

MINERAL ACT

CHAPTER 259

Interpretation

1. In this Act

- “certified mining lease” means a mining lease certified by the chief gold commissioner;
- “exploration and development” means prospecting, exploring, surveying, drilling or other activities as may be prescribed;
- “free miner” means a person who holds a valid and subsisting free miner certificate issued under this or a previous Act;
- “lease” means a lease issued before June 30, 1976;
- “leasehold” means the area leased under a lease, mining lease or certified mining lease;
- “legal corner post” means a post, placed and marked in accordance with the regulations that establishes the true geographical point from which the location of a mineral claim is determined;
- “limited production” means annual production of less than 1 000 t (metric) of ore;
- “mine”, where used as a noun, means land from which a mineral deposit is mined for its mineral content;
- “mineral” means ore of metal and every natural substance that can be mined and that
- (a) occurs in fragments or particles lying on or above or adjacent to the bedrock source from which it is derived, and commonly described as talus; or
 - (b) is in the place or position in which it was originally formed or deposited, as distinguished from loose, fragmentary or broken rock or float which, by decomposition or erosion of rock, is found in wash, loose earth, gravel or sand,
- but does not include coal, petroleum, natural gas, building and construction stone, limestone, dolomite, marble, shale, clay, sand, gravel, volcanic ash, earth, soil, diatomaceous earth, marl or peat;
- “mineral claim” means an area located other than as a 2 post claim after February 28, 1975 and includes a fractional mineral claim;
- “mining lease” means a mining lease issued under section 29;
- “mining property” includes a mineral claim, 2 post claim, leasehold and real and personal property pertaining to a mine or used in the working of it;
- “ministry” means the ministry responsible, under the minister, for the administration of this Act;
- “2 post claim” means a mineral claim or fractional mineral claim located on or before February 28, 1975 or a 2 post claim located after January 1, 1978;
- “unit” means a square of prescribed dimensions contained in a mineral claim.

1977-54-1.

Free miner certificate

2. (1) No person shall prospect or explore for, locate, mine or produce minerals or acquire title to a mineral claim or leasehold unless he is a free miner; but a person

employed by the holder of a mineral claim or leasehold to prospect or explore for, mine or produce minerals need not be a free miner.

(2) For the purposes of this section,
“Canadian corporation” means

- (a) a company as defined in the *Company Act* or the *Company Clauses Act*, or a corporation registered as an extraprovincial company under the *Company Act*;
- (b) a trust company registered under the *Trust Company Act*;
- (c) an insurance company licensed under the *Insurance Act*; or
- (d) a chartered bank,

in which at least 50% of the directors are Canadian residents;

“Canadian resident” means a person, other than a corporation, who is ordinarily resident in Canada and who

- (e) is a Canadian citizen; or
- (f) if not a Canadian citizen, has not, at the date he applies for, or applies to renew, a free miner certificate, ordinarily resided in Canada for a continuous period of more than 8 years.

(3) On application in prescribed form and on paying the prescribed fee, the gold commissioner shall issue a free miner certificate to the applicant if

- (a) he is 18 years of age or over and is a Canadian resident; or
- (b) it is a Canadian corporation.

(4) A free miner certificate

- (a) shall be in prescribed form;
- (b) is subject to this Act;
- (c) shall not be transferred;
- (d) shall be issued in the name of only one person and, where that person is a corporation, shall be issued in its corporate name;
- (e) may be renewed on application and compliance with this Act and the regulations;
- (f) is proof in the absence of evidence to the contrary of every matter contained in it; and
- (g) is void and unenforceable if the person to whom it is issued ceases at any time to be a Canadian resident or a Canadian corporation.

(5) Notwithstanding subsections (3) and (4) (g)

- (a) a free miner certificate that is subsisting or is eligible for renewal under the Act repealed by this Act on January 1, 1978 shall, whether or not the holder is a Canadian corporation or a Canadian resident, continue to be valid so long as it is renewed, in accordance with this Act, within one year after its expiry date; and
- (b) the Lieutenant Governor in Council may, by order, authorize a free miner certificate to be issued to a person who is not a Canadian corporation or a Canadian resident.

(6) A person under the age of 19 years to whom a free miner certificate is issued shall, for the purposes of operating and contracting with respect to his mining property, be deemed to have attained the age of 19 years.

Term of certificate

3. Where a free miner certificate is issued it is valid from the beginning of the day on which the application was received until the end of the day it is expressed to expire.

1977-54-3.

Register may be searched

4. On payment of the prescribed fee, a person may have searched the register of free miner certificates and obtain a written report respecting the presence or absence of a particular name or certificate on the register.

1977-54-4.

Failure to renew certificate

5. Failure to renew a free miner certificate does not affect title to mining property.

1977-54-5.

