



Government of the Northwest Territories Response to Committee Report 21-19(2): Report on the Government of the Northwest Territories Approach to the Mining Regime Fiscal Review

The Standing Committee on Economic Development and Environment (SCEDE) presented its “Report on the Government of the Northwest Territories (GNWT) Approach to the Mining Regime Fiscal Review” on November 30, 2021. It was considered and adopted in Committee of the Whole on December 8, 2021.

The GNWT thanks SCEDE for its research, which provided additional data points that will be of use in the ongoing work to develop regulations for the *Mineral Resources Act* (MRA). This collaborative work has been a key focus for the Intergovernmental Council (IGC) and will ultimately lead to enhanced benefits for all Northerners. IGC has adopted a Legislative Development Protocol that guides collaboration and dictates the progress of timelines on Northwest Territories (NWT) land and resources legislation, including these regulations. For this reason, the GNWT is not able to unilaterally implement changes to the draft regulations. SCEDE’s recommendations are a valuable contribution to the discussion at that table.

Modern, responsive, and responsible mineral resources legislation create greater certainty for everyone. This sets the stage for industry to achieve corporate social responsibility and supports a regulatory system people feel protects their rights, interests and the environment. The re-imagining of the NWT’s mineral resources framework requires a comprehensive, collaborative, and deliberate approach in collaboration with the Indigenous governments who have co-management responsibilities. Royalties are directly linked to the viability of resource development projects in the NWT.

Recommendation 1

SCEDE recommends that the GNWT analyze the performance of the NWT Mining Fiscal Regime since Devolution and publish these results.

GNWT Response

Several reports on the royalty regime have been produced, including a benchmarking report by PricewaterhouseCoopers (PwC) (https://www.iti.gov.nt.ca/sites/iti/files/pwc_report - nwt mining fiscal regime benchmarking with 3rd party review.pdf) in 2020. The current regime was mirrored from federal regulations at devolution in 2014.

The GNWT produces annual reports on the socio-economic effects of mining in the NWT. The most recent report, covering the year 2020, is available at:

<https://www.iti.gov.nt.ca/sites/iti/files/2021-11-XX - TD SEA Annual Report 2020.pdf>

Since devolution, the Department of Industry, Tourism and Investment (ITI) has been responsible for collecting royalties. This includes ensuring that the filing of revenues, the determination of deductions, and the resulting calculation and payment of royalty are in compliance with existing Mining Regulations. ITI has undertaken to audit 100 percent of the returns filed and to issue audit assessments for reporting errors.

In other Canadian jurisdictions, detailed reviews of fiscal systems for the mining sector are generally undertaken every ten years. The ten-year cycle gives mining companies with capital-intensive projects reasonably long periods of fiscal stability for planning purposes while ensuring governments address changes in the landscape. These longer time frames allow governments to strike a balance between attracting investment and a fair return to government, with the ultimate goal of maximizing benefits from resource sector activity.

The PwC's "benchmarking" report and a technical research paper (available at: [www.iti.gov.nt.ca/sites/iti/files/content/Research Paper Royalties WEB - Jan 2022.pdf](https://www.iti.gov.nt.ca/sites/iti/files/content/Research%20Paper%20Royalties%20WEB%20-%20Jan%202022.pdf)) are valuable context for the work that is currently underway to develop regulations for the MRA.

As a part of the IGC, the GNWT has worked with the Council to co-develop a discussion paper that is being used in public consultations about the NWT's resource royalty regime. This paper is recently tabled and available at:

[www.iti.gov.nt.ca/sites/iti/files/content/Discussion Paper Royalties WEB - Jan 2022.pdf](https://www.iti.gov.nt.ca/sites/iti/files/content/Discussion%20Paper%20Royalties%20WEB%20-%20Jan%202022.pdf)

Recommendation 2

The Standing Committee on Economic Development and Environment recommends that the Government of the Northwest Territories implement Government-led revenue transparency.

