exist.

If an acquisition of an operating Canadian mining business exceeds certain financial thresholds, it will be subject to government review under the *Investment Canada Act* (ICA). The review threshold is approximately 1.6 billion Canadian dollars in enterprise value for investments to directly acquire control of a Canadian business by trade agreement investors that are non-state-owned enterprises. The review threshold is approximately 1.0 billion Canadian dollars for WTO investors that are non-state-owned enterprises. The review threshold is approximately 428 million Canadian dollars in asset value for direct investments by WTO investors that are state-owned enterprises. The threshold for review is much lower for investors or vendors residing in non-WTO member countries (5 million Canadian dollars in asset value for direct investments and 50 million Canadian dollars in asset value for indirect transactions). In general, a proposed transaction that meets the review threshold cannot be completed until the federal Minister of Industry has made a determination that the proposed transaction is likely to be of net benefit to Canada. This ministerial review requirement does not apply to acquisitions of exploration properties or non-producing mines. In addition, the Canadian government has reserved the right to review any transaction if it considers that the investment could be injurious to national security.

There are special rules applicable to uranium mining. Federal government policy (the Non-Resident Ownership Policy in the Uranium Mining Sector) requires a minimum of 51% Canadian ownership in uranium mining properties which are at the first stage of production, with exemptions from the policy if the project is *de facto* Canadian-controlled or if Canadian partners cannot be found.

In 2015, the federal government granted the first exemption since the policy was implemented in 1987. An Australian company was allowed majority ownership of a uranium mine in Newfoundland and Labrador. The company was able to demonstrate that there were no Canadian partners interested in developing a proposed mining project.

Canada is a party to the *Canada and European Union Comprehensive Economic and Trade Agreement* (CETA) and the new *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP). Notwithstanding the terms of these treaties, the Non-Resident Ownership Policy in the Uranium Mining Sector will continue to apply. Canada has lodged reservations under both treaties such that exemptions from the Non-Resident Ownership Policy in the Uranium Mining Sector are only available where Canadian participants in the ownership of the property are unavailable.

4.3 Are there any change of control restrictions applicable?

The "net benefit review" and "national security review" rules discussed in question 4.2 apply in all instances where a non-Canadian acquires control, directly or indirectly, of a Canadian business.

In addition, proposed foreign investment may be subject to review by the Canadian Competition Bureau under the federal *Competition Act*. Where each of certain thresholds are met, a proposed investment requires pre-merger notification and either approval or expiry of a statutory waiting period before the transaction may go forward. The Canadian Competition Bureau also has jurisdiction to review and challenge all mergers within one year of completion on the grounds that the transaction will result in a substantial lessening or prevention of competition.

4.4 Are there requirements for ownership by indigenous persons or entities?

Please see question 10.1 regarding Aboriginal and treaty rights of the Aboriginal peoples of Canada.

4.5 Does the State have free carry rights or options to acquire shareholdings?

No, it does not.

5 Processing, Refining, Beneficiation and Export

5.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Mineral processing, refining and further beneficiation will generally be subject to the same legislative regimes that apply to mineral exploration and mineral extraction, as the provincial, territorial and federal statutes regulate all stages of the mining process. If mineral processing will be undertaken at the mine site, it will have been approved through the mine permit application and the environmental assessment process, where applicable.

The majority of jurisdictions do not require mineral processing to occur within the province or territory of extraction. Nova Scotia is an exception to that general proposition, in that under Nova Scotia law no person can remove ore to a place for processing outside of Canada unless an exemption is obtained from the appropriate Minister. Similarly, the Ontario *Mining Act* provides that, unless an exemption has been obtained, ores and minerals extracted in that province must be treated and refined in Canada. In New Brunswick and Newfoundland and Labrador, the government may make an order requiring minerals to be processed within the province. In Saskatchewan, lease holders may not export quarriable minerals in their natural or unprocessed state without the written permission of the Minister of Mineral Resources, and diamonds must be presented for valuation at facilities located in Saskatchewan before they are removed from the processing facility or sold. Some jurisdictions, such as Manitoba, encourage the beneficiation of minerals inside the province by providing tax deductions that are permitted only for the processing of minerals within the province.

Other than as noted above, there is no general prohibition on the export of un-beneficiated minerals. However, there are mineral-specific exceptions. Pursuant to the *Nuclear Non-Proliferation Import and Export Control Regulations*, uranium may not be exported unless the Canadian Nuclear Safety Commission grants a licence. Similarly, diamonds may not be exported unless they have been issued a Kimberley Process Certificate and the transaction has been reported to the federal Minister of Natural Resources.

