NWT & NUNAVUT CHAMBER OF MINES

May 17, 2019

Mr. Cory Vanthuyne
Committee Chair
c/o Mr. Michael Ball
Committee Clerk
Standing Committee on Economic Development and Environment
P.O. Box 1320
Yellowknife, NT X1A 2L9
Email: Michael_ball@gov.nt.ca

Dear Mr. Vanthuyne,

Re: Submission on Bill 34 – NWT Mineral Resources Act

On behalf of the minerals industry of the Northwest Territories, please find attached our thoughts and recommendations on Bill 34, the Mineral Resources Act. We are providing these comments in the interests of maintaining and hopefully growing the NWT's minerals industry, critically important to sustaining the significant benefits our industry creates for all northerners today.

The context of this Bill is important:

- The health of the NWT's mining industry is flagging as mines mature and there are insufficient new prospects or development projects to offset mine closures. Economic forecasts for the NWT are reported as grim as a result;
- Mineral exploration continues to languish, with low investor confidence largely of the NWT's own making through reduced and uncertain access to land, and long and uncertain permitting processes, to name a few. The NWT continues to attract insufficient investment, far below what its geological potential should support, and below what is required to sustain the mining industry and its significant employment, business and taxation benefits to the NWT;
- The industry is worth protecting. Mining has successfully made the greatest changes in community benefits in the NWT's history, particularly in Indigenous employment and business benefits, while at the same time operating responsibly and safely under unique, land claims driven co-management regimes;
- Other legislation, like the Protected Areas Act, the GNWT now proposes incentives to further close lands to development using donated funds. That same act also disregards the requirement for mineral resource assessments within the decision-making process, and further erodes the importance of mineral resource development and mining to the NWT's economy;

103, 5102 – 50th Avenue, Yellowknife, NT Canada X1A 3S8 Phone: (867) 873-5281 Fax: (780) 669-5681
Email: executivedirector@miningnorth.com Website: www.miningnorth.com

- As the first ever "made in the north" legislation for the minerals industry, the Mineral Resources Act should be a strong signal to rejuvenate investor confidence. We are concerned, however, that without changes, it will actually do the opposite.

In essence, the NWT minerals industry is ailing and needs help. This inaugural Mineral Resources Act is the opportunity for the 18th Assembly to make an innovative and positive difference to the health of its most important industry.

We are pleased that the Act continues to provide stability to the current land tenure system and the royalty establishment system. It is critically important to investor confidence to maintain that level of legislative and regulatory certainty. Don't change that.

The Act now has a new section, Part 5 – Benefits for People and Communities. We fully support the provision of benefits to people and communities from our minerals industry. Our members are proud of the significant benefits they have helped create, particularly over the past twenty plus years of diamond mining. Production value is higher than ever in our history, as are Indigenous benefits and taxes and royalties to both public and Indigenous governments.

However, proposing to legislate the benefit agreement portion of Impact Benefit Agreements (IBA) in Part 5 is cause for serious concern to our members.

IBAs have historically been the purview of Indigenous governments who negotiate them privately with mining companies, i.e., these IBAs are not bound in any legislation. Proposing to do so raises many questions, which add further uncertainty and fears that government intervention in this area will lead to court challenges, will delay projects, and will frighten investment away. Also, the concept of legislating a new "Benefit Agreement" by removing "Impact" from "IBA" has not been well explained, and is confusing and poorly understood by our members.

We are not the only ones with concerns. We have become aware that at least one major bank has expressed its concern with the direction this part of the Act is taking.

More work is required to understand the ramifications of including this change in Part 5. We request that this be revisited and studied in more detail with our industry before concluding it is safe to be made into law. None of us want this first ever, made-in-the-north minerals legislation to create unintended detrimental consequences, particularly at a time when the NWT needs to encourage investor confidence in its most important industry.

We are not averse to innovation and creativity in the MRA that improves investor confidence and incentivizes exploration and mining. We were hopeful that the MRA would do just that, and help rejuvenate the NWT's ailing mineral exploration and maturing mining industry. To that end, we wish to provide two recommendations that could make a big difference to supporting the minerals industry by linking the consequence of development to the traditional owners of the land on which the work occurs. Specifically that:

- the GNWT provide an annual cash payment equivalent to a percentage of every grassroots exploration project's annual expenditure to the Indigenous governments on whose land the project is located; and
- when that exploration finds a new mine, the GNWT split an additional 25% of the royalties collected from that new mine with those Indigenous governments on whose land that mine is located.

This innovation would provide revenue sharing at the exploration stage, and would provide it specifically to the Indigenous government(s) on whose traditional lands are being explored. Currently, revenues are shared with Indigenous governments across the NWT, often far removed from the work. That sharing would not change with our proposal.

In addition, we propose this new sharing of revenue would come from NWT Government coffers, redistributed from revenues already provided to GNWT by the minerals industry. These would be further supplemented if the GNWT can acquire the remaining share of royalties that Canada continues to retain.

