

October 13, 1994

NORTHWEST TERRITORIES HANSARD

Page 265

**CHAIRMAN (Mr. Whitford):** Thank you, Mr. Kakwi. Mr. Alloo.oo.

**MR. ALLOOLOO:** Thank you, Mr. Chairman. It started out as a really good statement, "in any form and includes information that is written, photographed, recorded..." Does that mean I could go to the government and ask for a tape since I cannot read or write? Could I ask the government for a taped section of the information I would like to get? On video, or cassette, that sort of thing.

**CHAIRMAN (Mr. Whitford):** Thank you, Mr. Alloo.oo. Minister Kakwi.

**HON. STEPHEN KAKFWI:** Mr. Chairman, there is nothing in here that prevents the government from providing this information in the form most suitable. For example, for the questions, if they're requested in one of the official languages, they may be requested in the form of a disc or a cassette. There's nothing that prevents that. In fact, I think one of the amendments we'll deal with in regard to translation may give some assurance of that.

**CHAIRMAN (Mr. Whitford):** Thank you, Mr. Minister. Clause 2.

**SOME HON. MEMBERS:** Agreed.

---Agreed

**CHAIRMAN (Mr. Whitford):** Clause 3.

**SOME HON. MEMBERS:** Agreed.

---Agreed

**CHAIRMAN (Mr. Whitford):** The chair recognizes Mr. Patterson.

**MR. PATTERSON:** Mr. Chairman, I guess when the whole issue of this bill first came forward in the last Assembly, I questioned whether a bill of this kind would limit the rights, powers and privileges of a Member of the Legislative Assembly to seek information in the House, in committee and in other ways. There are qualifications in section 3(2), which spell out that the act doesn't replace other access rights, but there's no reference whatsoever to the powers and privileges of an MLA to seek information, for example, by asking questions in a standing committee meeting, by asking for information in the Public Accounts committee or by asking questions in the Legislative Assembly.

I note that parts of the act, in section 17, say you can't get information about contractual or other negotiations of the Government of the Northwest Territories. I'd like to ask the Minister, if I ask questions now in the Legislature about contractual or other negotiations of the Government of the Northwest Territories -- like the Arctic Airport negotiations that are under way right now or the health billings dispute or the negotiations to transfer other responsibilities to the government -- would I be told by a Minister, I'm sorry, I'd love to answer that but it's an exception under the Access to Information Act, it will prejudice the economic interest of the Government of the

Northwest Territories, if you want that information, you can't ask for it here.

I'd like to ask the Minister, why is there no protection in section 3(2) for the powers and privileges of a Member of the Legislative Assembly. Thank you.

**CHAIRMAN (Mr. Whitford):** Thank you, Mr. Patterson. Minister Kakwi.

**HON. STEPHEN KAKFWI:** Mr. Chairman, I'm not certain if the Member is asking for a specific clause to be in there that says this act in no way limits or hinders or reduces the present access that Members of this Legislature have to information of the government under current practice. I understand that what it says is that the act is in addition to, and does not replace, existing procedures for access to government information or records. It is generic, but it means that this act is intended to enhance access to government information and, in no way, replaces current procedures in place for accessing information, which includes MLAs.

**CHAIRMAN (Mr. Whitford):** Thank you, Minister Kakwi. Mr. Patterson.

**MR. PATTERSON:** But, Mr. Chairman, that's my point. It doesn't include MLAs. Part 3(2), a to e, talks about existing procedures. In part b, it talks about access normally available to the public; it talks about information available in part to legal proceedings in part c, it talks about not affecting the powers of a court to compel a witness; it talks about not prohibiting the storage or transfer or destruction of records, but it does not say that it doesn't limit the powers and privileges of an MLA.

I was hoping to see it in there. The Minister tells me it is in there, but I don't see it. I don't think we come under the category of processes normally available to the public. I'm talking about the privileges that we have, as Members of the Legislative Assembly, and as committee Members, which are greater than those of an ordinary citizen and include, in the case of committees, the power to compel government bureaucrats and Ministers to account before those committees, particularly in areas of accounts with the Standing Committee on Public Accounts.