5.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Canada is a party to a number of international agreements relating to wastes and recyclable materials, pursuant to which it has various obligations on trans-boundary movements of hazardous wastes and hazardous recyclable materials.

In addition to Canada's international obligations, the federal *Export and Import Permits Act* provides permitting requirements and associated fees for the export of goods listed on the Export Control List (a list of controlled goods). The *Export and Import Permits Act* provides authority to the Governor in Council to establish and amend the Export Control List for certain prescribed purposes. Notably, one such purpose is to ensure that actions taken to promote the processing in Canada of a natural resource produced in Canada are not rendered ineffective by unrestricted exportation. Currently, uranium is a controlled substance on the Export Control List where certain characteristics are present. It is important to refer to the Guide to Canada's Export Controls and to the Export Control List for any amendments that may affect the products being exported.

Further, the *Export and Import of Rough Diamonds Act* restricts the export, import and transit across Canada of rough diamonds, while the *Nuclear Non-Proliferation Import and Export Control Regulations* require a licence issued by the Canadian Nuclear Safety Commission for the export of uranium.

6 Transfer and Encumbrance

6.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

In general, prospector's licences are not transferable.

Mineral claims are transferable, though the transfer is often subject to provincial, territorial, and federal legislative requirements. A general precondition to the transfer of a mineral claim is that it be in writing and executed by the holder of the claim. Several jurisdictions are more stringent and require the use of a prescribed form to validate a transfer, and in Nova Scotia, the transfer of an exploration licence (akin to a mineral claim) is also contingent upon the consent of the mining registrar. Transfers of mineral claims in British Columbia are completed by the transferor and transferee through the online mineral title system.

Mining leases are generally transferable. The transferability of the lease will be governed by the terms of the lease in question and applicable legislation. A common requirement is that the transfer agreement be in writing and signed by the holder of the interest. In addition, in some jurisdictions, including, for example, Ontario and Nova Scotia, government consent is required in order to transfer a mining lease.

Another general requirement related to the transfer of a mineral claim or mining lease is that the transfer must be recorded in a prescribed office. In some jurisdictions, recordation of the mining lease is not required but is permitted.

6.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Generally speaking, in Canada, indebtedness may be secured by all types of real and personal property under the real and personal property security regimes of each of the provinces and territories and by virtue of the common law. The nature of the charge granted to secure such indebtedness, for example, whether a mortgage, charge, pledge or other, will need to be considered in each circumstance.

There is some uncertainty as to whether a prospector's licence can be charged as security for indebtedness.

It is possible to create a charge against a mineral claim or mining lease. In some jurisdictions, consent of the applicable governmental authority will be required, however, such as in Ontario, where a mining lease cannot be mortgaged, charged, or made subject to a debenture, unless the applicable Minister consents in writing to the transaction.

Security documents granting such a charge are typically registered in the applicable mining registries against the mineral claims or mining leases, whose registration will serve as notice to third parties of the grant of the charge. In many jurisdictions, registration of documents purporting to charge mineral claims or mining leases is permissive; while in other jurisdictions, registration is mandatory in order to be given effect. Generally, the applicable legislation does not set a scheme of priorities for registered and unregistered charges or between them. Whether the security document validly and effectively creates a mortgage or charge is a matter determined by the common law.

7 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

7.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

A prospector's licence cannot be subdivided.

In some jurisdictions, a mineral claim may be subdivided. For example, in British Columbia, which uses electronic mapping for mineral claims, claims made up of two or more mineral "cells" can be subdivided into claims that are no less than one cell in size.

With respect to the subdivision of mining leases, the state of the law is not uniform across Canada. Subdivision of mining

leases is not possible in British Columbia; however, an application can be made to reduce the land area subject to the lease, which will reduce the lease rental payments. Where subdivision of mining leases is permitted, the rules governing the subdivision vary by province and territory.

7.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Mining activity in Canada can be structured in a variety of ways. A common structure is through a joint venture. Joint ventures can be formed through a variety of legal vehicles, including partnerships, corporations and unincorporated joint ventures.

Partnerships are governed by provincial and territorial legislation. General partnerships are generally defined as the relationship between two or more persons carrying on a business in common with a view to profit. Limited partnerships are a type of partnership created amongst partners of different classes: limited partners, who typically are not engaged in the management or control of the business and who, subject to certain exceptions, have limited liability in respect of the debts and liabilities of the partnership; and general partners, who operate and manage the business of the partnership and have unlimited liability. In some jurisdictions, such as the Northwest Territories and Nunavut, partnerships and limited partnerships are not permitted to acquire mineral claims or mining leases in their name.