Land on which free miner may enter

- 6.** (1) Subject to this section, a free miner may enter
- (a) Crown land and land in which minerals are reserved to the Crown and prospect and explore for, locate, mine and produce minerals; and
 - (b) land in which gold or silver is reserved to the Crown and prospect and explore for, locate, mine and produce gold or silver.
- (2) The right of entry under subsection (1) does not extend to
- (a) land occupied by a building;
 - (b) the curtilage of a dwelling house;
 - (c) orchard land;
 - (d) land under cultivation; or
 - (e) land lawfully occupied for mining purposes other than placer mining.

1977-54-6.

No exploration in parks without consent

7. Notwithstanding an Act, agreement, free miner certificate, mineral claim, mining lease or licence, no person shall locate, prospect or explore for, mine or produce minerals in a park created under an Act unless authorized by the Lieutenant Governor in Council on the recommendation of the person, corporation or government that is responsible for the park.

1977-54-7.

Prohibitory orders

8. The Lieutenant Governor in Council may, by order, prohibit a free miner from locating or recording a mineral claim on land specified in the order in respect of all minerals or a particular mineral specified in the order, either absolutely or subject to conditions specified in the order.

1977-54-8.

Security and compensation for damages

9. (1) Where a free miner enters land that is lawfully occupied for other than mining purposes and that is not land granted to and held by or for a railway company under a railway subsidy Act, he shall, where required by the owner of the land, give security in an amount and form satisfactory to the gold commissioner for loss or damage that may be caused by the entry and he shall not again enter the land until he gives the security.

(2) Where a free miner causes loss or damage by his entry he shall, except with respect to entry on the railway land referred to in this section, compensate the occupant or owner or both.

1977-54-9.

Surface rights

10. (1) The holder of a mineral claim, 2 post claim, lease, mining lease or certified mining lease may use and possess the surface of his claim or leasehold for the purpose of exploring for, developing and producing minerals, including the treatment of ore and concentrates, and all operations related to the exploration, development and production of minerals and the business of mining.

(2) Subject to the *Forest Act*, the holder of a mineral claim, 2 post claim, lease or mining lease that is not in production shall be issued a free use permit or a licence to cut under the *Forest Act*.

(3) The holder of a mineral claim, 2 post claim, lease or mining lease, that is in production or being prepared for production, and the holder of a certified mining lease shall be issued a licence to cut under the *Forest Act*.

1979-22-23.

Restriction of surface rights

11. (1) Notwithstanding this or any other Act, the minister may restrict the use of surface rights by a person who holds a mineral claim, mining lease or certified mining lease where, after inspection and giving reasonable notice to that person, he is of the opinion that the surface is so situated that it should be used for purposes other than mining.

(2) Where surface rights are restricted under this section

- (a) the minister shall serve the holder with a notice of the restriction; and
- (b) the holder may appeal to the Lieutenant Governor in Council at any time within 30 days after service of the notice.

1977-54-11.

Disposition of surface rights

12. (1) Where a person holds a mineral claim, 2 post claim or Crown granted 2 post claim that is located on

(a) unreserved land owned by the Crown; and

(b) land not lawfully occupied for purposes other than for mining

and the minister certifies that the surface rights are or will be required by the holder for the purposes of mining, including the treatment of ore and concentrates, the Minister of Lands, Parks and Housing shall, on application of the holder, dispose of the surface rights to him

- (c) in whole or in part;
- (d) on the terms and conditions he considers to be in the public interest; and
- (e) on payment of an amount fixed by him based on the value of the unimproved land.

(2) Where a person holds a mineral claim, 2 post claim or Crown granted 2 post claim that is located on

- (a) unreserved land owned by the Crown; and
- (b) land not lawfully occupied for purposes other than for mining

and, after serving a notice on the holder, the minister certifies that the surface rights are not or will not be required by the holder for the purposes of mining, including the treatment of ore and concentrates, the holder or any other person may apply to the Minister of Lands, Parks and Housing and

- (c) if he considers it to be in the public interest;
- (d) on payment of the amount as may be fixed by him; and
- (e) on complying with the terms and conditions imposed by him,

the Minister of Lands, Parks and Housing may dispose of the surface rights to the applicant.

(3) Where the minister

- (a) under subsection (1), refuses to certify that the surface rights are or will be required; or
- (b) under subsection (2), certifies that the surface rights are not or will not be required,

he shall serve the holder with a notice of that fact.

(4) Where the minister,

- (a) under subsection (1), fails or refuses to certify that the surface rights are or will be required; or
- (b) under subsection (2), certifies that the surface rights are not or will not be required

the holder may appeal to the Lieutenant Governor in Council,

- (c) in the case of a failure to certify under subsection (1), not sooner than 6 months after making the application; and
- (d) in the case of a refusal to certify under subsection (1) or certifying under subsection (2), within 30 days after service of the notice under subsection (3).

1977-54-12; 1979-20-14.

Priority of surface rights on Crown land

13. (1) Where an application to acquire surveyed Crown land is received by a commissioner as defined in the *Land Act* before the location of a mineral claim on the land, and the application results in acquisition of the land, the rights under the acquisition to the surface of the land have priority over the rights under a mineral claim on that land.