GNWT Response

Committee's suggestions for making the reporting more transparent within these documents will be considered in keeping with standard Canadian reporting practices. Non-renewable resource revenues, resource revenue sharing and resource revenue contributions to the NWT Heritage Fund are reported annually in the public accounts. A summary of resource revenue sharing is also provided on page xiv of the annual Main Estimates.

Since the royalty provisions of the mining regulations were last reviewed, the federal government has legislated public policy changes in Canada. The *Extractive Sector Transparency Measures Act* requires extractive sector entities to publicly disclose, on an annual basis, specific payments made to all governments in Canada and abroad.

There is a requirement to protect and manage the confidentiality of financial information in accordance with the laws administered. The new regulations will maintain this standard.

The collaborative work with the IGC has resulted in a shared understanding that the regulations will include transparency measures. As indicated in the discussion paper, a shared goal is to regulate mineral interests efficiently, effectively, and in a transparent manner.

The GNWT collects 100 percent of resource revenues paid in the NWT, as shown in the below main estimates tables since Devolution.

As per published Mains Estimates Actuals	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Minerals, oil and Gas Royalties	62,831	55,759	43,060	39,862	18,930	19,183	19,153
Licences, Rental and Other Fees	3,059	2,368	20,054	23,136	4,191	4,478	47,142
	65,890	58,127	63,114	62,998	23,121	23,661	66,295

* Revenues shared with Canada in the current year are offset against the Territorial Formula Financing two years later.

** Indigenous signatories to the Devolution Agreement shares are provided on a cash basis and do not match the 25% share calculated using resource revenues reported on an accrual basis in the Public Accounts.

Off the top, a percentage of this total royalty is distributed to Indigenous governments under modern treaties agreements, as shown in the table below.

Indigenous Government	Percentage of Resource Revenues (First \$2 Million)	Percentage of Resource Revenues (Over \$2 Million)
Tłı̨chǫ Government	10.429%	2.086%
Sahtu Secretariat Inc.	7.5%	1.5%
Gwich'in Tribal Council	7.5%	1.5%
Total	25.429%	5.086%

From there, the GNWT and federal governments split the remaining resource revenues collected from resource development (50-50). The GNWT then shares 25 percent of its share with those Indigenous governments that are signatories to the Devolution Agreement, known collectively as the Intergovernmental Council (IGC), as shown in the table below.

**Revenues Distributed under Resource Revenue Sharing, by Signatory
(dollars)**

Indigenous Group	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
Acho Dene Koe First Nation	188,133	135,105	197,272	174,755	74,162	117,712	203,404
Deninu Kue First Nation	238,226	181,971	265,450	244,861	102,559	94,305	285,003
Gwich'in Tribal Council	1,182,521	942,063	1,373,398	1,254,427	527,224	483,126	1,460,077
Inuvialuit Regional Corporation	1,815,566	1,441,671	2,101,856	1,973,271	821,920	759,980	2,296,767
Kát'odeeche First Nation	131,661	126,627	184,153	167,322	70,503	64,442	194,752
Northwest Territory Métis Nation	627,601	497,521	725,368	645,201	273,568	248,491	750,975
Sahtu Secretariat Inc.	1,335,446	1,067,134	1,555,666	1,448,762	605,048	557,972	1,686,270
Salt River First Nation	250,542	191,636	279,544	247,922	105,205	95,484	288,566
Tłı̨chǫ Government	1,213,736	961,408	1,401,716	1,269,178	534,950	488,807	1,477,245
Total Distributed Resource Revenues	6,983,432	5,545,136	8,084,423	7,425,698	3,115,140	2,910,318	8,643,060

Recommendation 3

SCEDE recommends that the GNWT conduct a fiscal regime review focused on maximizing government revenue.