Parties may incorporate a corporation to conduct a joint venture project. Usually, the joint venture property and assets are transferred to, and held by, the corporation and a shareholders' agreement will govern the conduct and management of the joint venture corporation. Joint venture corporations are governed by the provincial, territorial or federal legislation under which the corporation was incorporated.

Unincorporated joint ventures are formed and governed by a contract. A benefit of the unincorporated joint venture is that parties to the contract have considerable flexibility in setting out the terms of an agreement. Typically, the joint venture property is held by one of the joint venture parties on behalf of the joint venture and operations are managed by one of the joint venture parties or, in some cases, a third party. In some cases, depending on the applicable legislation, the property and/or assets may be held as tenants in common. Income and losses of the mining activity conducted by unincorporated joint ventures are computed and taxed in the hands of the individual joint venture parties.

7.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

The applicable legislation under which the mineral tenure in question has been obtained will often circumscribe the minerals that the tenure covers (e.g. hard rock minerals, placer minerals, coal or industrial minerals). For example, in British Columbia, the *Mineral Tenure Act* regulates the exploration and, in part, the development and mining of hard rock minerals and placer minerals, and the definition of what constitute "minerals" is very broad. Similarly, a holder of a placer claim is entitled to explore for placer minerals. Other examples include the British Columbia *Coal Act* that regulates the exploration and production of coal, and the British Columbia *Land Act* that regulates earth, soil, sand, gravel, rock and other natural substances used for a construction purpose.

7.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

The entitlement to tailings and waste dumps depends on a determination of whether such materials belong to the mineral owner or the surface owner. Some provinces expressly address the rights over tailings and waste dumps in legislation. For example, in British Columbia, tailings and waste dumps become part of the rights to a mineral or placer claim.

In provinces and territories where residue deposits such as tailings and waste dumps are not explicitly dealt with in legislation, the instrument that separates mineral rights from surface rights must be interpreted in order to determine the rights over such materials.

7.5 Are there any special rules relating to offshore exploration and mining?

Pursuant to international law, Canada has exclusive sovereignty over the territorial sea (12 nautical miles seaward from the low water line along the coast) and the exclusive right to explore and exploit the mineral resources of the continental shelf (the area extending beyond the territorial sea to the outer edge of the continental margin, or to a distance of 200 nautical miles from the low water line, whichever distance is greater). Canada has made partial submissions to the Commission on the Limits of the Continental Shelf, pursuant to Section 76(8) of the *United Nations Convention on the Law of the Sea*, and in 2018 established a joint task force with Denmark and Greenland to explore boundary issues including the delineation of an extended continental shelf beyond the 200-nautical-mile limit in the Arctic.

The *Oceans Act* (Canada) provides that provincial laws do not apply to the territorial sea or the continental shelf with respect to minerals or other non-living natural resources, unless regulations are enacted to make provincial laws apply.

Unlike in the oil and gas sector, there is no federal legislation currently in place that provides for the issuance of offshore mining rights.

8 Rights to Use Surface of Land

8.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Most often, pursuant to the applicable mining legislation, the holder of a prospecting permit will automatically be permitted to access the surface where the Crown holds the underlying mineral rights. Where the surface rights are privately held, the miner will either be required to issue a notice of access, come to an agreement with the surface owner or seek a court order. A right to compensation for entry and damage caused to the property is generally provided for in the applicable mining or surface rights legislation. The applicable legislation usually contains dispute-resolution provisions to resolve disputes between a mineral rights holder and the surface owner.

In Prince Edward Island, Nova Scotia, Saskatchewan, the Northwest Territories and Nunavut (other than Inuit-owned lands), surface rights are not automatically granted as part of a mineral claim or lease. A land-use permit may be required for any work under a mineral claim. Work conducted on a lease will also require a land-use permit or a surface lease. On Inuit-owned lands, a licence or lease may be required to gain access to the surface.

8.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

As most mining activity in Canada occurs outside of population settlements, mineral operators usually deal primarily with the Crown, rather than with private owners. In situations where a mineral operator wants to enter privately held land, the operator's obligations are set out in applicable legislation and the common law (and civil law in Québec). Generally, a mineral operator must either obtain the permission of the owner to enter their land, often in the form of a lease, or obtain an order from the prescribed authority allowing the operator to proceed without the owner's permission. However, in British Columbia, permission from the owner is not a necessary requirement. Under the *Mineral Tenure Act*, an operator cannot begin mining activity unless the operator first serves notice to the owner of the surface.

The general common law rule requires the mineral owner to use his or her property so as not to injure his or her neighbour, the surface owner. Legislation also addresses the rights as between mineral owners and surface owners. For example, in British Columbia, an operator is liable to compensate the owner of a surface area for loss or damage caused by a mining operation.