(2) Where an application to acquire unsurveyed Crown land is received by a commissioner as defined in the *Land Act* and the staking of the land for the purpose of the application is completed before the location of a mineral claim on the land, and the application results in acquisition of the land, the rights under the acquisition to the surface of the land have priority over the rights under a mineral claim on that land.

1977-54-13.

Locating claim

14. A mineral claim shall be located in accordance with the regulations.

1977-54-14.

Location made on Sunday

15. Location of a mineral claim on a Sunday is not for that reason invalid.

1977-54-15.

Effect of location of part on reserved areas

16. The inclusion within a mineral claim of land situated in an area in which this Act prohibits the location of mineral claims does not affect the validity of the location as to the remainder of the mineral claim.

1977-54-16.

Inclusion of forfeited claims within mineral claim

17. (1) Where a mineral claim or 2 post claim is partially or wholly within a mineral claim of the same ownership, those portions located within the mineral claim shall, on forfeiture or cancellation, be deemed to be included in the mineral claim that remains in good standing and section 27 (2) does not apply to them.

(2) The chief gold commissioner may order that subsection (1) does not apply to an owner where the chief gold commissioner is satisfied that the owner has allowed his mineral claim or 2 post claim to be forfeited or cancelled in an attempt to avoid the requirements of section 22 or 45.

(3) Where an order is made under subsection (2),

(a) the chief gold commissioner shall serve a copy of the order on the owner;
and

(b) the owner may appeal to the minister at any time within 30 days after service of the order.

1977-54-17.

Reduction of mineral claim

18. The holder of a mineral claim may reduce the size of his mineral claim in accordance with the regulations and the unexpired exploration and development recorded or credited under section 24 for the area of a mineral claim that is excluded under this section may be applied to the reduced mineral claim, subject to the 10 year maximum referred to in section 24.

1977-54-18.

Acquiring reverted Crown granted 2 post claim

19. (1) Where a Crown granted 2 post claim has reverted to the Crown in right of the Province and the survey in respect of the claim has not been cancelled, the claim may, subject to the regulations, on application in prescribed form and payment of a prescribed recording fee, be acquired as a mineral claim without the necessity of locating it under this Act.

(2) On receipt of an order from the Lieutenant Governor in Council made at any time before an application is granted under subsection (1), the Surveyor General shall cancel the survey of a reverted Crown granted 2 post claim.

1977-54-19.

Recording of mineral claim

20. (1) A free miner who locates a mineral claim shall, within 30 days after he locates it, apply to record the mineral claim in the office of the gold commissioner for the mining division within which the legal corner post of the claim is situated.

(2) A mineral claim shall not be recorded unless the application is accompanied by

- (a) a statement in prescribed form;
- (b) a sketch plan of the location satisfactory to the gold commissioner; and
- (c) a recording fee of \$5 a unit.

(3) A mineral claim for which an application to record is not made within the 30 days shall be deemed to be void from the beginning as if it had never been located.

(4) Where a mineral claim is applied for or recorded in an incorrect mining division, the error does not affect the free miner's interest in the claim and on discovery of the error the gold commissioner shall send copies of all documents relevant to the claim to the correct mining division for recording.

1977-54-20.

Entitlement of minerals and nature of interest

21. (1) The holder of a mineral claim is entitled to those minerals and only those minerals that are inside the boundaries, continued vertically downward, of his claim.

(2) The interest of a holder of a mineral claim shall be deemed to be a chattel interest.

1977-54-21.

Maintenance of mineral claim

22. (1) A mineral claim may be held for one year after the date it was recorded and where, on or before the anniversary date, the holder

- (a) satisfies the gold commissioner for the mining division in which his claim is situated, by a statement made by a free miner who knows the facts, that there has been performed during the past year, exploration and development valued at not less than \$100 a unit with respect to each of the first 3 years and \$200 a unit for each subsequent year, and at the same time pays a recording fee of \$5 for each \$100 exploration and development recorded; or

- (b) pays the equivalent in cash in lieu of the exploration and development referred to in paragraph (a) and at the same time pays a recording fee of \$10 for each \$100 paid as cash in lieu under this paragraph

he may hold the mineral claim for a further year.

(2) Exploration or development performed after the claim is located, but before the claim is recorded, shall be deemed to have been done during the year immediately following the date the claim is recorded.

(3) Where 2 or more units, 2 post claims, or Crown granted 2 post claims, or any combination of them, adjoin, they may, on submission of the prescribed notice and fee, be grouped together in one group not exceeding 40.

(4) Where a group contains a unit, all units within the mineral claim to which it pertains shall be placed in the same group, subject to the maximum limit under subsection (3).

