



Northwest Territoriesmi

Ihuriat Malirutaliatigun

MEETING EDE 74-19-21

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND ENVIRONMENT

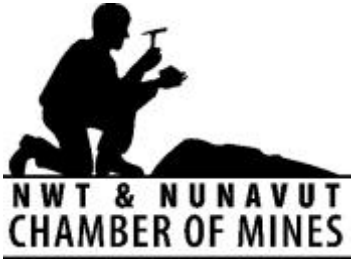
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WEDNESDAY, SEPTEMBER 15, 2021

COMMITTEE ROOM 'A', LEGISLATIVE ASSEMBLY / TELECONFERENCE
5:00 P.M.

AGENDA

1. Prayer
2. Review and Adoption of Agenda
3. Declarations of Conflict of Interest
4. In-Camera Matters
 - a) Internal Briefing on Bill 29: *Resource Royalty Information Disclosure Statute Amendment Act*
 - i. Committee Review
 - ii. Correspondence
 - iii. Sponsoring Member Materials
 - iv. Bill 29: *Resource Royalty Information Disclosure Statute Amendment Act*
5. Public Matters
 - i. Public Hearing on Bill 29: *Resource Royalty Information Disclosure Statute Amendment Act*
 - ii. Clause-by-Clause Review of Bill 29: *Resource Royalty Information Disclosure Statute Amendment Act*
6. In-Camera Matters
 - i. Wrap-Up discussion
7. Date and Time of Next Meeting: Friday, September 17th at 8:30am.
8. Adjournment



***Minerals Industry Submission on Private Member's Bill 29,
the Resource Royalty Information Disclosure Statute Amendment Act***

To: The Standing Committee on Economic Development and Environment
September 15, 2021

Industry Recommendations

- The NWT Government, together with the federal and Indigenous governments, need to take many constructive actions to reverse the decline in the minerals industry and mitigate the impending loss of benefits it provides to maintain our private sector economy and the benefits it provides for all stakeholders.
- **Bill 29 does not address this.** This Bill is duplicative of other legislation, requires further reporting burden, and requires companies to share sensitive and competitive information. If there is little or no minerals industry in the NWT, there will only be lower to no royalty revenues.
- It is our recommendation that the current system which protects business confidentiality should be maintained.
- Bill 29 should not be supported or passed for the reasons that we have provided.

Consultation with our mining industry finds that Bill 29 ...

1. Is duplicative of other legislation
2. Proposes unusual sharing of confidential tax information beyond government staff who have the responsibility and the systems to protect business sensitive financial information.
3. Disconcertingly, this confidential and sensitive information would also be available to business competitors.
4. Is being proposed before the GNWT has completed its study on resource royalties and the tax system.
5. Will not support the 19th Assembly's Mandate to "Increase resource exploration and development" and "restore levels of investment, partnership, employment, and growth in the NWT's economy."



Resource Royalty Information Disclosure Statute Amendment Act

September 15, 2021



Introduction to the NWT Mineral Royalty Regime

- Royalties are paid by the owner of a mine to compensate for natural resources that are extracted.
- The existing royalty regulations were mirrored from the federal regulations as part of the 2014 Devolution Agreement.
- Royalty revenue is directly correlated with profitability of producers.
- Under the resource revenue sharing arrangements, royalty revenue is shared with Government of Canada and Indigenous governments in the NWT.





Background on Confidentiality of Royalties ?

- Canadian tax law has protected taxpayer privacy and confidentiality from its initial enactment in 1917 through the present.
- The default rule in the Canada Tax Act, and other acts that involve self-assessment and reporting, is nondisclosure, with specific exceptions.
- Even with respect to non-taxpayer specific or aggregate data, the Court stated that:
“Taken to its limits, [the] conclusion that statistics derived from confidential information are an integral part of that information could and would mean that all statistics about taxation laws and, indeed, government operations to enforce these laws could be withheld.”
(Sherman v. Minister of National Revenue, 25 C.P.R. (4th) 32 (Fed. Ct. App. May 6, 2003).
- Royalty systems in Canada use the same self assessment and reporting methodology.





What Royalties Information is published?

