

12.3 Mining and petroleum legislation

12.3.1 Federal and departmental jurisdictions

Mineral rights vested in the Crown in right of Canada include those situated in the Yukon and Northwest Territories and off-shore within the limits of Canada's continental margins, as well as those underlying certain federally owned lands within the provinces.

The Supreme Court of Canada in its Opinion of November 1967 stated that, as between Canada and the province of British Columbia, Canada has proprietary rights in and legislative jurisdiction over "lands, including the mineral and other natural resources, of the seabed and subsoil seaward from the ordinary low-water mark on the coast of the mainland and the several islands of British Columbia, outside the harbours, bays, estuaries and other similar inland waters, to the outer limit of the territorial sea of Canada, as defined in the Territorial Sea and Fishing Zones Act...". The Court also stated that the federal government has legislative jurisdiction "in respect of the mineral and other natural resources of the seabed and subsoil beyond that part of the territorial sea of Canada... to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the mineral and other natural resources of the said areas...".

The Department of Energy, Mines and Resources, through the Resource Management and Conservation Branch, is responsible for administration and enforcement of legislation and regulations relating to mineral resources off Canada's east and west coasts and in the Hudson Bay and Hudson Strait regions, as well as with respect to federally owned mineral rights that become available for development in the provinces. The Department of Indian Affairs and Northern Development, through the Northern Natural Resources and Environment Branch, is similarly responsible for mineral rights in the Yukon Territory and Northwest Territories and underlying Canada's high-Arctic off-shore regions.

Mineral rights of Indian reserves in the provinces are also vested in the Crown in the right of Canada and are administered by the Indian-Eskimo Economic Development Branch of the Department of Indian Affairs and Northern Development in consultation with the Indian band councils. The rights to a reserve may be taken up only after the Indian band has given approval for development through a referendum vote. The minerals are then administered under the Indian Oil and Gas Regulations or the Indian Mining Regulations, except in British Columbia where mining rights must be acquired under provincial statutes and the BC Indian Reserves Mineral Resources Agreement of 1943. The Indian Oil and Gas Regulations provide for disposal of rights by public tender in the form of permit or lease parcels. The Indian Mining Regulations, on the other hand, provide for disposal based on terms negotiated with the Indian band council. The Indian councils are thus assuming a greater share of responsibility in the management of their mineral resources. Officers of the Department of Indian Affairs and Northern Development are advisers to the Indian councils on mineral matters and are responsible for the administration and enforcement of relevant regulations.

12.3.2 Federal mining laws and regulations

Mining exploration is carried out in the Yukon Territory in accordance with the provisions of the Yukon Quartz Mining Act and the Yukon Placer Mining Act; in the Northwest Territories, including Arctic coastal waters, operations are governed by the Canada Mining Regulations 1961, as amended. There are also the Territorial Dredging Regulations, Territorial Coal Regulations and Territorial Quarrying Regulations common to both territories. In the Yukon Territory, mining rights may be acquired by staking claims under the appropriate acts and regulations. A one-year lease may be obtained to prospect for the purposes of placer mining, renewable for two additional periods of one year each; a 21-year lease, renewable for a like period, may be obtained under the Yukon Quartz Mining Act.

Under the Canada Mining Regulations, a prospector's licence is required. Staked claims must be converted to lease or relinquished within 10 years. In certain areas, a system of exploration by permit over large areas is allowed. Any individual over 18 years of age or any joint-stock company incorporated or licensed to do business in Canada may hold a prospector's licence. No lease will be granted to an individual unless the Minister of the department involved is satisfied that the applicant is a Canadian citizen and will be the beneficial owner of the interest acquired under such lease; no lease will be granted to a corporation unless such corporation is incorporated in Canada and unless the Minister is satisfied that at least 50% of