TORYS LLP

Guide to mining regulatory and legal regimes in Canada

A Business Law Guide

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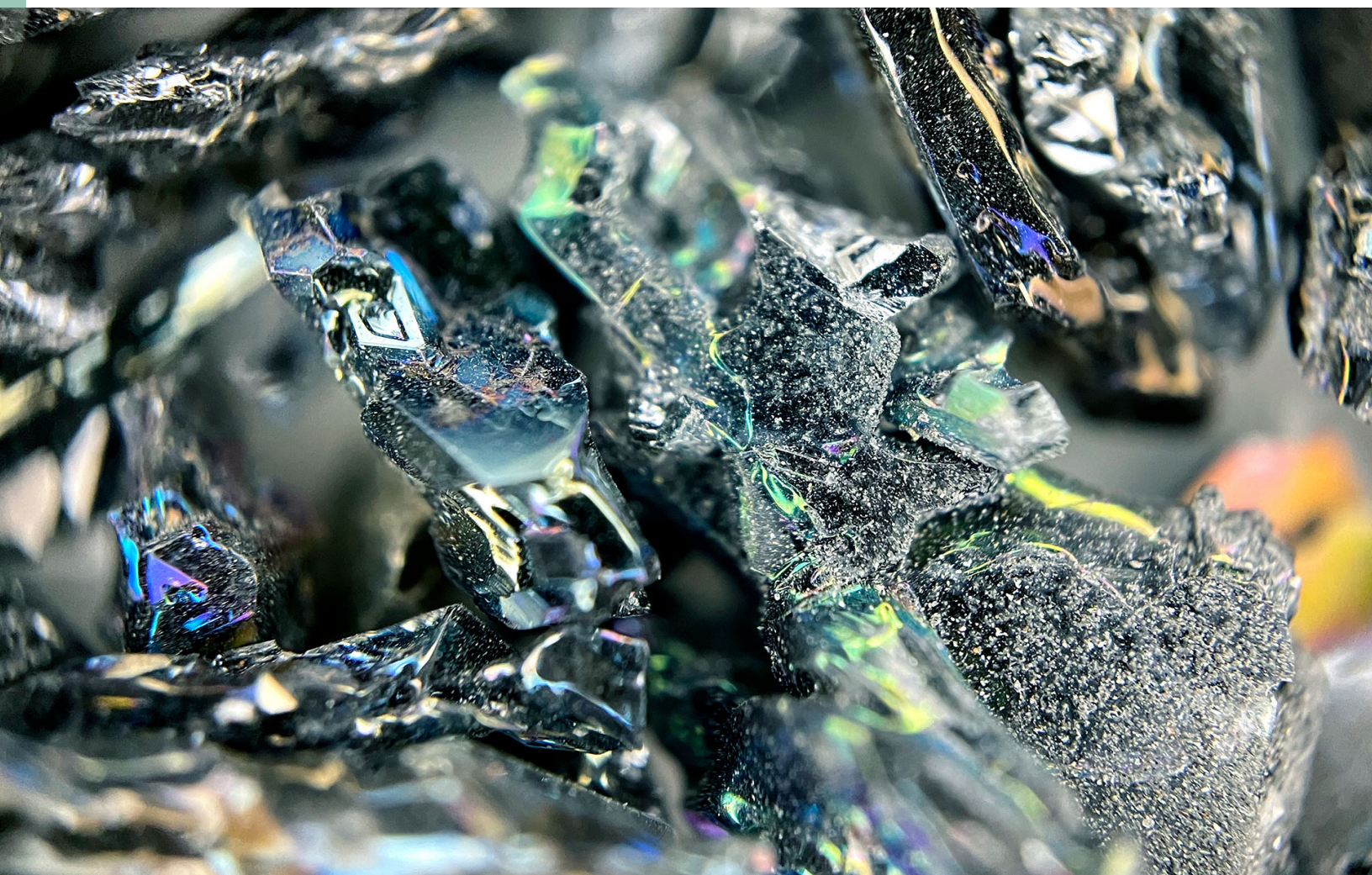

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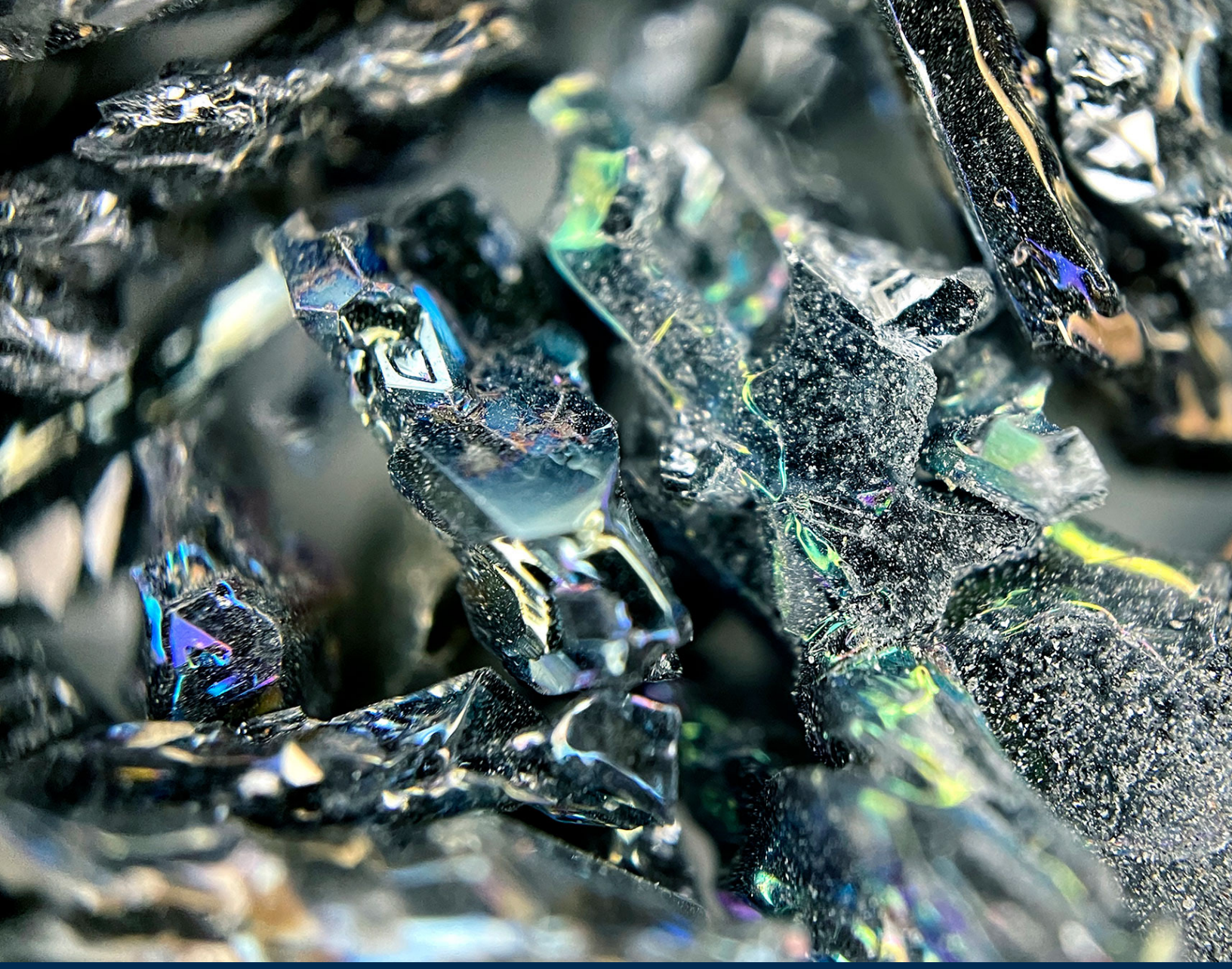


Introduction

Description of industry

Mining is a significant part of the Canadian economy. The Mining Association of Canada estimates that in 2022, mineral production in Canada had a total value of $55.5 billion, and the mining industry represented 665,000 total jobs[1].

Mining activity in Canada varies significantly across the country, with a wide range of geographies and geologies resulting in different commodity concentrations across the country. Similarly, the relative economic importance of mining varies significantly across the country. Whereas there is statistically no mining activity in Prince Edward Island, the mining industry represents the largest private sector contributors to the economies of the Northwest Territories and Nunavut[2].

The regulation of mining also varies across Canada, as each provincial government has regulatory authority over mineral exploration and development in the province, while the federal government has jurisdiction over a number of other regulatory aspects that impact the mining industry. Multiple distinct mining regulatory regimes have developed provincially over the years, but these are largely organized on similar principles and have many similar features, allowing for relatively comparable regimes across the country.

