Canadian Land Tenure System

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General Introduction

• Federal System
  – Canadian constitution allocates legislative authority between federal government and provinces
  – Legislative authority over mining related issues is attributed to both federal and provincial governments
  – Ownership of lands and minerals are vested in the province where they are located
General Introduction

– Mineral underlying Indian Reserves, national parks, federal territories, continental shelf and certain federally owned land are owned by the federal government.
– The federal or provincial government may grant lands or minerals to private persons.
– Generally, government will lease minerals, extract royalties and impose operating conditions on Crown land by law, permit or contract.
General Introduction

• Other issues to consider
  – Province of Quebec has a Civil law systems and as result there may be some differences in dealing with title
  – Generally, all Crown Lands are open for prospecting and staking
  – Certain lands are not open for prospecting and staking (i.e park lands, environmentally sensitive lands)
  – Aboriginal rights – developing minerals on Crown owned lands may trigger a duty to consult with affected First Nations
Quebec Land Tenure System

• Legislation that establish mining titles and conveyance of titles:
  – Mining Act (administered by the Minister of Natural Resources)
  – Quebec Civil Code

• Type of title will vary depending on whether the government is granting “Mineral Substances” or “Surface Mineral Substances” (i.e. peat, sand gravel, limestone, clay)

• Province owns rights in Mineral Substances, except for mining concessions issued prior to July 1911 and certain lands granted before July 1880

• Surface minerals belong to surface owner if land is not granted for mining purposes
Quebec Land Tenure System

• Mining rights are immoveable real rights - they are rights that run with the land
• The province can grant various forms of title, most notably:
  – exploration license for surface mineral substances
  – lease to mine surface mineral substances (exclusive and non-exclusive)
Quebec Land Tenure System

-Mining Claims

• grants exclusive right to explore for mineral substances
• acquire by ground staking or map designation
  – no prospecting or staking without a Prospecting Licence
  – certain lands cannot be staked (may require authorization of the Minister)
• registration and validity period
  – valid for a 2 year period and renewable for 2 years periods
Quebec Land Tenure System

-Mining Claims

• rights and obligations of claim holder
  – bulk sampling <50 m.t. permitted. If greater, Ministerial authorization is needed
• assessment work /renewal
  – amount varies depending on whether claim is north or south of the 52nd parallel
  – credits for exploration work can be used from claims within 4.5 km radius (proposal to reduce to 4km)
  – payments in lieu are possible (proposal: will require 2x amount of work)
  – proposal: cannot apply work on leases and concessions to renew claims
Quebec Land Tenure System

- **Mining Concessions**
  - no longer granted for mineral substances
  - grants title to land and minerals for mining purposes
    (terms of concession must be examined)
  - are transferable

- **Mining Leases**
  - grants right to mine mineral substances
  - claims can be converted to lease if demonstrate the existence of a workable deposit
  - 20 year term and can be renewed for three 10 year periods
  - mining must start within 4 years of date of lease
Quebec Land Tenure System

- In Quebec there is a Land Registry and a Mining Rights Registry (GESTIM)
  - as a rule real and immoveable rights are registered on both Registries
  - claims, exploration licences and non-exclusive leases for surface mineral are currently exempt from registration at the Land Registry / proposal to remove the exemption
  - currently a proposal to have a promise to purchase a claim registered on the mining rights registry
Quebec Land Tenure System

• GESTIM: https://gestim.mines.gouv.qc.ca/MRN_GestimP_Presentation/ODM02101_login.aspx

• Right of Expropriation granted to holder of a mining right for exploration and mine operation and for mine infrastructure (proposal: only for Mine operation)

• Transfer of Mineral Rights

• Disputes (Mining Judge)
Quebec Land Tenure System

• Bill 14 (introduced on May 12, 2011) proposes:
  – Power given to Minister to exclude certain zones from mining activities and refuse to grant certain types of mining rights in order to avoid conflicts with other uses of the territory.
  – To withdraw from prospecting, mine exploration and mine operations mineral substances found in urban areas, areas dedicated to vacationing or recreational tourism and residential areas that are incompatible with mining activity
  – No recourse in damages for existing claim holder. Holders can be reimbursed for certain expenses incurred if they abandons their claim
Quebec Land Tenure System

• Bill 14 (introduced on May 12, 2011) proposes:
  – All mining projects whether the construction or operation of a mineral treatment plant or the opening or operation of a mine, be subject to an Environmental impact assessment procedure (EIA), without regard to the production threshold.
  – No mining lease can be concluded unless the claim holder has obtained approval of its mine restoration and rehabilitation and an environmental Permit has been issued after completing the EIA
Ontario Land Tenure System

