



Mining Law of Canada

Martin-Joe Ezeudu

To cite this article: Martin-Joe Ezeudu (2019): Mining Law of Canada, Journal of Energy & Natural Resources Law, DOI: [10.1080/02646811.2019.1633152](https://doi.org/10.1080/02646811.2019.1633152)

To link to this article: <https://doi.org/10.1080/02646811.2019.1633152>



Published online: 22 Jul 2019.



Submit your article to this journal [↗](#)



Article views: 8



View Crossmark data [↗](#)



BOOK REVIEW

Mining Law of Canada, by Dwight Newman, Toronto, LexisNexis, 2018, 236 pp, \$180 (hardback), ISBN 978-0-433-49006-7

Twenty-five years after the publication of the first major work on Canadian mining law,¹ Dwight Newman's *Mining Law of Canada* arrives as another distinguished work, which may be aptly described as the 'New Testament' of Canadian mining law. In a number of ways it compares to Barry Barton's premier book much as the biblical New Testament compares to the Old Testament. Size-wise, it is smaller than Barton's book. It is abridged, though not necessarily an abridgement of issues or scope of coverage. Content-wise, it speaks of the law of the now, without rendering its predecessor redundant, in the same way that the New Testament contains the fulfilment of many of the prophecies of the Old without nullifying their divine authenticity. Again, unlike its precursor, it covers contemporary issues in mining law, and is essentially apocalyptic in outlook. It does not conclude many of its chapters without a projection of how the law may continue to develop or a clear statement on the future direction of the law on the specific issues discussed.

Written in one of the best academic styles, the book has 14 chapters with tables of cases and legislation, and an index that is arranged by key words and phrases for ease of reference. The introductory chapter explores a range of foundational subjects that set the stage for the rest of the book's contents. It essentially covers the background to mining law in Canada, accentuating the role that law plays in the mining industry. It equally sets the tone of this book as a 'contemporary take on the mining law of Canada' (p. 3). The impacts on mining of both the division of powers in Canada's federal system of government and the Aboriginal jurisdiction over certain lands in Canada are other key points purposefully projected to the forefront of the book.

In an incisive way, the book sheds light on the connections between mining and communities, particularly focusing on the rights of Indigenous communities as they affect the mining sector, a topic that, unsurprisingly, takes up a whole chapter, given the author's background as Canada's leading scholar on Aboriginal legal studies. It features the constitutional foundation of the Aboriginal and treaty rights in Canada, the Aboriginal title and other forms of Indigenous ownership of land as they affect the mining industry, the procedural duty to consult, which is incidental to Aboriginal rights, the concept of 'free, prior, and informed consent', the indigenous–industry agreements and other forms of economic participation of Indigenous communities in the mining industry, and also the implications of the anti-bribery and extractive sector transparency laws for Indigenous communities. While the topic is one of Newman's signature additions to mining law literature, its place in the structure of the book is problematic. The topic is not cardinal to an initial understanding of

¹ Barry J Barton, *Canadian Law of Mining* (Canadian Institute of Resources Law 1993) is the first major and leading textbook on Canadian mining law.

mining law; as such, the chapter should have been placed somewhere after the discussion of traditional mining law topics such as the ownership of minerals, acquisition of mineral rights, surface rights issues, withdrawal of land from mining access and dealings in mineral rights.

By discussing the mining cycle in a way that presents an ‘integrated understanding of the mining industry’ (p. 49), as well as discussing mine closure and reclamation, the author appears to achieve a double mission. First, to contextualise clearly the mining industry in a way that facilitates an understanding of the role of law across the length and breadth of the industry. Second, to present the book in a way that may appeal to a wide spectrum of readership beyond mining law scholars and practitioners. Furthermore, the book goes beyond the subject of ‘royalties and taxation’ to engage in essential contemporary mining law issues, which defines it as an outstanding work. First is its discussion on the range of financing options for mining operations, accompanied by securities regulations pertaining specifically to publicly quoted mining companies. Second is its discussion of restrictions on foreign investment in Canada’s mining industry, highlighting the key federal legislation on foreign investments that affect mining. This particular topic is also discussed within the context of Canada’s national security. Third is the discussion of environmental regulations affecting mining operations, which highlights the regulatory perspectives of both the federal and provincial governments on the subject. Finally, the survey of the corporate social responsibility of mining companies, which is presented as both an obligation and a potential risk that mining companies should strive to guard against, especially the extra-territorial tort actions.