An overview of mining regulation in Canada must consider Canada's role as a centre of global mining finance and, particularly, junior mining exploration finance. Regulating the public disclosure of the junior exploration market and mining companies generally led to the development of leading standards for public disclosure of technical reviews of mining projects. Moreover, capital raised in Canada is invested in mining projects globally, bringing international treaty and foreign investment matters into the Canadian mining orbit of laws.

Key risks

Mining exploration, development and production operations in Canada face similar risks to those of mining companies generally, with a number of issues particular to Canada.

A significant portion of Canadian mining projects and operations are located in remote areas throughout Canada. Pursuing these opportunities often requires the development of new dedicated infrastructure, whether energy interconnection, port, rail or road access, and logistics for accommodation of workforces. Developing that new infrastructure across previously undisturbed lands results in increased environmental concerns, engaging potentially overlapping provincial and federal jurisdiction over environmental matters operating in remote areas also increases the cost and time to deliver commodities to market, increasing the risk for the operators.

As discussed in more detail below, mining activity takes place in areas where it is likely to have an impact on indigenous communities and potentially disrupt and conflict with indigenous rights.

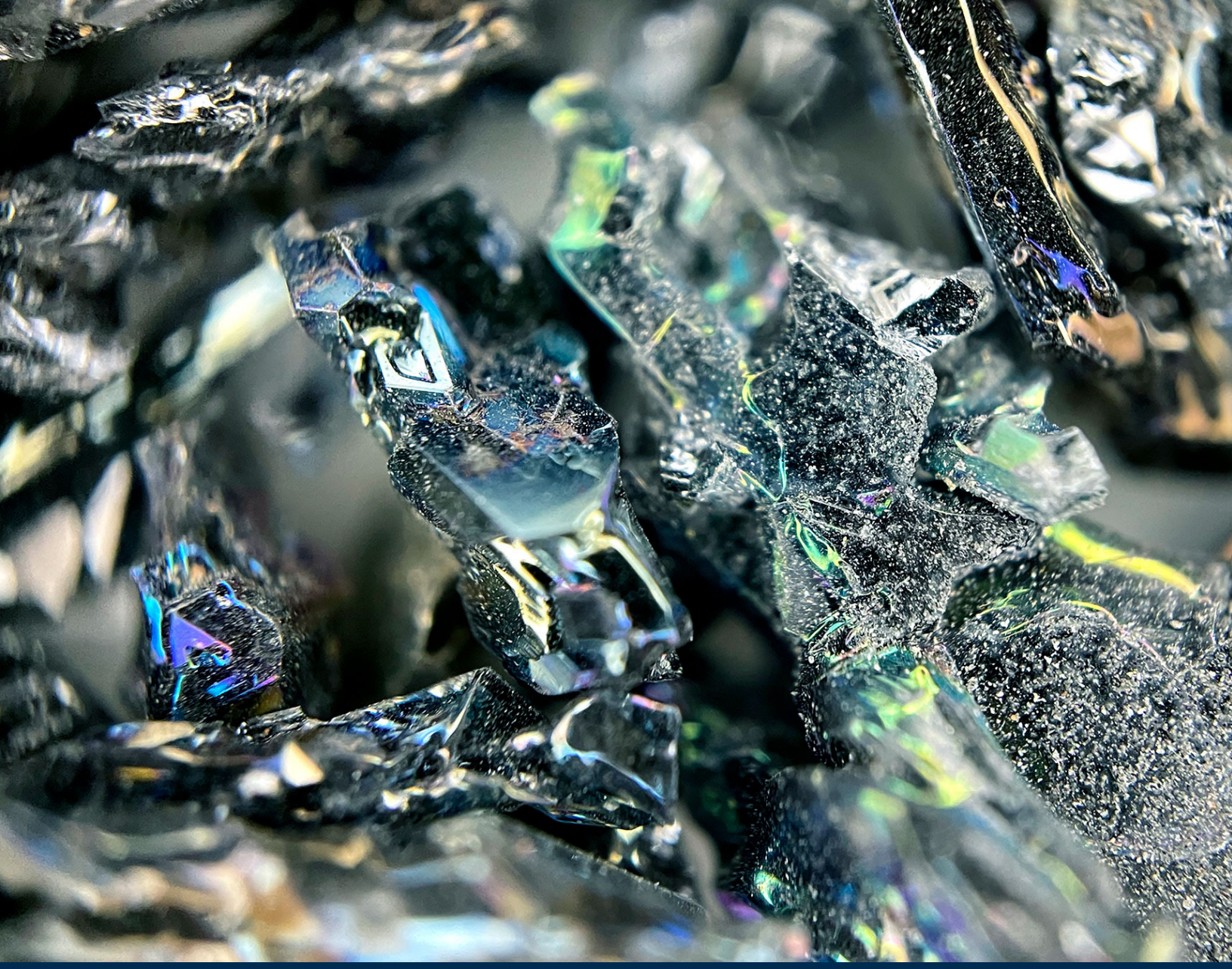
[1] Mining Association of Canada, 2023 Report.

[2] Mining Association of Canada, 2023 Report.

Government policy

The Canadian federal government and provincial governments are generally supportive of the development of mining exploration and projects. Canada has traditionally been receptive to foreign investment into the mining industry at all stages of the mining life cycle, including funding exploration and project development or the acquisition of domestic mining companies or projects.

The recent domestic and international focus on critical minerals required to support the energy transition has increased government support for the domestic mining industry and increased scrutiny of foreign investment in Canadian mining projects and ownership of significant positions in Canadian mining companies.



Year in review

Market trends and developments

From a legal perspective, the Canadian mining market (both operations and finance), has been dominated by two ongoing factors: 1) the energy transition, including de-carbonization by operators as well as developing projects to supply the critical minerals; and 2) increased concerns about security of supply and protecting domestic value in the critical mineral chain. The other area of key legal developments in Canada focuses on indigenous rights: the ongoing evolution of the duty to consult and economic reconciliation.