Revenues Distributed under Resource Revenue Sharing, by Signatory						
(dollars)						
	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Indigenous Group						
Acho Dene Koe First Nation	188,133	135,105	197,272	174,755	74,162	117,712
Deninu Kue First Nation	238,226	181,971	265,450	244,861	102,559	94,305
Gwich'in Tribal Council	1,182,521	942,063	1,373,398	1,254,427	527,224	483,126
Inuvialuit Regional Corporation	1,815,566	1,441,671	2,101,856	1,973,271	821,920	759,980
Kátł'odeeche First Nation	131,661	126,627	184,153	167,322	70,503	64,442
Northwest Territory Métis Nation	627,601	497,521	725,368	645,201	273,568	248,491
Sahtu Secretariat Inc.	1,335,446	1,067,134	1,555,666	1,448,762	605,048	557,972
Salt River First Nation	250,542	191,636	279,544	247,922	105,205	95,484
Tłįchǫ Government	1,213,736	961,408	1,401,716	1,269,178	534,950	488,807
Total Distributed Resource Revenues	6,983,432	5,545,136	8,084,423	7,425,698	3,115,140	2,910,318















https://www.itl.gov.nt.ca/en/publications?f%5B0%5D=field_document_category%3A48





What Do Other Provinces and Territories Do?

- Newfoundland 
- Nova Scotia 
- New Brunswick 
- Prince Edward Is. N/A
- Quebec 
- Ontario 
- Manitoba 

- Saskatchewan 
- Alberta 
- British Columbia 
- Nunavut 
- Northwest Territories 
- Yukon 





What about the Future?

- Department of Industry Tourism, and Investment (ITI) is currently reviewing existing Mineral Resources Act and regulations
- We are following the Intergovernmental Agreement on Lands and Resources Protocols
- Level of transparency of the royalty regime is included in this review
- Intergovernmental Council (IGC), Other Indigenous Governments (IGO), Industry and other impacted stakeholders to be included in process review
- GNWT is committed to a thorough, fair and respectful legislative process
- Current review process best reflects the commitment of this government to consultation and engagement



Questions



Bill 29: Resource Royalty Information Disclosure Statute Amendment Act

Standing Committee on Economic Development and Environment
September 15, 2021



K'ici Okimānāhk Māmawapowin • Beba ʔelígíth ʔela Délth'i Kúé • Ek'ètehtsodq Legehdi Kq̄ • K'áowe gogha efek'éterewe ke Iénakedé
Gogha Sombaa Nálée • Dagwidjji'è' Tr'igwahtsii Geenjit Nadhat Kat • Legislative Assemblitkut • Ihumiurviat Malirutaliatigun • ᑭᑭᑭᑭᑭᑭᑭᑭ

Presentation Outline

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- Plain Language Summary
- Background
- Purpose
- Rationale
- Implementation
- Consultation
- Questions

Plain Language Summary

- Bill proposes small changes to:
 - [Mineral Resources Act](#) (not yet in force)
 - [Northwest Territories Lands Act](#)
 - [Petroleum Resources Act](#)
- royalty information is already available within GNWT for “use in the development and evaluation of policy for the GNWT” but not to MLAs or Indigenous governments
- Bill is about allowing MLAs and Indigenous governments to access information about mining and petroleum royalties already in GNWT’s possession
- would protect confidentiality of information
- enables informed discussion and input by regular MLAs and Indigenous governments into policy, regulations and legislation for the management of minerals and petroleum
- broader issue of public access to royalty information is NOT addressed in this Bill

Background

Timeline

- April 1, 2014 Devolution of Lands and Resources to GNWT and Indigenous Governments
- August 2019 *Mineral Resources Act* (not yet in force) passes in the 18th Assembly, SCEDE report recommended:
 - “GNWT assess, develop and adopt a set of principles, tools and indicators to drive performance and ensure greater transparency and accountability, such as those contained in the Extractive Industries Transparency Initiative (EITI), or the ‘Towards Sustainable Mining’ (TSM) commitment of the Mining Association of Canada”

Background

Timeline

- **October 20, 2020** ITI Minister announces Review of the NWT Mining Fiscal Regime and releases PriceWaterhouse Coopers benchmarking study
 - No publicly available plan to develop regulations, deal with information sharing or public disclosure
 - No specific references to information sharing or public disclosure in study
- **October 28, 2020** ITI Minister states in the House:

“For the moment, those [mining] regulations require confidentiality, have a confidentiality clause. It's one to which I'm bound. It's not dissimilar to something that is in many other Canadian jurisdictions. That's not to say that we won't be doing work to modernize ours and to bring it home and make it something that works for the best interests of the people of the Northwest Territories once that work gets done.”