Our key recommendations are the following:

- **Recommendation #1**: Send Part 5 back for further study and more comprehensive discussion with industry and investors to reduce its risks, and to consider other approaches to provide benefits to people and communities. Pre-eminent among these innovations is our recommendation to share other mineral industry revenues with Indigenous governments on whose land exploration and mining occur.
- **Recommendation #2**: Involve industry in the further study. The Intergovernmental Council established under the *Northwest Territories Intergovernmental Agreement on Lands and Resources Management* was provided several duties, including these two related to the MRA:
    - address legislative requirements for benefit agreements relating to resource development; and
    - review and develop any proposed changes to the [GNWT] legislation including the development of new resource management legislation.

  This wording has enough latitude that other methods, other wording, and other benefit agreement models can be found that could more effectively, and with low risk, create benefits for people and communities. Despite several attempts, our Chamber has not been granted opportunity to meet with the Council to discuss other opportunities and concerns. We would very much like to offer our expertise in the discussion on our industry.
- **Recommendation #3**: Maintain the other Parts of the Bill, particularly those that maintain the land tenure and royalty collection systems found in the current *Mining Regulations* under the *Northwest Territories Lands Act.* These aspects have been in place for a long time, and fulfill a critically important job in providing investment certainty.
- **Recommendation #4**: Draft regulations in concert with the Act so as to provide the needed clarity of the Act's intent. Many members have observed the dizzying references to regulations still to be written. Section 111 describes some of those. Some clauses in the Act are virtually indecipherable in their intent without seeing regulations.
- **Recommendation #5**: We ask the Committee and the government to look at the big picture, including how other Bills like the Protected Areas Act will work against efforts to increase investor confidence under the MRA. With this first ever made-in-the-NWT minerals legislation, it is important that the 18th Legislative Assembly takes meaningful actions to increase investor confidence and to bolster the ailing exploration and maturing mining industries in the face of other initiatives that could compromise it.

- **Recommendation #6**: Take time in the process. Many members have observed that the rapid speed with which this act and others are moving so as to be finalized before the impending election. We certainly believe there is a need for speed in rejuvenating mineral investment in the territory, given it has languished for over 12 years, however we recommend that GNWT take the time for fulsome discussion with our industry to de-risk and improve Part 5 of the Bill.

In addition to this letter, please find attached more detailed comments on various clauses in the bill. Note that while we have also provided comments on Part 5, we ask that they be considered ***WITHOUT PREJUDICE*** to our recommendation that Part 5 be removed from the Bill for further study.

Also find attached the speaking notes from the presentation that Chamber Executive members made to the Standing Committee at the public meeting held on May 8th.

If you have any further questions, please do not hesitate to contact our Executive Director, Tom Hoefer at executivedirector@miningnorth.com or the phone number below.

Yours truly,

NWT & NUNAVUT CHAMBER OF MINES

Gary Vivian
President

Attachments:

- Chamber of Mines Detailed Observations and Comments on Bill 34 – the Mineral Resources Act
- Chamber of Mines Presentation to SCEDE public meeting, May 8, 2019

c.c.: Felix Lee, President of the Prospectors & Developers Association of Canada
Pierre Gratton, President of The Mining Association of Canada
Hon. Bob McLeod, Premier of the Northwest Territories
Hon. Wally Schumann, NWT Minister, Industry, Tourism & Investment
Hon. Lou Sebert, NWT Minister, Lands
Hon. R.C. McLeod, NWT Minister, Environment & Natural Resources

NWT & NUNAVUT CHAMBER OF MINES

Chamber of Mines Detailed Observations and Comments on Bill 34 – the Mineral Resources Act

The Chamber provides the following detailed comments on Bill 34, the Mineral Resources Act (MRA), including to the Bill's Summary and to clauses in the Act's subsequent twelve Parts.

These are meant to be attached to and accompany the detailed submission letter provided to the Standing Committee on Economic Development and Environment.

SUMMARY

We recommend that supplemental wording be added to the MRA that draws on the concepts put forward in the Mackenzie Valley Resource Management Act, in particular, that the MRA will contribute to the *protection and promotion of the social, cultural and economic well-being of residents and communities in the Northwest Territories having regard to the interests of all Canadians*.

The industry is confidently doing that today, and this must be protected, encouraged and supported. This new MRA needs to be an innovative piece of legislation that can uphold these initiatives if properly written and applied.

PART 1 – INTERPRETATION AND APPLICATION

1. Definitions

- "contiguous" – check if this definition should include mineral leases as well as claims. The Bill refers to contiguous mineral leases in the definition of 'mining property'. Requiring contiguous boundaries usually only applies to the situation of grouping and under s.111(1)(n)(iii), it looks like there could be provisions to potentially allow for the grouping of leases (and other jurisdictions allow for it).
- Add "instruments" to definitions. They are referred to in Clause 12, 16, 22(11), 111(g), 113(2), and a definition would help with understanding.
- Add definition of "statistical return". Referenced in Entire Part 7, 111 (1)(x), and (z.3)
- "settlement lands" is not clearly defined as lands on which the Indigenous government owns only surface rights, subsurface rights, or both. This has implications in interpreting, for example, where zones might be established under clause 24. (4).
- "work":
    - needs clarity on trenching of rock since "excavation" implies dirt or soil.
    - Reference the placing of grid lines in the field for the purpose of performing any of the undertakings referred.
    - Where are "requirements prescribed" in (c)(iii) Indigenous engagement that meets prescribed requirements?