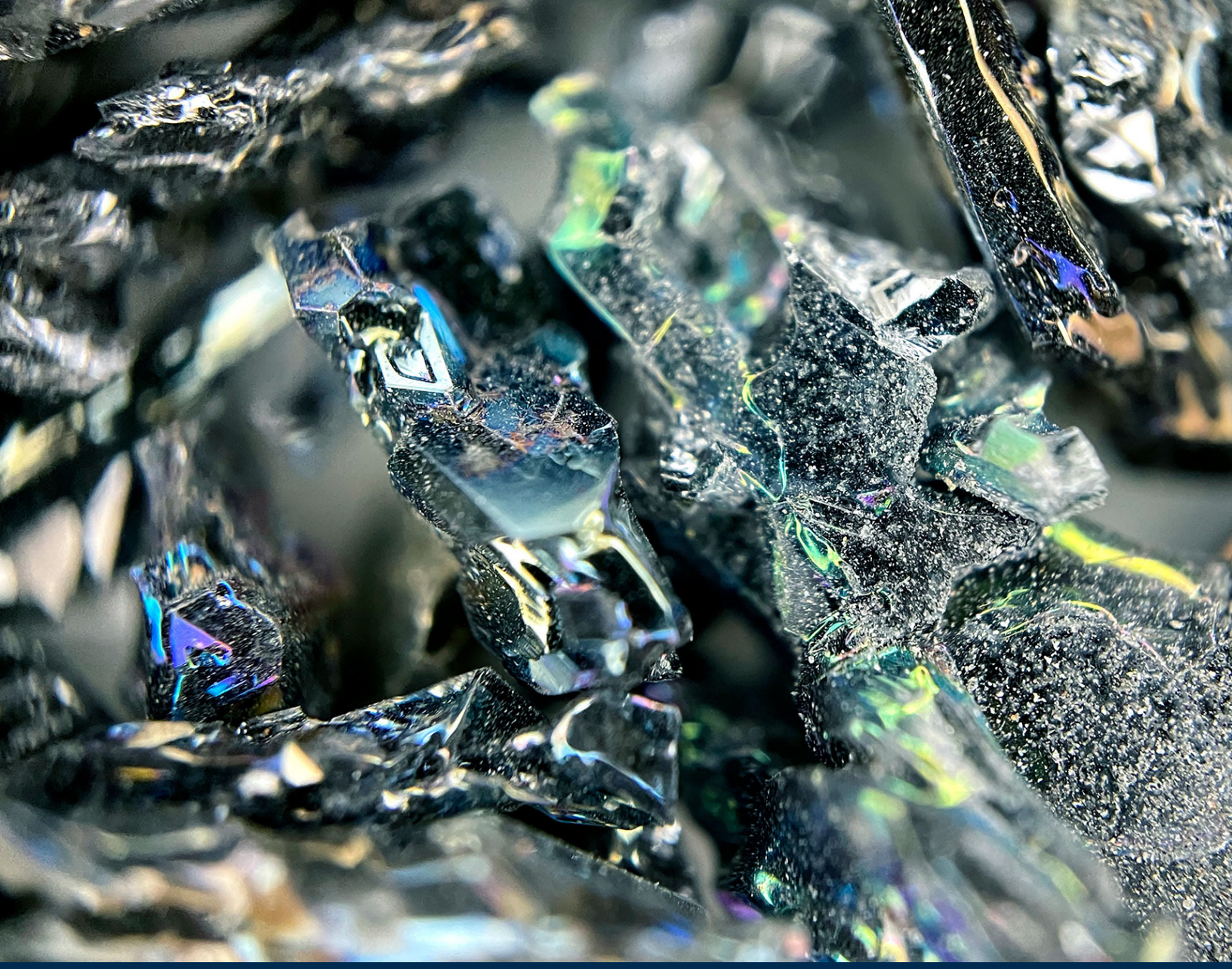
Legislative and policy developments

The development of critical minerals necessary to support the energy transition and the development of the supply chain (including critical minerals) for the energy transition has been identified as a clear priority by multiple levels of Canadian government. The federal government introduced the Canadian Critical Mineral Strategy in December 2022, describing it “a road map to seizing a generational opportunity” to become the world’s supplier of choice for critical minerals. The Critical Minerals Strategy is being supported federally by an array of fiscal stimulus measures, including tax incentives in respect of critical minerals and direct financial support for project development. A number of provinces have introduced similar critical mineral strategies, providing their own financial and policy supports.

In tandem with efforts towards fiscal support, the government recognizes the need to streamline the regulatory process that oversees mining development. By way of example, the Government of Ontario recently proposed amendments to its *Mining Act*, trumpeting these changes as necessary to “help attract more investment” and to “secure the critical minerals that support the made-in-Ontario supply chain for new technologies like batteries and electric vehicles”. While the scope of these changes was relatively limited, the proposed amendments and messaging are indicative of a strong desire to be seen as supportive of the mining industry, particularly in the context of the battery metals supply chain and the energy transition.

Significant case law

Governments, regulators and courts in Canada continue to consider the duty to consult and, if applicable, accommodate Indigenous peoples—and this is an evolving area of law. Recently, the British Columbia Supreme Court found that the granting of mineral claims triggers the duty to consult and that the current online mineral tenure system does not include Indigenous consultation and should be re-designed by the provincial government. This decision is discussed in more detail below.

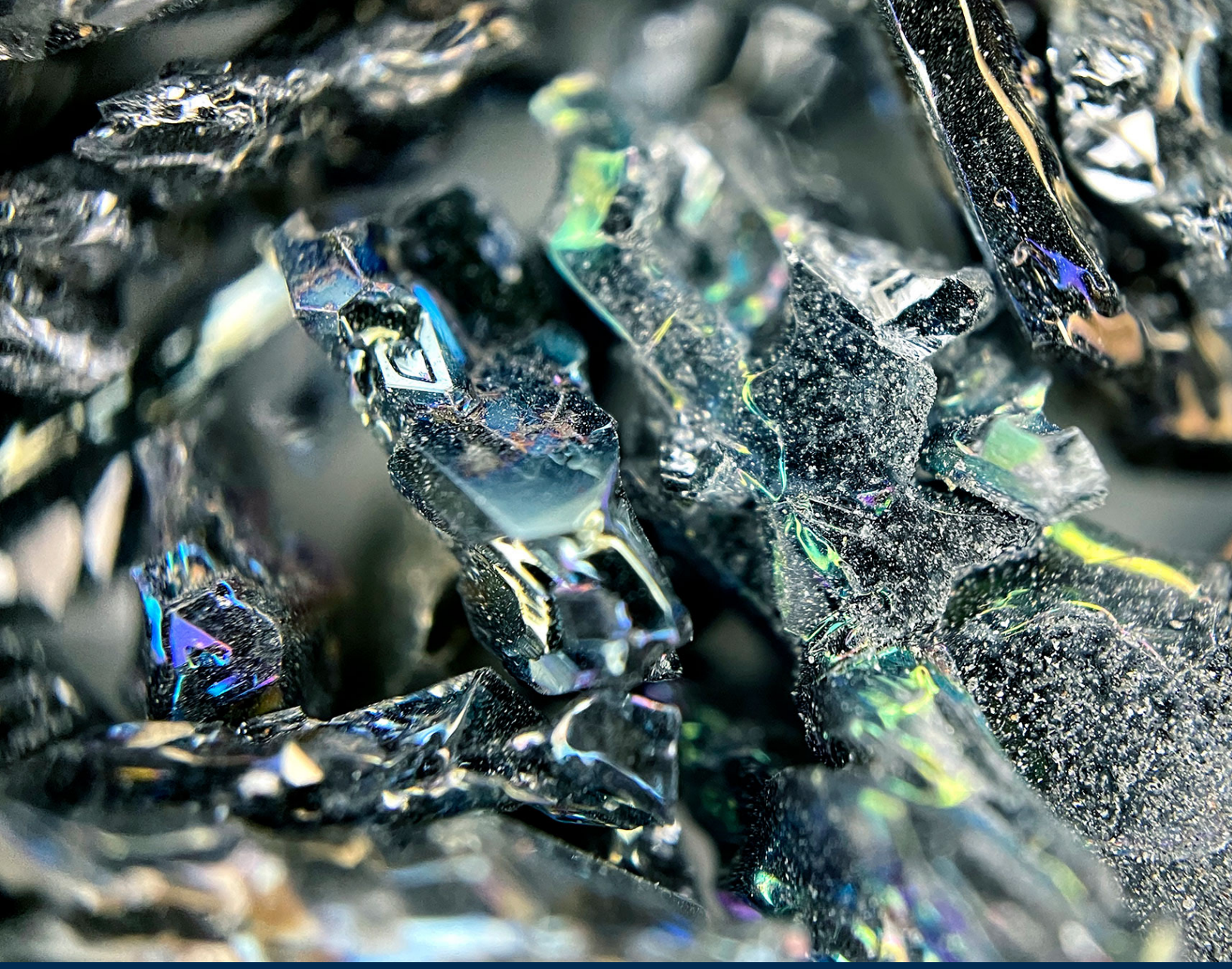


Legal framework

Legislative authority in Canada is constitutionally divided between the federal government and the ten provincial governments, with each government autonomous with respect to matters within its jurisdiction, which creates the potential for overlap where an activity falls across multiple spheres of legislative authority.

Jurisdiction over mining activities is shared between the federal government and the provincial governments. Each province has exclusive power over the regulation of mineral exploration, extraction, development, conservation and management within its territory. Private property and land-use regulation also typically falls under provincial jurisdiction. Jurisdiction is shared or partially allocated over a number of areas impacting mining, including regulation of the environment and taxation. The federal government does have exclusive jurisdiction over matters that may indirectly impact mining and mining investors, such as foreign investment and competition restrictions.

The federal government has exclusive constitutional authority over mineral exploration, development, conservation and management in each of the territories, although this power has largely been devolved to the territorial governmental authorities by regulation.



Mining rights and required licences and permits

Title

Mineral title in Canada is largely held by the Crown, (i.e., federal or provincial governments in the name of the monarch). Subject to aboriginal title and private ownership, the federal government owns all minerals located offshore and under any federally owned land. Each province owns the mineral located in its territory, subject to those minerals owned by the Government of Canada.

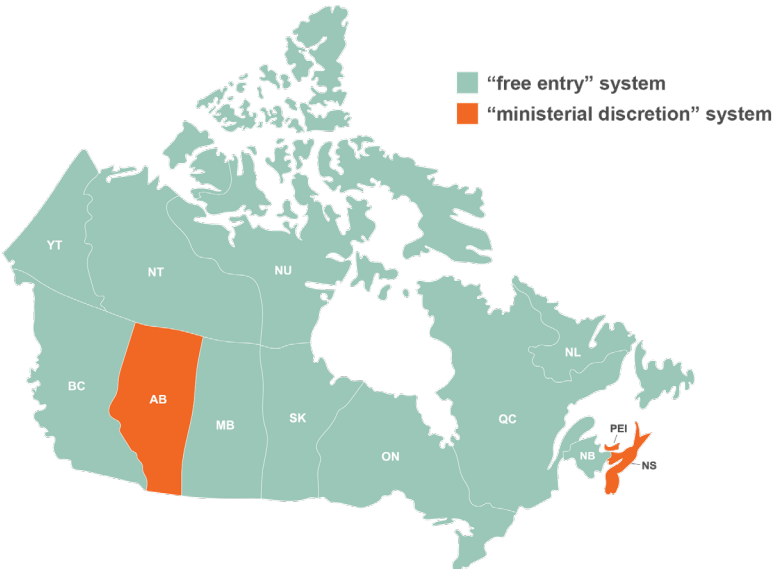
Historically, land grants might include granting the ownership of the minerals under such land (freehold mineral rights), but the overwhelming practice for much of Canadian history has been to sever the surface rights to the land from the underlying mineral title and retain Crown ownership of the minerals. Mineral rights granted in connection with Crown-owned minerals allow for the extraction and sale of minerals but not the ownership of the minerals in the ground.