8.3 What rights of expropriation exist?

In every Canadian jurisdiction, pursuant to the applicable legislation, the Crown is authorised to expropriate lands or interests in land. Depending on the legislation of the relevant jurisdiction, this authority of the Crown may enable a mineral owner to acquire surface rights. For example, under the British Columbia *Mining Right of Way Act*, a miner has a right to expropriate private land for access to a mine site where the owner of the land, or a person with an interest in the land, does not grant a right of way.

In exceptional circumstances, mineral rights have been effectively expropriated by the Crown, though, in such cases, compensation has generally been paid.

9 Environmental

9.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

In most Canadian jurisdictions, there are statutorily prescribed environmental assessment requirements that apply to certain classes of projects that are over a certain threshold size. Most major mining projects trigger the impact assessment requirements. For example, the British Columbia *Environmental Assessment Act* requires an environmental assessment of any proposed new mine that will have a production capacity equal to or greater than 75,000 tonnes per year of mineral ore.

While the process is not uniform across Canada, in some jurisdictions there may be a requirement for a public hearing. Other environmental authorisations or permits issued by provincial or territorial governments may be required.

In addition to the aforementioned potential environmental assessment, the federal government may also conduct an environmental assessment if a proposed project is of a prescribed type or size. In certain circumstances, the federal legislation allows the Minister of Environment and Climate Change to make a decision on a project based upon a provincial assessment process, thus making it possible to avoid redundant assessments.

In June 2019, the Government of Canada passed a new federal *Impact Assessment Act* to replace existing federal environmental assessment legislation. The new Act and associated regulations came into force in August 2019. The new Act created a single Impact Assessment Agency with the mandate to conduct and decide upon environmental assessments on behalf of the federal government. A wider range of effects will also be considered in the impact assessment and final approval process – including impacts on health, society, gender, climate change, Aboriginal peoples, jobs, and the economy. Further, there is a reduction in the time limit for panel-reviewed projects. Projects will be reviewed by a panel within 600 days, as opposed to the previous turnaround time of 24 months. Smaller projects with fewer assessment requirements will be reviewed within 300 days. The *Impact Assessment Act* also introduced a new Planning Phase, intended to assist the Impact Assessment Agency in deciding whether to carry out an assessment, whether to coordinate with other jurisdictions or agencies (such as a provincial government, federal authority or Indigenous governing body) and what the scope of the assessment will be.

9.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Mining projects must comply with both provincial and federal environmental legislation. Generally, provincial legislation will set requirements for the storage of tailings and other waste products.

For example, following the failure of a tailings storage facility in 2014, British Columbia updated its *Health, Safety and Reclamation Code for Mines in British Columbia* to require mines to develop and maintain a tailings management system that includes regular audits. Managers are required to retain an engineer of record to ensure that the mine's tailings storage facility has been designed and constructed in accordance with the applicable guidelines, standards and regulations. The manager and engineer of record must report any unresolved safety issues to the Chief Inspector of Mines.

At the federal level, the Government of Canada may be responsible for regulatory decisions specific to tailings management if they involve uranium tailings, navigable waters, fish-bearing waters and fisheries, environmental matters of international and inter-provincial concern or federal lands. The Minister of the Environment and Climate Change is required by the *Canadian Environmental Protection Act* to establish and publish a national inventory of releases of pollutants, including substances that are transported to waste rock storage areas and tailings-impoundment areas.

The approval of mine closure plans to rehabilitate and restore properties after the completion of mining operations is provided for in the mining legislation of most Canadian jurisdictions. Most jurisdictions require financial security or a guarantee and an approved closure plan to be filed prior to the mine production. Certain jurisdictions require the closure plan to be filed prior to any exploration activities being undertaken.

9.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Generally, the provincial government will need to approve rehabilitation, restoration, reclamation or closure plan submissions prior to any mining activities, pursuant to provincial mining laws

and regulations. Upon the closure of operations, the approved plans must be executed so as to restore the site to an acceptable condition.

Additionally, in certain jurisdictions, the closure of mining activities may be subject to contaminated site remediation obligations.

9.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

In most jurisdictions, the development of a mine will require mine plans to be submitted and approved. In some jurisdictions, this is done in conjunction with the environmental assessment process; in others, mine planning and permitting requires a separate process under a separate regulator.

In some jurisdictions, specific reserves for areas of land, such as agricultural or environmental reserves, will require additional authorisations or approvals for proposed undertakings that fall outside the specified uses. In circumstances where a mining project is located within the boundaries of a municipality or other local government, the applicable municipal laws such as zoning bylaws will need to be adhered to.

