

## “ALL THAT GLITTERS” A COMPARISON OF GOLD MINING LAWS ON PRIVATE PROPERTY IN BRAZIL AND CANADA<sup>1</sup>

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**Contextualization:** The study compares gold mining laws on private property in Brazil and Canada. Its relevance lies in how history, legal tradition (Civil Law vs. Common Law), and governance structure (centralized vs. decentralized) influence mineral regulation and Indigenous rights in each nation

**Objectives:** The main objective is to compare the legal frameworks for gold mining on private property in Brazil and Canada. The research focuses on crucial differences in the control and ownership of mineral resources and the protection of Indigenous territories. The study seeks to understand how these systems balance private property rights, Indigenous sovereignty, and sustainable development.

**Method:** The comparative law method was used to contrast the legal structures and historical factors that shaped mining regulations. The analysis compared the laws, considering variables such as economic and cultural factors, and the implications of federalism in dividing jurisdiction.

**Results:** Both countries treat minerals as public assets. Brazil adopts a centralized system (Federal Control) with strict constitutional protections for Indigenous lands, but suffers from weak enforcement. Canada has a decentralized system (Provincial Control) that legally requires consultation with Indigenous communities (duty to consult) and offers regionally tailored regulations. The Brazilian system is uniform, but the Canadian one is legally complex and regionalized.

**Keywords:** Gold mining law; Private property; Mineral rights; Indigenous land rights; Comparative law.

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<sup>1</sup> This paper was presented in the course LAW4010H F LEC0102 (20249): Foundations of Canadian Law at the University of Toronto Faculty of Law.

### “NO TODO LO QUE BRILLA” : UNA COMPARACIÓN DE LAS LEYES DE MINERÍA DE ORO EN PROPIEDADES PRIVADAS EN BRASIL Y CANADÁ

**Contextualización:** El estudio compara las leyes de minería de oro en propiedad privada en Brasil y Canadá. Su relevancia radica en cómo la historia, la tradición legal (Derecho Civil vs. Common Law) y la estructura de gobierno (centralizada vs. descentralizada) influyen en la regulación mineral y los derechos indígenas en cada nación.

**Objetivos:** El objetivo principal es comparar los marcos legales de la minería de oro en propiedad privada en Brasil y Canadá. La investigación se centra en las diferencias cruciales en el control y la propiedad de los recursos minerales y la protección de los territorios indígenas. El estudio busca comprender cómo estos sistemas equilibran los derechos de propiedad privada, la soberanía indígena y el desarrollo sostenible.

**Método:** Se utilizó el método de derecho comparado para contrastar las estructuras legales y los factores históricos que dieron forma a las regulaciones mineras. El análisis comparó las leyes, considerando variables como factores económicos y culturales, y las implicaciones del federalismo en la división de jurisdicción.

**Resultados:** Ambos países tratan los minerales como activos públicos. Brasil adopta un sistema centralizado (Control Federal) con estrictas protecciones constitucionales para las tierras indígenas, pero adolece de una aplicación débil. Canadá tiene un sistema descentralizado (Control Provincial) que legalmente requiere consulta con las comunidades indígenas (deber de consultar) y ofrece regulaciones adaptadas regionalmente. El sistema brasileño es uniforme, pero el canadiense es legalmente complejo y regionalizado.

**Palabras clave:** Derecho de la minería de oro; Propiedad privada; Derechos mineros; Derechos territoriales indígenas; Derecho comparado.

### “NEM TUDO O QUE RELUZ: UMA COMPARAÇÃO DAS LEIS DE MINERAÇÃO DE OURO EM PROPRIEDADES PRIVADAS NO BRASIL E NO CANADÁ

**Contextualização:** O estudo compara as leis de mineração de ouro em propriedade privada no Brasil e no Canadá. A relevância reside em como a história, a tradição jurídica (Civil Law vs. Common Law) e a estrutura de governança (centralizada vs. descentralizada) influenciam a regulação de minerais e os direitos indígenas em cada nação.

**Objetivos:** O principal objetivo é comparar os marcos legais de mineração de ouro no Brasil e no Canadá em propriedade privada. A pesquisa foca nas diferenças cruciais no controle e propriedade dos recursos minerais e na proteção dos territórios indígenas. O estudo busca entender como esses sistemas equilibram os direitos de propriedade privada, a soberania indígena e o desenvolvimento sustentável.

**Método:** Foi utilizado o método de direito comparado para contrastar as estruturas jurídicas e os fatores históricos que moldaram as regulamentações de mineração. A análise comparou as leis, considerando variáveis como fatores econômicos e culturais, e as implicações do federalismo na divisão de jurisdição.

**Resultados:** Ambos os países consideram os minerais como ativos públicos. O Brasil adota um sistema centralizado (Controle Federal) com proteções constitucionais estritas para terras indígenas, mas com fraca fiscalização. O Canadá possui um sistema descentralizado (Controle Provincial) que exige consulta legal às comunidades indígenas (dever de consulta) e oferece regulamentações regionalmente adaptadas. O sistema brasileiro é uniforme, mas o canadense é legalmente complexo e regionalizado.

**Palavras-chave:** Direito de mineração de ouro; Propriedade privada; Direito de mineração; Direitos territoriais indígenas; Direito comparado.

## INTRODUÇÃO

Gold mining is a significant economic driver in both Brazil and Canada, but the regulatory approaches in each country differ substantially, specially on private property. Brazil operates under a centralized, federally controlled system, ensuring uniformity in mining laws across the country. In contrast, Canada's decentralized system gives provinces the authority to regulate mining, resulting in diverse legal frameworks and procedures. These differences affect everything from landowners' ability to obtain mining permits to the treatment of Indigenous rights.

