

Giant Mine Oversight Body Implementation Committee

Meeting Minutes

July 7, 2015, 1 p.m. – 3:30 p.m.

Scotia Building

In attendance:

Lisa Dyer, Environment and Natural Resources (ENR)
Jeff Mackey, Aboriginal Affairs and Northern Development Canada (AANDC)
Ken Landa, Legal Counsel
Natalie Plato, Aboriginal Affairs and Northern Development Canada (AANDC)
Johanne Black, Yellowknives Dene First Nation (YKDFN)
Shin Shiga, North Slave Metis Alliance, (NSMA)
Kerry Penney, City of Yellowknife (City)
Dennis Kefalas, City of Yellowknife (City)
Rohan Brown, Legal Counsel
Erika Nyysönen, Environment and Natural Resources (ENR)
Kevin O'Reilley, Alternatives North (AN)
Gordon Hamre, Alternatives North (AN)
Bruce Hanna, Environmental and Natural Resources (ENR)

Johanne, accepted position of Acting Director of Land and Environment with YKDFN. Going forward, William Lines will also be providing support for Giant Mine Oversight Body (OB).

FINALIZATION OF BY-LAWS

AN suggested changes related to Section 14; security of tenure for directors, and ability of members to make adjustments to the Society over time. The AN concern is that political interference is possible with current wording, affecting the independence of the board and ability to freely state opinions without fear of dismissal if appointments are at pleasure. It was mentioned by federal Legal Counsel that security of tenure wording may create problems similar to "with cause" dismissal and suggested to put onus on Oversight Body or member who appointed them. Members should be provided with some flexibility to change due to circumstances.

Federal Legal Counsel mentioned that Tom Nesbitt's suggestion was incorporated from the previous meeting into the revised version. A suggested compromise was to remove the words 'at pleasure'. Federal Legal Counsel pointed out that the Oversight Body is a small organization, with limited resources to train members, and couldn't sustain a wrongful dismissal lawsuit. Directors don't want to be in the position of policing others. The organization should be in a position to react. The remainder of the directors would still be independent. Legal Counsels concern is that the revised wording related to

tenure may cause Society members to move towards shorter and shorter appointments. AN mentioned that they want to prevent problems from happening and did not believe that its Legal Counsel's views on expectation for Directors had been properly incorporated.

The City indicated that membership is linked to performance, and that the Committee is talking about qualified people on the board.

AN said that the members should feel free to carry out the mandate of the Oversight Body. Getting rid of 'at pleasure' may be on the right track. There will be opportunities a couple times a year, where the Society members can talk about membership through the implementation meetings required under the Environmental Agreement. NSMA recommended using the suggestion that Tom made, by adding a paragraph, adding expectation, but not really using legal consequence language. NSMA further asked if AN is trying to add legal meaning. AN answered that 'Should' not 'Shall' gives wiggle room for the appointing members of society. NSMA further suggested having very clear paragraphs.

Federal Legal counsel suggested allowing objectivity of independence. Membership is moving into a position of trusting each other. Five other Society members have appointed members. There are reasons to remove a member that may not be shared by everyone. An appropriate balancing of interest is needed. By-laws are meant to be an objective set of rules. AN pointed out that the difficulty is the way it's drafted and that there are no expectations in the by-laws. People appointed should say and do as necessary, as a director of the Society. One person removed can make a difference to the dynamics of the board, result in additional costs and generally be very unhelpful.

Federal Legal counsel stated that it could change the dynamics. However, expertise can be replaced with a new board member with similar background or contracting out for specific areas of interest. Independence isn't compromised. AN would like to build on other safe guards, but still an area of concern. Provide more of a balance to reach an agreement on the bylaws.

City stated that they don't want to appoint somebody whose hands are tied, unless they are performing to set standards. From the City's perspective, they don't want to know that they are stuck because the Director appointed by the City is not performing, without to go through a great deal of detail in laying out responsibilities. AN pointed out that there's no wording in either of the Sections that lays out expectations of being a director. The City mentioned that they want to be able to remove someone when they need to. GNWT mentioned that they would follow the consensus of the overall group.

