



PROSPECTORS &
DEVELOPERS
ASSOCIATION
OF CANADA



May 9th, 2014

Anil Arora
Assistant Deputy Minister
Natural Resource Canada
580 Booth St.
Ottawa, Ontario
K1A 0E4

Dear Mr. Arora,

Thank you for the opportunity to provide additional feedback on the Government of Canada's development of requirements for mandatory reporting of payments to governments by Canadian companies and specifically submit comments on NRCan's Consultation Paper.

As members of the Resource Revenue Transparency Working Group (RRTWG), which includes the Mining Association of Canada (MAC), Prospectors & Developers Association of Canada (PDAC), Publish What You Pay-Canada, and the Revenue Watch Institute, we acknowledge the important steps the Government has taken in this regard. In addition to the joint submission made by the RRTWG (attached), the PDAC and MAC would like to share several additional points for consideration, specifically pertaining to the Government's proposed inclusion of mandatory reporting of payments by Canadian companies to Aboriginal entities.

As you are aware, the RRTWG sought to build a consensus-based framework for the implementation of mandatory reporting requirements that would reflect the practical realities of both industry and civil society. The RRTWG's framework, publically released in January 2014, was the product of two years of extensive consultation with groups across the country. As outlined in the joint-submission, the RRTWG made a deliberate decision not to include payments to Aboriginal groups in its framework. The reasons for this are detailed in the joint-submission but generally stem from the RRTWG's agreement that including this additional element of disclosure would require another very intensive consultation process with a wider group of stakeholders and Aboriginal communities. As such, the RRTWG agreed it was best not to include this element of disclosure in its framework, but to consider addressing it as a second phase once mandatory reporting requirements had been put in place.

The government's decision to include payments to Aboriginal entities in its mandatory reporting requirements raises numerous issues that will require additional time and resources to consider, particularly if there is a desire to do so in a collaborative and consultative way. Considering the Government's proposed timeline to implement mandatory reporting requirements by 2015, we do not believe it is possible to adequately address the many issues associated with the disclosure of payments to Aboriginal entities. We strongly recommend that the Government of

Canada take a phased approach to the development of its mandatory reporting framework in which the inclusion of payments to Aboriginal entities is considered as part of a second stage. This would allow the government to devote the necessary time to undertake extensive consultation with industry and Aboriginal groups to work through the complexities of this issue and develop an appropriate framework for disclosing payments to Aboriginal entities in Canada.

Some of the concerns and issues regarding the government's inclusion of payments to Aboriginal groups that require additional time and consideration include:

- **Implementation Delays:** The inclusion of payments to Aboriginal entities raises complex issues which would make it difficult to implement mandatory reporting within the Prime Minister's timeframe. The related challenges and potential controversy could possibly lead to a delay, hindering the overall transparency initiative.
- **Meaningful Consultation:** Robust consultation with Aboriginal groups is a necessity to ensure that reporting requirements are appropriate and that Aboriginal interests are adequately considered. A sound consultation process is critical to avoid discontent and a possible legal challenge related to the Crown's Duty to Consult with Aboriginal Peoples. Extensive consultation with industry groups will also benefit the process for including Aboriginal payments in the reporting requirements.
- **Relationships:** Existing and future relationships between mineral companies and Aboriginal communities could be at risk if the "Aboriginal payments" aspect of the Government's reporting requirements is too hasty, ambiguous and implemented without adequate consultation and consideration of related complexities. The potential risk to relationships could be heightened should the reporting framework negatively impact Aboriginal groups, particularly their federal funding.
- **Definition of "Aboriginal entity":** The definitions of Aboriginal entities presented in NRCan's Consultation Paper are not clear and could be misinterpreted. For example, the second definition of "entities" listed in the consultation paper could be interpreted as including Aboriginal businesses and Aboriginal providers of goods and services, which is extremely problematic and could be considered discriminatory. There is concern around the inclusion of reporting requirements for the disclosure of payments that are effectively part of commercial agreements between two private parties involved in a mining project based on the sole criteria that one party constitutes an Aboriginal business group or Aboriginal providers of goods and services. We are concerned that the reporting of such payments could put Aboriginal business entities at a competitive disadvantage with non-Aboriginal businesses not subject to such reporting rules and could also result in a breach of legal contractual agreements between parties.
- **Company-Community Agreements/IBAs:** These and other agreements are considered to be "business to business" arrangements that are "commercial" in nature and confidential for proprietary reasons. In the absence of a robust consultation process with Aboriginal groups and industry that would hopefully lead to agreement on disclosure, mandating the

publication of agreement terms could negatively impact both mineral companies and Aboriginal communities by straining relationships, increasing costs, and delaying projects and community benefits.

- **Payment Types:** The types of payments to Aboriginal groups in Canada are not uniform in each jurisdiction or for each project, which will create difficulties in defining what constitutes a payment. Particularly, a number of “payments” currently provided to Aboriginal communities throughout a project cycle are directly related to engagement and consultation efforts, as well as capacity-building to enable Aboriginal groups to directly participate in the project. Making a determination between funds that are provided and spent for participation purposes and those for community benefit will be difficult and requires consultation with industry and Aboriginal groups.
- **International Indigenous Peoples:** Further clarification is required regarding the potential inclusion of payments to foreign Indigenous entities that is suggested in NRCan’s consultation paper. The inclusion of payments to foreign Indigenous entities goes beyond the reporting standards introduced in other jurisdictions. Since the concept of an ‘Aboriginal entity’ and ‘Indigenous entity’ would be unique to Canadian disclosure requirements, this could put the Canadian government in the position of determining which communities and entities in other countries it considers to be Aboriginal or Indigenous (noting there is no globally agreed-upon definition for the term Indigenous) for the purpose of judging reporting compliance of Canadian companies operating internationally.

Due to the aforementioned and additional concerns and complexities, we recommend the government approach the development of its reporting requirements in two stages whereby, following robust and meaningful consultation with industry and Aboriginal groups, the inclusion of Aboriginal payments is considered as a second stage.

We would be very happy to speak with you further on any of the points raised in this submission and / or to arrange an opportunity for you to hear directly from our members regarding their questions and concerns on this issue. Thank you once again for the opportunity to provide feedback on the Government’s development of mandatory reporting requirements and the Consultation Paper.

Sincerely,



Ross Gallinger
Executive Director
Prospectors & Developers Association of Canada



Pierre Gratton
President and CEO
The Mining Association of Canada