103, 5102 – 50th Avenue, Yellowknife, NT Canada X1A 3S8 Phone: (867) 873-5281 Fax: (780) 669-5681
Email: executivedirector@miningnorth.com Website: www.miningnorth.com

- Allowing "Indigenous engagement" to be eligible as a work requirement is new, and we support this. However, most other "work" has been historically related to the specific actions of assessing mineral potential and this is relatively easy to assess by NTGS geologists on behalf of the Mining Recorder. Who will assess the value of Indigenous engagement? Is there a way to bank credit from engagement towards future benefit agreements or SEAs? Of primary concern is that the collection of geological data should not be sacrificed for the desire to claim costs related to engagement. Will it require completely separate reporting to the Mining Recorder? The MRA should be helping investors, not making more work for them.

2. Purpose

- Recommend adding: "(d) to acknowledge that mineral resources are necessary in maintaining and advancing quality of life for people of the Northwest Territories;"

PART 2 – ADMINISTRATION

10. (1) Mining Rights Panel

This creates a Panel with quasi-judicial powers for reviewing all decisions under the Act and under the regulations. It suggests that there is much to be distrustful of, so as to require such interventionist power.

10. (3) Eligibility requirements (for Mining Rights Panel):

This is a good addition to the Act to require that panel members have specialized, expert or technical knowledge in the four areas described.

16. Training requirements

What is the instrument? Is this training for claim stakers? Clarify. It relates too to the lack of definition of "instruments".

18. (3) Reservation for roads and public works

Government should also have to accommodate the mineral rights / surface rights holder too, not just run roughshod over them.

22. (3-5) Authority to designate lands, etc.

It is our understanding all of Canada is "asserted traditional territory of Indigenous governments or organizations". Does this even exist anywhere in the NWT, or Canada for that matter?

Indicate that any existing mineral rights issued within that restricted area, would be able to continue as normal. Or compensation issued if their ability to work is halted?

24. (1) Meaning: "applicable"

Under the definition of 'applicable', it says "for the purposes of the section" when it probably should read "for the purposes of this section". The wording of 'the section' is ambiguous as it does not set out which section.

PART 3 – INTERESTS IN MINERALS

24. (2) Zones:

The concept of zones is currently found in "prospecting permits" which are a tenure vehicle used to entice exploration investment into underexplored areas by providing exclusive prospecting rights to a permit holder for a set period of time. We support that process to incent investment, and encourage government to translate this into a continuation of prospecting permits.

We are pleased that S.113(5) indicates that the regulations for the current prospecting permits will continue as they are until revoked or amended. Exploration in many underexplored areas needs to be encouraged but the playing field needs to remain level for all to participate.

We would suggest that some way be found to modernize the method of issuing prospecting permits that doesn't require people to be sleeping on the streets for days on end.

But the change in name to "zones" suggests another purpose might be contemplated. We cannot then comment on some other zone purpose. The devil may be in the details of the regulations.

24. (3) Authority to establish zones

We are unsure of where land might be found with "no asserted traditional territory of Indigenous governments or organizations.

24. (4) Where land, resources and self-government agreement

Allowing prospecting permit type zones to be issued on settlement lands is good. Indigenous governments have similar responsibilities as public governments to look for opportunities to generate benefits for their beneficiaries and helping them to seek exploration investment on those lands will be important.

Similarly, it could be interpreted that indigenous governments could allow for, or ask the GNWT to provide, tenure services on their subsurface lands. It is not clear, but could be clarified with a redefinition of "settlement lands", as written earlier. At first blush, and without additional detail, we would likely have no issue with that.

28. (4) Public Notice

(4) A Mining Recorder shall ensure public notice is given within a reasonable time after receiving an application to record a claim, in accordance with the regulations.

This clause is a new concept, and not knowing the intent, may be hard to comment on. However, it could be a good thing if it is used to help identify a concern that would block subsequent exploration, and thereby save an investment loss. However, in so doing, the intellectual property (area of interest) of the explorer has now been revealed. That intellectual property should be protected, and perhaps that land should be withdrawn from staking, or some other action taken to protect the explorer. The claim staking system is a very confidential process in Canada in order to protect those intellectual property rights of the explorer.

28. (6) Recording of staked claim

It is good that the Mining Recorder is obligated to record a claim staked appropriately to meet prescribed requirements.

But without knowing what will be worded in the regulations in terms of 'prescribed requirements', it is hard to tell whether there might be provisions for Indigenous governments or the public to ultimately say 'no' to or argue against a claim being recorded (given the public notice and notice provisions of 28 (4) and (5)). This potentially delays a claim being recorded and/or causes uncertainty in staking from the start. That would not help build investment confidence in the NWT.

29. Duration of recorded claim

This appears to be a change, and we question why a recorded claim could not be in place indefinitely, as long as work is being done on the claim.

