



# **Overview of Canadian Subsurface Regulations**

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*Fostering Sustainable Mining Industry in Kazakhstan*

January 24, 2024

# Agenda

1. Overview of Mining in Canada
2. Mining in British Columbia
3. Overview of the *Mineral Tenure Act*
4. Upcoming Changes to the *Mineral Tenure Act*
5. Conclusion

## Mining in Canada

- Canada is one of the top producers of minerals and metals worldwide (\$55.5 billion in 2021)
- Accountable for hundreds of thousands of jobs
- Roughly 80% of mineral and metal commodities mined in Canada are exported
- **Top mining products:** potash, uranium, niobium, nickel, cobalt, aluminum, platinum group metals, gold, diamonds
- The great majority of mineral rights in Canada are owned by the Crown

## Regulation by Jurisdiction

- Mining is primarily the responsibility of the provinces and territories, and not the federal government, per the division of powers set out in the *Constitution Act, 1867*, and the respective territorial acts (Yukon, Northwest Territories, Nunavut).
  - **Provincial/Territorial:** exploration, development and extraction of mineral resources; own the majority of mineral rights in Canada
    - E.g., Ministry of Energy, Mines and Low Carbon Innovation (British Columbia); *Mineral Tenure Act*, etc.
  - **Federal:** international trade and investment, science and technology, environmental protection, Aboriginal affairs
    - E.g., Energy and Natural Resources Canada; *Investment Canada Act*, etc.

# Mining in British Columbia

## Key Statutes and Regulations:

- ***Mineral Tenure Act, RSBC 1996, c 292***
  - *Mineral Tenure Act Regulation*, BC reg 529/2004
  - *Mineral Title Online Grid Regulation*, BC reg 530/2004
- *Land Act*, RSBC 1996, c 245
- *Mineral Land Tax Act*, RSBC 1996, c 290
- *Mining Right of Way Act*, RSBC 1996, c 294
- *Expropriation Act*, RSBC 1996, c 125
- *Ministry of Forests and Range Act*, RSBC 1996, c 300
- *Mines Act*, RSBC 1996, c 293
  - *Mineral Tenure Act* covers ownership, *Mines Act* covers activity
- *Health, Safety and Reclamation Code for Mines in British Columbia*
- *Environmental Assessment Act*, SBC 2018, c 51
- *Impact Assessment Act*, SC 2019, c 28, s 1
  - *Physical Activities Regulation*, SOR/2019-323
- *Environmental Management Act*, SBC 2003, c 53
- *Extractive Sector Transparency Measures Act*, SC 2014, c 39, s 376

# Overview of the *Mineral Tenure Act*

## Introduction:

- The main act concerning staking and recording mineral claims
- Administered by the Mineral Titles Branch of the British Columbia government
- **Free Miner System**
  - System in place in BC and most Canadian jurisdictions
  - Provides three general rights:
    - 1) enter lands in pursuit of Crown Minerals
    - 2) obtain a mineral claim (traditionally by physical staking)
    - 3) to go to lease and mine and produce minerals discovered
- Must be a "free miner" to record a claim or lease
- "**free miner**" means a person who holds a valid and subsisting free miner certificate issued under this Act or any of the former Acts. **(S. 1, MTA)**
- Free miner certificates can be issued to applicants who are:
  - a) a person age 18 or over and ordinarily a resident in Canada for at least 183 days in each calendar year or authorized to work in Canada,
  - b) a Canadian corporation, or
  - c) a partnership consisting of partners who are persons that qualify under paragraph (a) or (b) **(S. 8, MTA)**

# Overview of the *Mineral Tenure Act*

## Pros of BC's Free Miner System

- Certainty of registration
  - Centralized database (Mineral Titles Online)
- Access to private property in the pursuit of minerals
  - Provided the land is "**mineral lands**": land in which minerals or the right to explore for, develop and produce minerals is vested in or reserved to the government
  - Various exceptions (e.g. parks and protected areas)
- Ease of staking
  - BC government switched to electronic map staking in 2005
    - Claims prior to switch: 1.1 million hectares (2004); after, 5.2 million hectares (2008)