(5) Where grouping occurs under this section,

- (a) the exploration and development referred to in this section

- (i) may be performed anywhere within the group; and
- (ii) may be applied to any mineral claim, 2 post claim or mining lease in the group;
- (b) a part of a group shall not be included in another group until the expiration of one year after the original group was created; and
- (c) so long as the total in a group does not exceed 40, a supplementary prescribed notice and fee may be submitted at any time to add parts to an existing group.

1977-54-22.

Late recording

23. Where a free miner has performed the exploration and development referred to in section 22 (1) or 45 (4), as the case may be, but fails to pay the fees and submit the statement on or before the anniversary date, he may nevertheless renew his mineral claim for one or more years from the anniversary date on payment, in addition to the recording fee under section 22 (1) (a), of a late recording fee of \$10 for each \$100 exploration and development recorded or credited and filing the prescribed statement, so long as he does so within 30 days after the anniversary date.

1977-54-23.

Recording excess exploration and development

24. (1) Where a free miner performs exploration and development on his mineral claim during a year in excess of the amount referred to in section 22 or 45 (4), as the case may be, he may, in that year only and on payment of a recording fee of \$5 for each \$100 exploration and development, record the excess to the value of each \$100 or \$200 as the case may be, so as to cover the exploration and development for an additional year to a maximum of 10 years, and he is exempt from performing exploration and development for each year covered by the recording of excess exploration and development.

(2) Where the excess is insufficient to cover exploration and development on his mineral claim for a whole year, the free miner is entitled to a credit in multiples of \$100 toward exploration and development for a future year on payment of \$5 for each \$100 credited.

1977-54-24.

Portable report costs and refunds

25. (1) Notwithstanding sections 22 to 24, a free miner may, subject to the regulations, have credited to him the cost as approved by the chief gold commissioner, of exploration and development, and of a report made for him respecting the exploration and development, and the cost may, on application to the gold commissioner, be applied, subject to the 10 year maximum referred to in section 24, to a mineral claim held by him.

(2) On application to the gold commissioner a free miner may, pursuant to the regulations and by applying prescribed amounts of the approved cost referred to in subsection (1), obtain a refund of recording fees paid under section 22.

1977-54-25.

Forfeiture of interest of co-owner who fails to contribute

26. (1) On the failure of a co-owner or his personal representative to contribute the co-owner's portion of the exploration and development or expenditure required by section 22 or 45 (4), as the case may be, another co-owner who has performed and recorded the exploration and development or made the expenditure may, after an anniversary date, serve the delinquent co-owner or his personal representative with a notice that the co-owner's portion must be contributed within 3 months after service of the notice.

(2) Where the co-owner or his personal representative fails to contribute in full, including the costs of service, before the end of the 3 months, the co-owner's interest in the mineral claim vests in his co-owner who has performed and recorded the required exploration and development or made the required expenditure, on filing with the gold commissioner of the division in which the mineral claim is situated evidence satisfactory to him that the co-owner or his personal representative was served and the contribution not made.

(3) Where more than one co-owner is to be vested with the interest of a defaulting co-owner under this section, the interest shall be vested in proportion to the interests held by the co-owners who are in good standing.

1977-54-26.

Forfeiture

27. (1) Subject to section 23, where a free miner does not perform or record the exploration and development or pay the cash in lieu as required by this Act, his mineral claim shall, at the end of the day of the anniversary date forfeit to and vest in the Crown in right of the Province.

(2) Where a mineral claim forfeits, the free miner shall not hold a claim over the same land for a period of one year after the date of the forfeiture.

1977-54-27.

Abandonment of claim

28. (1) A free miner, or his agent appointed in writing filed with the gold commissioner, may at any time abandon a mineral claim by giving notice in writing and paying the prescribed fee to the gold commissioner, and the free miner's interest in the mineral claim ceases at midnight of the day shown on the notice recorded by the gold commissioner.

(2) Subject to subsection (3), the abandoned mineral claim shall not be relocated by a person for a period of 14 days after midnight of the day shown on the notice.

(3) With the written consent of the gold commissioner, a free miner or his agent may, during the 14 day period, relocate in the name of the immediate former owner part or all of the abandoned mineral claim.

(4) Where a free miner or his agent relocates a mineral claim under this section, he may apply the value of the unexpired exploration and development recorded or credited under section 24 on the abandoned claim to the relocated claim.

1977-54-28.

Issue of mining lease

29. (1) The minister shall issue a mining lease to a holder of a mineral claim who applies in the prescribed form, pays a fee of \$50 and satisfies the gold commissioner that he has

- (a) had the mineral claim surveyed by a British Columbia land surveyor;
- (b) posted, after the Surveyor General confirms the surveyor's plan, at the office of the gold commissioner a notice in the prescribed form stating that he intends to apply for a mining lease within 90 days after the date he posted the notice; and
- (c) published, not less than once in the Gazette and once each week for 4 consecutive weeks in a newspaper circulating in the area in which the mineral claim is situated, a copy of the notice referred to in paragraph (b).