30. Prohibition

No person shall conduct an activity for which a recorded claim is required by this Act or the regulations, except as authorized under a valid claim recorded under section 28. In the past, a prospector could trench without staking. This should be clarified to be still allowed.

34. (2) Saving of rights of others

We suggest some commas to make less confusing: 'Nothing in this section relieves the holder of a recorded claim or mineral lease, who is in fact a trustee of the claim or lease or of any part or share thereof or interest therein, from liability as between the holder and any person for whom the holder is a trustee, but such liability continues as if this section had not been enacted, and nothing in this Act relieves the holder from any personal liability or obligation.'

35. (1) Dispute recording of a claim

This should be reduced to 6 months. One year could imply a full season of exploration (5-6 months) could be invested for nothing.

37. (3) Lease duration

Should state what the duration of a lease will be in the regulations.

42. (1) Notice of intended work

This appears to be new. When before have companies been forced to file an exploration plan? This is duplicative of work described in a land use permit, which is already publicly posted. If so, allow this information in that permit to be filed, or remove it, in deference to the Land Use permit. Is this asking for a work plan for a project that does not require a LUP? Are you asking companies now to initiate a work plan prior to prospecting and sampling and provide that to communities? In person, or in writing? Clarity is needed.

There should be no fee for such filing.

42. (3) and (4) Prescribed circumstances

What are prescribed circumstances and where will these prescribed circumstances be found?

42. (5) Notice of intended work to be provided

Does this wording potentially open up opportunity in regulations for feedback/consultation period that could delay work or cause uncertainty?

Again, land use permits are already shared transparently through public registries, are consulted on with Indigenous governments. This filing of a notice of work appears to add duplicative work unless this means something different, e.g. that you are now asking companies to engage communities at the very initial part of the exploration process.

PART 4 – EXPLORATION AND MINING

44. (1) No removal except in accordance with Act

We understand this to mean no trespassing and removing minerals from someone's claim and only the holder of the claim can do that as in 44.(2). We support that.

49. Drill Core, Cuttings, etc.

Clarity will be needed in the regulations as there appears to be conflict between the clauses. There is an owner of the core in 49. as implied in 50. and they have the right to, at the least, transport core.

50. Possession of drill core

We agree it is important that GNWT be able to protect core.

PART 5 – BENEFITS FOR PEOPLE AND COMMUNITIES

We believe that Part 5 carries sufficient risk and lack of detail and discussion to mitigate investment risk that it should be removed for further study with industry as a participant. See our comments in the detailed letter to SCEDE covering this document.

There are other ways to increase benefits, and the Chamber of Mines proposed two initiatives for consideration in its presentation to SCEDE on May 8:

- First, for every grassroots exploration project that occurs in a region, that the GNWT provide an annual cash payment equivalent to some percentage of that project's annual expenditure to the Indigenous governments on whose land the project is located. This would allow an Indigenous government whose traditional lands are being explored to benefit along with the GNWT early in the mineral development phase.
- And second, we propose that when a new mine goes into production, the GNWT split an additional 25% of the royalties that are collected from that new mine with those Indigenous governments where that mining project is located. This provides an extra benefit to the Indigenous governments whose traditional lands are directly affected by mining.

COMMENTS ARE WITHOUT PREJUDICE: Note that while we provide constructive comments and suggestions on specific clauses in Part 5, they are not meant to prejudice our position that Part 5 should be removed from the Bill for further study.

51. Measures that benefit the people of the Northwest Territories

This clause would cover socio-economic agreements, the current vehicle that is used by all mines with the GNWT to encompass socio-economic commitments made as part of the requirements under the MVRMA.

We fully support that mines in the NWT should provide benefits to the people and communities and governments in the NWT. All of our mines in the NWT have socio-economic agreements to formalize commitments they made under environmental impact reviews.

However, we do not believe they should be regulated. They are best business practices whose success is dependent on shared commitments from not only the proponent but also Indigenous and public governments, eg, increased trades training at a mine site is contingent upon government also supporting trades training; increased employment is contingent on education provided by governments and support for mining provided by Indigenous governments.

The language to use "may" is appropriate.

Benefit Agreements with Indigenous Governments and Organizations

Impact benefit agreements are not new in the NWT

All of our NWT mines have negotiated Impact and Benefit Agreements (sometimes called Participation Agreements) with Indigenous governments, and without government intervention or participation.

Legislating impact benefit agreements is a totally new to NWT legislation. As the GNWT's public user guide to the MRA states: "This is not just a first for the NWT, but Canada."

Unfortunately, there is not enough information provided in the Bill's wording to assuage our concerns that this will increase investment risk in the NWT.

For example,

- Would the MRA require that benefit agreements are negotiated with Indigenous governments before production licenses and/or permits are issued?
- When mines are discovered under overlapping traditional lands, would all multiple agreements have to be negotiated before production licenses and/or permits are granted?
- What will compel all Indigenous governments to complete those agreements simultaneously and meet the company's project schedule?
- What will compel completion of multiple negotiations if one group feels that they will have negotiating advantage by being the last to negotiate? Who will go first, if being last appears to be of benefit?
- How will this not delay project development and project financings?

