



August 30, 2021

Att: Jennifer Franki-Smith
Committee Clerk
Standing Committee on Economic Development and Environment
NWT Legislative Assembly
By Email to: Jennifer_Franki-Smith@ntassembly.ca

Dear Ms. Franki-Smith,

Please find attached a minerals industry submission from the NWT & Nunavut Chamber of Mines and The Mining Association of Canada on Private Member's Bill 29, the Resource Royalty Information Disclosure Statute Amendment Act.

Yours truly,

Ken Armstrong
President
NWT & Nunavut Chamber of Mines

Pierre Gratton
President and CEO
The Mining Association of Canada

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

c.c.: Hon. Caroline Wawzonek, NWT Minister of Finance, and NWT Minister of Industry, Tourism & Investment
MLA Jackie Jacobson, Chair of the Standing Committee on Economic Development and Environment

NWT & Nunavut Chamber of Mines: #4, 5120 – 49th Street, Yellowknife, NT X1A 1P8 | T: (867) 873-5281
Email: executivedirector@miningnorth.com | Website: www.miningnorth.com

The Mining Association of Canada: 275 Slater Street, Suite 1100, Ottawa, ON K1P 5H9 | T: 613.233.9392 ext. 316
Email: bchalmers@mining.ca | Website: www.mining.ca



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

Introduction

The public, along with the minerals industry, have been invited to provide thoughts on Private Members Bill 29: Resource Royalty Information Disclosure Statute Amendment Act.

The bill proposes to make changes to three pieces of legislation that could have far reaching negative effects on the NWT's mineral investment competitiveness.

The Chamber has been asked by its members to submit a collective position on the Bill.

To that end, our industry members find that the Bill is:

1. 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. Does 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."

Details follow.

Duplicative of ESTMA Legislation

- Under current legislation, the Extractive Sector Transparency Management Act (ESTMA), individual mines report what they pay to governments in various taxes – including royalties – which are then posted publicly. The ESTMA legislation was advanced and supported by the Canadian mining industry, working together with two NGOs, to become law.
- The Canadian ESTMA is fully consistent with other international financial payment reporting schemes in the United Kingdom and Europe, and these jurisdictions mutually recognize each other's legislation as equivalent. This equivalency recognition allows for a company to report government payments only once and have that report address reporting requirements in multiple jurisdictions, minimizing reporting burden and duplication.
- ESTMA is fundamentally an anti-corruption tool to determine whether payments made by industry to government match with government reporting of payments received. While not an issue in Canada, these anti-corruption mechanisms have high relevance in other parts of the world where governance is weak and corruption is high. Quebec is the only other Canadian jurisdiction with similar legislation and it, too, recognizes legislation in other jurisdictions as equivalent.

- The extra detail in the proposed private member's bill is therefore unnecessary, inconsistent with international norms, and proposes many sensitive competitiveness issues for industry and government that are not in the NWT's interest.
- It is our belief that the disclosures under ESTMA are sufficient to provide the public with an appreciation for the royalties paid, without exposing commercially sensitive aspects of each individual business to competitors or the general public.