10 Native Title and Land Rights

10.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

In Canada, the *Constitution Act, 1982* protects Aboriginal and treaty rights of the Aboriginal peoples of Canada. Aboriginal rights themselves are not strictly defined. The Supreme Court of Canada has defined these rights in relation to a spectrum dependent on the degree of connection with the land, the highest level of right being Aboriginal title. Aboriginal rights can also be defined by treaty. Where Aboriginal rights remain undefined, they can continue to exist until a treaty is reached with the Crown or until they are proven by claimants and defined by the courts.

A 2014 Supreme Court of Canada decision, *Tsilhqot'in Nation v. British Columbia*, provided the first declaration of Aboriginal title in Canada, over a limited area of land. The potential impact of the decision on mining companies remains unclear, given the very specific facts on which the decision was based.

In certain circumstances, the Crown owes a duty to consult with the Aboriginal peoples and to accommodate them where appropriate, even where Aboriginal rights have not been proven. The extent of consultation and accommodation required of the Crown will vary depending on the circumstances. The impact of consultation obligations and Aboriginal rights with respect to reconnaissance, exploration and mining operations rights will thus depend on the individual circumstances of a given case.

In May 2016, Canada officially removed its objector status to the UN Declaration on the Rights of Indigenous Peoples and announced its intent to adopt and implement the Declaration in accordance with the Canadian Constitution. In November 2019, British Columbia passed the *Declaration on the Rights of Indigenous Peoples Act*, in order to affirm the application of the Declaration to the laws of British Columbia, contribute to the implementation of the Declaration and to support the affirmation of, and develop relationships with, Indigenous governing bodies. British Columbia is the first province in Canada to start implementing legislation in accordance with the UN Declaration on the Rights of Indigenous Peoples.

Partly in recognition of the aforementioned UN Declaration, the Canadian government recently launched a national engagement with Canada's Aboriginal peoples to help develop a Recognition and Implementation of (Indigenous) Rights Framework. This framework, if and when implemented, would help ensure that the starting premise for all federal government action is the recognition of Indigenous rights.

11 Health and Safety

11.1 What legislation governs health and safety in mining?

In general, worker health and safety falls within provincial jurisdiction unless the subject matter of the undertaking falls within federal jurisdiction. For example, federal government employees are governed under the *Government Employees Compensation Act*. Generally this Act is administered by provincial and territorial workers' compensation boards and commissions.

The federal government also has jurisdiction over competency of workers dealing with uranium and thorium. The qualifications and training of certain workers who deal with uranium and thorium are governed by the federal *Nuclear Safety and Control Act*. The Act also creates offences relating to inadequate staffing and work practices at a uranium or thorium mine.

Each province and territory in Canada has its own workers' compensation board or commission, although the Northwest Territories and Nunavut have a combined workers' compensation board. These boards or commissions generally provide a preventative function by administering occupational health and safety laws, and an administrative function by administering insurance schemes for injured workers.

Some provinces and territories also have legislation and regulations that specifically apply to the mining industry in addition to workers' compensation legislation. For example, British Columbia has the *Health, Safety and Reclamation Code for Mines in British Columbia* (Code), which applies to both exploration and production mine sites in British Columbia. The Code sets out obligations for owners to develop a health and safety programme, and to establish a joint management worker health and safety committee. In addition, the Code prescribes reporting requirements for accidents, deaths and dangerous occurrences and the maximum hours of work at a mine site.

11.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Generally, the governing health and safety legislation of the province or territory where the work is conducted will impose obligations on owners, supervisors and employees. While these obligations are not uniform across the country, in general, mine owners are obligated to ensure that applicable laws and regulations are followed, and to take all reasonable precautions to ensure the health and safety of employees. Supervisors generally have a duty to ensure that proper training is given to employees on site, and to ensure the safety and well-being of employees. Employees have an obligation to inform supervisors of any potential risks or dangers on the worksite, as well as to protect their own personal health and safety (see question 11.1).

11.3 Are there any unique requirements affecting the mining industry in light of the coronavirus (COVID-19) pandemic?

The mining industry has been significantly affected by the COVID-19 pandemic. Governments and regulatory bodies in Canada have generally been quick to respond with measures intended to limit the spread of the virus.

In light of the pandemic, governments across Canada have imposed varying levels of restrictions on operations, and limited permitted activities to certain "essential services". In provinces such as British Columbia, Ontario and Québec, mining operations and mineral exploration were classified as essential services and allowed to continue, subject to compliance with health and safety orders and recommendations. Equally, in other provinces, such as Alberta, mining operations and mineral exploration were not among the classes of business which were ordered to close.