GNWT Response

The GNWT has reviewed the fiscal regime for a number of policy options including maximizing revenues from mineral resources using the studies referenced above. The work commissioned by SCEDE is also beneficial. The GNWT, in the context of the IGC, continues to consider whether the approach to royalty calculation should be modified in addition to determining if various rates should be changed.

The IGC has identified key priorities and objectives as part of the co-development of regulations for the MRA. That work has progressed to the point where discussions involve royalty rate levels and how royalties should be structured. The current approach is based on the assessed value of the minerals extracted, minus allowable deductions. The IGC is examining the implications of alternative methods of collecting the people's ownership share of the resources and if they would be more appropriate for the NWT.

In addition to maximizing revenues, competitiveness in the industry is a factor among many being considered by the IGC. Before the COVID-19 pandemic, the NWT minerals sector was faced with challenges such as an infrastructure deficit, land unavailable for exploration, and regulatory complexity. These fundamental challenges remain. To achieve a sustainable mining industry, the NWT needs to address these and other challenges. Without a healthy and vibrant mineral exploration sector, the NWT will likely experience future periods where little or no active mining occurs.

Recommendation 4

SCEDE recommends that the GNWT analyze the net revenue benefits for the NWT.

GNWT Response

While the focus of the effort is on developing a royalty system appropriate for the NWT, the evaluation must be completed in the context of the fiscal framework that surrounds mining and the royalties themselves. NWT mines contribute corporate taxes, property taxes, income taxes and employment taxes. The economic value of employment training and procurement opportunities provided through Impact Benefit Agreements and Socio-Economic Agreements, also need to be considered.

The GNWT produces annual reports on the Socio-Economic Agreements that are in effect. The most recent report is available at [https://www.iti.gov.nt.ca/sites/iti/files/2021-11-XX-TD SEA Annual Report 2020.pdf](https://www.iti.gov.nt.ca/sites/iti/files/2021-11-XX-TD%20SEA%20Annual%20Report%202020.pdf).

Resource development contributes to the NWT economy through support for local businesses. With procurement targets set out in Socio-Economic Agreements and projects backed by significant buying power, the NWT's mining industry has stimulated the evolution and growth of a strong, Indigenous and made-in-the-NWT service sector. In 2020, NWT mines spent \$300 million directly on local businesses. The net revenue benefit to the territory includes jobs and business opportunities, programs under Socio-economic and Impact-Benefit Agreements, and a wide-range of secondary and tertiary benefits. These benefits are under review at the IGC table.

Between 1996 and 2020, cumulatively, NWT mines have contributed over \$23 billion to the NWT economy, over \$16 billion of which went toward NWT businesses and nearly \$7.5 billion to Indigenous-owned NWT businesses.

If it would be helpful to SCEDE, the GNWT is willing to provide a confidential briefing to provide more information about how the resource revenue sharing approach was determined during devolution negotiations.

Recommendation 5

SCEDE recommends that the GNWT generate greater mining revenues to benefit future generations.

GNWT Response

Resource royalties are only a small part of generating greater mining sector benefits for future generations. Benefits include jobs, training, business opportunities, community support, taxes and resource revenues. Benefits need to be measured holistically, rather than narrowly focusing on maximizing resource revenues, which can drive away resource sector investment.

With that said, the GNWT uses non-renewable resource revenues to benefit future generations in several ways:

- Contributions to the NWT Heritage Fund, which represent savings for future generations of NWT residents from today's non-renewable resource revenue;
- Using them to build lasting infrastructure that benefits residents today and in the future; and
- Paying down debt.

Since April 2019, the NWT Heritage Fund is professionally managed since April 2019. To allow the external fund managers to maximize long-term returns without undue risk of the Fund's principal, its selection of investments includes "A"-rated bonds and a maximum of 25 percent of the portfolio value in equities. Under the *Northwest Territories Heritage Fund Act*, no withdrawals from the NWT Heritage Fund are permissible for 20 years from its establishment in 2012 until January 1, 2033 and the NWT Heritage Fund's principal cannot be withdrawn.