(2) Not more than 40 adjoining 2 post claims, units or a combination of claims and units shall be included in one mining lease.

1977-54-29.

Term of mining lease

30. No mining lease or renewal of mining lease shall be issued for a period exceeding 21 years after the date it is issued or last renewed.

1977-54-30.

Uniform date

31. The chief gold commissioner shall, for the purpose of making uniform the terms of the mineral claims in a mining lease, consolidate, as of the date of issue of the mining lease, the dates that the exploration and development is to be recorded and the fees paid.

1977-54-31.

Mining lease conveys minerals

32. A mining lease conveys to the lessee the minerals within and under the leasehold, together with the rights the lessee held as the holder of the mineral claim, but is subject to a valid charge recorded against the record of the claim.

1977-54-32.

Maintenance of mining leases

33. (1) The provisions of this Act respecting the recording and crediting of exploration and development, payment of cash in lieu of exploration and development and payment of fees continue to apply to mineral claims and 2 post claims contained in a mining lease and, notwithstanding sections 22 and 45 (4) the exploration and development requirement or cash in lieu, is \$400 a unit or \$400 a 2 post claim and the recording fee is \$20 a unit or \$20 a 2 post claim.

(2) Where the holder of a mining lease does not comply with the provisions of this Act respecting the recording of exploration and development or payment of cash in lieu, the minister may serve a notice on the holder requiring him to promptly comply with this Act, and, if the holder does not so comply within 30 days after service of the notice, the minister may order that the mining lease and the claims contained in the mining lease be forfeited to, and vested in, the Crown in right of the Province.

1977-54-33.

Amendment of mining lease

34. (1) A lessee may, on an anniversary date of his mining lease, amend the mining lease by deleting part of the leasehold.

(2) Where a mining lease is amended under subsection (1), a copy of the plan, approved by the Surveyor General, showing the portion to be deleted from the mining lease, shall be submitted to the chief gold commissioner.

1977-54-34.

Conversion from lease to mining lease

35. On the application of a holder of a lease the minister shall issue, subject to the regulations, a mining lease.

1977-54-35.

Mining lease shall not be impeached

36. After the issue or renewal of a mining lease, and during its term, it shall not be impeached in a court on any ground except fraud.

1977-54-36.

Surrender of mining lease

37. A holder of a mining lease may, by giving notice in writing to the chief gold commissioner, surrender the mining lease and abandon the mineral claims in it, but the lessee is not entitled to a refund of fees paid.

1977-54-37.

Survey regulations by Surveyor General

38. (1) The Surveyor General may make regulations respecting the conduct of surveys for the purposes of this Act.

(2) Where a mineral claim is surveyed, it must, for the purposes of this Act, be surveyed by a British Columbia land surveyor in accordance with regulations made by the Surveyor General.

(3) On completion of the survey of a mineral claim or 2 post claim, the surveyor shall forward to the Surveyor General

- (a) a copy of his original plan;
- (b) a statement in a form prescribed by the Surveyor General; and
- (c) a fee of \$20 a unit or 2 post claim, not exceeding \$200 in total.

1977-54-38.

Moving posts of fractional claims

39. Where a post of a fractional mineral claim is not located on a surveyed line of an adjoining previously located mineral claim, the holder of the fractional mineral claim may move the post to the surveyed line.

1977-54-39.

2 post claim survey

40. (1) If during a survey of a 2 post claim, the British Columbia land surveyor determines that the distance between the number 1 and 2 post exceeds 457.2 m, the surveyor shall establish the effective position of the number 2 post at a point on the

location line 457.2 m from the number 1 post; but he shall not disturb the actual position of the number 2 post.

(2) Where, during a survey,

- (a) either of the posts of a 2 post claim is on a previously located claim or on a boundary of a previously located claim;
- (b) the boundary line of the previously located claim is not at right angles to the location line of the claim being surveyed; and
- (c) the area of the claim being surveyed, including a fraction created, does not exceed 20.903 184 ha,

the British Columbia land surveyor shall include the fraction created along the boundary touched or crossed by the location line within the claim being surveyed notwithstanding the location of another claim over the fraction created subsequent to the location of the claim being surveyed.

1977-54-40

Production on mineral claim

41. Production on a mineral claim, other than limited production, shall not be commenced unless the mineral claim has been surveyed.

1977-54-41

Certified mining lease

42. (1) On application to the chief gold commissioner by the holder of a mining lease, payment of an annual rent in advance and notification by the chief inspector of mines that he is satisfied that the holder is in production on the mining lease, the chief gold commissioner shall certify, on an anniversary date of the mining lease, that the holder is in production.

(2) The annual rent, payable in advance, is \$10/ha or fractional hectare contained in a certified mining lease, and section 33 does not apply to a certified mining lease.