In many jurisdictions, regulators have announced relief measures extending the time limit for filing the requisite expenditures needed to maintain mineral claims in good standing. For example, in British Columbia, the time limit for filing a statement of exploration and development work or making payment *in lieu* on any mineral or coal claim becoming due in 2020 or 2021, has been extended to December 31, 2021. Similarly, in Ontario, the Ministry of Energy, Northern Development and Mines has announced that it will be granting exclusion orders to any claim holders with claim anniversary dates on or prior to December 31, 2020.

Recently, jurisdictions such as British Columbia and Ontario have released sector-specific guidelines regarding workplace safety during COVID-19, which set out "best practices" for employers of workers in the mining sector as those jurisdictions slowly ease the restrictions that were put in place to limit the spread of COVID-19.

The pandemic-related requirements and other effects on the mining industry resulting from COVID-19 are evolving rapidly in response to the pandemic, and the above information is therefore subject to change.

12 Administrative Aspects

12.1 Is there a central titles registration office?

There is no central titles registration office in Canada. With the exception of Nunavut, which is primarily regulated by the Federal Department of Aboriginal Affairs and Northern Development Canada, and the Northwest Territories, which is regulated by both the federal and territorial governments, each of the provinces and territories is responsible for issuing prospector's permits (if applicable) and registering mineral titles.

12.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

All provinces and territories provide for some form of dispute-resolution mechanism in their respective mining legislation. In general, all decisions made by a tribunal or official carrying out a statutory function are subject to judicial review by the courts in the relevant jurisdiction.

Certain provinces, including Manitoba, Ontario, Newfoundland and Labrador, and New Brunswick, have created distinct tribunals that are separate from the department in charge of administering the mining legislation. Other provinces (including British Columbia) have internal dispute resolution systems with appeals to the courts.

13 Constitutional Law

13.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The jurisdictional powers of both levels of government, provincial and federal, are set out in the *Constitution Act, 1867*. The *Constitution Act, 1867* provides the federal government with the power to create laws in relation to trade and commerce, banking, navigation and shipping, sea coasts and inland fisheries, as well as other matters. On the other hand, the provincial legislatures have the power to create laws in relation to property and civil rights (including laws relating to property, contracts and torts), natural resources, and local works and undertakings, among other matters. There are, however, some matters that fall within the purview of both federal and provincial jurisdictions. In such a case, each level of government may create laws in respect of a particular subject matter insofar as it relates to their jurisdiction. For example, both the federal and provincial governments have their own form of environmental legislation. The federal government may regulate approvals for a proposed mine in an effort to protect fish, and the province may regulate that same proposed mine for reasons relating to emissions that could pollute the environment. Federal and provincial statutes which deal with the same subject matter may co-exist, though if there is conflict or inconsistency between federal and provincial law, in the sense of impossibility of dual compliance or frustration of federal purpose, the federal statute prevails.

Canada's three territories, the Yukon, Northwest Territories and Nunavut, do not yet have provincial status and are at different stages in terms of devolution of powers to their territorial government from the federal government. Their legislative powers are enumerated in specific federal statutes (the *Yukon Act*, the *Northwest Territories Act* and the *Nunavut Act*). From a practical perspective, the territorial legislative powers are quite similar to those of the provinces under the *Constitution Act, 1867*, but the relevant statute must be consulted in each case.

13.2 Are there any State investment treaties which are applicable?

Please refer to question 4.2 with regard to the *Investment Canada Act*.

14 Taxes and Royalties

14.1 Are there any special rules applicable to taxation of exploration and mining entities?

In Canada, there are both federal and provincial statutes that provide a number of deductions, allowances, and credits to a taxpayer engaged in qualifying mining activities, and to a taxpayer who invests in certain mining companies. A specific tax incentive that is unique to the resource sector in Canada, found in the *Income Tax Act* (Canada) (ITA), is the use of flow-through shares, which enables junior mining companies to raise money for exploration and development by providing the investor with tax relief in exchange for their investment. Costs incurred for the purpose of determining the existence, location, extent or quality of an oil, gas or mineral resource in Canada are characterised as "Canadian exploration expenses" (CEE) under the ITA. A taxpayer can deduct from their reported income up to 100% of its cumulative CEE. However, accordingly, they are left with CEE deductions which they are unable to use.

Flow-through shares allow corporations to monetise expenses that they are unable to use by entering into an agreement with an investor, whereby the investor subscribes for shares of the company and the company agrees to use the subscription proceeds to incur qualifying CEE which it then renounces to the investor. Under the ITA, the CEE are deemed to have been incurred by the holder of the flow-through shares rather than the mining company, so the investor is able to deduct the CEE from the investor's income for tax purposes.