Surface and mining rights

Mining legislation and related property law concepts in each jurisdiction address the respective rights and interests and any conflicts between the holders of surface and mining rights. Where there is a conflict, the mining right may typically be exercised upon adequate compensation to the surface rights holders. Where compensation cannot be agreed upon, most jurisdictions provide for the determination of appropriate compensation, and where compensation cannot be determined or is not a sufficient remedy, for the holder of the mining right to acquire the surface rights for prescribed consideration.

Mining rights in Canada broadly fall into two categories: a first-stage mineral right (typically a mineral claim or an exploration licence) that allows for the conduct of exploration work on an exclusive basis over a specified area over a defined period (typically several years) and a subsequent mineral right (typically a mining lease) allowing for the continuation of exploration work, while allowing its holder to carry out extraction and processing on a commercial basis, which typically has a longer term.

There are two types of mineral rights acquisition systems used in Canada, with the system being determined by the particular province or territory. The prevalent regime is a “free-entry” system, used in all provinces and territories other than Alberta, Nova Scotia and Prince Edward Island, which each use a “ministerial discretion” system.



Under free-entry systems, persons may claim, on a first-come-first-served basis, areas on which they intend to carry out exploration work. Claim staking is now largely online, although some jurisdictions still permit physical staking of claims. Provided that the area is available for claim (not closed for competing land uses such as national parks) and not subject to a pre-existing mineral right, as long as certain prescribed formalities are met, the mineral claim (or exploration licence) will be granted without government discretion. Claims typically have minimum work requirements that must be complied with to maintain the claim in good standing. A claim also entitles the holder to obtain a mining lease, which is also not subject to government discretion, other than meeting certain prescribed conditions.

Ministerial discretion systems differ from free-entry systems in that discretion is retained by the government with respect to the granting of mineral rights. While in practice rights may be routinely granted, there is a fundamental difference in systems that retain government power over the grant, rather than free-entry systems that award property rights based on discovery efforts.

Outside of uranium, there are generally no formal restrictions on foreign parties holding mineral rights, provided that they have the proper registrations and licences in the jurisdiction.

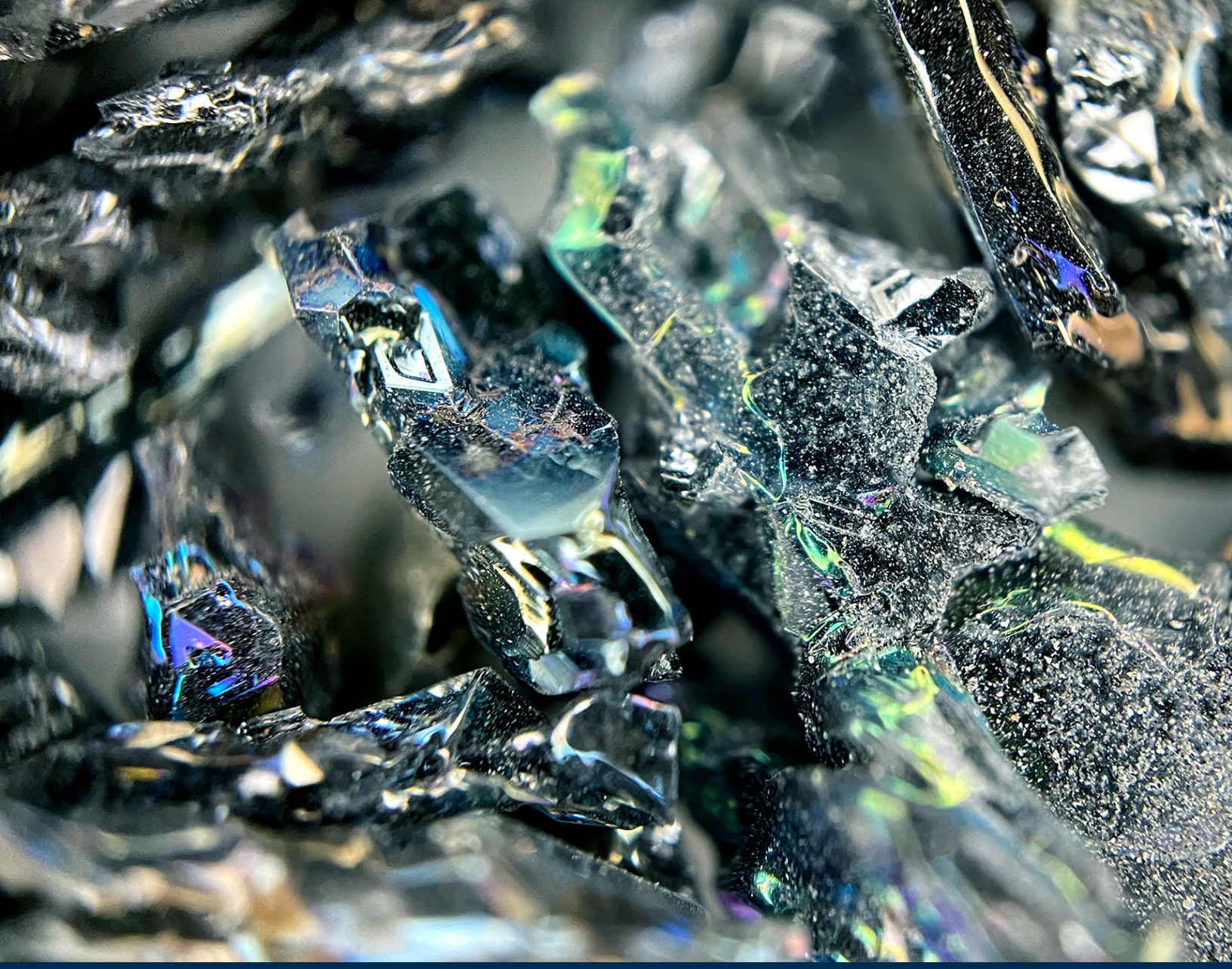
Additional permits and licences

A number of other permits and authorizations may be required in connection with conducting mining activities. These typically relate to the nature of the activity being conducted, with more extensive permitting requirements for activities with a greater potential for disturbance or harm.

Governments across Canada are increasingly acknowledging the significant time period and complexity involved in permitting a mine through exploration, to development and operation, as well as challenges posed by the overlapping provincial and federal regulatory regimes.

Closure and remediation of mining projects

Prior to commencing mining activities (including in some cases, advanced exploration work), most jurisdictions require a closure and rehabilitation plan to be filed with respect to such activities. Annual reporting and periodic updates are also typically required in connection with these closure and rehabilitation plans. Financial assurance or other forms of guarantee covering all or a portion of the anticipated costs of the plan may also be required in connection with the submission and maintenance of these plans.



Environmental, social and governance considerations

Sustainable development

In addition to sustainable development initiatives being developed and implemented outside of Canada, in Canada, the Mining Association of Canada has developed and implemented the *Towards Sustainable Mining* initiative, which has been adopted by other national mining chambers around the world. This initiative assists mining companies to transform environmental and social commitments into action and requires participants to assess and publish their performance against indicators specified in the applicable protocols.

Like many other countries, Canada has implemented laws to support sustainable development. For example, Canada recently passed the *Fighting Against Forced Labour and Child Labour in Supply Chain Act*, which will require reporting starting in 2024 and impose other obligations.

Environmental compliance

Both federal and provincial governments have jurisdiction over and regulate environmental matters, including whether an environment or impact assessment (collectively, an "EA") is required for a mining project. Prior to the construction of a proposed large mine in Canada, both federal and provincial (or territorial) EA approval is generally required. These EA processes can be quite complex and time-consuming (often several years, if not longer, especially for projects subject to the federal EA regime). At a high level, these EA processes generally require an assessment of effects and must obtain public feedback to generate an EA report, which is used by the relevant government(s) to make the EA decision. There are mechanisms in place to minimize duplication and streamline these EA processes, and in some cases, the provincial or territorial EA regime can largely be used to substitute for the federal EA regime.