## Cons of BC's Free Miner System

- Indigenous groups and the environment often an afterthought
  - BC government has duty to consult and accommodate Indigenous groups, where required – Automatic staking neglects such duties
  - Concern that too much of BC's environmentally-sensitive areas subject to mineral claims
- Registration of claims without intent to explore
  - Impedes mineral exploration and extraction
  - But, nuisance staking prohibited by *MTA* and may be cancelled where claim acquired for purposes other than a mining activity (***MTA, S. 40***)

# Overview of the *Mineral Tenure Act*

## Minerals and Placer Minerals:

- Both are defined terms under the *MTA*
- "**mineral**" means an ore of metal, or a natural substance that can be mined, that is in the place or position in which it was originally formed or deposited or is in talus rock...
  - Does not include coal, petroleum, natural gas, marl, earth, soil, peat, sand or gravel and various other substances.
- "**placer mineral**" generally refers to minerals found in alluvial deposits (sand and gravel)
  - Also defined: "placer claim", "placer lease"



# Overview of the *Mineral Tenure Act*

## Mineral Claims and Mining Leases

- Must be a free miner to be registered as recorded holder of mineral claim or mining lease
- "**mineral claim**" means a claim to the minerals within an area which has been located or acquired by a method set out in the [*Mineral Tenure Act Regulation*]...
  - Chattel interest (personal property)
  - Explore/develop 1,000 tonnes per year, per unit of a claim
- "**mining lease**" is an interest in land and conveys to the lessee the minerals within and under the leasehold, together with the same rights held as the recorded holder of the claim or group of claims
- BOTH are fully transferrable (**MTA, S. 6.34**)

*Mineral Claim* → *Mining Lease*

- Mineral claims can be converted to mining leases upon application to the Chief Gold Commissioner
- Mining leases contain more rights than mineral claims
  - The production tenure for mining
  - Initial term not longer than 30 years, renewable
  - Annual rent payable to BC government
  - Work conducted on mining leases subject to further approvals under the *Mines Act*, environmental, foreign investment etc.

