



# BC MINING LAW REFORM

ELK VALLEY GOAL MINES / GARTH LENZ

## Fact Sheet

### The Need to Modernize the Mineral Tenure Act

- British Columbia's *Mineral Tenure Act* has changed little since the 1850s gold rush era and continues to be a source of **conflict between various land users**. As they did since the 1859 *Gold Fields Act*, miners today still require a "free miner's certificate" for a cost of \$25. The certificate grants the right of free entry to explore for minerals in most of the province.
- **'Free-entry' rights** include the right for a free miner to enter and access land that may contain minerals, the right to locate and register a claim, and the right to apply for a mineral lease. If the miner has paid the required fees, completed a survey, and published a notification of the application, the Chief Gold Commissioner is obliged by law to grant the lease. Neither claim staking, nor lease applications require further information, consultation, or consent of any affected land users or rights holders.
- Since 2005, BC has had an **online claim registration** system which automates the claim staking process for individuals and companies. Claims are selected online with the click of a mouse, virtually anywhere in the province. Mineral claims are \$1.75 per hectare; and placer claims are \$5 per hectare to stake. Predictably, mining activities have increased substantially with on-line staking, with mining claims now covering 10 to 45% of some regions (see some examples here [reformbcmining.ca/maps](http://reformbcmining.ca/maps)).
- The *Mineral Tenure Act* does prohibit miners from entering **specific types of lands** including "orchard land", "land under cultivation", "land occupied by a building", and land that is within "the curtilage of a dwelling house" (tens of metres at most).

However, other sensitive areas, such as old growth management areas, wildlife habitat areas, Indigenous cultural areas, prime touristic areas, sensitive watershed areas, and municipal drinking sources are not properly protected from mining. Particular parcels of land can also be granted "No Registration Reserve" status either arbitrarily by the Province's Chief Gold Commissioner, or on application by a third-party, but essentially mining exploration can take place in **over 80% of the province**.

- The *Mineral Tenure Act* does not require that miners give a simple notice to local First Nations despite potential impacts on their rights and title. Landowners are merely entitled to a notice no later than 8-days prior to any mining activity taking place. Unless the land is specifically a protected heritage property, or enumerated under the *Park Act*, *Land Act*, *Environment and Land Use Act*, *Protected Areas of British Columbia Act*, *Ecological Reserve Act*, or *Local Government Act*, current mining laws do not contemplate or defer to any other land use plan and watershed plan.



- B.C. remains one of the **last main mining jurisdictions in Canada** that has not yet modernized its mining laws to keep pace with other jurisdictions (Ontario, Quebec, Yukon, and the NWT have all modernized their law in recent years). For instance:
  - › **Quebec** now requires the consent of property owners prior to conducting any exploration work; private lands represent about 8% of Quebec's land mass; they represent 5% in British-Columbia, including some of the river valleys and riparian areas that are increasingly critical for food security. Since 2017, Quebec also allows municipalities and regional governments to set "no-go zones" in their land use plans.
  - › Following the **Yukon** Court of Appeal's decision in 2012, the Yukon began a process to review its free entry mining law to comply with its constitutional obligations to inform, consult, and accommodate Indigenous Peoples prior to mining activities, including prior to claim staking and exploration work.
  - › Over 10 years ago, **Ontario** put new constraints to its free entry law with information, consultation, and accommodation obligations prior to all exploration work involving heavy equipment.

- › More recently, the **NWT** has passed a legislation requiring increased transparency, new mechanisms to designate no-go zones in consultation with affected Indigenous Peoples, and mandatory collaboration agreements with affected Indigenous Peoples prior to mining.