(3) Where the holder of a certified mining lease does not pay the annual rent when due, the minister may serve a notice on the holder requiring him to promptly pay the rent, and, if the rent is not paid within 30 days after service of the notice, the minister may order that the mining lease and the mineral claims and 2 post claims contained in the mining lease be forfeited to, and vested in, the Crown in right of the Province.

(4) On application by the lessee, and confirmation by the chief inspector of mines that a mine situated on a mining lease has ceased production, the chief gold commissioner shall decertify the mining lease and section 33 again applies to the mining lease.

1977-54-42

Recording of document

43. (1) A grantee under a conveyance, bill of sale, assignment, transfer or other document of title relating to a mineral claim, mining lease or certified mining lease, or an interest in any of them, shall record the document with the gold commissioner for the mining division in which the mineral claim, mining lease or certified mining lease is situated, and shall pay the prescribed fee for the recording.

(2) The failure to record a document referred to in subsection (1) does not invalidate it as between the parties to it.

(3) A conveyance, bill of sale, assignment, transfer or other document shall not be recorded under this section unless the grantor is the recorded holder of the mineral claim, mining lease or certified mining lease to which the document relates.

1977-54-43.

Transfers to be in writing

44. A transfer of a mineral claim, mining lease or certified mining lease or of an interest in any of them is not enforceable unless it is in writing, signed by the transferor or by his agent authorized in writing; and where signed by an agent, the authority of the agent shall be recorded before the record of the transfer.

1977-54-44.

2 post claims

45. (1) A 2 post claim shall be located in accordance with the regulations.

(2) A corporate free miner shall not locate a 2 post claim.

(3) A free miner may, in person, locate in his name not more than eight 2 post claims in a calendar year.

(4) A 2 post claim may be held for one year after the date it was recorded and where, on or before the anniversary date, the holder

(a) satisfies the gold commissioner for the mining division in which his claim is situated, by a statement made by a free miner who knows the facts, that there has been performed during the past year exploration and development valued at not less than \$100 a claim for each of the first 3 years and \$200 a claim for each subsequent year and at the same time pays a recording fee of \$5 for each \$100 exploration and development recorded; or

(b) pays the equivalent in cash in lieu of the exploration and development referred to in paragraph (a) and at the same time pays a recording fee of \$10 for each \$100 paid as cash in lieu under this paragraph

he may hold the 2 post claim for a further year.

(5) Sections 2 (1), 7, 8, 10, 11, 13, 15, 16, 20, 21, 23, 24 (1), 25 to 29, 31, 32, 37, 38 (2), 39, 41, 43, 44, 48 to 52, 54, 57 to 60, 62 and 65 apply to a 2 post claim.

1977-54-45.

Leases

46. (1) A holder of a lease shall pay in advance an annual rent of \$2 an acre (.404 685 6 ha) or fractional acre.

(2) Sections 7, 11, 30, 32, 34, 36, 37, 43, 44, 52, 57, 59 and 62 apply to a lease.

1977-54-46.

Forfeiture

47. Where the holder of a lease that does not provide for forfeiture for nonpayment of rent fails or neglects to pay rent, the minister may serve a notice on the lessee requiring him to promptly pay the rent, and if the rent is not paid within 30 days after service of the notice, the minister may order that the lease be forfeited to, and vested in, the Crown in right of the Province.

1977-54-47.

Priority where location disputed

48. Where the location of a mineral claim is disputed, the title to the claim shall be recognized according to the priority of location, subject to any question as to the validity of the record itself, and subject to the free miner having complied with this Act and the regulations.

1977-54-48.

Noncompliance with Act by locator

49. The failure on the part of a free miner to comply with this Act and the regulations does not invalidate the location or recording of the mineral claim so long as he attempted in good faith to comply with this Act and the regulations and the failure to comply was not calculated to mislead other free miners desiring to locate claims in the vicinity.

1977-54-49.

Dispute as to title

50. (1) On complaint to the minister by any person interested, including, for the purpose of this section, an employee in the ministry, made

- (a) within 2 years after the recording of a mineral claim, that the mineral claim has been located or recorded otherwise than in accordance with this Act; or
- (b) within one year after the recording of a statement of performance of exploration and development that the exploration and development alleged to have been performed in that statement was not done as alleged in the statement

the minister may order that the facts in connection with the location or recording of the mineral claim or of the exploration and development, as the case may be, be investigated and reported to him by an employee in the ministry.

(2) A person, other than an employee in the ministry, complaining and requesting an investigation under this section, shall

- (a) apply to the minister;
- (b) in his application set out the nature of his interest and the grounds of his complaint; and
- (c) furnish evidence to the satisfaction of the minister that notice of the complaint and of the application has been served on all persons who may be affected by an order that may be made by the minister,

and the complainant shall deposit \$200 with the minister which may be applied by the minister to the cost of the investigation if the complaint is unfounded.

