

July 14, 2023

Paul Mercredi
Intergovernmental Council Secretariat Coordinator
Aboriginal Consultation and Relations
Department of Executive and Indigenous Affairs
Government of the NWT
P.O. Box 1320
Yellowknife NT X1A 2L9

Re: Bill 29 *Resource Royalty Information Disclosure Statute Amendment Act*

Dear Mr. Mercredi

I wrote to the Intergovernmental Council on June 10, 2021 regarding my Private Member's [Bill 29 Resource Royalty Information Disclosure Statute Amendment Act](#) (see attached letter with revised Briefing Note). This Bill is still on the Order Papers at the Legislative Assembly and I need to decide whether to proceed or not with it during the upcoming sitting scheduled for August 16-24, 2023. I welcome any further input from the Intergovernmental Council and/or individual Indigenous governments.

This Bill would allow the Minister of Industry, Tourism and Investment to share resource royalty information subject to any confidentiality restrictions on its further disclosure as set by the Minister. The information could be made available to Indigenous governments and regular MLAs for their use in the development and evaluation of policy. No information on payments made to Indigenous governments by resource companies or any other information not already in the possession of the Minister could be disclosed as a result of this Bill. The Bill does not allow Indigenous governments or MLAs to access any proprietary or financial information held by the private sector that has not already been disclosed to the Government of the Northwest Territories. The Bill does not require or allow for the public disclosure of royalty information.

Bill 29 was introduced on May 31, 2021. The Bill was referred to the Standing Committee on Economic Development and Environment which conducted a public review. You can read that report here: https://www.ntassembly.ca/sites/assembly/files/2021-11-23_cr_19-192_scede_report_on_bill_29_resource_royalty_informa_0.pdf

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Although I sit on this Committee I did not participate in its deliberations on the Bill other than to present it and answer any questions posed. Various views were expressed to Committee including support and suggestions for strengthening disclosure requirements, while some concerns were also expressed by industry. The written submissions on Bill 29 can be viewed in the above report. Committee could not reach agreement on how to proceed with the Bill. However, Committee did recommend that the Bill receive further consideration in Committee of the Whole.

The Minister has interpreted current resource legislation in a way that prevents the sharing of resource royalty information beyond annual totals for all mining, petroleum development and some other fees. This may result in a less than thorough review of the mining fiscal regime that is currently under way.

Regular MLAs received a briefing on May 29, 2023 about the mining royalty modeling that is currently under way. You can see the slides for that presentation here:

https://www.ntassembly.ca/sites/assembly/files/ede_145-19-23_agenda_package_may_29_2023.pdf and you can watch the video of that meeting here:

<https://www.facebook.com/LegislativeAssemblyNWT/videos/210071911875025> . I am of the view that this modeling and subsequent policy work to ensure a fair mining royalty regime and revenue streams to Indigenous and public governments, requires the disclosure and analysis of royalty information beyond annual aggregate royalty amounts. Bill 29 would allow for that sort of information sharing to take place, which is currently prohibited.

I would ask that you distribute this letter and attachments to the members of the Intergovernmental Council. I would be happy to provide any further information on the Bill should there be any questions. I welcome any further thoughts on the content of the Bill, its usefulness and whether it should proceed at this time.

Sincerely,



Kevin O'Reilly
Member of the Legislative Assembly, Frame Lake
kevin_oreilly@ntassembly.ca
(867) 445-9450 cell

cc. Katie Weaver, Clerk of the Standing Committee on Economic Development and Environment

Attachments

With this Bill, regular MLAs and Indigenous governments would finally have access to information essential to the development of regulations under *Mineral Resources Act*. This is a first step towards greater transparency in reporting of the monies paid to the GNWT for resource development.

I would ask that you distribute this letter and attachments to the members of the Intergovernmental Council. I would be happy to provide any further information on the Bill should there be any questions.

Sincerely,

A handwritten signature in black ink that reads "Kevin O'Reilly". The signature is written in a cursive, flowing style.

Kevin O'Reilly
Member of the Legislative Assembly, Frame Lake
kevin_oreilly@ntassembly.ca
(867) 445-9450 cell

cc. Jackie Jacobson, Chair of the Standing Committee on Economic Development and Environment
Jennifer Franki-Smith, Clerk of the Standing Committee on Economic Development and Environment

Attachments

BILL 29 (PRIVATE MEMBER'S BILL):

RESOURCE ROYALTY INFORMATION DISCLOSURE STATUTE AMENDMENT ACT

PLAIN LANGUAGE SUMMARY

This Bill would make small changes to the [Mineral Resources Act](#) (not yet in force), the [Northwest Territories Lands Act](#), and the [Petroleum Resources Act](#), to allow for the sharing of mining, and oil and gas royalty information held by the Minister of Industry, Tourism and Investment (ITI) with Indigenous governments and regular MLAs. This sharing would be done in ways to protect any confidential information as specified by the Minister. This would better enable informed discussion and input by Indigenous governments and regular MLAs into policy, regulations and legislation for the management of mining, oil and gas. The broader issue of public access to royalty information is not addressed in this Bill.

