CED: An Overview of the Law

Mines and Minerals (Western)

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Part II – Ownership and Reservation

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II.1.(a): Private Ownership

See Canadian Abridgment: NAT.II.3.b.iii Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Sale or transfer — Miscellaneous

The general common law rule provides that all minerals lying in a direct line between the surface and the centre of the earth, excepting gold and silver, belong to the owner of the soil as long as there has not been a severance of the title to them.

It is acceptable for an owner of land to so convey the minerals lying in or under the land that thereafter two separate estates in fee exist, the one in the mineral conveyed and the other in that which is retained.

An agreement to convey lands without making any reservation entitles the purchaser to the mineral rights, but it does not oblige the vendor to convey title to the precious metals.

Where a company beneficially owns mines and minerals under an unregistered transfer of land, and files a caveat on title claiming such interest, the company does not subsequently surrender its beneficial ownership by purporting to enter into a natural gas lease as lessee.

If a vendor of land covenants to convey all of his or her interest in the land, and because of a mutual mistake it is believed the mines and minerals are reserved to the Crown, whereas they actually belong to the vendor, the purchaser will be entitled to the mines and minerals.

A purchaser who becomes aware of a defect in the vendor's title may repudiate the contract, except possibly in the case of trifling matters which the court could, at the vendor's instance, address by fixing compensation or abating the purchase price.

Accreted land takes on the legal characteristics of land to which it has accreted, and prima facie includes all mines and minerals.

An interest in minerals may be created as a profit à prendre where an agreement provides for the right to enter the lands of another, the right to sever minerals, and the right to remove the minerals for one's own use. As such an interest is an interest in land, it may be dealt with according to the ordinary rules of property.

Gold and silver belong to the Crown by prerogative and are not regarded as incidents of the land unless they have been severed from the title of the Crown. No such Crown prerogative exists in the case of base metals.1

The Crown's prerogative right to precious metals will not pass under a grant of land unless an intention to transfer is expressed by apt or precise words, or is necessarily implied.

Where the Crown has parted with the precious metals in a parcel of land, those metals will be regarded as incidents of the land and can be passed to a third party by the grantee of the land pursuant to a conveyance in the ordinary form even though the metals are not specifically mentioned.

II.2.(a) – Crown Ownership — Alberta, Manitoba, Saskatchewan

See Canadian Abridgment: NAT.II.3.a.i.A Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Scope of title passed — Crown prerogative; NAT.II.3.a.i.C.3 Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Scope of title passed — Reservations to Crown — Miscellaneous; NAT.II.3.a.vi Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Miscellaneous

By orders in council dated October 31, 1887 and September 17, 1889 made under the Dominion Lands Act, the federal government reserved to the federal Crown all mines and minerals, and the power to work them, from all patents issued for lands in the prairie provinces.

Homesteaders from the Hudson Bay Company received minerals, excluding gold and silver, until 1908, while homesteaders from the Canadian Pacific Railway received all minerals until 1902, with some homesteaders continuing to receive minerals until 1912.

The federal government reserved mines and minerals from sales of land made under the Soldier Settlement Act, 1919.

In 1930 the federal Crown transferred title to all reserved or ungranted natural resources in the Prairie provinces to those provinces.

In the absence of a specific grant to the contrary, mines and minerals and the right to work them are reserved to the provincial governments in the prairie provinces out of every disposition of public land.

II.2.(b) – Crown Ownership — British Columbia

See Canadian Abridgment: NAT.II.3.a.i.A Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Scope of title passed — Crown prerogative; NAT.II.3.a.i.C.3 Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Scope of title passed — Reservations to Crown — Miscellaneous; NAT.II.3.a.vi Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Miscellaneous

In British Columbia, precious metals were reserved from Crown grants as early as 1875, and coal was reserved from grants of agricultural lands for several years. In present legislation, all minerals, precious or base, including coal, are reserved from Crown grants.

Also to be considered in determining the mineral rights which attach to a piece of land in British Columbia are the date of the original Crown grant, and whether the land in question formed part of the Railway Belt or was granted as railway subsidy lands.

II.3 – Native Ownership

See Canadian Abridgment: NAT.II.3.a.i.A Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Scope of title passed — Crown prerogative; NAT.II.3.a.i.C.3 Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Scope of title passed — Reservations to Crown — Miscellaneous; NAT.II.3.a.vi Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Miscellaneous

Where lands are controlled by native peoples, special regimes govern title to minerals and the processes of exploration and development. Further, native interests may be exercised or asserted by reason of aboriginal title or a treaty on lands not controlled by native peoples. Also, aboriginal rights such as hunting or fishing rights can be relevant when interfered with by mineral activity.

Pursuant to the Constitution Act, 1867, "Indians, and lands reserved for the Indians" fall under federal jurisdiction, and accordingly the ownership and disposition of mineral and surface access rights are governed by federal law.

The consultation scheme envisaged by case law ensures that, in keeping with the honour of the Crown, asserted aboriginal interests are given proper consideration and respect when the Crown disposes of property or grants regulatory approvals. The Crown must ensure that it takes into account both immediate and future adverse impacts when it undertakes such dispositions or approvals. Where a First Nation's refusal to negotiate on any alternative basis or on terms other than those established by the First Nation causes an impasse, the Crown will have discharged its duty to consult.

II.4 – Title

See Canadian Abridgment: NAT.II.3.a.i.A Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Scope of title passed — Crown prerogative; NAT.II.3.a.i.C.3 Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Scope of title passed — Reservations to Crown — Miscellaneous; NAT.II.3.a.vi Natural resources — Mines and minerals — Ownership and acquisition of mineral rights — Patent or grant of Crown land — Miscellaneous

Under land titles legislation in the prairie provinces, the term "land" includes mines and minerals. A reservation of mines and minerals is a reservation of part of the land.

In British Columbia, mines and minerals are considered to be a charge.

In Saskatchewan, mineral ownership is determined by the records at the land titles office. The person who is the registered owner of the minerals has the prima facie right to

work, win and carry them away. The right exists under the certificate of title and is not created by the discovery.

In British Columbia, the chief gold commissioner must establish and maintain a mineral titles online registry for the purposes of registrations respecting claims, leases and notices. The chief gold commissioner may authorize a person to use a means of registration other than a means required by the legislation, if satisfied that it is necessary to avoid great hardship or great injustice, and the integrity of the registry will be maintained.

A person may register a claim in accordance with the regulations. Certain changes to a claim are not effective until registered and certain orders may be registered against a claim or lease by the chief gold commissioner.

In British Columbia, a recorded holder of a mineral claim or a placer claim who wishes to convert the claim to a mining lease or placer lease or a person who wishes to obtain a mining lease or placer lease must register an application for the lease. To abandon a claim or surrender a lease, the recorded holder must register a discharge of the claim or lease. The chief gold commissioner may register a notice of a forfeiture of a claim or of a lease.

Only one claim or lease may be registered with respect to a cell, unless the registration is in respect of the following: an area of a cell over which the mapping of a legacy claim has been challenged; a cell only part of which is covered by a legacy claim, and the registration is in respect of the part of the cell that is not covered by the legacy claim; a claim or lease regarding certain industrial mineral rights; one cell covered by a mineral claim and a placer claim, or by a mineral claim and a placer lease.