As an observation, the current mining regulations (and Act that empowers them) affect two parts of our industry: explorer with the mineral tenure rules, and miners with the royalty rules. By legislating benefit agreements, the new MRA now affects developers, those companies who are tasked at raising the hundreds of millions to billions of dollars to construct a mine. This is a bad place to suddenly introduce risk when you are trying to increase investor confidence in the NWT.

We are not the only ones that have observed this. We have learned that at least one major global bank that lends capital to mining projects would likely shy away from NWT if the MRA was passed in the current form in regards to benefit agreements.

Increasing investment risk is precisely the opposite of what the NWT needs in this ailing mining environment.

We express our extreme caution and discomfort with the bill and legislated agreements.

Recommendation: Part 5 be removed from the Bill for further study.

We also would like industry to be an active participant in further study of benefits.

Our Chamber tried to participate in discussions with the Council established under the *Northwest Territories Intergovernmental Agreement on Lands and Resources Management*. It was tasked to:

- address legislative requirements for benefit agreements relating to resource development; and
- review and develop any proposed changes to the [GNWT] legislation including the development of new resource management legislation.

We were prepared to appear before the Council on two occasions to share our thoughts, but our audience with them was not accepted. As a result, we could not share our thoughts earlier in this process, forcing us to submit our concerns at Standing Committee level, at a much later – eleventh hour – stage in the regulatory process than we would have preferred.

Recommendation: Therefore, in addition to our recommendation to remove Part 5 for further study, we would like industry to be involved in that further study.

52. (1) Requirement for agreement for benefits

We are not opposed to entering into benefit agreements with Indigenous governments, a very common practise already in place.

It would be helpful if the Minister could unequivocally identify who he "considers appropriate in the circumstances" to negotiate with through strength of claim, traditional land use, etc. It would take a task away from industry.

However, "… appropriate in the circumstances" provides no clarity on what circumstances are being contemplated. It can provide the Minister some flexibility, but can be a double edged sword without further clarification.

"… entering into agreements in accordance with the regulations" speaks to regulations that have yet to be developed, and it is not possible to gauge the effects these might have. Developing regulations beforehand in this regards would be helpful.

52.(1)(a) – "production project" and "prescribed threshold"

We support that a benefit agreement should be for a production project, in other words a mining project and <u>not</u> for an exploration project.

We also support "prescribed threshold" so as to insure small projects are not given onerous requirements for an agreement.

Both of these concepts mirror the logic and wording in land claim agreements for the Tlicho and in Nunavut, and likely elsewhere.

52.(1)(b) when required in accordance with the regulations.

Clause 111(1)(v) in PART 11 (REGULATIONS) hints at what might be expected in the regulations in terms of benefit agreements – principles to be applied in negotiating the scope and content; when agreement is required; what may be included as a benefit; notifications, requirements, etc. These are broad and appear reasonable.

52.(2) One or more agreements

This provides the flexibility to allow one impact benefit agreement with many groups, or multiple agreements. We have no issue with this.

This also reinforces well that agreements are for mines, ie, with lease holders, and not claim holders. That is good.

52.(3) Waiver by Minister on recommendation of Executive Council

This would have a difficult time flying. If the Minister and Cabinet decide a mining project can proceed without an agreement, and the indigenous community disagrees, we see no positive outcome, and we see much time lost in dealing with it.

52.(4) Waiver by Minister on agreement of proponent and Indigenous government or organization

One would expect that such a scenario would occur where an indigenous group that has equity interest tells the Minister to waive the requirement.

52.(5) Notification of commencement of negotiations

No issue. This could happen today under the current legislation, without the GNWT regulating benefits.

54.(1) Dispute resolution body

The establishment of a dispute resolution body sounds simple but obviously the devil will be in the details of the regulations as to how this body will resolve disputes. It has the potential to create more legal layers that slow down work than really help move things along.

PART 6 – ROYALTIES

55. Royalties to be paid annually

We support the creation of royalties, with rates to be applied through regulations. That is the system in place today, and works effectively.

57.(3) Notice of assessment or reassessment

The current regulations include wording under s.75(1) that suggests within six years of a fiscal year of a mine, the GNWT can send a mine operator 'a notice of assessment of royalties' payable for that fiscal year. Because the wording around the notice of assessment in this particular MRA clause s.57(3) is not specifically called a 'notice of assessment of royalties', does that open the door for the assessment to include additional revenue capture.

58.(1)(c) Confidentiality of information

The wording "… or with an Indigenous government owning mineral rights" suggests the government can administer royalties on Indigenous private lands. If so, we are supportive.

PART 7 – STATISTICAL RETURNS

60.(1) Requirement

There is no definition of just what a statistical return is, and what it must include.

Nor is there any reference to where this detail will be created, eg, in regulations? Clarify this.

In addition, we are concerned about duplication. While it would be practical for the GNWT to collect some information on mining through Statistical Returns, it would be good if they are not asking for information already reported to other departments or through SEAs as that places

onerous demands on companies to fulfil reporting requirements. When GNWT writes regulations for the items they want reported under Statistical Returns, it would be helpful if they were cognizant of who else in GNWT and/or federal government is collecting similar information, and not duplicate the process but help industry.

