International Comparative Legal Guides

Mining Law 2027

A practical cross-border resource to inform legal minds

14th Edition

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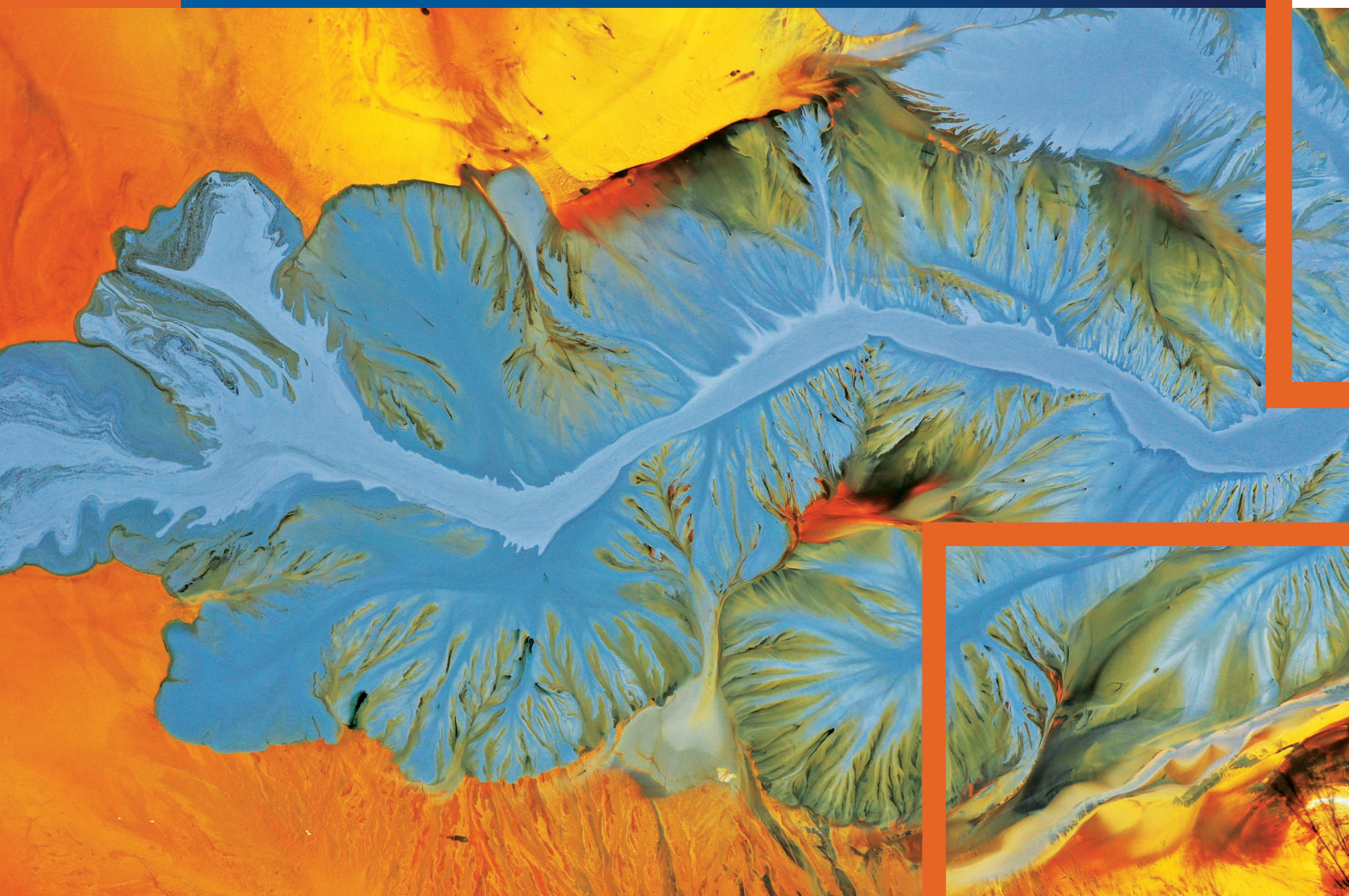

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The Canadian legal system consists of multiple levels of federal, provincial and territorial, and municipal law. At an overarching level, the *Constitution Act, 1867* (see the response to question 13.1) codifies the division of legislative authority between the federal government and the provinces and sets out the responsibilities and functions of each. Each province then delegates power to municipalities to legislate for more local concerns. Canada has an independent judiciary that adheres generally to common law principles for dispute resolution.