- **Mining Act** (Ontario) regulates mining titles and conveyance (administered by the Ministry of Northern Development and Mines)
- “minerals” defined as all naturally occurring metallic and non-metallic minerals, including coal, salt, quarry and pit material, gold, silver and all rare and precious minerals and metals, but does not include sand, gravel, peat, gas or oil;
Ontario Land Tenure System

- Forms of mineral rights
  - mining claim (unpatented mining claim)
  - patented mining claim (equivalent to a freehold interest in land and/or minerals)
  - Mining Lease (Surface and/or Minerals)

- Lands open:
  - Holder of a prospector’s licence may prospect and stake claim on (a) Crown lands, surveyed or unsurveyed; (b) lands, where the mines, minerals or mining rights have been reserved by the Crown in the location, sale, patent or lease of such lands
Ontario Land Tenure System

• Claims
  – Ground staked claims only (map staking only on subdivided territory in Southern Ontario)
  – If a mining claim is staked on land where there is a surface rights owner, the licensee must within 60 days after applying to record the claim, either (a) give confirmation of staking to the surface rights owner and file proof at the recorder’s office; or (b) apply to a recorder for an order waiving confirmation
  – A claim confers the right to perform the prescribed assessment work or to obtain a lease from the Crown. The person is merely a licensee of the Crown until it obtains a lease
  – The Claim confers no right to take, remove or otherwise dispose of any minerals found in, upon or under the mining claim
Ontario Land Tenure System

- The Claim confers no surface rights other than the right to enter upon, use and occupy the surface for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights therein
- Bulk sampling permitted with permission of Minister
- Assessment work prescribed by Assessment Work Regulations: Generally $1600 per claim in the first 5 years
- Excess work can be used for 5 years (valued @ 100% for 2 years and 50% subsequently)
- Work can be assigned contiguous claims (amounts limited)
- Will introduce payments in lieu (can’t be banked, not in consecutive years)
- Will introduce requirement for Exploration Plans and Exploration Permits (to include Notice, Aboriginal consultation and rehabilitation requirements)
Ontario Land Tenure System

• Lease
  – can apply for Mining Rights Only
  – All leases contain reservations (for roads, power lines, railways, navigable waters, fishing, etc.)
  – 21 year term and renewable for 21 years
  – conditions for renewal imposed by MNDM including Mining Purpose Statement (renewal 6 months):
    http://www.mndm.gov.on.ca/mines/lands/disposit/lease_renewal_documentation_e.asp
  – Consent to transfer lease required (3 months)
Ontario Land Tenure System

• Crown Patents
  – vests in the patentee all title of the Crown in such lands and all mines and minerals therein
  – Severance applications where selling adjoining land

• Titles registered at Land Registry and Provincial Mining Recorder (CLAIMMaps):
  http://www.mndm.gov.on.ca/mines/claimaps_e.asp

- Disputes
British Columbia
BC Land Tenure System

• Ownership of Rights in Minerals and Surface
  – Privately held rights are also known as “freehold” or “Crown granted” mineral claims (which are similar to US patented mineral claims)
  – Crown owned minerals are administered by government agencies under the Mineral Tenure Act (which are similar to US unpatented mineral claims)
BC Land Tenure System

- Private Surface and Private Mineral Titles
  - Companies with projects where the surface is privately owned must follow certain notification procedures to the surface owner.
  - Privately held mineral rights make up a small proportion of the mineral rights in British Columbia and originate from grants that were issued under historical legislation.
BC Land Tenure System

• Private Mineral Titles cont.
  – Need to look at the originating grant or the definition of “mineral” under the originating legislation in order to determine what minerals are included
  – Right to use surface usually included in the grant
  – Registered as a “charge” against surface titles in the Land Title Office Registry System
  – Subject to Mineral Land Tax Act
  – Subject to permitting requirements under the Mines Act and environmental legislation
BC Land Tenure System

• Crown Surface and Mineral Titles
  – Legislation
    • Mineral Tenure Act
    • Coal Act
    • Land Act

• Mineral Tenures issued under the Mineral Tenure Act
  – Free Miner Certificate and BCeID (see http://www.empr.gov.bc.ca/Titles/MineralTitles/faq/Pages/fmc.aspx and https://www.bceid.ca/)
  – Mineral Titles Online https://www.mtonline.gov.bc.ca/mtov/home.do
BC Land Tenure System

• Mineral Tenures issued under the Mineral Tenure Act cont.
  – entitled to the minerals or placer minerals that are held by the Crown and that are situated vertically downward from and inside the boundaries of the claim
  – exploration and development work must be filed or cash in lieu must be paid to the British Columbia government (along with a prescribed fee)
  – conversion to a lease to produce commercial quantities of ore or pay dirt
  – separate surface tenure is not required
  – transfers and encumbrances
BC Land Tenure System