AN wants to lay out the expectations. Suggested adding a schedule or something similar to the by-laws.

Federal Legal Counsel suggested a balance; the duty of the director acts in the best interest of the Society; independence, impartiality and in the best interest of the Society. Federal Counsel reiterated, what's threatening is that the director feels entitled and that security of tenure is more than what an employee gets.

Caucus suggested and accepted.

Break out discussion at 1:36-2:19 pm.

AN, YKDFN and NSMA came back with suggestions for Section 14, 'Expectations of Directors' and 'Removal of Directors'.

Federal Legal Counsel mentioned that the first paragraph brought forward, for Section 14, 'Expectations of Directors' is appropriate. Canada mentioned that they are fine with the wording, as long as GNWT is fine with it. GNWT said that unless Rohan has input, GNWT is fine with the wording as well. Rohan indicated that the wording is fine. City was concerned if anybody will be sued, with the section of 'Removal of Directors' edited. Federal Legal Counsel answered that anybody can start motions for legal action, and that silence may be the best approach.

It was asked by AN why written notice needs to go through the Secretary instead of to the Board as a whole. Federal Legal Counsel answered that the reason that it is structured that way, is so there isn't a delay due to everyone needing to be notified and someone not being available. A single act to put it into effect. Everyone can still be notified concurrently.

AN further pointed out that there are two different sections with different wording with regards to notice. They would like to have consistency in the two different sections. In Section 6 and 14, things have to go through the Secretary. And in Section 7 and 11, notice is to be given to the Society members directly. Preference is that AN and all Society members get the notice directly, and not to rely on the Secretary to transmit the information.

Federal Legal Counsel mentioned that it's not the notice that makes it official. In Section 6, relying on a Secretary seems appropriate. AN stated that if notice is to be given as a Society Member, members shouldn't have to rely on the Secretary. Legal Counsel suggested that notice 'Shall' also be given to the other members. City also suggested adding 'Shall' provide a copy to the other members. AN stated that they want to get notices directly from the other Society member, not the Secretary.

Legal Counsel asked if Section 6 should be changed. AN confirmed that Section 6 needs to be changed as well, and the language for Section 14 would be adjusted. City asked if AN wants the resignation notice to be the same. Federal Legal Counsel stated

that can stay the same; notice is given to the Secretary, and adds that the Member "Shall" also provide notice to the other members, putting into effect the resignation. AN clarified that should be the case for when a Society member wants to resign, not a director.

AN further mentioned that in Section 7, it says that members must give 30 days' notice. Federal Legal Counsel said that concurrent notice can be done. The City stated that it would need to see a copy of the notice, not a separate notice. Federal Legal Counsel pointed out that notice must reach everybody for effective resignation. It is understood that timely information is sought, and can be done.

AN said that changes also need to be applied to Section 45 and 46. The City stated that if you want to terminate somebody, you need to meet the notice requirement for it to be valid and need to give notice to Society. Federal Legal Counsel pointed out this would only apply where you are permitted by the Agreement.

AN brought attention to Section 11, about appointment of directors. They were wondering about the order of the 3 sentences, as the order that appointments happen needs to be clearer. Federal Legal Counsel confirmed that the sentences can be reordered. Suggestion approved.

AN was also trying to understand Section 37, and asked why the Secretary has to give notice to the Auditor of any scheduled meetings. Federal Legal Counsel responded that the by-laws were from Canada's non-business Act. It is standard practice for Auditors to get notice. The Auditor is aware of meetings; whether they attend or not, their attendance isn't mandatory. GNWT mentioned that notice can be given through an email, and they don't have to provide a response. AN did not believe this was worth pursuing but stated that notice to the Auditor appears excessive.