Mining law in Canada does not fit neatly within a single level of government. However, provincial and territorial legislation governs most mining activities.

1.2 Which Government body/ies administer the mining industry?

Both the federal government and provincial/territorial governments regulate the mining industry in Canada (see the response to question 13.1). Exploration, development and extraction of mineral resources, and the construction, management, reclamation and closure of mine sites, fall primarily within the provincial/territorial jurisdiction (with some exceptions).

In Nunavut, the responsibility for administering public lands and natural resources is undergoing a formal transfer from the federal government to the territorial government as part of the Nunavut Lands and Resources Devolution Agreement, signed in 2024. It is estimated that the formal transfer of these responsibilities will be completed in 2027, following which, Nunavut will have its own mining legislation in place. Other than Nunavut (for the time being), 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 own the majority of the mineral rights in Canada, although mineral rights may also be held by private entities, Indigenous groups and the federal government.

Federal government regulation of mining operations is limited to undertakings within federal jurisdiction, such as activities relating to the nuclear industry, and mining on federal lands and in offshore areas. Activities relating to explosives used in mining and to the import, export and transport of rough diamonds each fall under federal jurisdiction – being the *Explosives Act* and the *Export and Import of Rough Diamonds Act*. In addition, 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.

Mining disclosures (whether oral or written) made available to the public are governed by National Instrument 43-101, *Standards of Disclosure for Mineral Projects*, and are administered by the relevant provincial and territorial securities commissions.

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

Contract law and tort law are generally regulated by the provinces. These bodies of law are composed of primarily common law rather than legislation. Common law can be superseded or modified by legislation. Recently, Canadian courts have recognised that some international law may form part of Canadian common law.

Unique among the provinces, Quebec is a civil law jurisdiction and has codified law that is written into statutes, which are then strictly interpreted by the courts.

2 Recent Political Developments

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

There has been a trend to promote investment in Canada's resource development industries. In 2025, British Columbia (BC) enacted the *Infrastructure Projects Act* and Ontario enacted the *Protect Ontario by Unleashing our Economy Act, 2025*, each of which generally aim to accelerate approvals for resource development projects. Following the 2025 federal election, the federal government established the Major Projects Office to fast-track "nation-building" infrastructure and resource projects, including proposed mines in multiple provinces and territories.

The federal and provincial governments each have strategies to promote and protect the development of critical minerals. Federally, the Canadian Critical Minerals Strategy distributes funds in support of research and the development of the critical minerals sector. These strategies are intended to attract investment in critical minerals.

The electronic mineral tenure registries in certain jurisdictions have been challenged by First Nations groups for a lack of consultation and accommodation by the government. For instance, in 2024, the Supreme Court of BC in the *Gitxaala v BC (Chief Gold Commissioner)* decision ruled that BC's electronic system for issuing mineral tenures failed to implement an adequate consultation process with First Nations groups.

In response, BC developed the Mineral Claims Consultation Framework and consults with applicable First Nations groups before new claims can be registered in the electronic registry. It is expected that other jurisdictions may provide for similar changes in the design of their electronic mineral tenure registries to avoid similar challenges.

In 2021, the Government of Canada passed legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The legislation obligates the federal government to take all measures necessary to ensure that the laws of Canada are consistent with UNDRIP.

BC is the only province to pass legislation incorporating UNDRIP into provincial law (under the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA)). In an appeal of the *Gitxaala* case, the BC Court of Appeal held that this legislation obligated the Government of BC to take all actions to ensure that all BC legislation is consistent with DRIPA and by extension, UNDRIP. *Gitxaala* has been appealed to the Supreme Court of Canada (SCC).

In 2024, the Government of Canada signed the Nunavut Lands and Resources Devolution Agreement, officially transferring the responsibilities for Nunavut's public lands, natural resources, and rights with respect to water, from the federal government to the Government of Nunavut. This process is expected be completed by 2027. There is speculation that this will increase local support for investment in the territory, as Nunavut is now entitled to receive royalties for resource development on public lands and has the ability to make decisions about the administration, development and management of resources on public lands in its territory.