In this paper, I argue that while both Brazil and Canada regulate gold mining on private property, their systems differ in two key areas: the control and ownership of mineral resources, and the protection of Indigenous lands. Brazil's centralized control over mineral rights and its strict protections for Indigenous territories contrast with Canada's more flexible system, where landowners may retain mineral rights but must comply with provincial regulations, including Indigenous consultations.

### 1. BACKGROUND

This research compares the laws governing gold mining in Brazil and Canada, focusing on extraction rights and land ownership. To ensure a fair comparison, I will consider the legal structures and historical factors shaping these regulations. As Landman<sup>2</sup> and Modéer<sup>3</sup> suggest, comparative legal studies reveal patterns of development and highlight the interplay between law, history, and culture.

Gold mining has long been a source of significant economic value for countries around the world, especially in nations like Brazil and Canada, where gold deposits are abundant. However, the ways in which gold mining is regulated, particularly when it comes to private property, vary greatly between these two countries due to differences in their legal systems, historical contexts, and governance structures<sup>4</sup>.

Brazil and Canada are vast countries with diverse landscapes, making the regulation of natural resources, like gold, challenging. Brazil, the largest country in South

<sup>2</sup> As noted by Landman, comparative studies help uncover broader patterns of legal development, providing a richer understanding of the specific factors influencing the regulation of gold. This method will involve comparing the unit of analysis (mining laws), control variables (such as historical, economic, and cultural factors), and the implications of federalism in both Brazil and Canada, where jurisdiction over mining is divided between federal and provincial/state levels. LANDMANN, Todd, **Issues and Methods in Comparative Politics: An Introduction**, Routledge, 2000)

<sup>3</sup> Modéer's insight that comparative law must account for both space (geography) and time (history), he also explains how "modern comparative law is by definition interdisciplinary. It recognizes the important relationship between law, history, and culture," which underscores the importance of addressing each country's path to current gold regulations. MODÉER, Kjell Å. Chapter 3: comparative legal history. In: ADAMS, Maurice; VAN HOECKE, Mark (ed.). **Comparative Methods in Law, Humanities and Social Sciences**. Cheltenham: Edward Elgar Publishing Limited, 2021, p. 47.

<sup>4</sup> MCALLISTER, Mary Louise; MILIOLI, Geraldo. Mining sustainably: opportunities for Canada and Brazil. **Minerals & Energy - Raw Materials Report**, [S.L.], v. 15, n. 2, p. 3-14, jan. 2000. Informa UK Limited. <http://dx.doi.org/10.1080/14041040009362553>. Disponível em: <https://www.tandfonline.com/doi/ref/10.1080/14041040009362553?scroll=top>. Acesso em: 12 dez. 2025.

America, has mineral deposits in regions such as the Amazon, while Canada, the second-largest country in the world, spans forests, tundras, and mountains, with extensive mineral resources across its provinces. Brazil's gold mining is mainly in remote areas, while Canada's activities are spread from British Columbia to Quebec to the Northwest Territories. The size and geography present challenges in ensuring that mining activities are regulated and monitored effectively, particularly in areas that are difficult to access<sup>5</sup>.

Brazil's legal system, rooted in its Portuguese colonial past, is centralized, with the federal government holding significant authority, including over mining.<sup>6</sup> The civil law tradition means laws are codified and applied uniformly nationwide. The Brazilian Constitution of 1988 places mining regulation under federal control, with laws like the Mining Code and agencies like the National Mining Agency (ANM) overseeing operations, including on private property. While this centralized system ensures consistency, it faces enforcement challenges, particularly in remote areas like the Amazon, where illegal mining often occurs. Weak enforcement also undermines protections for Indigenous lands, which are impacted by illegal mining activities<sup>7</sup>.

Canada's legal history is quite different, beginning with thousands of years of Indigenous presence before colonization by France and later Britain. After the British gained control in the 18th century, the Royal Proclamation of 1763 recognized Indigenous land rights. Canada's system of governance was formalized in 1867 with the British North America Act, which established a federal system dividing powers between the federal government and the provinces<sup>8</sup>. The country operates under a common law system, where judicial decisions play significant roles<sup>9</sup>. Each province has the authority to manage its own resources, including mining<sup>10</sup>. Unlike Brazil, where mining laws are uniform, Canadian provinces have their own mining regulations, which can vary significantly<sup>11</sup>. The

<sup>5</sup> MCALLISTER, Mary Louise; MILLIOLI, Geraldo. Mining sustainably: opportunities for Canada and Brazil. **Minerals & Energy - Raw Materials Report**, [S.L.], v. 15, n. 2, p. 3-14, jan. 2000. Informa UK Limited. <http://dx.doi.org/10.1080/14041040009362553>. Disponível em: <https://www.tandfonline.com/doi/ref/10.1080/14041040009362553?scroll=top>. Acesso em: 12 dez. 2025.

<sup>6</sup> RUSSELL-WOOD, A. J. R.. **Society and Government in Colonial Brazil, 1500-1822**. London: Routledge, 2024.

<sup>7</sup> PLUMMER, Jasmine. The Yanomami: illegal mining, law, and indigenous rights in the Brazilian Amazon. **The Georgetown Environmental Law Review**, Washington Dc, v. 3, n. 27, p. 479-496, dez. 2014.

<sup>8</sup> RICHARD, John D.. Federalism in Canada. **Duquesne Law Review**, Pittsburgh, v. 44, n. 1, p. 5-33, jan. 2005. Disponível em: <https://dsc.duq.edu/dlr/vol44/iss1/4/>. Acesso em: 12 dez. 2025.