BACKGROUND

ITI has begun to develop regulations to implement the *Mineral Resources Act*, including regulations for royalties. This initiative was announced on [October 20, 2020](#) with the release of a benchmarking study on mineral royalties and taxation in a number of jurisdictions including the NWT. The secrecy around disclosure of mining royalties was raised in the House on [October 28, 2020](#) with the ITI Minister stating “part of that work includes modernizing the transparency provisions that are currently in the regulations. For the moment, those regulations require confidentiality, have a confidentiality clause.”

In March 2021, during the creditor protection proceeding for the Ekati Mine, [written questions](#) were presented in the House for the Minister of Industry, Tourism and Investment to disclose the amount and types of liabilities owed to GNWT. The [Minister would not disclose the amount](#) of royalties owed to GNWT as this has been interpreted to be confidential information.

Work to review the mining royalty regime continues and a consultant has been hired to conduct modeling. It is not clear what type of modeling will take place and whether that will include any of the new royalty data now held by GNWT since devolution in 2014.

It is also not clear how or when GNWT will allow mining royalty information to be shared with Indigenous governments and regular MLAs, or whether this will happen in time for meaningful participation in the ongoing review the royalty regime for NWT mining. To remove the secrecy barrier, this Private Member’s Bill was drafted and introduced.

PURPOSE

The proposed bill would amend existing resource management legislation to:

- provide certainty that resource royalty information can be shared with Indigenous governments and regular MLAs subject to such restrictions on further disclosure as may be specified by the Minister; and
- better enable informed discussion and input by Indigenous governments and regular MLAs into policy, regulations and legislation for the management of mining, oil and gas, without breaching confidentiality.

The Private Member's Bill **does not** seek to create new powers with respect to mining and petroleum activities, nor create any new regulatory structure to govern performance. The Private Member's Bill **does not** allow MLAs or Indigenous governments to access any proprietary or financial information held by the private sector that has not been disclosed to GNWT. The Bill **does not** require or allow for the public disclosure of royalty information. The Bill **does not** require or allow for public disclosure of any mining revenues to Indigenous governments.

RATIONALE

- The amendments will be to the original legislation rather than allowing for regulation-making authority to facilitate disclosure. This will avoid the need for separate regulations to implement information sharing.
- Amend the [Mineral Resources Act](#) section 59(2) to allow for royalty information in the possession of the GNWT to be disclosed to MLAs and Indigenous Governments for use in the development and evaluation of policy for the Government of the Northwest Territories, subject to such restrictions on further disclosure as may be specified in either case by the Minister.
- Amend the [Northwest Territories Lands Act](#) section 10 that currently allows that the “Commissioner in Executive Council may make regulations for the leasing of mining rights in, under or on territorial lands and the payment of royalties for the lease of those mining rights, and those regulations must provide for the protection of and compensation to the holders of surface rights”. A new subsection would be added to allow the Minister to “disclose information of a confidential nature acquired for the purposes of sections 69 to 77 [of the [Mining Regulations](#) which lay out how and when royalties are calculated and collected] of those regulations for use in the development and evaluation of policy for the Government of the Northwest Territories to a member of the Legislative Assembly or to an Indigenous

government, subject to such restrictions on further disclosure as may be specified in either case by the Minister.”

- Amend the [Petroleum Resources Act](#) section 91 to allow the Minister to “disclose any information obtained under Part 6 [which lay out how and when royalties are calculated and collected] of this Act for use in the development and evaluation of policy for the Government of the Northwest Territories to a member of the Legislative Assembly or to an Indigenous government, subject to such restrictions on further disclosure as may be specified in either case by the Minister.”
- These legislative changes will enable the ITI Minister to share resource royalty information with Indigenous governments and regular MLAs to better participate in the review of the fiscal regime for mining in the NWT. That review will also be a basis for the development of new regulations under the [Mineral Resources Act](#) that will deal with royalties.
- This Bill upholds the process set out in the Intergovernmental Council on Land and Resource Management [Legislative Development Protocol](#): “information and/or documents shared by participating IGC members through the collaborative development process for NWT legislation that is described herein are confidential and will not be further disclosed without the consent of the party that shared the information and/or documents.” [page 3] More detailed information on mining royalties, as this Bill enables, will result in a more rigorous analysis of performance and options, and ultimately, better regulation of royalties.
- This Bill upholds the objectives of the [Guiding Principles and Process Conventions of the Legislative Assembly](#): “Except. under extraordinary circumstances, Members of the Legislative Assembly should be made aware of and have opportunity to discuss significant announcements, changes, consultations or initiatives before they are released to the public or introduced in the Legislative Assembly.” [Guiding Principle 5]

IMPLEMENTATION

Legal Issues

- The proposed approach maintains the current regulatory regime governing mining and petroleum development in the NWT. The Bill explicitly provides that resource royalty information can be shared with Indigenous governments and MLAs within this system but subject to such restrictions on further disclosure as may be specified in by the Minister. Royalty information can be shared on a confidential basis for the

purposes of regular MLAs carrying out their oversight duties with regard to the evaluation and development of policy, regulation and legislation. The broader issue of public disclosure is not addressed and can be dealt with during the ITI review of mining and petroleum royalties.