In 2025, two court decisions were released: *Cowichan Tribes v Canada* in BC; and *JD Irving v Wolastoqey Nation* in New Brunswick. In *Cowichan Tribes*, the trial court granted Aboriginal title over land that included privately held, fee simple land, and held that Aboriginal title and private property rights can "co-exist" with respect to the same property. In contrast, the Court of Appeal in *Wolastoqey Nation* held that Aboriginal title and fee simple ownership cannot co-exist. These competing authorities will likely require reconciling at the SCC.

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

The mining industry is aware of and is tracking the adoption of UNDRIP at both the federal and provincial level. While requirements continue to evolve, Indigenous consultation and accommodation are now familiar components of project development and the approval process, and it is expected that the mining industry will continue to adapt to any new changes to the regulatory framework in Canada. The mining industry is increasingly incorporating Indigenous participation and consultation at earlier stages of project development.

3 Mechanics of Acquisition of Rights

3.1 What rights are required to conduct reconnaissance?

Reconnaissance right requirements vary by jurisdiction. In some jurisdictions (BC, Manitoba, New Brunswick, Northwest Territories, Nunavut, and Prince Edward Island), individuals and companies must obtain a prospector's licence from the government before prospecting for minerals; in others (Ontario and Quebec), only individuals may obtain a prospector's licence.

Prospector's licences can be obtained in most jurisdictions by filling out a form and paying the applicable fee. In general, licences expire if they are not renewed.

Prospector's licence requirements differ by jurisdiction, but, in general, a licence is issued automatically if the applicant meets the statutory criteria. The government can cancel or suspend a licence if the licensee contravenes applicable mining legislation.

In the Northwest Territories, 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. In Saskatchewan, holders of permits issued by the Minister of Energy and Resources are granted the exclusive right to explore the lands in question and subsequently can convert the permit into a mineral claim.

In Alberta, Newfoundland and Labrador, Saskatchewan and the Yukon, certain prospecting activities do not require a licence or other formal registration.

3.2 What rights are required to conduct exploration?

Significant exploration requires a prospector to hold the mineral rights to the area of interest. Mineral rights are obtained by "staking" a mineral claim (or a "licence" or a "permit" in some jurisdictions).

Methods for staking a claim vary by jurisdiction. These include physically staking a claim on the ground or on a map, or electronically on a registration system. Additional fees and documentation are frequently required. In some jurisdictions (for example, the Yukon), there may be a requirement to notify or engage with Indigenous groups prior to recordation or prior to conducting exploration programmes on recorded claims. In BC, the province must engage with certain Indigenous groups prior to issuing a mineral claim. See the response to question 2.1.

The provinces and territories (other than Nunavut) each have their own mineral tenure system; however, 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.

For federally owned lands, the federal Public Lands Mineral Regulations regulates 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.

To retain a mineral claim, the claim holder must conduct prescribed amounts of exploration work and file an associated "assessment report" with the relevant mining records. Most jurisdictions permit a claim holder to pay an amount of money directly *in lieu* of incurring exploration costs. If a holder fails to satisfy the foregoing obligations, the claim will be forfeited.

The duration of a mineral claim differs by jurisdiction. Some jurisdictions allow for indefinite renewals; in others, claims are valid only for a limited time.

In general, a mineral claim entitles the holder only to conduct exploration. A holder will generally have rights of access to explore the claim, but where the surface is privately owned, notice to or an agreement with the surface owner is typically required, and notice to other applicable rights holders may also be required. Most provinces have some form of codified dispute resolution mechanism to resolve disputes between undersurface rights holders and surface rights holders.

Minerals may also be held privately and originate from Crown grants or patents, or freehold tenures that were issued in connection with another type of grant – in Western Canada, historic railway grants. The owner of privately held minerals may conduct exploration activities and develop the minerals subject to their ability to obtain surface access (where the surface is separately held).

Where Indigenous groups hold surface or mineral rights, it may be necessary to negotiate with the terms on which one can access the lands and conduct exploration activities. Common instruments allowing for surface access include a licence or exploration lease and, for exploration activities, an exploration agreement.