Background

Other Jurisdictions

- limited jurisdictional scan of Canadian jurisdictions with large resource extraction sectors
- 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)
- **Yukon** any information of a private or confidential nature shall not be disclosed to anyone, except in so far as may be necessary for royalty calculation and collection (Yukon [Quartz Mining Act](#) s. 102)

Background

Other Jurisdictions

- worldwide movement towards stronger disclosure of government revenues from the mining and petroleum resource development as found in the [Extractive Sector Transparency Initiative](#)
 - implemented in 55 countries and supported by 68 companies including Rio Tinto and Anglo American that operate 2 of the 3 NWT diamond mines)
- [Canada](#) has already largely implemented the international standard for disclosure with the [Extractive Sector Transparency Measures Act](#) where payments to public and Indigenous governments are reported
- problems with the consistency and quality of data with the self-reporting system established under the federal legislation
- Bill 29 is consistent with the international efforts to improve disclosure of government resource revenue information to decision-makers
- broader issue of public disclosure is not addressed in the Bill but can be considered as part of the overall review of the mining fiscal regime

Purpose

- **amend existing resource management legislation to:**
 - provide certainty that resource royalty information can be shared with regular MLAs and Indigenous governments subject to such restrictions on further disclosure as may be specified by the Minister
 - enable informed discussion and input by regular MLAs and Indigenous governments into policy, regulations and legislation for the management of mining and petroleum development, without breaching confidentiality
- **does not** create new powers with respect to mining and petroleum activities, nor create any new regulatory structure to govern performance
- **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
- **does not** require or allow for the public disclosure of royalty information

Purpose

Legislation	Wording
<i>Mineral Resources Act</i>	s. 59(2) Notwithstanding subsection (1) a person may disclose information of a confidential nature for use in the development and evaluation of policy for the Government of the Northwest Territories. [passed in August 2019, not in force]
<i>Mining Regulations</i>	s. 76(3) Notwithstanding subsection (2), a person may disclose information of a confidential nature for use in the development and evaluation of policy for the Government of the Northwest Territories. [currently in force, this section added on June 1, 2018]
Bill 29	AMEND <i>Mineral Resources Act</i> by adding the following after s. 59(2): (2.1) Notwithstanding subsection (1), the Minister may disclose information of a confidential nature 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.
Bill 29	AMEND <i>NWT Lands Act</i> by adding the following after s. 10: 10.1. Notwithstanding subsection 76(2) of the <i>Mining Regulations</i> , established by regulation numbered R-015-2014, the Minister may disclose information of a confidential nature acquired for the purposes of sections 69 to 77 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.

Rationale

- Information sharing on royalties is already in the *Mining Regulations and Mineral Resources Act* for “use in the development and evaluation of policy for the GNWT” but only within GNWT
- Minister has stated she cannot share royalty information with MLAs and Indigenous governments under current *Mining Regulations*
- Bill would extend current royalty information sharing to MLAs and Indigenous governments

Rationale

- No publicly available timelines for royalty information sharing or for public disclosure of royalty information
- changes will enable MLAs and Indigenous governments to better participate in the review of the fiscal regime for mining in the NWT with access to royalty information
- sharing of resource royalty information with regular MLAs and Indigenous government is consistent with open and transparent government and provides greater certainty in the development of new policy, regulations and legislation
- 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]
- Bill amends original legislation rather than allowing for regulation-making authority to facilitate access
- avoids need for separate regulations to implement royalty information sharing with MLAs and Indigenous governments

Implementation

- Bill is about allowing MLAs and Indigenous governments to access royalty information already in GNWT's possession
- No changes to current regulatory regime governing mining and petroleum development in the NWT
- No interdepartmental issues are anticipated
 - ITI is the administrator and regulator of mining and petroleum rights
 - [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 where royalty information can be shared
- No financial implications are anticipated for the Government of the NWT
- No additional information needs placed on resource sector, no impact predicted as financial reporting already in place, confidentiality protected

Consultation

- Cabinet and Regular MLAs provided the Bill and a briefing note 27 days before First Reading, no concerns raised beforehand
- No consultation carried out with Indigenous governments before First Reading given the limited resources for regular MLAs and tight timeline for drafting and introduction into the House
- Bill and briefing note shared with Intergovernmental Council (IGC) member Indigenous governments and Non-IGC Indigenous governments in June 2021 (no written responses received)
- Informal meetings with Indigenous government staff and advisors June-September 2021
- Offered to meet with the NWT and Nunavut Chamber of Mines
- Given the minor nature of the proposed changes, ability of the Minister to require confidentiality, no impacts predicted

Thank You and Questions