60.(4) Disclosure of information

What is the rationale for possibly disclosing information under 4(d) after 15 years?

65. Final and binding

The MRA empowers the Mining Rights Panel to deal with not only decisions under the MRA, but also under the regulations.

The Mining Rights Panel is established to review decisions in accordance with Part 9, which means any decisions under the Act, but also the regulations.

By offering no appeal of a Mining Rights Panel except by Supreme Court, a potential serious delay is imminent.

PART 8 – CONFIDENTIALITY OF INFORMATION

No comment.

PART 9 – REVIEW OF DECISIONS UNDER ACT

62. (2) Limit on decisions that may be reviewed

We agree that the Panel may not review the exercise of an authority to make regulations or orders under this Act.

63. (1) Chairperson to assign panel member

There should be more than one member of a Panel assigned to review a decision or action, especially considering s.65 says the determination made by the Mining Panel member is binding (and s.66 says they are protected from liability)?

Most importantly, given that their decision making can only be appealed to the Supreme Court, it is important that their decisions be balanced between just a pure legal opinion of one member and those with mining industry knowledge and experience.

This puts too much power in the hands of one individual, conceivably one with the least amount of mining expertise.

We recommend that two members be assigned, and at least one with mining expertise, ie, not just the member with only law expertise. This will provide important balance between a panel member who does not know the industry and one that does.

In addition, any decision they make should only be used to inform a decision that is made by the entire Panel. That would add the balance of the other members to the decision that is made.

64. Referral to Supreme Court

The Mining Rights Panel may refer any question to the Supreme Court for its opinion. We do not agree that one member of the Panel basically sets the Panel's referral to the Supreme Court. It should be the decision of the full Panel with its combined expertise. See 65. below.

Why wouldn't the Panel take its concerns to the Minister? What level of concern requires that they be so powerful?

65. Final and binding

This clause allows a determination made by only one member of the Mining Rights Panel to be final and binding and, except for judicial review not subject to appeal or review by any court.

Put this in combination with the current wording of Clause 10, which allows that a Panel member could simply have "technical knowledge in law". This least industry-informed panel member should not have the unquestioned power to make a decision that is only appealable to the Supreme Court or by judicial review.

This is very dangerous and should be changed to be a determination made by the entire Panel. (In combination with our earlier recommendation that that two panel members be assigned to a determination, not one).

68.(1) Inspectors

Inspections could probably stand-alone as a chapter. What will the inspectors under this section be doing? The mining inspectors, under the *Mine Health and Safety Act*, have authority to enter mines (for safety purposes). So presumably the inspectors referred to in this MRA would be monitoring either staking, production/royalties or geological work completed (like what District Geologists were tasked with doing by property visits years ago).

Maybe it will make more sense when they write the regulations?

PART 10 – ENFORCEMENT, OFFENCES AND PENALTIES

We are gobsmacked with 16 pages of enforcement, one quarter of the Bill.

Could not most of this be in regulations?

PART 11 – REGULATIONS

No comments.

PART 12 – TRANSITIONAL, CONSEQUENTIAL AND COMMENCEMENT

TRANSITIONAL

113. (1) Claims marked or staked

This is good and essential that all existing claims transfer to the new system as valid under the new system.

113. (2) Continuation of instruments and decisions

This reduces uncertainty on changes in these instruments in the shorter term, upon passing of the Act.

CONSEQUENTIAL AMENDMENTS

No comment.

COMMENCEMENT

No comment.

---------- end ----------

NWT & NUNAVUT CHAMBER OF MINES

Presentation to the Standing Committee on Economic Development and Environment on Bill 34 – the Mineral Resources Act
May 8, 2019

Appearing: Gary Vivian, President, NWT & Nunavut Chamber of Mines (Presenter)
Glen Koropchuk, Treasurer,
Tom Hoefer, Executive Director

Thank you, Mr. Chair.

We are here today to highlight the economic importance of the mineral industry sector and to express our serious concerns for the health of the sector should the MRA be passed in its current form.

Let us begin with emphasizing the obvious, that the minerals industry is critically important to the NWT and to its residents.

In 1991, the NWT received a gift when two inquisitive explorers discovered diamonds where nobody expected them to be found.

In the years since, we have collectively turned those diamonds into the most unprecedented benefits the territory has experienced.

- training programs that have helped create nearly 1,500 jobs, a stunning 7% of the entire working labour force;
- tens of thousands of person years of jobs;
- billions of dollars in northern and Indigenous business spending;
- billions in taxes and royalties; and
- hundreds of millions of dollars in community benefits through benefit agreements, as well as scholarships, corporate donations, etc.

These benefits are so great that in a good year, direct and indirect benefits from mining and exploration could reach half of the NWT's economy and all with responsible mining.

This is certainly not the industry of the past.

Unfortunately, these phenomenal benefits are now at risk as our diamond mines mature, and we have no equivalent replacements.