• Coal Licences issued under the Coal Act
  – a coal licence holder has the exclusive rights to explore for and develop coal on the licence location and to remove certain quantities of coal
  – issuance of coal licences is discretionary
  – in order to keep the coal licence in good standing, renewal fees must be paid each year
  – conversion to a lease to produce commercial quantities of coal
  – separate surface tenure is not required
  – not an online system
  – transfers and encumbrances
BC Land Tenure System

• Crown Surface and Quarry Licences under the Land Act
  – for additional surface areas not covered by the mineral or coal tenure
  – for quarry licences for sand and gravel
  – no registration or title system, unless the lot has been surveyed and title has been raised in the Land Titles Registry
  – transfers and encumbrances usually require consent from the government
BC Land Tenure System

• Notification to Private Surface Owners and Conflict Resolution
  – must give private surface owners eight days notice before entering private land for any mining activity
  – disputes
BC Land Tenure System

• Mineral Tax
  – payable on production (regardless of tenure type)
  – tax is calculated as 13% of “net revenue” and 2% of the “net current proceeds” (See the *Mineral Tax Act* as this is somewhat simplified)
  – only “prescribed costs and expenses” to be deducted in the computation of net revenue and net current proceeds
BC Land Tenure System

• Permitting
  – Exploration stage
    • Mines Act Permit required for any mechanical disturbance of the ground or any excavation is made for mineral exploration activities
  – Development and Construction
    • Many additional permits including the requirement to go through an environmental assessment
  – First Nation Considerations
    • Early communication
The Territories
Canada's North - the Yukon, NWT and NU

• The “Territories” vs. the “Provinces”
• Land Claims
Yukon

- Devolution
- Umbrella Final Agreement (UFA)
- Categories of ownership of land and minerals
  - Commissioner’s Land (formerly Crown Land)
    - Free entry system
    - Legislation
      - Quartz Mining Act, Placer Mining Act (note also Coal Regulation, Dredging Regulation and Quarry Regulation)
      - Territorial Lands Yukon Act, Lands Act and Quartz Mining Act (s. 79)
  - Mineral claims and leases
  - http://www.yukonminingrecorder.ca/
    - Category A Settlement Lands (surface and subsurface)
    - Category B Settlement Lands (surface only)
    - Fee Simple Settlement Lands (primarily residential, surface only)
Yukon cont.

- Permitting
  - Exploration stage
    - Classification system under the Quartz Mining Land Use Regulation and the Placer Mining Land Use Regulation
    - Class 1 programs – no approval required
    - Class 2 programs – notification required, environmental and socio economic assessment required
    - Class 3 and 4 Programs – require approval, detailed Operating Plan must be submitted, environmental and socio economic assessment required
  - Development and Construction
    - Many additional permits including the requirement to go through an environmental and socio economic assessment and various regulatory approvals, including (but not limited to) a Type A or B Water License and a Quartz Mining License
  - First Nation Considerations
    - Early communication
Royalties

- Quartz Mining Act
  - Net profit
  - Royalty rate varies up to a max of 12% on output of greater than $35 million
  - The value of the output of a mine is determined by subtracting eligible expenses and allowances, as defined in the Royalty Regulation, from the value of minerals produced by a mine during the calendar year

- Placer Mining Act
  - Royalty on all gold shipped from Yukon for export, whether in the form of gold dust as mined or bars. The royalty is computed at the rate of 2.5% of the value of the gold, or at such lesser rate as may be fixed by the Commissioner-in-Council. For this purpose, gold is valued at US$15 per ounce
Northwest Territories

- Land Claims
- Categories of Ownership of Land and Minerals
  - Crown Land
  - Settlement Lands (Surface)
  - Settlement Lands (Surface and Subsurface)
  - Commissioner’s Lands
Northwest Territories cont.

• Surface and Subsurface Tenures
  – Location dependent
  – Crown Land
    • subsurface tenures are acquired under the *Northwest Territories and Nunavut Mining Regulations* (also applies in Nunavut and is discussed below).
    • surface tenures are obtained under the *Territorial Lands Regulations* and the right to use the surface is obtained under the *Territorial Land Use Regulations* (also applies in Nunavut and is discussed below) unless located in the Mackenzie Valley.
Northwest Territories cont.

• Surface and Subsurface Tenures cont.
  – Settlement Lands
    • where subsurface is held by the Crown, subsurface tenures are acquired under the *Northwest Territories and Nunavut Mining Regulations*.
    • where subsurface is held by an Aboriginal group, subsurface tenures will be obtained on application to the group, not the Crown, in accordance with the procedures outlined in or adopted pursuant to the relevant Settlement Agreement.
    • where the surface is held by an Aboriginal group, surface tenures will be obtained from their land administration department in accordance with the procedures outlined in or adopted pursuant to the relevant settlement agreement.
Northwest Territories cont.