(3) On receiving a report under subsection (1), the minister shall serve a notice on all persons who may be affected by an order that may be made by him stating that

- (a) the report is completed;
- (b) the report may be inspected at the office of the chief gold commissioner;
- (c) a copy of the report may be obtained on payment of a reasonable fee fixed by the chief gold commissioner; and
- (d) a request to submit evidence and make representations to the minister may be made to the minister within 30 days after the date the notice is served.

(4) The minister shall not act on a report under subsection (1) until 30 days after service of the notice under subsection (3), but if a person advises the minister within the time referred to in subsection (3) that he desires to make representations, the minister shall not act on the report until he has afforded that person a reasonable opportunity to make representations to him not later than 60 days after service of the notice under subsection (3).

(5) Where the minister is satisfied, on the report under subsection (1), and after hearing representations under subsection (4), that a complaint under subsection (1) is substantiated, the minister may

(a) order the cancellation of the record of the mineral claim, or of the record or credit for exploration and development found not to have been performed or both; or

(b) make such other order as he considers appropriate, and shall order that the money deposited under subsection (2) be returned to the complainant.

(6) The minister shall serve a copy of an order made by him under this section to each person affected.

(7) A person affected by an order of the minister under this section may, within 30 days after service of the order, appeal to a County Court or the Supreme Court in the manner set out in the Supreme Court Rules.

(8) The appellant shall serve the minister and all other persons who may be affected by the appeal with notice of the appeal, not less than 30 days before the date set for the hearing of the appeal and the court may, where personal service cannot be effected, direct substitutional service in the manner it considers appropriate, and may give directions as to the proceedings it considers appropriate.

(9) After the court has disposed of the appeal, the registrar of the court shall send, without fee, a certified copy of the order to the chief gold commissioner within 30 days after the order is made.

(10) Until the certified copy of the order is received by the chief gold commissioner, the order of the minister remains in effect.

1977-54-50.

Court proceeding to establish adverse claim

51. (1) Where a person claims an adverse right of any kind, either to possession of all or part of a mineral claim referred to in an application for a mining lease or to the minerals contained in the claim, he must commence his proceeding in a County Court or the Supreme Court within 80 days after the date of posting of the notice under section 29 (1) (b) unless the court orders otherwise on being satisfied that the failure to proceed in time was not within the plaintiff's control.

(2) The plaintiff shall serve a copy of all documents filed with the court on the appropriate gold commissioner promptly after their being filed with the court.

(3) After the filing of the final court order with the court, and on compliance with section 29, the person named in the order is entitled to the issue of a mining lease for all or part of the claim specified in the order.

1977-54-51.

Court proceedings affecting claim or lease

52. (1) Where a court proceeding results in an order affecting a mineral claim, mining lease or certified mining lease, the court registrar shall send a certified copy of the order to the appropriate gold commissioner.

(2) Where a court order results in a change in original boundaries, the court shall order that a plan be made by a British Columbia land surveyor and filed with the appropriate gold commissioner, and the court shall further order that the expense of obtaining the plan be shared among the parties in the proportion it considers just.

1977-54-52.

Adverse claim affecting only portion of mining lease

53. Where an order in a court proceeding affects only a portion of the area for which a mining lease is applied, the applicant for the mining lease is nevertheless entitled to a mining lease for the undisputed remainder on complying with this Act and the regulations.

1977-54-53.

Evidence of location

54. (1) A copy of a record kept in a gold commissioner's office, certified by the gold commissioner to be a true copy, shall be received in a court without proof of the signature of the gold commissioner.

(2) Evidence of the location of a surveyed mineral claim on the ground may be given by a person who has seen and can describe the position of the monuments on it, and the field notes or a certified copy of them, shall be received in a court as proof, in the absence of evidence to the contrary, of the evidence given or of the facts which the notes set out.

1977-54-54.

Mining division

55. The Lieutenant Governor in Council may designate any portion of the Province as a mining division and may establish a gold commissioner's office for it.

1977-54-55.

Appointment of gold commissioner

56. (1) There may be appointed, under the *Public Service Act*, a gold commissioner for a mining division and a chief gold commissioner for the Province.

(2) The chief gold commissioner has general supervision of the gold commissioners and persons appointed under subsection (5).

(3) The chief gold commissioner may exercise a power given to a gold commissioner under this Act.

(4) A gold commissioner may, at any reasonable time, enter and examine a mining property.

(5) For each mining division there may be appointed, under the *Public Service Act*, persons whose remuneration shall be either by way of salary or by commission on fees collected and who shall maintain an office inside or outside of the mining division at a place designated by the chief gold commissioner.

(6) A person appointed under subsection (5) shall have those powers and exercise those duties of a gold commissioner under this Act that are specified in writing by the chief gold commissioner.

1977-54-56.

Free inspection of all records

57. All records in the gold commissioner's office relating to title to a mineral claim, mining lease or certified mining lease shall, during office hours, be open to public inspection without fee.

1977-54-57.

Claim protected for one year after death

58. Unless the chief gold commissioner orders a shorter period, a mineral claim shall not be relocated within one year after the death of the holder.