3.3 What rights are required to conduct mining?

Mining claims must generally be replaced with mining leases prior to conducting mining operations. A mining lease is a long-term and more secure form of mineral tenure. Leases permit full exploitation of the resource (subject to required permits and authorisations) and, depending on jurisdiction, have a term of 10 to 30 years. Rent is payable annually to the lessor government. Mining leases are renewable, provided that the proponent has complied with the terms and conditions of the lease.

A mining operator must hold a permit approving the proposed mining project. For a major mine, the operator must submit a detailed mining and reclamation plan and may be subject to an environmental assessment. See the response to question 9.1.

Where Indigenous groups hold surface or mineral rights, surface rights and mineral rights may take the form of a surface lease and mineral production lease, respectively. A proponent will frequently negotiate an Impact and Benefit Agreement (IBA) with the Indigenous group, which is a negotiated means of mitigating the impacts of the project on the Indigenous group and provides economic benefits for the Indigenous group. An IBA forms the basis for an ongoing relationship between the proponent and the Indigenous group.

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

Different law applies depending on the resource and the location of the resource.

Hard rock minerals (including precious) metals, placer minerals, coal, and industrial minerals each have different applicable legislation. Under federal jurisdiction, the *Export and Import of Rough Diamonds Act* controls the export, import and transit of rough diamonds and administers a certification scheme for the export of rough diamonds to comply with Canada's obligations under the United Nations' Kimberley Process. Federal legislation also applies to the production, refinement and treatment of uranium and thorium for national security purposes.

Differing regimes apply depending on the owner of the land with the undersurface resource.

To access privately owned land, a mineral claim holder may gain access through: (i) notice to the surface holder; (ii) agreement; or (iii) an order from a provincial or territorial authority. A claim holder must typically compensate the surface owner for surface damage, and sometimes for the granted access. Where parties cannot reach an agreement, each jurisdiction has a different form of dispute resolution procedure wherein access and compensation is determined by a third party.

To access Indigenous-owned land, a claim holder must obtain permission directly from the Indigenous group.

To access Crown land, a claim or lease holder is typically allowed surface access for mining purposes (though land-use permits or leases may be required). However, where Indigenous groups hold or assert Aboriginal rights in respect of the land, the Crown must consult and accommodate the affected Indigenous groups. The extent of the consultation and accommodation varies depending on the affected group and their recognised rights. Because the Crown can delegate consultation and accommodation to proponents, proponents will often enter into IBAs for community support.

In some cases, Indigenous groups may hold the surface rights and/or mineral rights, in which case it is necessary to negotiate with the applicable Indigenous 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.

3.5 Are different procedures applicable to natural oil and gas?

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 that differs from the first-come, first-served basis for obtaining mineral rights.

4 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

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

Generally, individuals and corporations can own prospector's licences and mineral claims and leases. However, this varies by jurisdiction. Some provinces allow partnerships to acquire mineral claims or mining leases, and others do not.

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?

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).

Where an acquisition of a mining business exceeds certain financial thresholds, it will be subject to federal government review under the *Investment Canada Act* (ICA). The review thresholds vary, from approximately 2.1 billion Canadian dollars in enterprise value for trade agreement investors that are non-state-owned enterprises, to 5 million Canadian dollars for direct investments by investors in non-World Trade Organization (WTO) member countries.

In general, a proposed transaction that meets or exceeds a specified review threshold cannot proceed until the federal government has determined that the proposed transaction is likely to be "net benefit" to Canada. This review requirement does not apply to exploration properties or non-producing mines.

The Government of Canada may review any transaction if it considers the underlying investment to be potentially injurious to national security. One national security consideration is whether an investment has any potential impact on an investment in critical minerals and critical mineral supply chains. The federal government has designated 34 minerals and metals as critical minerals.

In 2024, the federal government issued a directive that any transaction to acquire a Canadian-headquartered mining firm engaged in significant critical minerals operations will be found a "net benefit" in only the most exceptional circumstances. This indicates increased scrutiny under the ICA on mining transactions.

Non-Canadian investors contemplating a direct acquisition of a Canadian company engaged in significant critical minerals operations should anticipate additional scrutiny from the federal government if their investment is subject to review under the ICA.

Special rules apply to uranium mining. Federal government policy (the Non-Resident Ownership Policy in the Uranium Mining Sector (NROP)) requires a minimum of 51% Canadian ownership in uranium mining properties that 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.

