



**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.**

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 manoeuvrability 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:

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