While the NWT Heritage Fund was managed internally, it earned interest at the rate of RBC's prime rate less 165 basis points. The rate was a low of 1.05 percent from 2015 to 2017 and as the Bank of Canada's key interest rate rose, the returns increased to an annualized rate of 2.30 percent by October 25, 2018 until April 1, 2019 when the NWT Heritage Fund was transferred to external management. The annualized return since April 1, 2019 is about 8.7 percent as investment criteria was relaxed to allow the NWT Heritage Fund to hold equity investments. Under both internal and external management, returns have been modest. They have been constrained due to the restrictions on the types of investments available to the NWT Heritage Fund and market conditions characterized by low interest rates.

At the first Session after August 1, 2022, the Legislative Assembly (or a designated committee) must review the provisions and operation of the Act in accordance with Section 10 of the *Northwest Territories Heritage Fund Act*. The types of investments to maximize long-term value of the NWT Heritage Fund could be part of the review.

The remainder of the GNWT's net fiscal benefit from resource revenues after the NWT Heritage Fund contribution is used for infrastructure investments and paying down debt. Strategic infrastructure investments will better position the NWT to build a stronger mining sector which will better position the GNWT to generate greater mining revenues to benefit future generations. Along with these infrastructure investments, paying down debt would contribute to the GNWT's efforts to manage financial spending in a responsible and sustainable way.

Recommendation 6

SCEDE recommends that the GNWT expands Indigenous governments' economic benefit sharing.

GNWT Response

The IGC is working to expand the overall benefit to all Northerners. This includes new measures to enhance benefits to Indigenous governments, beyond the resource revenue sharing agreement, which was created under devolution and falls outside the scope of the Mining Fiscal Regime review.

Mining operations provide employment to NWT residents directly and indirectly through companies and organizations that work with the mines. Mining companies are required to set employment targets aimed at ensuring the majority of job opportunities from natural resource operations stay in the North. Mining companies also establish training targets that encourage NWT residents to explore different pathways for their education. Mining companies also establish Northern and Northern Indigenous business procurement targets in Socio-Economic Agreements to maximize Northern business benefits.

Recommendation 7

SCEDE recommends that the GNWT make public as soon as possible, information on the steps, timeline, and opportunities for public engagement for the review of the mining fiscal regime.

GNWT Response

The regulations regarding royalties are one part of the broader set of mining regulations being developed for the MRA. As such, engagement for the royalty regulations is being conducted in conjunction with discussions on the broader mining regulations in addition to specific targeted royalty engagements. Public engagement on the mineral resource royalty system was conducted between February 22 and July 29, 2022, and opportunities are available for groups to have briefings on the research that has been compiled to date.

Industry engagement has been concurrent, including meetings with industry representatives from the NWT and Nunavut Chamber of Mines, as well as meetings with representatives from the producing mines.

Additional engagement meetings are scheduled with the federal government before the end of April 2022. The MRA regulations will be developed over a couple of years and will include a number of opportunities for public engagement. For the SCEDE's convenience, the steps and timeline are outlined below:

- Industry engagement: January - June 2022;
- Public engagement including non-government organizations: May - July 2022;
- Regulatory boards, other GNWT departments and federal government: May - June 2022;
- Review of proposed regulations: October - November 2022;
- Aboriginal Consultations: February 2023 - April 2023;
- Draft regulations publicly posted for comment: July 2023 - August 2023; and
- Final regulations: September 2023 (with the Act coming into force afterwards).

The schedule will be refined and updated as the project progresses. Public engagement opportunities will be advertised publicly.

Recommendation 8

SCEDE recommends the GNWT provide a response to the recommendations contained in this report within 120 days.

GNWT Response

This response will be tabled at the earliest possible opportunity during the May/June 2022 sitting of the Legislative Assembly.