4.3 Are there any change of control restrictions applicable?

Along with the rules discussed in question 4.2, proposed foreign investment may be subject to review by the Canadian Competition Bureau under the federal *Competition Act*. Where certain thresholds are met, a proposed investment will require pre-merger notification and require either approval, or the expiry of a statutory waiting period. 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?

See the response to question 10.1.

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. Mineral processing at the mine site requires permitting approval and an environmental assessment process where applicable.

Generally, there is no requirement that mineral processing occur within the jurisdiction of extraction, subject to the following: in Nova Scotia, an exemption is required to remove ore for processing outside of Canada; in Ontario, an exemption is required to treat and refine ores and minerals outside of Canada; in New Brunswick and Newfoundland and Labrador, the government may require minerals to be processed in-province; and in Saskatchewan, the Minister of Energy and Resources must provide written permission to export quarriable minerals in their natural or unprocessed state, and diamonds must be presented for valuation at facilities located in Saskatchewan before they are removed from the processing facility or sold. Other jurisdictions provide tax incentives to beneficiate minerals within the province.

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

Mineral-specific prohibitions on the export of unbeneficiated minerals exist. Uranium, for example, requires a licence from the Canadian Nuclear Safety Commission for export, and diamonds require an issued Kimberley Process certificate and transaction reporting.

Canada is party to international agreements relating to trans-boundary movements of hazardous wastes and hazardous recyclable materials.

The federal *Export and Import Permits Act* sets out permitting and fees for the export of goods on the Export Control List. The Governor in Council has the authority to establish and amend the Export Control List for purposes that include, for example, ensuring that actions that promote Canadian processing of Canadian-produced natural resources are not impacted by unrestricted exportation. Refer to the "Guide to Canada's Export Control List" and the Export Control List for amendments that affect mineral export.

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 subject to each jurisdiction's statutory regime. Mining leases are generally transferable subject to each jurisdiction's statutory regime and to the terms of the lease.

Transfers of mineral claims and mining leases must be in writing and executed by the claim holder (or completed online by counterparty). Depending on the jurisdiction, consent of the mining registrar or government may be required.

A typical requirement for the transfer of a mineral tenure 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, 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. Registration typically serves 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.

Whether mineral claims and mining leases can be subdivided, or the area reduced, varies by jurisdiction.

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

Yes. Common structures for holding reconnaissance, exploration and mining rights include partnerships, limited partnerships, corporations, and unincorporated joint ventures (i.e., contract). Partnership and corporation legislation varies by province, and there may be specific requirements for director residency requirements. In some jurisdictions, partnerships cannot hold or acquire mineral tenures. Taxation considerations apply in respect of each form of business structure and each jurisdiction.

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

The rights to mine secondary minerals are often circumscribed in the applicable primary mineral tenure legislation but often are contained in legislation applicable to the secondary minerals. This differs by jurisdiction.

7.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled also to exercise rights 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 address this through legislation. In other provinces, the instrument that separates mineral rights from surface rights determines the rights to tailings and waste dumps.

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 generally has the exclusive right to authorise the exploration and exploitation of mineral resources on 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).

The federal *Oceans Act* 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.

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?

See the responses to questions 3.2, 3.3 and 3.4.

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?

Where a mineral operator wants to enter privately held land, the operator's obligations are set out in applicable legislation and the common law (or civil law in Quebec). 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. In some provinces, permission is not required, but an operator must serve a notice to the surface owner prior to beginning mining activity.

The general common law rule requires the mineral owner to use the mineral owner's property so as not to injure the surface owner. Legislation also addresses the rights as between mineral owners and surface owners. Generally, an operator is liable to compensate the surface owner for loss or damage caused by a mining operation.

8.3 What rights of expropriation exist?

The Crown is authorised to expropriate land and interests in land pursuant to applicable legislation.

In certain jurisdictions, a miner may also have the 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.

There is little risk of expropriation of mining operations by government seizure. The Crown generally pays compensation on the rare occasion where it has expropriated mineral rights.

9 Environmental and Social

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

Statutorily prescribed provincial environmental assessments apply in most jurisdictions to certain classes of projects that are over a certain threshold size. Most major mining projects trigger impact assessment requirements. These processes differ and may require public hearings. Additional environmental authorisations and permitting, including waste discharge permits and water use permits, will also be required.