As in many countries, developing and operating a mine in Canada generally requires numerous permits and other authorizations in addition to any required EA approval. Typically, such authorizations are more straightforward, and obtained on a much shorter timeline, than EA approvals in Canada.

Indigenous and third-party rights

Addressing Indigenous rights is a key issue for most large mining projects in Canada. Generally, the duty to consult and, if appropriate, accommodate is the most significant Indigenous rights issue for the development and operation of a mine. Prior to taking an action that may affect a claimed Aboriginal or treaty right or Aboriginal title, the Crown has a constitutional duty to:

1. consult with such Indigenous peoples to understand their claimed rights and how the proposed Crown action may affect such claimed rights; and
2. if appropriate, to accommodate such claimed rights, which, as a practical matter, means seeking to balance the Indigenous peoples' interests related to those rights, and the government's interests in taking the action.

While the duty to consult and accommodate is an obligation of the Crown, it often delegates procedural aspects of the duty to proponents of large mining projects. If the duty to consult and accommodate is not sufficiently satisfied, a court may find that any Crown action (such as issuing an EA approval) is invalid. As a result, the proponent of a large mining project in Canada may suffer most of the consequences if the duty to consult and accommodate is not satisfied.

The content of the duty to consult varies depending on the circumstances, and the degree of consultation required is proportionate to a preliminary assessment of the strength of the case supporting the right or title claim and to the seriousness of the potential adverse effect on the right or title claim[3]. In practice, the degree of consultation for large mining projects tends to be on the more significant end of the spectrum.

The duty to accommodate arises where a strong case exists for the right or title claim, and the consequences of the Crown's proposed action may adversely affect the claim in a significant way[4]. The Supreme Court of Canada has indicated that this accommodation is not a veto over the affected lands until the claim is resolved—rather, "what is required is a process of balancing interests, of give and take"[5].

Typically, a proponent of large mine in Canada seek to enter into an agreement with the Indigenous groups that would be most affected by the proposed mine. Such agreements tend to align interests of the proponent and Indigenous group(s) by providing certain benefits (such as a payment stream, equity position, and/or preferential employment and contracting opportunities) and often will restrict the Indigenous group(s) from objecting to the project and the related consultation and accommodation.

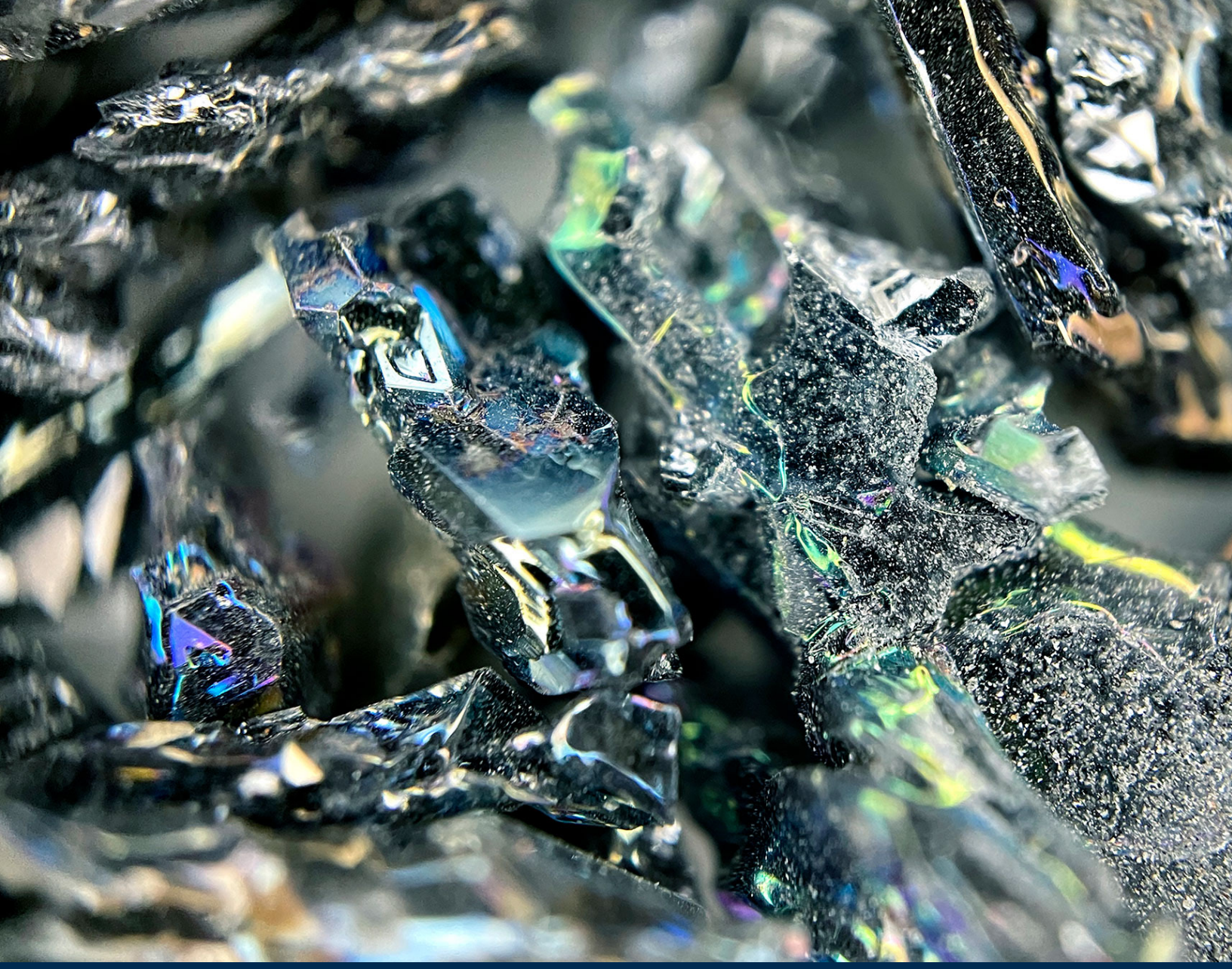
On 26 September 2023, the British Columbia Supreme Court found that the granting of mineral claims (even in advance of any exploration activities) triggers the duty to consult, and that British Columbia's current mineral tenure granting system does not require Indigenous consultation (although such consultation is part of later permitting stages). The Court has suspended the implementation of the declaration for 18 months to allow for the design of a regime that allows for consultation[6]. Due to the similarities between the British Columbia system and other provinces with a "free-entry" system, this decision may have implications for projects in other parts of Canada, too.

Additional considerations

Social licence for large mining projects in Canada remains an important consideration. Social licence can, directly and indirectly, affect the outcome and timing of EA processes. Increasingly, certain Indigenous groups are asserting that their free, prior and informed consent (FPIC) pursuant to the United Nations Rights of Indigenous Peoples (UNDRIP) or their approval pursuant to their inherent rights is required for developments (including new mines) to proceed in their traditional territories. While some Canadian jurisdictions have begun the process of ensuring that their laws are consistent with the UNDRIP, we are not aware of FPIC (or without more, alleged inherent rights being sufficient for a veto) as a legal matter. That said, with increased awareness and desire for Indigenous reconciliation in Canada such arguments may be sufficient to undermine social licence. Thus, social licence issues—especially those involving Indigenous peoples—should be carefully managed.

One of the potential tools to address important issues with respect to EAs, social licence and FPIC are Indigenous-led EAs, which are increasingly being utilized. They provide Indigenous groups with the opportunity to undertake studies of potential project impacts that may affect their peoples, territories and rights. Properly designed and implemented Indigenous-led EAs may provide many benefits to mining project, including potentially resulting in FPIC, increasing the social licence of a mining project that is ultimately approved by an Indigenous-led EA, and shortening EA timelines.

[3] Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73 at para. 39.
[4] Ibid., paras. 46-47.
[5] Ibid., para. 48.
[6] Gitxaala v British Columbia (Chief Gold Commissioner), 2023 BCSC 1680 (CanLII), para. 14.



Operations, processing and sale of minerals

Employment, health and safety

Employment, health and safety issues in the mining industry are largely handled through respective provincial and territorial legislation. These regimes can be complex, and mining operators should understand the specific regime in their jurisdiction. Specific minerals of concern from an occupational health and safety perspective also have specific legislation and regulations. Directors and office are responsible for ensuring corporate compliance with labour and health and safety regulations and may face personal liability in certain circumstances.

Processing and operations

Mining operations and mineral processing in Canada is subject to comprehensive regulatory regimes, which require obtaining and maintaining permits and authorizations, as well as ongoing reporting obligations.