- Economists at the Conference Board of Canada have alerted us to this.
- The Premier's Economic Summit with Indigenous leaders also recognized and flagged its concern.
- So too did the Indigenous Leaders' Summit last winter.

You might think that since exploration is the lifeblood of mining, we should be counting on it to help find new mines and prevent this.

103, 5102 – 50th Avenue, Yellowknife, NT Canada X1A 3S8 Phone: (867) 873-5281 Fax: (780) 669-5681
Email: executivedirector@miningnorth.com Website: www.miningnorth.com

However, NWT mineral exploration has been unhealthy for twelve years running now.

- Investors have taken their money to more certain jurisdictions.
- Our mineral tenure has fallen by a stunning 90%, from 20% of the land being explored to now less than 2%.
- Compared to Yukon and Nunavut, we have missed out on over $1 billion in exploration investment since 2007.

This decline has not been driven by lower commodity prices or poor geology.

The investment problem lies here at home with regulatory and land claim uncertainties and land access issues.

These started under the Federal government.

We were hopeful that this would improve with devolution.

However, it has not improved quickly enough and now projections are dire.

This is not good.

Many northerners are counting on mining to stay strong.

Several thousand jobs are at stake.

Today, too, there are new Indigenous development corporations like Tlicho Investment Corporation, Det'on Cho, Denesoline, Metcrete, and many others – that need a strong minerals industry.

Creating a new Mineral Resources Act (MRA) provides a tremendous opportunity to make changes to strengthen exploration and mining, and its many benefits to communities and people.

Unfortunately, the MRA as currently proposed, does not look like it will do that.

First, on the positive side, the MRA generally continues to support the current mining regulations, looking after mineral tenure and royalties. It offers some tweaks like recognizing community engagement under work requirements which is good. It also allows government some manoeuverability to tweak those regulations where required to make things better.

That is good.

In general, we have no issue with those aspects of the MRA, and we can share later with the Committee detailed comments on particular clauses.

We must say that we are very pleased that there is a new section intended to provide benefits for people and communities. It is important that we keep strong the game changing benefits our members continue to provide.

Part 5 is focused on only one tool, the legislation of benefit agreements with Indigenous governments. We fear that in its current state, it will do more harm than good. That it will NOT increase investor confidence in the NWT and it will NOT help keep benefits for the people and communities of the NWT strong.

Just to be clear, we support Impact Benefit Agreements, or as many of us call them, Participation Agreements that are negotiated between companies and Indigenous governments. All of our mines

have negotiated such agreements with Indigenous governments. Frankly we have no indication our members would not negotiate them.

Part 5 creates much risk with unanswered questions

For example:

- Mines are often discovered under overlapping traditional lands. Would the MRA require that multiple agreements all be in place before production licenses are issued?
- What will compel all Indigenous governments to complete those agreements simultaneously and meet the company's project schedule?
- What will compel completion of multiple negotiations if one group feels that they will have negotiating advantage by being the last to negotiate? Who will go first, if being last appears to be of benefit?
- How will this not delay project development and project financings?
- While the new MRA proposes that the Minister can act as a dispute resolution arbiter and could rule that some projects can proceed, what exceptional circumstances will guarantee that this will not result in a court challenge? A challenge that would delay or perhaps even threaten the project?
- If there has been a negotiation in the past concluded with all Indigenous governments in the NWT over this aspect of the MRA, it would be good to have this shared with us as then there could be good merit in this approach.

We have not seen evidence that the Bill will protect investors from this. Even the clauses around regulations that are proposed for part 5, don't alleviate those concerns.

The most difficult and contentious issue for concluding IBA's are payment provisions. A government appointed dispute resolution body would not be the appropriate forum for resolving disputes on financial terms. Parties need to be free to work out their disputes amongst themselves as they see fit and have a direct relationship for the management of benefits arising from development of a mining project.

We observe too, that there are already clauses in land claim agreements that create the expectation and requirements for benefit agreements.

So let us reiterate: we fully support the negotiation of benefit agreements between our mining members and Indigenous governments. But we believe the language in the Bill around legislating this carries great risk. Government should not insert themselves into the negotiations of these agreements.

Money is a coward, and it goes where risk is manageable. If investors perceive uncertainty around Part 5 of the MRA, they will take their money to another jurisdiction with more certainty.

We are not the only ones that have observed this.

We have learned that at least one major global bank that lends capital to mining projects would likely shy away from NWT if the MRA was passed in the current form.

Now, all that being said, if the Minister has found a way to remove this uncertainty and potential court challenges around it, then we ask that he share it. We have not seen evidence of it in the Bill.

Therefore, we recommend that Part 5, as currently worded to legislate benefit agreements, be removed from the Bill for further study.

We believe that Part 5 could be more creative in providing benefits for people and communities as

We recommend two improvements to Part 5:

- First, for every grassroots exploration project that occurs in a region, that the GNWT provide an annual cash payment equivalent to some percentage of that project's annual expenditure to the Indigenous governments on whose land the project is located. This would allow an Indigenous government whose traditional lands are being explored to benefit along with the GNWT early in the mineral development phase.
- And second, we propose that when a new mine goes into production, the GNWT split an additional 25% of the royalties that are collected from that new mine with those Indigenous governments where that mining project is located. This provides an extra benefit to the Indigenous governments whose traditional lands are directly affected by mining.