A federal impact assessment is only required when a project may have adverse effects within federal jurisdiction. Recent amendments to the federal *Impact Assessment Act* promote substitution of the federal impact assessment process with other equivalent provincial assessment processes where appropriate.

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, and ensure that tailings storage facilities adhere to applicable design and safety standards.

At the federal level, the Government of Canada may be responsible for regulatory decisions specific to tailings management involving uranium, navigable waters, fish-bearing waters and fisheries, environmental matters of international and interprovincial concern or federal lands.

Most provincial mining legislation governs mine closure plans. Operators are generally required to rehabilitate and restore properties after the completion of mining operations. Most jurisdictions require financial security or a guarantee, and an approved mine closure plan, to be filed prior to the mine entering into production (and in certain jurisdictions, a mine closure plan must be filed prior to any exploration activities).

9.3 What liabilities does a mining company face in the event that mining activities result in ground water or other contamination affecting third parties?

In general, a company will be liable for damage, loss, and injury caused by contamination or pollution arising from its activities. Applicable environmental and mining legislation at the federal and provincial levels generally allows the government to regulate pollution, and to require the mining company to remediate or otherwise abate or mitigate any damage caused. Most regimes impose reporting requirements on the company.

Third parties that suffer damage, loss or injury may be able to pursue an action in torts. In some jurisdictions, statutory causes of action or other remedies may also be available.

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

See the response to question 9.2.

9.5 Are there any social responsibility requirements (such as to invest in local infrastructure and communities) under applicable law or regulation?

Such requirements are generally not legislated but may arise following consultations with local communities and Indigenous groups. Where applicable, municipalities may have local infrastructure investment requirements.

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

Most jurisdictions require an operator to develop and submit a government-approved mine plan. In some jurisdictions, the submission and approval process tracks with the environmental assessment process; in other jurisdictions, planning and permitting requires a separate process under a different regulator.

Certain reserved-use land areas may require additional authorisations or approvals if the proposed use differs from the reserved use. Where a mining project is located within the bounds of a local government, an operator must comply with applicable municipal laws and zoning bylaws.

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?

The Indigenous peoples of Canada hold Aboriginal rights enshrined in the *Constitution Act, 1982* and treaties that cover much of Canada. Aboriginal rights are not strictly defined, but the SCC has defined the rights in relation to a spectrum dependent on the degree of connection with the land, the highest level of right being Aboriginal title.

Aboriginal title was first recognised in Canada pursuant to a 2014 SCC decision, *Tsilhqot'in Nation v British Columbia*. The recognition of Aboriginal title has had a practical impact on consultations with Indigenous peoples, shifted the expectations of negotiating parties and accelerated other forms of land-use agreements and treaties with Indigenous groups.

The Crown owes a duty to consult and, where appropriate, accommodate Indigenous peoples. The extent of this duty varies based on the factual circumstances and tends to be lower with respect to reconnaissance and higher with respect to mining operations. Although this duty is owed by the Crown and cannot be delegated, the Crown can delegate the procedural aspects of consultation to a mine proponent.

Where a treaty exists, lands may be owned or administered by the Indigenous group, as discussed under question 3.3, in which case a proponent may need to obtain a licence or lease for surface use, mineral exploration or development from the Indigenous group. Treaties generally specify whether the Indigenous group owns or administers both the surface and subsurface, or the surface only, for any given area. Many treaties also cover Crown land wherein the Indigenous group holds treaty rights to specific types of consultation or consultation processes. In some cases, treaties include forms of co-management or joint decision-making for resource development.

11 Health and Safety

11.1 What legislation governs health and safety in mining?

Worker health and safety generally falls within provincial jurisdiction, subject to certain undertakings within federal jurisdiction.

The federal government has jurisdiction over the competency of works dealing with uranium and thorium under the *Nuclear Safety and Control Act*. This includes qualifications and training for workers, and offences for inadequate staffing and work practices.

Each province and territory has its own workers' compensation board or commission that administers occupational health and safety laws. These boards or commissions also administer administrative functions such as insurance schemes for injured workers.