Mining Law of Canada, exquisite and loaded with lots of information, is indeed a grand display of Dwight Newman’s versatility as a consummate law scholar. It draws upon some of his earlier works, which are generously referenced in the book,² making up for the synopsis-like presentation of its contents. The condensed style of the book

² They include: Dwight Newman, *Natural Resource Jurisdiction in Canada* (LexisNexis Canada 2013); Guy Régimbald and Dwight Newman, *The Law of the Canadian Constitution* (2nd edn, LexisNexis Canada 2017); Dwight Newman and Kaitlyn Harvey, ‘Stepping into the Sunshine Without Getting Burned: The Extractive Sector Transparency Measures Act (ESTMA) and Aboriginal Communities’ (Macdonald-Laurier Institute, June 2016); Dwight Newman, ‘Changing Duty to Consult Expectations for Energy Regulations: Broader Implications from the Supreme Court of Canada’s Decisions in *Chippewas of the Thames and Clyde River*’ (2017) 5 Energy Reg Q 21; Dwight Newman, ‘Business Implications from a Public Law Doctrine: Judicial Interpretations of Canada’s Indigenous Rights Clause and Their Relationship to Economic Reconciliation’ in Dwight Newman (ed), *Business Implications of Aboriginal Law* (LexisNexis Canada 2018); Dwight Newman, ‘The Economic Characteristics of Indigenous Property Rights: A Canadian Case Study’ (2016) 95 Nebraska L Rev 432; Dwight Newman, ‘Contractual and Covenantal Conceptions of Modern Treaty Interpretation’ (2011) 54 SCLR (2d) 475; Dwight Newman, ‘Is the Sky the Limit? Following the Trajectory of Aboriginal Legal Rights in Resource Development’ (Macdonald-Laurier Institute, June 2015); Ken Coates and Dwight Newman, ‘The End Is Not Nigh: Reason Over Alarmism in Analysing the Tsilhqot’in Decision’ (Macdonald-Laurier Institute, September 2014); Dwight Newman, *The Top Ten Uncertainties of Aboriginal Title after Tsilhqot’in* (Fraser Institute 2017); Dwight Newman, *The Duty to Consult: New Relationships with Aboriginal Peoples* (Purich 2009); Dwight Newman, *Revisiting the Duty to Consult Aboriginal Peoples* (Purich 2014); Dwight Newman, ‘The Section 35 Duty to Consult’ in Peter Oliver, Patrick Macklem and Nathalie Des Rosiers (eds), *The Oxford Handbook of the Canadian Constitution* (Oxford University Press 2017); Dwight Newman and Ibrinke Odumosu-Ayanu (eds), *Indigenous-Industry Agreements, Natural Resources, and the Law* (Routledge, forthcoming 2019); Dwight Newman, ‘Be Careful What You Wish For: Why Some Versions of “Social Licence” Are Unlicensed and May Be Antisocial’ (MLI Commentary, November 2014).

perhaps explains why, despite its wider coverage of topics, it remains smaller than Barton's publication. Curiously, the book is silent on treatment of mining agreements. With Barton's book discussing only confidentiality agreements, it means that as of yet there is no Canadian book that comprehensively covers mining agreements in a broad context. However, in an intriguing way the book reveals the multifarious dimensions of issues in mining law, and demonstrates the linkage the subject has with some complex areas of law, particularly with the area of conflict of laws. Considering the scope of its coverage, such a book could have been written by two or more authors, with each author providing a more in-depth coverage of one of the different topics covered. An important credit deservingly ascribed to this book is that it has proven to be an invaluable resource on Canadian mining law, and provides a useful template for designing a modern syllabus on the subject.

Martin-Joe Ezeudu

Bora Laskin Faculty of Law, Lakehead University, Thunder Bay, Ontario, Canada

Email: mezeudu@lakeheadu.ca

© 2019 Martin-Joe Ezeudu

<https://doi.org/10.1080/02646811.2019.1633152>