Legal Counsel stated that finalization of the by-laws will happen July 8. Canada added that if any additional changes need to be added, let Legal Counsel know by Friday, July 10.

SOCIETY REGISTRATION / BANK ACCOUNT SET UP

Finish by-laws, sign by-laws, society is created. 1st board meeting, titles and alternates can be discussed. Bank account, need to decide which bank to choose. Fiscal year would be set at the first board meeting, agreed by all committee members. Temporary address would be that of the Environment Division. Change of address would occur through filling out the 'change of address' form.

Motion: Directors to decide upon the fiscal year at the first Board meeting.

Canada suggested that the Executive positions would preferably be someone from the NWT. AN suggested that the Committee discuss positions of Interim Directors. Canada mentioned that there could be a teleconference in 2 weeks, most likely when people are on holidays. Discuss positions now, or discussion of positions will have to be delayed until Sept. Agreed that positions should be discussed.

The City asked who the Chair would be. AN nominated Johanne Black for Chair and Johanne accepted. Lisa volunteered for Vice Chair, Kerry volunteered for the position of Secretary and Kevin volunteered for position of Treasurer.

It was mentioned that the Interim Directors will need to be able to provide signatures for bank account set up. The aim is for the last 2 weeks in July or first 2 weeks in Aug to have documentation in place.

Motion: All directors have signing authority where necessary, and when the Board is established, changes can be made.

The City suggested finalizing draft letters by the end of the week, July 10. Federal Legal Counsel will attach a 'form of consent to act as Director'.

FOLLOW UP CONFIDENTIAL DISCUSSION ON APPOINTMENTS:

AN discussed potential appointments of David Livingstone, and Bill Slater.

Canada mentioned that they have a candidate in mind, but said candidate did not accept. They are currently considering a couple more people. Generally some qualifications include: broad based, project management, experience. No names mentioned today.

GNWT indicated that they will choose someone from the NWT. Approached Ken Hall, who expressed interest. Wanted to make sure that it was acceptable to the YKDFN. He is a Northerner, worked at Giant Mine site, and was in the GNWT Environmental Protection for a number of years.

AN brought up the question of GNWT's policy or position on Board appointments as half of appointments made to the Mineral Advisory Board are not residents of NWT. GNWT responded that this is the direction and policy that GNWT has been given. The City indicated that GNWT can't change policy, and they have chosen someone reputable.

AN asked if Ken Hall is doing contract work at Giant Mine, the contract work would have to end if he was appointed? GNWT responded that his contract would have to end once he becomes a Board member.

The City has 3 candidates, and 1 has been approached. Hopefully by the end of the week, they will make contact. NSMA asked what their qualifications were. The City responded that all 3 are science based with mine related experience.

NSMA mentioned that Dr. Steve Rudy, from the University of Calgary/Alberta is someone that they are considering. He was on the Independent Review Panel for the Giant Mine and is familiar with arsenic toxicology. His condition is that he wants the honoraria to be paid to his company and NSMA is trying to figure out if it's possible. The City indicated that it depends who he wants the cheque cut to. If it's paid to a corporation, there would be GST applied to it. Canada mentioned that to keep things in order for the Oversight Body, they would have to have that corporation as a member. AN pointed out that over the years, the experience with one of the diamond mine oversight bodies was that it switched from T4s to T4As for its Directors. The Canada Revenue Agency (CRA) made a ruling that individuals should have tax deducted at source. The Directors are treated as employees for the purpose of taxation. If another treatment of Directors is used by the Giant Mine Oversight Body, there is a risk that sooner or later CRA will come back with deductions that should have been made. NSMA said Dr. Steve Rudy won't do it if he cannot be paid through his corporation.

NSMA further mentioned that next on their list is, Laurie Chan and George Demopoulos. GNWT mentioned that they know Laurie Chan. Canada further mentioned that he is very well respected. GNWT mentioned that he is on the Giant Mine Independent Peer Review Panel, and would have to resign from that position. NSMA asked if anyone on the committee is familiar with George Demopoulos. The City responded that they were thinking of George as well and would like to know if NSMA will reach out to him as an appointee.