Some provincial regulation applies specifically to the mining industry in addition to workers' compensation legislation. For example, BC has the Health, Safety and Reclamation

Code, which obligates owners to develop health and safety programmes, establish necessary committees, and prescribes reporting requirements for accidents, 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?

Health and safety legislation typically imposes obligations on owners, supervisors and employees. Although not uniform across the country, mine owners must generally ensure compliance with applicable laws and regulations and take all reasonable precautions to ensure the health and safety of employees. Supervisors must adequately train employees and ensure the safety and well-being of employees, while employees have an obligation to inform supervisors of any potential risks or dangers on the worksite and to protect their own personal health and safety. See the response to question 11.1.

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 Crown-Indigenous Relations and Northern Affairs Canada, and the Northwest Territories, which are regulated by both the federal and territorial governments, each province and territory 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?

In general, decisions made by a tribunal or official carrying out a statutory function are subject to judicial review by the courts. Some provinces provide for dispute resolution mechanisms in mining legislation, which may take the form of tribunals or other internal dispute resolution systems.

13 Constitutional Law

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

The *Constitution Act, 1867* sets out the jurisdictional divide of powers between federal and provincial governments. The federal government has jurisdiction over trade and commerce, banking, navigation and shipping, sea coasts and inland fisheries, as well as other matters, while provincial governments have jurisdiction over, among other things, property and civil rights (including laws relating to property, contracts and torts), natural resources, and local works and undertakings.

Some matters fall within the purview of both federal and provincial jurisdiction. In this case, each level of government may legislate in respect to a particular subject matter insofar as it relates to their jurisdiction. For example, the federal government may regulate approvals for a proposed mine to protect fish, while a provincial government may regulate approvals for the same proposed mine for environmental protection reasons. The federal statute will prevail where dual compliance is impossible or where the federal law's purpose is frustrated by the provincial statute.

The territories (Northwest Territories, Nunavut and the Yukon) do not yet have provincial status and are at different stages in the devolution of powers from the federal government. Territorial legislative powers are similar to provincial legislative powers under the *Constitution Act, 1867*, but the federal statutes (the *Northwest Territories Act*, the *Nunavut Act* and the *Yukon Act*) containing those powers differ slightly.

13.2 Are there any State investment treaties that are applicable?

See the response to question 4.2.

14 Taxes and Royalties

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

Both federal and provincial statutes provide advantageous tax treatment to taxpayers engaged in qualifying mining activities, and taxpayers who invest in certain mining companies.

Flow-through shares, a tax incentive under the *Income Tax Act* (ITA) that is unique to the resource sector, enable junior mining companies to raise capital for exploration and development by allowing a holder of flow-through shares to deduct "Canadian exploration expenses" (CEE) incurred by the company from the investor's income for tax purposes under the ITA.

The ITA and other provincial statutes offer investment tax credits to taxpayers for certain mining-related expenditures. For example, costs associated with environmental studies and community consultations are eligible for favourable tax treatment as CEE, and the Critical Mineral Tax Credit provides a 30% tax credit towards amounts invested in exploration for certain critical minerals.

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

Each province and territory imposes varied taxes on mining operations. Some provinces (including Manitoba, Newfoundland and Labrador, Ontario and Quebec) impose a profits tax of up to 20%, while others (Alberta, BC, New Brunswick and Saskatchewan) impose taxes based on some combination of net revenue, net profits and production from mining operations. Most remaining jurisdictions (other than Prince Edward Island) impose graduated royalties running as high as 14%. However, taxes or royalties vary depending on the mineral.

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?

A mining project is generally subject to federal and provincial laws. If a proposed project is within municipal boundaries, municipal laws, including zoning laws and property taxes, may apply. See the responses to questions 1.2 and 9.6.

Unique to Quebec, the *Mining Act* provides municipalities with legislatively prescribed powers in relation to mining exploration and projects. Specific obligations apply to a company that acquires a right on municipal land, including notification to the municipality prior to any exploration work and public consultation prior to applying for a mining lease.

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, and may contain incentives for establishing production in Canada.

Canada's major free trade agreements include the Canada–United States–Mexico Agreement (CUSMA), the Comprehensive Economic and Trade Agreement (CETA), and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Canada is also a party to bilateral Foreign Investment Promotion and Protection Agreements (FIPAs) aimed at encouraging reciprocal investment in each country that is party to the FIPA. FIPAs generally contain prohibitions on discrimination and expropriation without compensation, ensure that potential investments are treated on a merit basis, and ensure that disputes affecting foreign investment, including resource development and environmental issues, will be dealt with through international arbitration.