## Implementing the Polluter-Pays Principle & Financial Assurances

- If BC's mining laws are going to fully minimize the damage mining afflicts on the land, air, and water, they must require **polluters to pay** the true costs of their pollution. Full cost, or 'true-cost' accounting of reclamation bonds, and securities also act as motivation for companies to adopt best practices and technologies, and reduce reclamation and environmental costs.
- Due to **lax security and bonding legislation**, Canadian taxpayers are now liable for more than \$700 million in remediation costs at Yukon's Faro Mine and \$1 billion at the NWT's Giant Mine—with no confirmation yet that these are the full and final costs.
- The **legacy of poor remediation policies** persists today in BC. The remediation of Britannia Mine near Squamish cost taxpayers an estimated \$46 million but also requires ongoing water treatment at a cost of \$3 million per year, payable by the public in perpetuity. A Ministry historic mine inventory identifies 1,171 legacy sites throughout the Province which have metal leaching potential, or acid mine drainage potential.
- In total, BC's Auditor General estimated that a **\$1.2 billion unfunded taxpayer liability** was produced as a result of the Province not taking full security from mining companies for cleanup costs. This liability rose to almost \$1.6 billion by 2016, according to BC's Chief Inspector of Mines. In 2018, the liability was again over \$1.2 billion. And it does not include long term water treatment costs, nor the potential costs arising from accidental spills or damages.
- Other jurisdictions, like Quebec and Alaska, require **full mine reclamation bonding** within 3 years. The level of financial assurance must also be publicly and independently assessed prior to permitting, and regularly reviewed thereafter (every 3 to 5 years maximum, or when projects are subject to significant changes).
- While other industries, like oil shipping, have industry **levied funds for spills and disasters** (insurance pool), none exist for the mining sector. First Nations and downstream communities have been calling for a pooled mining fund that could compensate those impacted from mine failures and assist with clean-up costs if companies go bankrupt (see [fnemc.ca/mining](https://fnemc.ca/mining)).

## Protecting BC Waters & Communities

- The 2014 **Mount Polley Mine dam failure** resulted in 25 million cubic metres of wastewater and mine waste tailings released into Quesnel Lake, one of BC's most important sockeye salmon-rearing lakes. Many mines in BC use the same type of waste storage facility that Mount Polley used. These wet tailings impoundments store water in massive disposal lakes, mixed with mine waste materials. Despite clear evidence of damages to water and fish habitat, the company Imperial Metals never faced any government sanctions.
- The government-appointed Panel of independent expert engineers investigating the incident predicted that many similar events could be expected in the future. Noting the **123 active tailings dams** across the province, the Expert Panel stated: "*[If] performance in the future reflects that in the past, then on average there will be two failures every 10 years and six every 30. In the face of these prospects, the Panel firmly rejects any notion that business as usual can continue.*" The Panel recommended cutting the current inventory in half (to 60 tailings dams storage facilities), and moving to implement Best Available Technology, including alternatives to wet tailings impoundments, such as densified or filtered (dry) tailings with proper covers to prevent wind erosion and acid generation.
- Globally, mines are becoming bigger with lower quality ore, resulting in **more tailings disasters** (see [worldminetailingsfailures.org](http://worldminetailingsfailures.org)). The 2015 & 2019 mine tailings dam collapses in Brazil killed over 280 people and decimated houses and buildings for kilometers before flowing for hundreds of kilometres into the rivers and waterways downstream. Despite claiming to the contrary, **BC still falls short of meeting the best international standards** (see [tinyurl.com/FNEMC-BC-Tailings](http://tinyurl.com/FNEMC-BC-Tailings) and [miningwatch.ca/safety-first](http://miningwatch.ca/safety-first)).
- **Acid rock drainage and metal leaching** can continue indefinitely and require ongoing water treatment (some European mines from medieval and Roman times continue to pollute today). For examples, Brenda Mine on Babine Lake and Silver Creek Mine near Smithers will require water treatment for over 200 years. Only fourteen major BC mine sites have been required to have water treatment facilities. There is also a growing awareness of the significant risks and impact mining can have on BC waters and fish (e.g. selenium pollution in the entire Elk River Watershed, see [thenarwhal.ca/teck-resources-elk-valley-mines-bc-fish](http://thenarwhal.ca/teck-resources-elk-valley-mines-bc-fish)).