<sup>9</sup> RICHARD, John D.. Federalism in Canada. **Duquesne Law Review**, Pittsburgh, v. 44, n. 1, p. 5-33, jan. 2005. Disponível em: <https://dsc.duq.edu/dlr/vol44/iss1/4/>. Acesso em: 12 dez. 2025.

<sup>10</sup> Government of Canada. **The Canadian Constitution**. 2024. Disponível em: <https://www.justice.gc.ca/eng/csj-sjc/just/05.html>. Acesso em: 12 dez. 2025.

<sup>11</sup> Under the Constitution Act, 1867, provinces generally oversee natural resources like mining, including exploration and operations within their borders. Federal authority intersects in areas like environmental protection, fisheries, and Indigenous rights, creating overlapping jurisdictions. Courts address these overlaps, balancing provincial resource control with federal responsibilities under the Constitution. BRIDEAU, Isabelle *et al.* **The distribution of legislative powers: an overview**. Ottawa: Parliamentary Information, Education And Research Services, 2022. Disponível em: <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/HillStudies/PDF/2019-35-E.pdf>. Acesso em: 12 dez. 2025.

federal government, however, plays a crucial role in areas like environmental protection and Indigenous rights<sup>12</sup>.

In Canada, while the federal government has regulatory authority over Indigenous rights and environmental protection, much of the control over mining is left to the provinces. Each province can create and enforce its own mining laws, resulting in variations across the country. For example, some provinces have a "free entry" system for staking claims, while others require government approval for exploration rights. The federal government plays a larger role in managing the environmental impact of mining and ensuring consultation with Indigenous communities before operations near their lands. This decentralized approach allows provinces to tailor mining regulations to local needs and priorities<sup>13</sup>.

Both countries treat minerals, including gold, as state property, which means that landowners do not automatically have the right to mine gold on their own land. In Brazil, the government controls mining rights through the issuance of exploration licenses and mining concessions, while in Canada, the provinces regulate the granting of mining claims and exploration rights. These differences in how the two countries manage extraction rights reflect their distinct legal systems and governance structures<sup>14</sup>.

Another key area where the legal frameworks diverge is in the treatment of Indigenous rights. In Canada, the legal requirement for consultations with Indigenous communities before mining activities can proceed is enshrined in law and has become an essential part of the regulatory process<sup>15</sup>. The aim is to ensure that Indigenous peoples' rights and interests are respected, and that they can benefit from mining activities through negotiated agreements. Brazil, however, faces significant challenges in this area, particularly in regions like the Amazon, where illegal mining is rampant. Although Indigenous lands are constitutionally protected, the enforcement of these protections is often insufficient, leaving many Indigenous communities vulnerable to exploitation and environmental degradation<sup>16</sup>.

<sup>12</sup> KUYEK, Joan. **Canadian Mining Law and the Impacts on Indigenous Peoples Lands and Resources**. 2006. Disponível em: <https://miningwatch.ca/news/2006/9/19/canadian-mining-law-and-impacts-indigenous-peoples-lands-and-resources>. Acesso em: 12 dez. 2025.

<sup>13</sup> MCALLISTER, Mary Louise; MILIOLI, Geraldo. Mining sustainably: opportunities for canada and brazil. **Minerals & Energy - Raw Materials Report**, [S.L.], v. 15, n. 2, p. 3-14, jan. 2000. Informa UK Limited. <http://dx.doi.org/10.1080/14041040009362553>. Disponível em: <https://www.tandfonline.com/doi/ref/10.1080/14041040009362553?scroll=top>. Acesso em: 12 dez. 2025.

<sup>14</sup> BARTON, Barry. **Canadian Law of Mining**. 2. ed. Calgary: Lexisnexis Canada, 2019.

<sup>15</sup> DUARTE, Maria Paula. **A Study on the Canadian Mining Industry and the Potential for the "Duty to Consult" as a Pathway Towards Reconciliation with Indigenous Peoples: lessons for brazil**. Sudbury: Laurentian University Of Sudbury, 2021.

<sup>16</sup> DUARTE, Maria Paula. **A Study on the Canadian Mining Industry and the Potential for the "Duty to Consult" as a Pathway Towards Reconciliation with Indigenous Peoples: lessons for brazil**. Sudbury: Laurentian University Of Sudbury, 2021.

These legal frameworks and the way each country addresses the regulation of gold mining on private property are shaped by the broader historical, social, and economic contexts in which they operate. Brazil's centralized system reflects its colonial history and its focus on uniformity in governance, while Canada's decentralized system reflects its federal structure and its historical commitment to recognizing provincial autonomy and Indigenous rights. Despite their differences, both countries face similar challenges in balancing the economic benefits of gold mining with the need to protect the environment and Indigenous communities, making them valuable subjects of comparison<sup>17</sup>.

## 2. LEGAL FRAMEWORKS FOR GOLD MINING IN BRAZIL AND CANADA

In Brazil, the legal framework for gold mining is built on a centralized system, as discussed in the background section, where the federal government controls the country's mineral resources. This means that mining laws are uniform across the nation, which creates a consistent regulatory environment but also presents challenges in addressing local and regional differences. According to the Brazilian Constitution of 1988, natural resources, including gold, are considered public assets and belong to the state. The Constitution specifically assigns the regulation of mining activities to the federal government, making it necessary for anyone wishing to mine gold to obtain permission from the government<sup>18</sup>.