1977-54-58.

Removal of property

59. (1) Where

- (a) a mineral claim, mining lease or certified mining lease is abandoned, cancelled or forfeited; or
- (b) a Crown granted 2 post claim has reverted to the Crown in right of the Province,

the holder may, not later than one year after the abandonment, cancellation, forfeiture or reversion, or within a longer time as may be set by a gold commissioner, remove all property, whether or not fixed or processed, placed by him on the claim or lease.

(2) Property not removed within the time required by subsection (1) is forfeited to and vests in the Crown in right of the Province and the minister may, on behalf of the Crown, take possession and dispose of it as he considers appropriate.

1977-54-59.

Misrepresentation of sale

60. (1) A person who advertises for disposition in any manner

- (a) a mineral claim;
- (b) a leasehold; or
- (c) a Crown granted 2 post claim that conveys the right to use and possession of the surface for mining purposes only

shall not include more than the following in the advertisement:

- (d) price and terms of disposition;
- (e) person to contact, address and phone number;
- (f) name given to the property, record number, lot number or lease number;
- (g) geographic location;
- (h) geological features;
- (i) mine equipment.

(2) The following statement shall also be included in an advertisement respecting the sale of mining property, and shall be of the same size print as the general body of the advertisement:

WARNING—This property is offered for mining purposes only and ownership of the mining property does not include the right to use the surface of the property for residential purposes.

1977-54-60.

Suspension of free miner certificate

61. (1) Where the minister is satisfied that a free miner has contravened this Act or the regulations, he may, 30 days after service of notice on the free miner, and where

one is requested by the free miner within 30 days after service of the notice, hold a hearing, suspend the certificate and the right to apply for another, subject to the conditions he may specify.

(2) Where a certificate is suspended under this section

- (a) the minister shall serve a notice of the suspension on the free miner; and
- (b) the free miner may appeal to a County Court or the Supreme Court within 30 days after service of the notice.

(3) The appellant shall file a notice of appeal with the registrar of the court and shall serve a copy of the notice of appeal on the minister within the time referred to in subsection (2).

(4) On the request of the appellant, the minister shall furnish to him certified copies of all records on which the minister acted, on payment for copies at the same rate as would be charged for the same service by an official stenographer of the court.

(5) The appeal shall be

- (a) a new hearing where there is no transcript of proceedings before the minister; or
- (b) a review of the transcript and proceedings where there is a transcript; but the court may, where it considers it necessary in the interest of justice, conduct a new hearing or allow the introduction of new evidence.

(6) The minister is entitled to be a party on the hearing and may take part in the proceedings.

(7) The Supreme Court Rules apply for the procedure on an appeal under this section and the court may give such directions as it considers necessary to ensure the proper hearing of the appeal.

(8) On the hearing of an appeal under this section, the court may

- (a) make an order confirming, reversing or varying the decision of the minister;
- (b) refer the matter back to the minister, with or without directions; or
- (c) make such other order as it considers proper under the circumstances.

1977-54-61.

Change of address

62. A holder of a mineral claim, mining lease or certified mining lease shall notify the gold commissioner for the mining division in which his mineral claim, mining lease or certified mining lease is situated of a change in his permanent address.

1977-54-62.

Service of notices

63. (1) Where service of a notice, order or other document is required under sections 11 (2), 12 (2) and (3), 17 (3), 26 (1), 33 (2), 42 (3), 47, 50 (2), (3) and (6) and 61 (1), (2) and (3), the notice or document shall be conclusively deemed to have been served

- (a) if served on the person; or
- (b) if sent by registered mail to the last known address of the person.

(2) Where service is by registered mail the notice, order or other document shall be conclusively deemed to be served on the eighth day after deposit of the notice, order or other document in the Canada Post Office at any place in Canada.

(3) This section does not apply where a court has jurisdiction to order another mode of service.

1977-54-63.

Offence

- 64.** A person commits an offence who
- (a) wilfully and without lawful excuse pulls down, defaces, alters or removes a post of a 2 post claim, legal corner post, or survey monument;
 - (b) mines minerals without having obtained a right to do so under an enactment;
 - (c) knowingly makes a false statement or provides false information under this Act; or
 - (d) contravenes section 9 (1) or 60.

1977-54-64

Regulations

- 65.** The Lieutenant Governor in Council may
- (a) make regulations;
 - (b) order the cancellation of the record of a mineral claim where it has been proven that the claim has been acquired or held for purposes other than a mineral claim;
 - (c) convey to the registered owner of a Crown granted 2 post claim minerals that did not pass from the Crown under the original grant;
 - (d) provide for the extension of a time or time limit referred to in this Act; and
 - (e) make regulations respecting geophysical work done from aircraft over and beyond the boundaries of a mineral claim or leasehold and respecting the extension of geophysical and geological work beyond the boundaries of a mineral claim or leasehold for consideration as exploration and development.

1977-54-65.