Mineral processing is generally not required to be conducted within the province or country, unless included in the terms of the mining lease. Ontario and Nova Scotia typically require processing, refining and beneficiation within Canada (subject to being granted an ordinary-course exemption), with Québec and the other Atlantic Provinces requiring or prioritizing in-province processing.

Sale, import and export of extracted or processed minerals

Subject to provincial restrictions on the processing of minerals, import and export restrictions are the jurisdiction of the federal government. Canada does have import and export controls in place but broadly favours the free movement of goods, and the application to minerals is largely limited to application through sanctions and nuclear non-proliferation agreement.

Foreign investment

Foreign investment in Canada is regulated pursuant to the *Investment Canada Act* (ICA). Although the government has broad jurisdiction to review investments, foreign investors only have mandatory reporting obligations when they propose to acquire control of a Canadian business. Proposed legislative amendments would expand reporting requirements to include certain minority stake acquisitions, including non-controlling acquisitions in critical minerals businesses and require expanded pre-reporting.

Under the ICA, a Canadian business can include a mining business with a negligible connection to Canada (including a business headquartered in Canada where all of its revenue-generating assets are located outside of Canada). Mineral properties at the exploration stage of development are not considered to be “businesses” under the ICA, whereas a producing mine or a mine in development will be considered a “business”.

Reporting is typically required before or within 30 days after closing. Pre-completion approval is required where certain enterprise values are exceeded, or in the case state-owned enterprises (SOEs), a lower book value threshold.

The net benefit assessment is based on the impact that the acquisition will have on the Canadian business, with reference to the management team, employment levels and capital expenditures. For SOEs, the degree of influence that the foreign government has over the SOE and its commercial orientation and corporate governance is considered. Investments are generally approved if investors enter into binding undertakings relating to the maintenance and/or growth of the Canadian business.

All non-Canadian investors are required to submit a national security review notification form when they acquire control of a business or establish a new business, which must be filed before or within 30 days after closing. Upon receipt, the Minister has 45 days to initiate a review, and if not initiated in such period, the investment is presumed cleared under the ICA. If an investment is subject to a national security review, the maximum review timeframe is 200 days (or longer with the consent of the investor).

The likelihood of a national security review will depend on the country of origin of the foreign investor and the activities of the Canadian business. Investors from China or Russia are typically high-risk, particularly SOEs. Investors from Canada's other primary trading partners, such as the US, UK, Australia, European Union and Japan, are unlikely to raise national security concerns, even if they are SOEs.

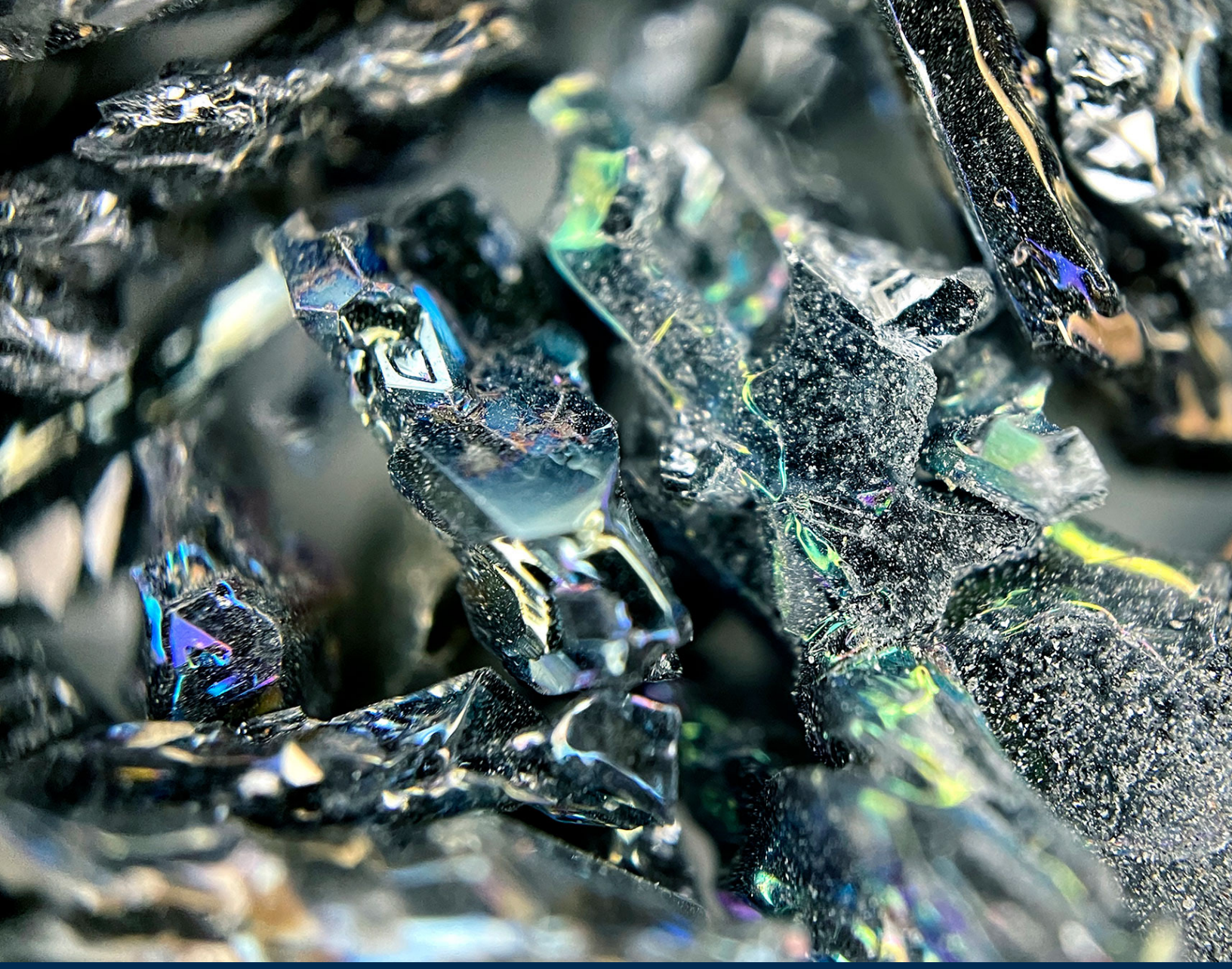
Transactions subject to remedial action are usually blocked or require divestiture, requiring the foreign investor to sell the acquired business within a short period of time.

Critical minerals are a current enforcement focus, with 31 minerals deemed "critical" to Canada's economic and national security interests. In late 2022, the Canadian government announced a) a restrictive policy on investments in critical minerals; b) that it was ordering divestitures of three Chinese investments in Canadian-listed critical minerals companies; and c) a foreign investment policy stating that "China is an increasingly disruptive global power", and that the government will "[act] decisively when investments from SOEs and other foreign entities threaten our national security, including our critical minerals supply chains".

Pre-merger notification under *Canada's Competition Act* is generally required for the proposed acquisition of interests in a Canadian business (20% for public companies, 35% for private companies), where certain thresholds for party size and asset and revenue size are met. If the thresholds are exceeded, the Competition Bureau must be notified and await a 30-day statutory waiting period before completing the transaction. The waiting period can be extended for a supplemental information request (SIR), in which case the waiting period is extended until 30 days after compliance with the SIR. Reviews typically end with the issuance of a No Action Letter confirming the merger is not being challenged.

Parties can request an exemption from pre-merger notification by applying for an Advance Ruling Certificate (ARC). An ARC application takes the form of a letter describing the transaction, the parties and explaining why there are no substantive competition law concerns. ARCs are typically issued where there is no substantive competitive overlap between the parties.

There is a filing fee, which is adjusted annually. Failure to file is a criminal offence, punishable by fines. Failure to observe the statutory waiting period is subject to civil fines.



Financing

Overview

Canada is a hub for mining exploration companies and a centre for mining finance. Approximately 40% of all publicly listed mining companies globally are listed on the Toronto Stock Exchange or TSX Venture Exchange[7]. The TSX has become a source for capital for mining development around the world. Mining companies listed in Toronto have assets throughout the world and, in many cases, will not have any mining assets located in Canada. As a centre of finance and the home of many mining companies, each of Vancouver, British Columbia and Toronto, Ontario have developed a significant infrastructure of management and administrative service as well as third-party legal, accounting, banking and engineering professional expertise relating to the mining sector.

Capital raising

As a centre for mining exploration financing, the Canadian capital markets and related regulation have developed specific traits to support and regulate the mineral exploration sector.