These payments would be in addition to royalty sharing payments already in land claim agreements, and in addition to the royalties shared under devolution. They would of course, be in addition to training, employment and business benefits for the communities from both exploration and mining.

And these payments would be in addition to any private agreements that a mineral developer makes with Indigenous governments under the existing practices of privately negotiating Benefit Agreements.

This kind of positive and creative change to Part 5 would help improve mineral development in the NWT, AND it would improve benefits to people and communities.

Importantly, we propose the payments be made from the GNWT's own coffers.

You will of course ask what the source of that money will be.

There are several that can be considered:

- First there is **the NWT Heritage fund**: This fund already contains moneys collected from mining, profits that could be reinvested back into helping strengthen the very industry that created them. In strengthening mining, that fund would also get refilled, so why not use some of it to catalyze investment?
- Second, there is the unique **NWT Mine Property Tax**. Mines in similar remote areas in provinces do not pay such property taxes. So these are a windfall to the GNWT. They are also substantial. Since the first diamond mine was constructed, the GNWT has collected well over $250 million in property taxes. These taxes simply disappear into general government revenue. They are not redirected back into strengthening the very industry that pays them. By sharing some of them with Indigenous governments who actually help mining grow, these taxes will continue to flow.
- And then there are **the many other taxes arising from mineral development**: Every exploration project and every mine pays a variety of taxes to the GNWT. All of the service and supply companies working with exploration and mining companies also pay more of these taxes. Since the government benefits financially from each new project that it attracts, it would be smart for government to share some of that revenue with Indigenous governments who also are helping to keep mineral investment strong.

We believe this kind of fresh and innovative thinking would help improve Part 5. It would improve mineral development investment and, simultaneously, the benefits to people and communities.

Using such creative approaches is appropriate too given the precarious state our mineral industry finds itself in. It very much needs bold and creative action to help.

Lest you think others aren't thinking creatively to **close** lands to mineral development:

- The Protected Areas Act that you are also reviewing is proposing to allow a radical approach of accepting donations from outside groups, conceivably even foreign money, to close areas from potential development. The Act proposes to even ignore the need for mineral assessments in considering protected areas.
- Similarly, the new Canada Nature Fund is offering $500 million to get matching funding from environmental groups to further close lands to development.

These will add pressures against mineral development – and also its benefits to communities and people – by closing lands. This will further weaken investor confidence.

Why wouldn't the GNWT look for new approaches to attract development? To share the benefits from mineral development with Indigenous governments in order to help strengthen its struggling, number one industry? Some would call this good preventative maintenance.

In reconsidering Part 5, we want to share some thoughts on a **process** to help move improvements forward.

The reason we are here talking about benefit agreements comes from the *Intergovernmental Agreement on Lands and Resources Management.* This agreement created an *Intergovernmental Council* and it gave the Council duties. The two most relevant are:

- To address legislative requirements for benefit agreements relating to resource development; and
- To review and develop any proposed changes to legislation … including the development of new resource management legislation.

We must share with you that since this discussion on a new Mineral Resources Act began, we have had no opportunity to meet and explain our logic and rationale with the Council.

Despite several attempts, we were given no opportunity to meet, and that is why we are here today alerting you to those same concerns. We would like to meet with the Council in future, and more on that shortly.

Let me conclude now with the following:

For several reasons, we believe you should delay Part 5 of the MRA

- As currently worded, it will add significant uncertainty and reduce investor confidence. When a major global financier is also expressing concern, you know you have a problem.
- It only makes sense to delay actions that will hurt investment and its many benefits to all NWT citizens.
- We have no evidence that mining companies will not negotiate benefit agreements. Every mine today has negotiated benefit agreements, and many of the upcoming projects are doing so as well.

- And there are other actions that can be taken to create a better Part 5 that will strengthen mineral development so that it provides benefits to communities and people of the NWT.

We recommend that you advance the Mineral Resources Act without Part 5 .

The other parts of the bill are fine.

We also recommend you direct that a multi-party, cooperative approach, be used to revisit Part 5, with the following represented:

- GNWT of course;
- The Indigenous governments;
- The Indigenous mining industry businesses, too;
- The Intergovernmental Council; and
- The minerals industry

Direct them to create an improved Part 5 that incentivizes exploration and mining, that looks to add what we have proposed with our two recommendations, and that considers other actions that would also successfully support mineral development and community benefits.

This would be a northern solution collaboratively worked on by northerners.

At the end of the day, we need actions to improve mineral development, if we want to sustain and grow benefits to people and communities.

Collectively, we can create a Mineral Resources Act that takes a fresh, bold and investment supportive approach to incentivize more of the responsible mineral development that is providing the significant benefits we receive today.

A new and improved Mineral Resources Act can help, but not with the currently worded Part 5.

We seek the Standing Committee's support with this.

Many are counting on your help.

Thank you.

---------- end ----------