One of the key pieces of legislation governing mining in Brazil is the Mining Code, which was established in 1971<sup>19</sup>. The code outlines the procedures for exploration and extraction of minerals, including gold. Under the code, gold is considered state property, meaning that landowners do not automatically have the right to extract gold from their land. Instead, they must apply for an exploration license through the National Mining Agency (ANM), which is responsible for granting these licenses and overseeing the mining process<sup>20</sup>. Exploration licenses are typically issued for four years, after which they can be renewed. If a mineral deposit is found to be economically viable, the ANM may issue a

<sup>17</sup> BARTON, Barry. **Canadian Law of Mining**. 2. ed. Calgary: Lexisnexis Canada, 2019..

<sup>18</sup> MOURA, Anderson; VELLA, Rodrigo Vilardo. **Dentons Global Mining Guide: Brazil**. Brazil. 2022. Disponível em: <https://www.dentons.com/en/insights/newsletters/2022/january/17/dentons-global-mining-guide/dentons-global-mining-guide-2022/brazil>. Acesso em: 15 dez. 2025. See also OECD. **Regulatory Governance in the Mining Sector in Brazil**. Paris: Oecd Publishing, 2022. Disponível em: <https://doi.org/10.1787/89a72df8-en>. Acesso em: 15 dez. 2025.

<sup>19</sup> BRASIL. Decreto-Lei nº 227, de 28 de fevereiro de 1967. (Regulamento) Dá nova redação ao Decreto-lei nº 1.985, de 29 de janeiro de 1940. (Código de Minas). Brasília, DF, Disponível em: [https://www.planalto.gov.br/ccivil\\_03/decreto-lei/del0227.htm](https://www.planalto.gov.br/ccivil_03/decreto-lei/del0227.htm). Acesso em: 15 dez. 2025.

<sup>20</sup> BRASIL. Lei nº 13.575, de 26 de dezembro de 2017. (Regulamento) Cria a Agência Nacional de Mineração (ANM); extingue o Departamento Nacional de Produção Mineral (DNPM); altera as Leis nº 11.046, de 27 de dezembro de 2004, e 10.826, de 22 de dezembro de 2003; e revoga a Lei nº 8.876, de 2 de maio de 1994, e dispositivos do Decreto-Lei nº 227, de 28 de fevereiro de 1967 (Código de Mineração).. Brasília, DF, Disponível em: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2017/lei/13575.htm](https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/13575.htm). Acesso em: 15 dez. 2025.



mining concession, which is usually granted for an indefinite period, but it still requires ongoing compliance with various regulations<sup>21</sup>.

In addition to the Mining Code, Brazil has specific environmental and Indigenous protection laws that apply to mining operations. For example, the Brazilian Environmental Policy Law of 1981 sets out guidelines for environmental management in mining. Before starting mining operations, companies must conduct an Environmental Impact Assessment (EIA) and submit a report detailing the potential environmental effects of their activities. This is essential to ensure that the environmental damage caused by mining is minimized. However, in practice, enforcement of environmental laws can be weak, especially in areas like the Amazon, where illegal gold mining is a major concern<sup>22</sup>.

When it comes to Indigenous rights, Brazil's Constitution explicitly protects Indigenous lands, stating that mining on these lands requires the consent of the Indigenous communities. Despite this, the government has struggled to effectively manage mining on Indigenous lands, particularly in remote areas. Illegal mining is a growing problem in the Amazon, where many gold miners operate without the necessary permits or without respecting Indigenous communities' rights. This has led to significant challenges in protecting Indigenous lands and preventing environmental destruction<sup>23</sup>.

In Canada, the legal frameworks for gold mining are governed by a combination of federal and provincial/territorial laws, which vary significantly across the country. In provinces like Ontario and British Columbia, mining is primarily regulated through provincial laws. For instance, in Ontario, the Mining Act (R.S.O. 1990, c. M.14) governs the staking of claims and the issuance of mining rights. This act allows for the staking of claims on public land through an online system. However, when mining claims overlap with private property, the prospector must notify the landowner and comply with legal procedures. While landowners cannot block exploration or extraction if the necessary permits are obtained, they may negotiate access agreements with the prospector, particularly when private land is involved<sup>24</sup>.

Similarly, British Columbia's Mineral Tenure Act (R.S.B.C. 1996, c. 292) governs

<sup>21</sup> MCALLISTER, Mary Louise; MILIOLI, Geraldo. Mining sustainably: opportunities for canada and brazil. **Minerals & Energy - Raw Materials Report**, [S.L.], v. 15, n. 2, p. 3-14, jan. 2000. Informa UK Limited. <http://dx.doi.org/10.1080/14041040009362553>. Disponível em: <https://www.tandfonline.com/doi/ref/10.1080/14041040009362553?scroll=top>. Acesso em: 12 dez. 2025.

<sup>22</sup> MCALLISTER, Mary Louise; MILIOLI, Geraldo. Mining sustainably: opportunities for canada and brazil. **Minerals & Energy - Raw Materials Report**, [S.L.], v. 15, n. 2, p. 3-14, jan. 2000. Informa UK Limited. <http://dx.doi.org/10.1080/14041040009362553>. Disponível em: <https://www.tandfonline.com/doi/ref/10.1080/14041040009362553?scroll=top>. Acesso em: 12 dez. 2025.

<sup>23</sup> DUARTE, Maria Paula. **A Study on the Canadian Mining Industry and the Potential for the "Duty to Consult" as a Pathway Towards Reconciliation with Indigenous Peoples: lessons for brazil**. Sudbury: Laurentian University Of Sudbury, 2021.