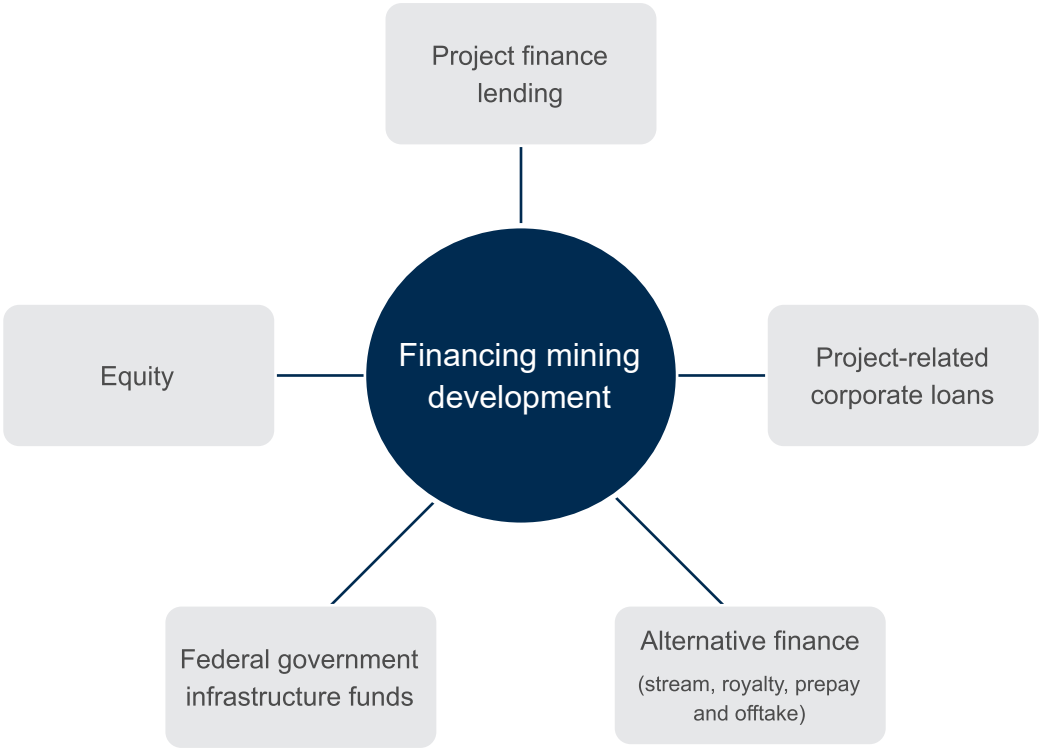
One tax-advantaged financing structure utilized to finance mining exploration in Canada is the offering of flow-through shares. Flow-through shares allow the issuer to pass through certain eligible deductions, from exploration and development expenses to the holder of these shares, allowing the holder the benefit of the deductions and allowing the issuer to realize a higher share price in exchange. According to the Prospectors and Developers Association of Canada, over 65% of funds raised on Canadian stock exchanges specifically for exploration comes from flow-through offerings. As part of the government's support of exploration for critical minerals, the existing flow-through shares rules were recently expanded to lithium from brines.

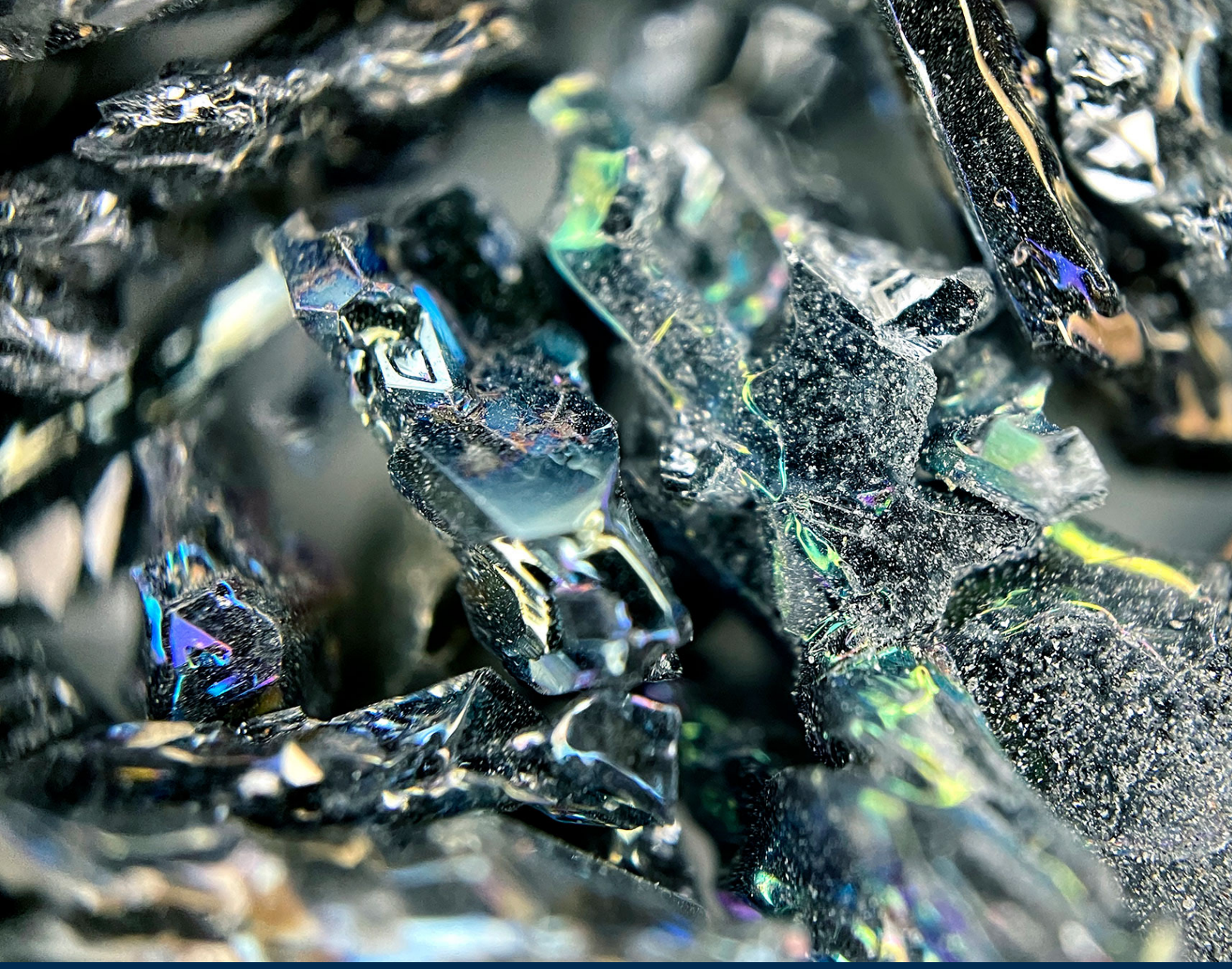
Canada's experience regulating the public disclosure of the junior exploration market and mining companies led to the development of leading regulation of mineral resource and reserve disclosures in the form of National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* (NI 43-101), which is a gold standard for public disclosure of technical reviews of mining projects. NI 43-101 establishes a regime governing disclosure of scientific and technical information, including resource and reserve disclosure. In particular, the rules mandate the development of a technical report required for material projects of publicly listed companies and a regime for the review of scientific and technical information by qualified persons.

Mining projects in Canada are typically financed with equity and then some form of project finance lending. Project finance for mining companies has evolved consistent with project financing space generally. In particular, Canadian banks and other project lenders are now almost universally signatories to the Equator Principals, which include detailed requirements for project finance and project-related corporate loans. These terms are relatively new in the Canadian financing market, and project proponents are adjusting operations and reporting to satisfy these requirements. Alternative finance, including stream, royalty, prepay and offtake, continues to play a key role in the financing packages for mining projects in Canada and global mining projects owned by Canadian mining firms.

[7] Toronto Stock Exchange/TSX Venture Exchange, "Sector and Product Profiles: Mining," (Accessed October 13, 2023).

The continued focus on critical minerals is also impacting financing opportunities in Canada for projects. The Canadian government's 2023 Federal Budget contained a number of financing commitments designed to support the Canadian Critical Mineral Strategy. These included tax incentives in respect of critical minerals as well as direct financial support for project development. The federal government announced the launch of a $1.5 billion Critical Minerals Infrastructure Fund for the development of energy and transportation projects in support of critical minerals project development. The new fund is designed to complement other clean energy and transportation supports.





Royalties, taxes and duties

The various charges levied with respect to the mining industry in Canada encompass a mix of a) royalties that vary across provinces and territories, b) federal and provincial income taxes, and c) potential customs duties.