Unusual and inappropriate sharing of sensitive tax information

- Mineral resource royalties are essentially a profits tax. They are calculated through a legislated formula that considers various factors that could affect profits positively or negatively, and differentially for one mine compared to another.
- These include sensitive confidential information such as market price, but in the case of diamonds, also the efficiency of an individual company's customer supply chains to maximize their own market price. It also considers business losses, capital investments, fuel costs, depreciation and amortization, and the various other taxes that companies must also pay.
- In the NWT, ice road costs, the costs of self-generating power, and property taxes, and other costs associated with our acute infrastructure deficit are also some of the unique additional costs incurred by mine operators that are taken into consideration.
- Current NWT legislation recognizes and respects the need to protect such potentially sensitive business information, eg:
 - o Under the current [Northwest Territories Mining Regulations](#)
 - o And under the upcoming Mineral Resources Act, through the [Access to Information and Protection of Privacy Act](#).
- Under current privacy laws, this detailed financial information is limited to the government staff responsible to use it for detailed tax calculations, and who are obligated to safeguard it.
- The current legislation is designed to protect the public interest, by requiring companies to follow the law in reporting to government the detailed information required for royalty calculation purposes.
- If enacted, this Bill would unusually allow the release of tax information and sharing of other sensitive information beyond government staff who have the authority and responsibility to audit and assess company confidential information with politicians and Indigenous governments without this responsibility. We say "unusually" as this is not the norm in other jurisdictions in Canada.
- This broadening of the distribution of the information to a much larger group of people also substantially increases the likelihood of a breach in confidentiality requirements. As the number of people who have the information increases, the level of confidentiality applied to the information concomitantly decreases.
- The type of disclosure proposed under Bill 29 could pose harm to the commercial side of the mineral resource business for companies that mine – or may be considering it – in the NWT.
- Government regularly protects all business and industries with confidentiality of their financial information for tax reporting calculations. Bill 29 is unusually intrusive in proposing that detailed, sensitive information be shared more broadly. It begs the question, would government then ask other mining and related businesses to reveal confidential information related to their profitability?
- Similarly, our personal tax filings are not available to politicians.
- We see no added value, and in fact added risk, in sharing business detail beyond those whose jobs and skills and responsibilities are to use this data to calculate royalties and other taxes.

- We note that the Briefing Note provided by the Standing Committee states that while Bill 29 enables the Minister to share confidential information to Members of the Legislative Assembly or Indigenous Governments, it does not require the Minister to do so. In other words, that Bill 29 simply provides the Minister the discretion to choose whether or not to share confidential information to Members of the Legislative Assembly or Indigenous Governments. However, this does not change our position on Bill 29.

Unclear intentions, but the Bill jumps the gun on GNWT royalty study

- The intentions behind Bill 29 are unclear to us. If it's to allow politicians to propose different royalty systems, we'd suggest this is not appropriate, since we understand that GNWT-ITI is currently conducting an in-depth royalty review to look into this issue. That process should be completed to help the standing committee, all MLAs, and the public understand the current system, before discussing options for others.
- We are not aware of any other Canadian jurisdictions requiring such an unusual level of sharing of detailed, and frankly, sensitive business information that Bill 29 proposes to share. The closest might be Quebec which we believe requires only partial reporting of information from rock quality to the process plant, in other words, they do not require any information on processing and sales beyond that.
- We understand that comparing and studying other royalty regimes is part of the work currently underway by GNWT-ITI, and soon to be shared with the public.
- Bill 29 is therefore premature to this work already being completed.

Would not support the 19th Assembly Mandate

- Under the 19th Assembly's Mandate, the GNWT will "increase resource exploration and development" in order to "restore levels of investment, partnership, employment, and growth in the NWT's economy."
- This is a very appropriate mandate action given the circumstances the NWT is facing with its mineral resource industry.
- Mineral development continues to be the largest private sector contributor to the NWT's economy, annually adding hundreds of millions in business spending alone, in addition to significant employment and taxes and community contributions.
- The NWT's globally significant mineral potential should support such continued high levels of benefits.
- However, for a variety of reasons, many of which we have already shared with newly elected members of the 19th Assembly in October 2019, the investment attractiveness of the NWT continues to decline. Over the last two years, we have seen mineral production take a significant drop of \$900 million, and exploration investment continues to flat line at low levels. What projects we have in the development pipeline are still in the advanced exploration to feasibility stage, and are much smaller than the maturing diamond mines we expect them to replace.
- Proposing this highly unusual Bill 29 to reveal and share what is treated as confidential and sensitive business information in virtually all Canadian jurisdictions will not help rejuvenate the NWT's most important private sector industry.
- Respectfully, there are many more important actions that the Standing committee, regular MLAs and Cabinet can do to help reinvigorate the NWT's mineral industry, and candidly, none have come from this Private Member.

Industry Recommendations

The NWT Government, working 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.

----- end -----