<sup>24</sup> BARTON, Barry. **Canadian Law of Mining**. 2. ed. Calgary: Lexisnexis Canada, 2019.

the process of staking claims on public lands and obtaining the rights to explore and mine minerals, including gold. This act also requires that when claims are made on private land, prospectors must inform landowners and comply with any other provincial regulations governing land use. In these provinces, mineral rights are typically separate from land ownership, meaning that landowners do not automatically possess the rights to the minerals beneath their property unless they explicitly hold these rights<sup>25</sup>.

In Alberta, mining rights can be more directly tied to land ownership. Under the Public Lands Act (R.S.A. 2000, c. P-40), the ownership of subsurface mineral rights, including those to gold, can be associated with the surface land. This means that landowners may hold the mineral rights for their property and can potentially extract minerals without needing a permit from the government, as long as they comply with environmental regulations and obtain necessary extraction permits.

However, even in these cases, mining activities must be regulated under the Environmental Protection and Enhancement Act (R.S.A. 2000, c. E-12) to ensure that they do not harm the environment<sup>26</sup>.

In northern Canada, mining is regulated by legal frameworks that account for Indigenous land claims and relationships with the land. In Yukon, the Quartz Mining Act<sup>27</sup> and Placer Mining Act<sup>28</sup> require prospectors to secure surface access rights and consult with Indigenous communities, while the Yukon Environmental and Socio-Economic Assessment Act<sup>29</sup> ensures environmental assessments. The 2003 Devolution Transfer Agreement gave Yukon more control over its mining laws<sup>30</sup>.

<sup>25</sup> CANADÁ. Lei nº [RSBC 1996] CHAPTER 292, de 1996. **Mineral Tenure Act**. Victoria, BC, Disponível em: [https://www.bclaws.gov.bc.ca/civix/document/id/rs/rs/96292\\_01](https://www.bclaws.gov.bc.ca/civix/document/id/rs/rs/96292_01). Acesso em: 15 dez. 2025.. See also DOBRA, John L. Divergent Mineral Rights Regimes: A Natural Experiment in Canada and the United States Yields Lessons, Vancouver: Fraser Institute, 2014. Disponível em: [https://www.fraserinstitute.org/sites/default/files/divergent-mineral-rights-regimes-rev\\_0.pdf](https://www.fraserinstitute.org/sites/default/files/divergent-mineral-rights-regimes-rev_0.pdf). Acesso em 15 dez. 2025.

<sup>26</sup> ALBERTA. **Mineral ownership**: the legal possession and the right to win, work and recover specific minerals or resources from beneath the surface of a parcel of land. The legal possession and the right to win, work and recover specific minerals or resources from beneath the surface of a parcel of land. 2025. Disponível em: <https://www.alberta.ca/mineral-ownership>. Acesso em: 15 dez. 2025.

<sup>27</sup> Yukon, *Guidelines for Quartz Claim Staking in Yukon Quartz Mining Act* (2019), online: <https://emrlibrary.gov.yk.ca/minerals/quartz/guidelines-for-quartz-claim-staking-in-yukon-quartz-mining-act-2019.pdf>. See also Barton *supra* note 13; Yukon, "Learn About Mining Regulations in the Yukon," <https://yukon.ca/en/science-and-natural-resources/mining/learn-about-mining-regulations-yukon>.

<sup>28</sup> Yukon, *Placer Mining Act*, R.S.Y. 2002, c. 13, <https://laws.yukon.ca/cms/images/LEGISLATION/PRINCIPAL/2003/2003-0013/2003-0013.pdf>.

<sup>29</sup> Canada, *Yukon Environmental and Socio-economic Assessment Act* (S.C. 2003, c. 7), online: Justice Laws Website <https://laws-lois.justice.gc.ca/eng/acts/y-2.2/index.html>.

<sup>30</sup> Hogg, Peter W., and Wade Wright. *Constitutional Law of Canada*, 5th ed. (Toronto: Thomson Reuters, 2019) ch 23, § 23:2, "Territorial Limitation," 1, WestLaw. Also see *Bonanza Creek Gold Mining Co v The King* (1916) on Mining and Territorial Limitations (in this case a company incorporated in Ontario was allowed to mine in Yukon). See also the Department of Justice Canada. "The Canadian Constitution." Online: <https://www.justice.gc.ca/eng/csj-sjc/just/05.html>.



In the Northwest Territories, the Mackenzie Valley Resource Management Act<sup>31</sup> ensures environmental impact assessments and consultations before mining projects proceed. In Nunavut and parts of the Northwest Territories, mining remains under federal jurisdiction, governed by the Nunavut Land Claims Agreement Act and Federal Mining Regulations<sup>32</sup>, with the federal government overseeing resource development in areas where land claims and self-governance agreements are still being negotiated.

In Canada's mining laws, the balance between provincial and federal regulations, Indigenous rights, and environmental concerns creates a complex and sometimes inconsistent regulatory framework. While provinces like Ontario and British Columbia offer relatively straightforward systems for obtaining mining claims and permits, northern territories and regions with significant Indigenous populations require more detailed consultations and often involve negotiations between multiple parties, including federal, territorial, and Indigenous governments. These laws are continuously evolving to reflect the growing influence of Indigenous land claims and the increasing importance of environmental sustainability in resource extraction<sup>33</sup>.

### 3. LAND OWNERSHIP RIGHTS, INDIGENOUS LAND RIGHTS AND MINING

In both Canada and Brazil, private property plays a central role in land ownership and resource management, and the legal frameworks in each country offer clear distinctions between private and public property, with different sets of rules governing its use, sale, and transfer<sup>34</sup>.