YKDFN approached Kathy Racher. She does work on Giant Work related projects and has water quality qualifications. She's expressed interest and has also accepted, but she has to finish her term/contract work on Giant Mine before she can serve on the Oversight Body. In the meantime it will have to be an interim director acting. Her contract is up in Nov. or Dec, so by Jan 1 she may be in a position to become Board member for the Oversight Body. Canada pointed out that YKDFN would have to appoint someone for 3 months until she can participate.

AN said that their two candidates have confirmed willingness to participate. 3rd candidate, Ian Gilchrist is not available. AN asked for another discussion once parties are in a position to discuss specific names and qualifications. AN had expected a rational discussion of areas of expertise to ensure that there is a sound mix of skills and expertise to support the mandate of the Oversight Body. AN said it would secure and distribute resumes for the two individuals it has identified as potential Directors and asked the other parties to do the same.

Canada suggested putting a 2 week timeframe on confirming names. Accepted by all.

PREPARATION FOR INCOMING BOARD

It was asked what the appropriate time is for incoming Board to have its first formal meeting and orientation, Aug or Sept? The City responded that we all need to know who they are, and know when they can start, as it will be hard to appoint an Executive Director until then. Canada mentioned that the Oversight Body can't take effect until Sept. 8. The City stated that the appointees would have to have people picked, confirmed, appoint them and file the necessary paper work to change the directors.

Canada said that they also want to get the Oversight Body running, with a site visit prior to winter. The Committee would try to get board set for Aug. The Oversight Body won't get any money until the by-laws are finalized and a bank account is confirmed. Interim board needs to get administrative work done. If the board is not in place by Labour Day, the Oversight Body would be in no place to get anything done until Christmas, and giving up the calendar year if not in place by then.

Interim board members would sign the Environmental Agreement until the Board is settled. Canada mentioned, as parties to the agreement, the deadline can be extended until then. Federal Legal Counsel pointed out that the Oversight Body has to sign the Environmental Agreement, as it's drafted in as a formality, but there is nothing wrong with interim directors signing the Agreement. AN expressed some reservations about the interim Directors signing on the Agreement on behalf of the Oversight Body, especially if the specific signatory is one who may have already signed the Agreement. The City urged to get all Directors appointed ASAP. Canada pointed out that it's getting close to elections. City mentioned that logistically, if they can't a permanent Director appointed until Oct 1, so it may be a combination between interim directors and appointed directors signing the Agreement.

Canada said that within 90 days of incorporation, contribution agreement can be in place. Jeff will put together an orientation for members.

The City suggested having documents circulated before the next meeting.

OTHER BUSINESS

By Friday, appointment letter drafted, minutes commented on, by-laws finalized, bank account set up. First Nations Bank suggested. No opposition. Once the board is established, they can change banks as well. AN suggested to have support staff look into banking information for non-profit organizations.

AN would like to have a discussion about directors before early Aug. They want to make a decision about who they are appointing, and want to see who other folks are appointing.

NEXT MEETINGS: Teleconference July 16th, 10am – 12pm. Face time meeting, Thurs. Aug. 6th, 10-3 pm.

Action items:

1. Bruce and/or Letitia will look into banking options for next meeting.
2. Letitia will update meeting minutes from previous meeting, with input from Kevin and Jeff and distribute to the group. Additional comments will be accepted until the end of the week, ending July 10.
3. Jeff and Ken to edit draft appointment letter and distribute by Wed, July 8.
4. Jeff to put together 2-3 page agenda for next Committee meeting; board and governance, financial arrangements, site tour, version of the presentation, overview of forecast of Environmental Agreement, overview of Environmental Agreement, meeting with committee about Implementation Committee, options for office space, work descriptions, etc. Folks can add and take away as necessary. Deadline of mid Sept. for orientation.

Meeting adjourned.