Additionally, the ITA and certain provincial statutes offer other investment tax credits to taxpayers for certain types of mining-related expenditure. The Mineral Exploration Tax Credit (METC) is a 15% credit in flow-through shares that can be claimed on specified CEE. While the METC was initially intended to be temporary, it has been announced that eligibility will be extended until March 2024. In January 2017, the Canada Revenue Agency updated its "Guidelines for determining the tax treatment of certain exploration expenses" to confirm that costs associated with environmental studies and community consultations undertaken to meet a legal or informal requirement to obtain a permit are eligible for treatment as CEE.

14.2 Are there royalties payable to the State over and above any taxes?

There are a range of additional taxes imposed by the provinces and territories on mining operations within their boundaries. Ontario, Québec, Manitoba and Newfoundland and Labrador impose a profits tax ranging generally from 5% to 20%. British Columbia, Alberta, Saskatchewan, Nova Scotia and New Brunswick generally impose taxes based on a combination of net revenue, net profits and/or production from mining operations. The remaining jurisdictions, other than Prince Edward Island, impose graduated royalties where the royalty rate increases with revenue, running as high as 14%. The foregoing is applicable to most minerals, but taxes or royalties on certain minerals, including coal, potash and uranium, are sometimes dealt with differently.

15 Regional and Local Rules and Laws

15.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Generally speaking, a mining company will be governed by federal and provincial laws in respect of its projects. Provincial legislation that should be considered by mining companies is discussed in several of the above sections. There may also be circumstances where municipal laws can affect a proposed mining project. For example, if a proposed operation is located within municipal boundaries, applicable municipal laws such as zoning laws and property taxes will need to be adhered to.

It should be noted that Québec has amended its *Mining Act* and related regulations in order to provide municipalities with more legislatively prescribed powers in relation to mining exploration and projects. If a mining company has acquired a right on municipal land, the amendments provide that a claim holder must notify the relevant municipality before beginning exploration work on the claim, and satisfy additional public consultation requirements before applying for a mining lease, subject to certain conditions. They also require mining lease holders to establish a monitoring committee in order to foster the involvement of the local community.

However, other jurisdictions have not followed suit in adopting similar laws, and developments in British Columbia have taken a different direction. In a 2013 British Columbia Court of Appeal decision, municipal laws were found to be subordinate to conflicting mining legislation. The court held that municipal bylaws that frustrated the terms of the British Columbia *Mines Act* permits, issued by the British Columbia Ministry of Energy, Mines and Petroleum Resources, were invalid.

15.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Canada's free trade agreements reduce the costs of exporting Canadian mined minerals and related value-added products. Such agreements should be taken into account by exploration or mining companies, as they can result in incentives for establishing production in Canada.

Canada has entered into a number of bilateral *Foreign Investment Promotion and Protection Agreements* (FIPAs) aimed at encouraging reciprocal investment in each country that is party to the agreement. For example, under the Canada-China FIPA, both countries agree to a most-favoured-nation commitment, which ensures that investors from both countries are not discriminated against relative to other foreign investors. The effect of this agreement in Canada is that Chinese state-owned enterprises (SOEs) seeking investment in Canada will be treated on a merit basis, with considerations of business orientation and the extent of political influence over their affairs constituting significant factors.

The FIPA also provides for protections to both prospective and existing investments by allowing investors to benefit from protections found in their home country. Under the FIPA, Canadian investments will benefit from Canadian protection measures against risks of investor discrimination, expropriation without compensation and arbitrary decisions from the government, among others.

In addition, the FIPA provides that disputes that affect foreign investment, including those concerning resource development and environmental issues, will be dealt with through international arbitration as opposed to domestic courts.

However, the FIPA does not affect the Government of Canada's ability to review or reject investments from China for reasons of national interest. "Net benefit" decisions under the *Investment Canada Act* are expressly excluded from the FIPA.

Canada has ratified the CPTPP, a multilateral trade agreement that currently includes 10 other countries: Australia; Brunei Darussalam; Chile; Japan; Malaysia; Mexico; New Zealand; Peru; Singapore; and Vietnam. In January 2017, the U.S. withdrew from the predecessor to the CPTPP, the Trans-Pacific Partnership (TPP). The remaining signatories to the TPP agreed in November 2017 on core elements of the CPTPP. The CPTPP, the text of which was finalised in January 2018, will gradually eliminate tariffs on Canadian mineral exports and, in general, increase certainty, transparency, and foreign investment protections for Canadian mining companies.