In Canada, individuals or corporations typically own both surface and mineral rights, especially in urban and agricultural areas. However, in some regions, the government retains mineral rights, even if the land is privately owned. In these cases,

<sup>31</sup> CANADÁ. Lei nº S.C 1998, c. 25, de 18 de junho de 1998. An Act to provide for an integrated system of land and water management in the Mackenzie Valley, to establish certain boards for that purpose and to make consequential amendments to other Acts. **Mackenzie Valley Resource Management Act**. [S. l.], Disponível em: <https://laws-lois.justice.gc.ca/eng/acts/m-0.2/page-1.html>. Acesso em: 16 dez. 2025.

<sup>32</sup> CANADÁ. Lei nº 1993, c. 29, de 10 de junho de 1993. Lei relativa a um Acordo entre os Inuit da Área de Assentamento de Nunavut e Sua Majestade a Rainha em nome do Canadá.. **Lei de Acordo de Reivindicações Territoriais de Nunavut**. [S. l.], Disponível em: <https://laws-lois.justice.gc.ca/eng/acts/n-28.7/FullText.html>. Acesso em: 16 dez. 2025.

<sup>33</sup> ANGGADOL, Kairos. **An overview of Canada's mines and minerals acts**: each province in canada has enacted their own mines and minerals act or other similar law. learn about these laws in this article. Each province in Canada has enacted their own mines and minerals act or other similar law. Learn about these laws in this article. 2024. Disponível em: <https://www.lexpert.ca/news/legal-faq/an-overview-of-canadas-mines-and-minerals-acts/384354>. Acesso em: 16 dez. 2025.

<sup>34</sup> COMISSÃO DE ASSUNTOS JURÍDICOS DA CCBC. **Brazil Canada Comparative Law**: acquisition of real state by foreigners. Acquisition of real state by foreigners. Disponível em: [https://www.ccbc.org.br/wp-content/uploads/2018/12/DC\\_Aquisic%C3%8C%C2%A7a%C3%8C%C6%92o-de-Terras\\_IN\\_02.pdf](https://www.ccbc.org.br/wp-content/uploads/2018/12/DC_Aquisic%C3%8C%C2%A7a%C3%8C%C6%92o-de-Terras_IN_02.pdf). Acesso em: 16 dez. 2025.

private landowners may not be able to exploit minerals beneath their land, and the government can issue mining permits or leases to third parties for extraction<sup>35</sup>.

In provinces such as Ontario and British Columbia, the concept of private property is tightly regulated. Mineral claims can be staked on public land through online systems, and in cases where claims overlap with private property, the prospector is legally required to notify the landowner and follow specific procedures. While landowners cannot prevent exploration or extraction, they do have a right to be informed, and any mining activities must comply with both environmental regulations and land-use laws<sup>36</sup>.

In Alberta, mineral rights are usually connected to land ownership. Some landowners hold both surface and mineral rights, allowing them to mine on their property, as long as they follow environmental regulations and obtain the necessary permits. However, in most cases, mineral rights belong to the government, and land titles often include the phrase "Excepting Thereout All Mines and Minerals." Older titles or separate agreements may grant landowners mineral rights. Generally, land has two titles: one for the surface and one for the minerals, with the surface title allowing land use and the mineral title granting the right to explore for resources.<sup>37</sup>

In Canada, private property rights are strongly enforced, and land sales and transfers are straightforward processes. Real estate transactions, including those involving mining or natural resources, are regulated by provincial laws, with contracts typically covering both surface and subsurface rights. If the land is of public interest, such as protected or conservation areas, negotiations with government agencies may be required. Additionally, Canada's legal system mandates that all mining operations, even on private land, must comply with environmental regulations like the Canadian Environmental Assessment Act (CEAA) and the Mining Act, which govern exploration, development, and closure<sup>38</sup>.

With respect to Indigenous lands, land ownership in Canada can be complex. While about 89% of Canada's land is Crown land—owned by the government—there are also

<sup>35</sup> DOBRA, John L. **Divergent Mineral Rights Regimes: A Natural Experiment in Canada and the United States Yields Lessons**, Vancouver: Fraser Institute, 2014. Disponível em: [https://www.fraserinstitute.org/sites/default/files/divergent-mineral-rights-regimes-rev\\_0.pdf](https://www.fraserinstitute.org/sites/default/files/divergent-mineral-rights-regimes-rev_0.pdf). Acesso em 15 dez. 2025.

<sup>36</sup> INNES, Larry *et al.* **Raising the Stakes: a comparative review of canadian mining laws and responsible mining standards**. Toronto: Olthuis Kleer Townshend - Llp, 2020. Disponível em: <https://responsiblemining.net/wp-content/uploads/2021/03/OKT-LLP-Raising-the-Stakes-A-Comparative-Review-of-Canadian-Mining-Laws-Sept-2020.pdf>. Acesso em: 16 dez. 2025.

<sup>37</sup> Alberta Government. **A Legal Guide to Plan Farm Land Ownership and Sale in Alberta**. 2020. Disponível em: <https://open.alberta.ca/dataset/64b0c08e-ae4f-46f5-9e78-99a7a73c0fc4/resource/d2408091-0bdf-49a8-a73f-f9318af9dfe2/download/planning-farm-ownership-sales-guide-albertans.pdf>. Acesso em: 16 dez. 2025.

<sup>38</sup> MCALLISTER, Mary Louise; MILIOLI, Geraldo. Mining sustainably: opportunities for canada and brazil. **Minerals & Energy - Raw Materials Report**, [S.L.], v. 15, n. 2, p. 3-14, jan. 2000. Informa UK Limited. <http://dx.doi.org/10.1080/14041040009362553>. Disponível em: <https://www.tandfonline.com/doi/ref/10.1080/14041040009362553?scroll=top>. Acesso em: 12 dez. 2025.

significant amounts of land that are held by private owners or are governed under different regimes, such as reserve land or First Nations lands<sup>39</sup>. For instance, First Nations can acquire land through the fee simple system, which allows them to buy and sell land as any other private landowner can. This applies to lands outside of federally protected or reserve lands, and First Nations may hold this land directly or through a corporation or proxy<sup>40</sup>.