# Overview of the *Mineral Tenure Act*

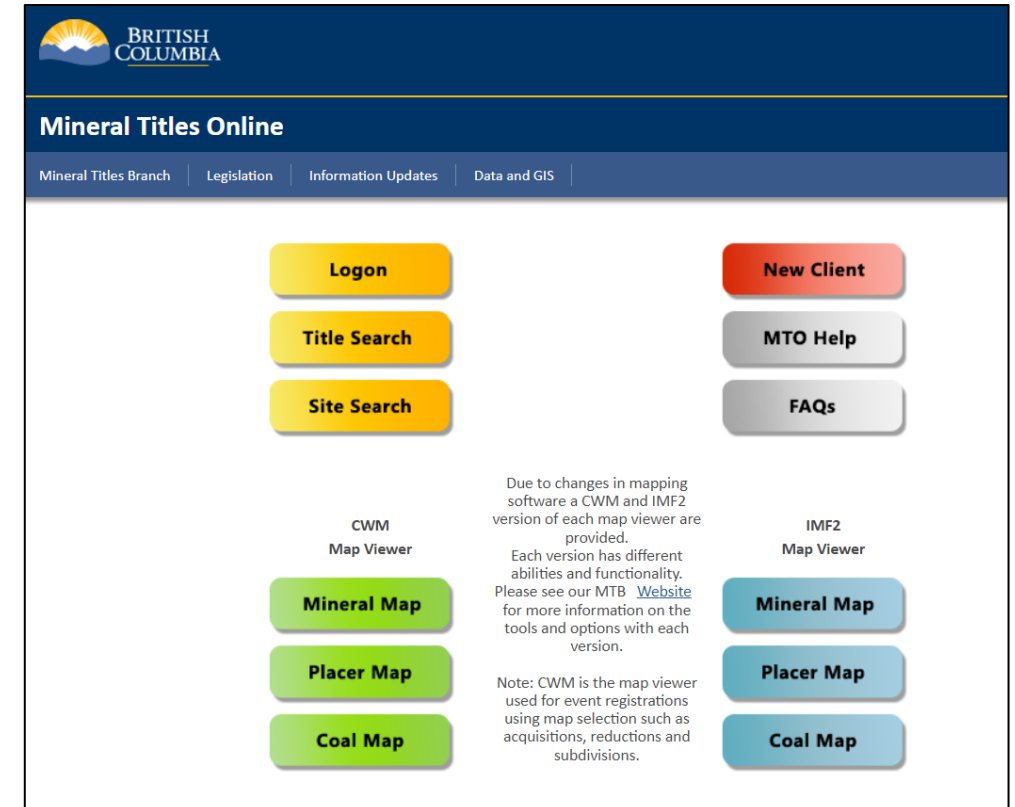
## Administration

- Chief Gold Commissioner and one or more gold commissioners
  - Appointed under *Public Service Act*
- Powers and responsibilities:
  - Designate mining divisions
  - Enter and examine land covered by mineral title
  - Resolve mineral title disputes
  - Make orders for claim holders to comply with the *MTA*
  - Cancel claims
  - Administer Mineral Titles Online registry

# Overview of the *Mineral Tenure Act*

## Mineral Titles Online Registry

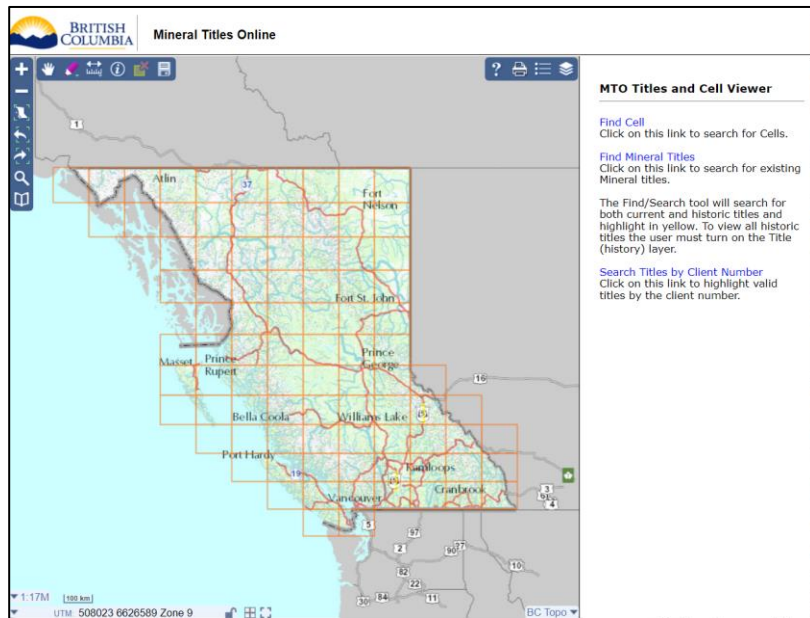
- BC's internet-based electronic mineral titles administration system
- Digital registration of titles
- Mineral titles split into cells based on different blocks, units and quarters
- Designed to resolve issues associated with physical staking, namely, priority in staking and ensuring substantial compliance with staking requirements
- Currently does not incorporate BC government's requirement to consult with Indigenous peoples prior to registration