The choice of business structure can influence the charges imposed on businesses engaged in mining in Canada, which can affect both domestic and foreign mining companies; a nuanced understanding of each specific jurisdiction's royalty and tax regime is essential.

Royalties

Royalties and mining taxes are distinct from income taxes and are generally determined by the province or territory where the mining activities occur. The table below outlines certain royalties prescribed by each province or territory in Canada in respect of mining activities:

Royalties in respect of mining activities

Province/territory	Royalty
Alberta	Complex set of differing royalties for different mineral, including quantum-based royalties.
British Columbia	Specific taxes on mining proceeds, including a smaller portion that is based on net current proceeds, with restrictions on deducting certain expenses.
Manitoba	Mining tax on profits from operations.
New Brunswick	A percentage-based royalty on an operator's annual net revenue and net profit.
Newfoundland and Labrador	A percentage-based royalty is levied.
Nova Scotia	A net revenue-based or net income-based royalty.
Ontario	Operators that produce defined mineral substances are subject to a mining tax.
Prince Edward Island	Does not impose royalties.
Québec	Greater of 1) minimum mining tax for the fiscal year and 2) mining tax on annual profit for the fiscal year.
Saskatchewan	Producers of coal, sodium chloride, potash, uranium, diamond and precious and base minerals are charged a provincial Crown royalty.
Northwest Territories	Levied on a mine-by-mine basis.
Nunavut	Levied on a mine-by-mine basis.
Yukon	A royalty is payable on all ore, mineral or mineral-bearing substances.

Taxes

Entities carrying on mining activities in Canada are subject to the income tax regimes applicable to all businesses. The federal and provincial governments in Canada levy income tax on corporations, individuals and trusts under the *Income Tax Act* (Canada) (Tax Act) and various provincial taxing statutes, respectively. Partnerships are generally considered flow-through entities for income tax purposes, with specific rules

for calculating income and losses at the partnership level and allocating such income and losses to the partners, which then recognize the income or losses in the calculation of their own tax liability.

The income tax regime that applies to mining provides a range of mining-specific incentives and deductions to encourage exploration and mining activities, acknowledges the capital-intensive nature of the industry and promotes mining investment by including the following options:

- a deductibility of government royalties and mining taxes;
- a capital cost allowance system, allowing for the depreciation of tangible assets at a defined maximum rate by asset class;
- a favourable deductibility of certain defined costs incurred in mineral exploration (Canadian Exploration Expenses or CEE) and in pre-production mine development (Canadian Development Expenses or CDE);
- flow-through shares allowing issuers to renounce certain tax deductions (e.g., CDE and CEE) to shareholders, who can then deduct these expenditures when calculating their income; and
- exploration tax credits[8] (15% generally and 30% with respect to certain critical minerals) in respect of certain eligible exploration expenses (in addition to the regular tax deduction associated with flow-through shares).

The 2023 Federal Budget also proposed a new refundable investment tax credit equal to 30% of the capital cost of eligible property associated with the extraction and certain processing activities related to six critical minerals essential for clean technology supply chains.

Duties

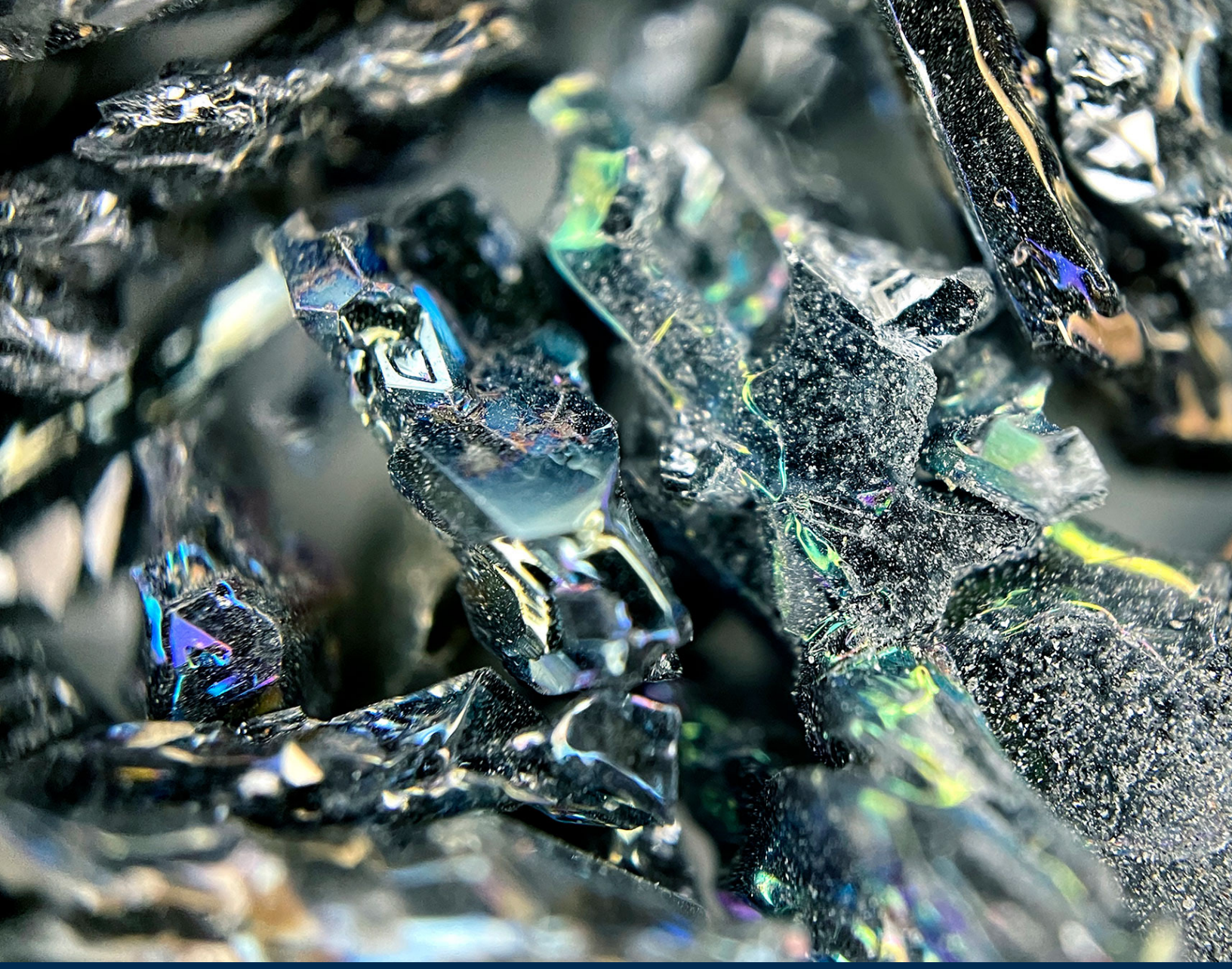
Mining payments to governments in Canada take the form of government royalties, income taxes and other fees as discussed herein, and there are not independent duties assessed on production.

Imported commercial goods in Canada are subject to import duties, but in the context of mining, the federal government has progressively eliminated tariffs on a wide range of manufacturing inputs, machinery and equipment imported into Canada.

Other fees

In addition to mining royalties, and administrative fees levied pursuant to mining legislation, mining operators in Canada are subject to other taxation regimes that generally apply to businesses in Canada, including federal and provincial payroll taxes and sales taxes, among others.

[8] The mineral exploration tax credit is generally available until March 31, 2024. Certain provinces have similar provincial tax credit regimes. The critical mineral exploration tax credit is generally available in respect of flow-through share agreements entered into before March 31, 2027.



Outlook and conclusions

The mining industry in Canada remains a critical part of the Canadian economy. In the near term, we expect continued regulatory and government support for the development of critical minerals in the form of ongoing stimulus (fiscal and otherwise) and regulatory attention to improving the approval process for mining projects in Canada. Indigenous rights and other community interests in mining projects will remain a critical issue for the mining industry, and we expect that regulators and the courts in Canada will continue to actively consider those interests, and the law in this respect to continue to evolve.

About Torys LLP

Torys is an international business law firm known for sophisticated counsel, best-in-class client service and the most cohesive Canada-U.S. cross-border team in the market.

Our Mining Practice

Torys' Mining and Metals team understands the dynamics and cycles of the sector. Our practical approach comes from a history of deep involvement in the industry, assisting leading players on high-profile matters. Our skilled group of mining lawyers regularly advise clients on both sides of the Canada-U.S. border and internationally on every aspect of the sector–from project financing, capital markets and M&A activity, to joint ventures, mining arbitration matters and negotiations with Indigenous groups.

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