Indigenous peoples in Canada hold land through Aboriginal title, based on historical use and occupancy, but this often conflicts with private land ownership. Free, Prior, and Informed Consent (FPIC) ensures Indigenous communities are consulted and actively involved in decisions about mining projects affecting their lands and rights<sup>41</sup>.

A recent case, *Gitxaala v. British Columbia* (2023), highlighted this issue when the Gitxaala Nation and the Ehattesaht First Nation challenged the province's mineral tenure system, which allowed claims without consulting Indigenous groups. The court ruled that this violated their Aboriginal rights, as removing minerals without their input harmed their cultural and spiritual beliefs. The decision emphasized the need for consultation and, in some cases, consent before mining on lands tied to Aboriginal title<sup>42</sup>.

In Brazil, private property is protected under the 1988 Constitution, which guarantees the right to own, sell, and transfer land. However, like in Canada, there are limitations, especially regarding natural resources. Brazil distinguishes between public and private property, with public property including all Indigenous lands and federal, state, and municipal lands. Private property, held by individuals or entities, is regulated by laws governing land use, transfer, and taxation. The Brazilian Civil Code regulates the sale and transfer of both urban and rural land, while the Land Statute (Law No. 4,504/1964) governs rural land holdings. These laws ensure compliance with

<sup>39</sup> BORROWS, John. **Crown and Aboriginal Occupations of Land: A History & Comparison**. Toronto: Ipperwash Inquiry, 2005. p. 84. Disponível em: [https://www.archives.gov.on.ca/en/e\\_records/ipperwash/policy\\_part/research/pdf/History\\_of\\_Occupations\\_Borrows.pdf](https://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/research/pdf/History_of_Occupations_Borrows.pdf). Acesso em: 15 dez. 2025.

<sup>40</sup> DAIGLE, Michelle. Indigenous peoples' geographies I: indigenous spatialities beyond place through relational, mobile and hemispheric & global approaches. **Progress In Human Geography**, [S.L.], v. 49, n. 2, p. 182-193, 12 out. 2024. SAGE Publications. <http://dx.doi.org/10.1177/03091325241283843>. Disponível em: <https://journals.sagepub.com/doi/full/10.1177/03091325241283843>. Acesso em: 15 dez. 2025

<sup>41</sup> METCALF, Cherie. Indigenous Land Ownership and Title in Canada: Implications for a Northern Corridor. **SPP Research Paper**, vol. 15:40, March 2023, 38-39. Disponível em: <https://www.policyschool.ca/wp-content/uploads/2023/03/NC45-IndigenousLandOwnership.Metcalf.pdf>. Acesso em: 15 dez. 2025.

<sup>42</sup> In *Gitxaala v British Columbia* (Chief Gold Commissioner) 2023 BCSC 1680, the Gitxaala Nation and Ehattesaht First Nation argued that the province's mineral tenure system breached the duty to consult. The Court found that "the allowance of mineral claims without consultation creates an adverse impact on the petitioners' Aboriginal rights regarding their cultural and spiritual beliefs" (para. 330) and that the removal of minerals constituted an adverse impact, as the result was to "permanently reduce the land's value" (para. 390). The court granted a declaration that the province breached its duty.

registration, environmental, and zoning regulations when land is sold or transferred<sup>43</sup>.

In Brazil, mineral rights are not tied to land ownership. The federal government owns all mineral resources, including gold, meaning private landowners cannot mine their land without a government concession. The Mining Code (Law No. 6,001/1973) governs mineral exploration and exploitation, establishing that mineral rights are separate from land ownership. To mine, landowners must apply for a mining concession, which involves an environmental impact assessment and consultation with local communities<sup>44</sup>.

In addition, Brazil has specific environmental laws that regulate the impact of mining on private land. The Forest Code (Law No. 12,651/2012) and the National Environmental Policy (Law No. 6,938/1981) both require landowners, including those on private land, to comply with environmental protections. For example, landowners who wish to carry out activities such as deforestation or mineral extraction on their property must ensure that the activities do not negatively affect protected areas, biodiversity, or water resources<sup>45</sup>.

Indigenous lands in Brazil are considered public property and are under federal government jurisdiction. The 1988 Constitution recognizes Indigenous peoples as the natural owners of their land, but it is treated as part of the national public domain, not private property. The government is responsible for demarcating Indigenous territories, granting them legal protection and preventing occupation by non-Indigenous parties, including private landowners or mining companies. As such, Indigenous lands in Brazil cannot be bought, sold, or rented<sup>46</sup>.

Brazil's legal framework guarantees that Indigenous lands cannot be sold or alienated, and mining activities on these lands can only occur under very specific conditions. Under the Constitution, only the federal government has the authority to grant

<sup>43</sup> CHAU, Symphony. **Constitutional land rights for Indigenous people in Brazil**. 2023. Disponível em: <https://www.sdg16.plus/policies/constitutional-land-rights-for-indigenous-people-in-brazil/>. Acesso em: 15 dez. 2025.