- In a limited jurisdictional scan of Alberta, Ontario, Yukon and Quebec, all these governments take steps in their legislation to protect confidentiality of royalty information. Alberta has provisions for all royalty information to be released after a five-year delay, on application through its access to information legislation (Alberta [Mines and Minerals Act](#) s. 50). Ontario does allow for royalty information to be shared for “use in the development and evaluation of fiscal policy for the Crown” (Ontario [Mining Act](#) s. 154(7)(1)(a)). Quebec discloses information publicly for each mine including the annual quantity and value of the ore extracted, royalties paid, overall contributions paid, rehabilitation and restoration plan approved by the Minister, and the total amount of the financial guarantee required (Quebec [Mining Act](#) s. 215).
- There is a worldwide movement towards stronger disclosure of government revenues from the mining and petroleum resource development as found in the [Extractive Sector Transparency Initiative](#). Canada has already largely implemented the international standard for disclosure but there are problems with the consistency and quality of the self-reporting system established under the federal [Extractive Sector Transparency Measures Act](#). This Private Member’s Bill is consistent with the international efforts to improve disclosure of government revenue information to decision-makers. The broader issue of public disclosure is not addressed in this Bill and it is anticipated that the Minister will bring forward regulations to deal with this matter as part of the implementation of the [Mineral Resources Act](#).

Interdepartmental Issues

- No interdepartmental issues are anticipated. ITI is the administrator and regulator of mining and petroleum rights. The [Office of the Regulator of Oil and Gas Operations](#) and the [Land and Water Boards of the NWT](#) are regulators of activities that may take place on any mining or petroleum rights obtained from GNWT. Finance is the ultimate recipient of royalties and determines the use of these funds as part of the Consolidated Revenue Fund. Executive and Indigenous Affairs deals with resource management and Indigenous governments through the Intergovernmental Council and GNWT could also share royalty information through that forum.

Financial Issues

- No financial implications are anticipated for the Government of the NWT.

Social Issues

- Allowing for the sharing of resource royalty information with Indigenous government and regular MLAs is consistent with open and transparent government and provides greater certainty in the development of new policy, regulations and legislation.

CONSULTATION

- No further public information or timelines have been provided by the ITI Minister on next steps or consultations with regard to sharing royalty information with Indigenous governments, MLAs or the public.
- No consultation was carried out with Indigenous governments by the sponsor of the Private Member's Bill prior to it being tabled in the House (May 31, 2021). This was driven by the limited resources at the disposal of a regular MLA and the narrow window for sittings of the Legislative Assembly. It was anticipated that Indigenous governments would not oppose the ability to receive and use royalty information in the development and evaluation of policy for the Government of the Northwest Territories. Sharing of resource royalty information is also consistent with the new Intergovernmental Council [Legislative Development Protocol](#). The Bill sponsor wrote the Intergovernmental Council on June 10 and non-Intergovernmental Council Indigenous governments on June 14, 2021 offering information and an opportunity to meet. The same offer was extended again on July 14, 2023.
- The Standing Committee on Economic Development (SCEDE) was better positioned to solicit comments from Indigenous governments as part of its public review of this Private Member's Bill. Submissions were received during that process from the Sahtu Secretariat Incorporated and the Tlicho Government. The Committee [reported](#) the Bill as ready for further consideration in the Legislative Assembly on November 23, 2021.
- No consultations have been carried out with the mining or petroleum resource industries. Any resource royalty information shared with regular MLAs and/or Indigenous governments may be subject to confidentiality as required by the ITI Minister, so no impacts are predicted on these sectors. SCEDE was also better positioned to solicit comments from the resource sector as part of its public review of this Private Member's Bill. The mining industry expressed concern over the

potential disclosure of what may be proprietary information, but this information is already available internally to ITI and since June 1, 2018, within GNWT as whole (but not Indigenous governments or regular MLAs). The mining sector is also engaged in the review of resource royalties as part of ITI's general public review.

TIMELINE

The Bill was introduced during the May-June 2021 Legislative Assembly sitting where it was referred to the Standing Committee on Economic Development and Environment for public review on June 1, 2021. The Committee reported back to the Legislative Assembly on November 23, 2021 stating that the Bill is ready for further consideration in Committee of the Whole. If the Bill is to be considered, it must be called in the August 16-24, 2023 sitting of the 19th Legislative Assembly.

Prepared by Kevin O'Reilly, MLA Frame Lake
July 2023