• Permitting
  – Exploration – generally not subject to additional licensing but exploration activities must be in compliance with applicable health, safety and environmental legislation
  – Development and Construction
    • Principal licence is the water licence
    • Other permits and authorizations both on the territorial and federal level
Nunavut

- Nunavut Land Claims Agreement (NLCA)
  - Inuit Owned Lands (IOLs) were vested in Designated Inuit Organizations (DIO)
    - The regional Inuit Associations (RIAs) were designated as the Inuit Organizations in which surface title to IOLs in each representative region would vest. They are the Kitikmeot Inuit Association, the Qikiqtani Inuit Association and the Kivalliq Inuit Association.
    - Subsurface title to Inuit Owned Lands is vested in the Nunavut Tunngavik Inc (NTI). IOLs are held in trust by NTI and the RIAs on behalf of and for the benefit of all Inuit.
  - Various other co-management boards (the Nunavut Impact Review board, the Nunavut Planning Commission, the Nunavut Wildlife Management Board, the Nunavut Surface Rights Tribunal, and the Nunavut Water Board)
Nunavut cont.

- Categories of Ownership of Land and Minerals
  - Crown Land
  - Inuit Owned Lands (Surface)
  - Inuit Owned Lands (Surface and Subsurface)
  - grandfathered pre-existing mineral rights (administered under *Northwest Territories and Nunavut Mining Regulations*)
  - No pre-existing rights (administered by NTI)
- Commissioner’s and Municipal Lands
Nunavut cont.

- Surface and Subsurface Tenures
  - Location dependent
  - Crown Land
    - subsurface tenures are acquired under the *Northwest Territories and Nunavut Mining Regulations* (also applies in Northwest Territories and is discussed below)
    - surface tenures are obtained under the *Territorial Lands Regulations* and the right to use the surface is obtained under the *Territorial Land Use Regulations* (also applies in Northwest Territories and is discussed below)
Nunavut cont.

- Surface and Subsurface Tenures cont.
  - Inuit Owned Lands (IOL)
    - where subsurface is held by the Crown, subsurface tenures are acquired under the *Northwest Territories and Nunavut Mining Regulations*.
    - where subsurface is held by NTI, subsurface rights will be obtained on negotiation and settlement of an “Exploration Agreement” and form of attached “Production Lease” with NTI, not the Crown (but if claims and leases existed prior to the land becoming IOL, then these claims and leases are considered to be grandfathered).
    - where the surface is held by a RIA, surface rights will be obtained from the applicable RIA.
Nunavut cont.

- Permitting
  - Exploration – generally not subject to additional licensing but exploration activities must be in compliance with applicable health, safety and environmental legislation
  - Development and Construction
    - Inuit Impact Benefit Agreement
    - Water Compensation Agreement
    - Water Licence
    - NIRB approval
    - Other permits and authorizations both on the territorial and federal level
NWT & Nunavut

- Northwest Territories and Nunavut Mining Regulations
  - A company or individual needs a prospector's licence to get a prospecting permit or to stake a claim.
  - Prospecting Permits (larger areas)
    - provide exclusive exploration rights within assigned boundaries and allow the holder the exclusive right to locate mineral claims in the permit area but do not include mineral rights or surface rights. Applied for in December, issued in January, effective February for 3 or 5 years, depending on the area.
  - Mineral Claims
    - The holder of a recorded claim has the exclusive right to prospect for minerals and to develop any mine on the land within the boundaries of the claim.
    - Mineral Claims can be held for up to 10 years if representation work is completed
NWT & Nunavut cont.

• Northwest Territories and Nunavut Mining Regulations cont.
  – Mining Leases
    • Mineral claims cannot be taken past the tenth year unless a lease is applied for. A mining lease allows the holder to prospect, develop, extract or sell minerals from the land within the lease area, but does not convey surface rights.
  – Transfers
  – Encumbrances
  – Royalty
    • The regulations provide for payment of an annual royalty based on the value of the output of the mine on a sliding scale from 0% on the first $10,000 up to 14% on any value over and above $45 million.
NWT & Nunavut cont.

- **Territorial Land Use Regulations**
  - Surface tenure on Crown land in NWT and Nunavut is administered by the Department of Indian and Northern Affairs pursuant to the *Territorial Land Use Regulations* (except in the Mackenzie Valley)
    - Class A Land Use Permits for higher impact activities
    - Class B Land Use Permits for lower impact activities
    - Land Leases
QUESTIONS?
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