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?

Recorded holders can generally abandon mineral claims and mining leases upon notice or application to the applicable regulatory body. Recorded holders can also typically apply to reduce their claim or lease areas, effectively abandoning their mineral tenure in part. The procedure and requirements for both abandonments and reductions vary by jurisdiction.

Upon abandonment (in whole or in part), the underlying mineral rights revert to the government or to the holder of such underlying rights. The recorded holder can typically remove its chattels and fixtures from the abandoned land within a specified timeframe following 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, a holder of a mineral claim may renew the claim indefinitely until the claim is abandoned or the holder obtains a mining lease. Mineral claims in some jurisdictions extinguish upon the expiration of a defined term if it is not converted to a lease.

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?

Yes. Mining registries may cancel mineral tenures where a recorded holder is in breach of statutory requirements. Cancellations most commonly occur where a recorded holder fails to complete required assessment work, payments *in lieu* or reporting (see the response to question 3.2), or fails to comply with lease provisions. Cancellations generally take effect immediately upon such failure, but leases often afford the holder a period to cure the default.

17 Mining Finance: Granting and Perfecting Security

17.1 In relation to the financing of mines, is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

A company may generally grant security in any or all of its real and personal property. The process to grant and perfect security varies by jurisdiction.

Generally, a company will enter into an agreement with a lender or counterparty to grant security against some or all of the company's assets. The nature of the agreement may vary depending on the subject assets: general security agreements are typically used for personal property (equipment, bank accounts, etc.); mortgages apply to specific interests in real property (land and leasehold interests); debentures are used for specific interests in real and personal property; and specific security agreements may apply to certain specified assets.

Following the creation of a security interest, the creditor will typically perfect the security by registering the document in the applicable government registry. While perfection by registration typically has priority over other perfection mechanisms, this is not always the case and, depending on personal property type, creditors may choose to perfect their security interest(s) by other mechanisms, including perfection by control.

17.2 Can security be taken over real property (land), plant, machinery and equipment (whether underground or overground)? Briefly, what is the procedure?

Generally, yes. See the response to question 17.1.

17.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

Generally, yes. See the response to question 17.1.

17.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Generally, yes, although the procedure differs depending on whether the cash is deposited in a bank account with the creditor itself or with another financial institution. See the response to question 17.1.

17.5 Can security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Briefly, what is the procedure?

Generally, yes, subject to restrictions specific to a company's organisational documents and applicable securities and corporate legislation. Most jurisdictions allow for both certificated and uncertificated shares.

The shareholder may pledge shares in favour of a creditor pursuant to a pledge agreement. The creditor typically registers its interest in the applicable personal property registry. If shares are certificated, the creditor will also hold a blank power of attorney for the transfer of shares executed by the shareholder and take physical possession of the share certificates, thereby perfecting its security interest and taking priority over all other perfection mechanisms, including registration. If shares are not certificated, the parties will typically enter into a control agreement in respect of the uncertificated shares.

17.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

Each jurisdiction has its own registries for recording and registering security interests. As a result, fees vary by jurisdiction. There are no stamp duty fees in Canada.

17.7 Do the filing, notifications or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

Filing, notice and registration requirements do not often involve significant time and expense, but this varies by jurisdiction and asset type.

Personal property registries in Canada are electronic. Time and expense for registering a security interest in personal property is typically minimal. In contrast, the required time to register an interest in a land title office differs significantly by jurisdiction.

17.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment at a mining operation?

The steps outlined in the responses to questions 17.1 through 17.8 apply with respect to the creation of security over real and personal property associated with a mining operation. Consents may be required under applicable securities laws or where senior security interests already exist on the property.

Lenders are encouraged to consider regulatory or other consents required in connection with mineral tenures and Indigenous matters, among others, and to conduct sufficient due diligence to determine what consents may be required in conjunction with structuring and registering the security package for a loan.

18 Other Matters

18.1 What actions, if any, could be taken by the Government to encourage further foreign direct investment in the mining industry?

This is not applicable.

Note

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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