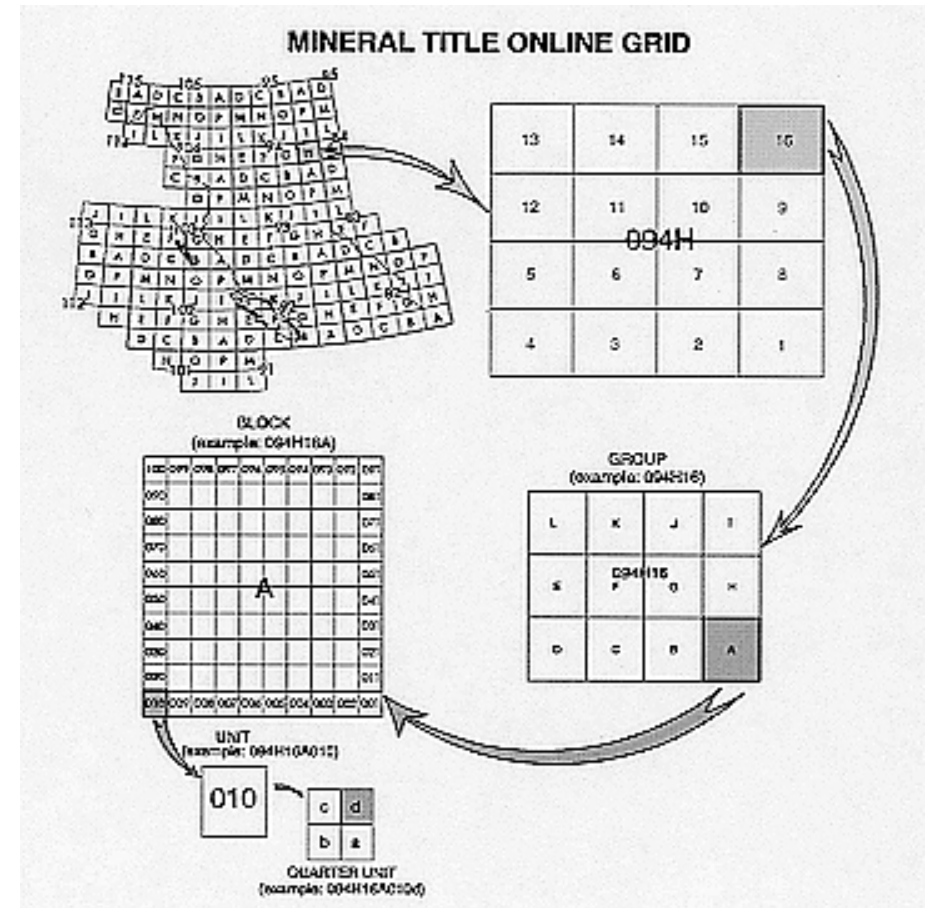
# Overview of the *Mineral Tenure Act*

## Mineral Titles Online Registry

- Governed by the *Mineral Title Online Grid Regulation*



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# Overview of the *Mineral Tenure Act*

## Prohibited Areas

- No exploration and development to be conducted, generally, in federal or provincial parks, heritage property, or such other land as determined by the Chief Gold Commissioner

## Keeping Mineral Title in Good Standing

- Annual work on mineral claim (or pay \$)
  - \*Technical exploration and development work may be credited to "Portable Assessment Credit" account
  - Can use credits in future years to keep claim in good standing
- Annual rent for mining lease (in advance)

# Overview of the *Mineral Tenure Act*

## Entry on Land and Surface Rights

- Free miners may enter "**mineral lands**":
  - Lands in which minerals or placer minerals or the right to explore for, develop and produce minerals or placer minerals is vested in or reserved to the government...
- Excludes:
  - Land occupied by buildings
  - Land surrounding houses
  - Agricultural land
  - Active mining operations
  - Protected areas (previously mentioned)
- Private land: must provide advance notice; liable to compensate for lossess or damage
- Must compensate surface rights holder for fair market value of property
- Must negotiate with surrounding claim holders to use surface rights for mining operations
- Claim holders may access mineral tenures using existing roads (*Mining Right of Way Act*) either privately or publicly owned
  - Can expropriate land to construct mining roads, but must still compensate property owners

# Upcoming Changes to the *Mineral Tenure Act*

- Changes to the current mineral title staking regime
  - Recent case law requires the implementation of consultation with affected Indigenous groups *before* a mineral claim can be staked (*Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680)
  - Replacement of "automatic" registration of mineral claims with a new form that recognizes rights of Indigenous peoples and enables consultation
- Currently registered mineral claims remain unaffected and one can still register mineral claims via Mineral Titles Online
- The government of BC passed the *Declaration on the Rights of Indigenous Peoples Act* in November 2019
  - Mandates provincial government to bring provincial laws into alignment with the United Nations Declaration on the Rights of Indigenous Peoples
  - May affect how mineral rights are conferred in the future, in addition to the anticipated changes in Mineral Titles Online

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