Some legislation in Canada allows compliance with similar legislation in foreign jurisdictions to substitute for compliance in Canada. For example, the recent federal *Extractive Sector Transparency Measures Act* allows payment reporting requirements of certain other jurisdictions to be satisfied *in lieu* of compliance with the Canadian statute, at the discretion of the Minister of Natural Resources.

16 Cancellation, Abandonment and Relinquishment

16.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Generally, recorded holders may abandon mineral claims and surrender mining leases upon notice or application to the provincial or territorial governing body. The procedure by which a recorded holder may do so differs from one province or territory to the next. For example, in British Columbia, the recorded holder wishing to abandon a claim or surrender a lease must register a discharge with the chief gold commissioner, while in Manitoba a notice of abandonment must be filed along with reports, plans and statistical data.

Further, recorded holders may also apply for a reduction of claim areas, effectively entitling them to partially abandon their claim or lease. Where such reduction is permitted, the method by which the area shall be reduced, and the requirements for a reduction, vary by province and territory. For example, in British Columbia, the reduced claim area must comply with the following requirements: (i) it must consist of at least one cell; (ii) if there are two or more cells they must be adjoining; and (iii) the reduced area cannot result in open areas within the cell claim. In Saskatchewan, there is also a requirement that the reduced area's total length not exceed six times its total width.

Upon abandonment or surrender, all minerals covered by the mineral claim or lease revert back to the government or the holder of the underlying rights. The recorded holder may remove chattels and fixtures from the land abandoned or surrendered; however, authorisation to do so is required in certain jurisdictions, including Prince Edward Island. Further, timelines may be imposed for the removal of such property, such as in British Columbia, where the last recorded holder must remove all property within one year after the abandonment.

16.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

In most jurisdictions, mineral claims may be renewed indefinitely from term to term until a lease is obtained or the claim is abandoned. However, in certain jurisdictions, mineral claims extinguish upon the expiration of a defined term. In Nunavut and the Northwest Territories, for example, the duration of a mineral claim is 10 years from the date it is recorded unless it is converted into a lease (subject to certain rights of extension).

16.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Relevant provincial and territorial mining ministries may cancel mineral claims and mining leases where a recorded holder is in breach of an obligation under the applicable legislation.

Mineral claims and mining leases are most commonly cancelled where recorded holders either fail to complete the required assessment work, fail to make payments *in lieu* of assessment work, fail to submit reports respecting the assessment work completed, or fail to make annual lease rental payments. Generally, the cancellation of the mineral claim will take effect immediately upon the failure of the recorded holder to comply with the completion of, the reporting on, or the payment *in lieu* of, assessment work. With respect to mining leases, the provincial or territorial authority will more commonly issue a notice of cancellation, either affording the recorded holder a grace period to comply with the requirement or to enquire into the grounds for cancellation.

Additionally, mineral claims and mining leases may also be cancelled for breach of the provincial or territorial mining legislation, and on various grounds set out in such legislation. A common ground for cancellation is the misrepresentation of the assessment work performed on the claim, though additional grounds may be found in different jurisdictions. For example, in Saskatchewan, there is a further ground for cancellation of a mineral claim or mining lease where an environmental assessment determines that the development should not proceed. In such cases, the legislation itself often provides a procedure for cancellation and review of the decision. In most instances, a notice of breach will be issued first, providing the recorded holder with a grace period to comply with the requirement, following which the provincial or territorial authority may order the cancellation where the recorded holder has not complied. However, in some instances, mineral claims may be cancelled without prior notice to the recorded holder. For example, in Manitoba the provincial authority may cancel a mineral claim or mining lease without prior notice if it is satisfied that the claim was recorded as a result of a material misrepresentation in the application to record the claim or lease.

Cancellation proceedings are subject to judicial review by the courts. Please refer to question 12.2 for further discussion on reviewing ministerial decisions.

Note

This chapter is not a compendium of Canadian mining law, as the topic is simply too large for the scope of this chapter. Canadian mining law is location-dependent, and there are many, many locations: 10 provinces and three territories, each with its own laws and, within each province or territory, Aboriginal land claim settlement areas or reserves; areas in which the surface is owned by the Crown or by Aboriginal groups or privately; and areas in which the minerals are owned by the Crown or by Aboriginal groups or privately. Canadian mining law is also commodity-dependent, with different laws applicable to hard rock minerals, coal, industrial minerals, petroleum and natural gas, uranium, etc.

As a cautionary note, all of that which is set forth above is intended to be indicative only. Even where topics are discussed in some detail, they are not intended to be complete, and nothing in this chapter should be relied upon as legal advice.

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