<sup>44</sup> FERNANDES, Bernardo Mançano; WELCH, Clifford Andrew; GONÇALVES, Elienai Constantino. **Land Governance in Brazil**. 2. ed. Rome: Framing The Debate Series,, 2012. Disponível em: [https://www.researchgate.net/profile/Bernardo-Fernandes-2/publication/263581290\\_Land\\_Governance\\_in\\_Brazil\\_A\\_geo-historical\\_review\\_of\\_land\\_governance\\_in\\_Brazil/links/54354b630cf2bf1f1f286e89/Land-Governance-in-Brazil-A-geo-historical-review-of-land-governance-in-Brazil.pdf](https://www.researchgate.net/profile/Bernardo-Fernandes-2/publication/263581290_Land_Governance_in_Brazil_A_geo-historical_review_of_land_governance_in_Brazil/links/54354b630cf2bf1f1f286e89/Land-Governance-in-Brazil-A-geo-historical-review-of-land-governance-in-Brazil.pdf). Acesso em: 15 dez. 2025.

<sup>45</sup> LOPES, Cristina L.; NARDI, Julia; CHIAVARI, Joana. **Regulating Forest Compensation for Legal Deforestation in Brazil**. Rio de Janeiro: Climate Policy Initiative, 2021. Disponível em: <https://www.climatepolicyinitiative.org/wp-content/uploads/2021/08/Summary-Forest-Compensation.pdf>. Acesso em: 15 dez. 2025.

<sup>46</sup> MUELLER, Bernardo. Property rights and violence in indigenous land in Brazil. **Land Use Policy**, [S.L.], v. 116, p. 106063, maio 2022. Elsevier BV. <http://dx.doi.org/10.1016/j.landusepol.2022.106063>. Disponível em: <https://www.sciencedirect.com/science/article/pii/S0264837722000904?via%3Dihub>. Acesso em: 12 dez. 2025. See ALSO ALEIXO, Leticia Soares Peixoto; ARIMA JUNIOR, Mauro Kiithi. **Threats to indigenous peoples' rights in Brazil – Legal and policy gaps**. Amsterdam: Oecd Watch, 2022. Disponível em: <https://www.oecdwatch.org/wp-content/uploads/sites/8/2022/03/Bridging-Brazilian-governance-gaps-Indigenous-peoples-rights.pdf>. Acesso em: 12 dez. 2025.

mining concessions on Indigenous lands, and such activities are prohibited unless approved by the Indigenous communities involved. This ensures that any mining on Indigenous lands in Brazil must respect the rights of Indigenous peoples, which are enshrined in both the Constitution and in the Indian Statute (Law No. 6,001/1973). This statute governs the protection and management of Indigenous lands, ensuring that these lands are preserved for the benefit of the communities that occupy them, and cannot be used for mining without their consent<sup>47</sup>.

A key difference between Canada and Brazil regarding private property and mining is the government's role in controlling mineral resources. In Canada, private property owners typically retain both surface and mineral rights, offering more autonomy in managing land and resources, though there are exceptions. In Brazil, the state controls mineral rights, and landowners must obtain permits from the federal government to mine, creating a more centralized system. While both countries protect private property rights, Canada provides more independence for landowners to exploit resources, whereas Brazil requires government authorization for mineral extraction<sup>48</sup>.

## CONCLUSION

This paper explored the regulatory frameworks governing gold mining on private property in Brazil and Canada, focusing on the key differences in the control and ownership of mineral resources and the protection of Indigenous lands. These differences reflect the unique historical and legal contexts of each country. Brazil's centralized system stems from its colonial history and civil law tradition, prioritizing federal control and uniformity in governance. This approach, while consistent, struggles with enforcement challenges, particularly in remote areas like the Amazon. In contrast, Canada's decentralized system is rooted in its federal structure and common law tradition, which emphasizes provincial autonomy and the recognition of Indigenous rights.

While both countries face similar challenges in balancing property rights, and Indigenous rights, Canada's system requires consultation with Indigenous communities and accommodates provincial priorities, as seen in the *Gitxaala* case. Brazil, meanwhile, places strict constitutional protections on Indigenous lands, but enforcement remains a significant issue. Ultimately, these regulatory frameworks reveal how historical, cultural, and political factors shape natural resource management in each country, offering important insights into the ongoing global challenge of balancing economic development

<sup>47</sup> VALLEJOS, Patricia Quijano; VEIT, Peter G.; TIPULA, Pedro; REYTAR, Katie. **Undermining Rights: indigenous lands and mining in the amazon**. Washington: World Resources Institute, 2020. Disponível em: [https://files.wri.org/d8/s3fs-public/Report\\_Indigenous\\_Lands\\_and\\_Mining\\_in\\_the\\_Amazon\\_web\\_1.pdf](https://files.wri.org/d8/s3fs-public/Report_Indigenous_Lands_and_Mining_in_the_Amazon_web_1.pdf). Acesso em: 12 dez. 2025.

<sup>48</sup> DUARTE, Maria Paula. **A Study on the Canadian Mining Industry and the Potential for the "Duty to Consult" as a Pathway Towards Reconciliation with Indigenous Peoples: lessons for brazil**. Sudbury: Laurentian University Of Sudbury, 2021.

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## HOW TO CITE:

KLAUS JR. Claudio A. "All that glitters" a comparison of gold mining laws on private property in Brazil and Canada. **Revista Direito e Política**. Programa de Pós-Graduação Stricto Sensu em Ciência Jurídica da UNIVALI, vº 20, nº3, 3º quadrimestre de 2025. Disponível em: <https://periodicos.univali.br/index.php/rdp> - ISSN 1980-7791. DOI: <https://doi.org/10.14210/rdp.v20n3.p483-497>

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Received: 15/09/2025  
Approved: 30/11/2025

Recebido em: 15/09/2025  
Aprovado em: 30/11/2025