With respect, I don't see that protection there. I was hoping it might be there. If it is not there, the Minister is right, I wonder whether it should be put in there. Because, frankly, I don't want to stand up in question period and be told, well, I'm sorry, I can't answer this question because it is an exception under the Access to Information Act. You can't ask that because it prejudices the economic interests of the Northwest Territories. I don't think we want to erode MLA privileges in that regard with this act. I'm sure other Members will agree with me on that.

So, Mr. Chairman, I will ask again. If it is in here, where is it? I don't see it. Thank you.

**CHAIRMAN (Mr. Whitford):** Thank you, Mr. Patterson. I shall endeavour to get the Minister to answer your question. Mr. Minister.



**HON. STEPHEN KAKFWI:** Mr. Chairman, the rules of the House already provide that Ministers don't have to answer questions if they don't want to. They are not compelled to answer questions. I know what the Member's point is. All I've said is that I know it doesn't specifically address the concerns the Member raises, but there is a generic clause in here that protects existing procedures for access. That, I'm told, includes the access that MLAs have through their work and committee procedures for accessing information.

That's what I'm told. I don't know what the Member is suggesting. Whether he wants something specific drafted to address his concerns, I don't think it's necessary because it is already taken care of.

**CHAIRMAN (Mr. Whitford):** Thank you, Mr. Minister. Mr. Patterson, does that help?

**MR. PATTERSON:** Thank you, Mr. Chairman. These are comforting words. The great body of rights and privileges embodied in parliamentary procedure over hundreds of years of the evolution of parliamentary democracy is carefully protected in clause 3(2)(a) under existing procedures. Frankly, that is not much comfort to me, Mr. Chairman.

I guess I would like to ask our legal advisor, in case the phrase "existing procedures" does not clearly preserve the rights and privileges of an MLA in a Legislature and in committee, could the bill be improved -- if that's the clear intention of the government -- by adding (f) which spells out that this bill does not, in any way, limit the powers and privileges of a Member of the Legislative Assembly of the Northwest Territories? My question is, would that kind of provision give more assurance, the kind of assurance I'm seeking, and would it, in any way, go against the spirit of this bill and the spirit of this section, if such a subsection would be added. Just to give me a little bit of comfort?

Mr. Kakfwi is very clear that everything's okay, but I think parliamentarians' privileges are not to be trifled with and I would like a little more assurance than being told, oh, you fit into "existing procedures," don't worry. That is not enough comfort for me, Mr. Chairman. Would a specific clause, spelling out that parliamentary privilege is not prejudiced, appropriately fit into the spirit of this subsection? Thank you.

**CHAIRMAN (Mr. Whitford):** Thank you, Mr. Patterson. I shall direct that question to our legal advisor, Ms. MacPherson.

**LAW CLERK (Ms. MacPherson):** Thank you, Mr. Chairman. Certainly, the addition of that type of clause would make it very clear that the privileges of an MLA are not to be affected by this act. I think that there is a very good argument to be made that that does exist in the current wording of section 3(2)(a), but the addition of the amendment would make it very clear.

I should note, however, that it is not part of the privilege of an MLA to force the government to give information; it is just a part of the privileges to be in a position to ask the government for that type of information. Then, Mr. Patterson asked if it would offend the spirit of the act. I don't believe it would offend the spirit or purpose of the act.

**CHAIRMAN (Mr. Whitford):** Thank you, Ms. MacPherson. Clause 3. The chair recognizes Mr. Allooloo.

**MR. ALLOOLOO:** I was ahead of myself, sorry. I will wait until the next clause.

**CHAIRMAN (Mr. Whitford):** Okay, clause 3.

**SOME HON. MEMBERS:** Agreed.

---Agreed

**CHAIRMAN (Mr. Whitford):** We have agreement. Clause 4. The chair recognizes Mr. Allooloo.

**MR. ALLOOLOO:** Thank you, Mr. Chairman. As I said before, clause 4(2) says that, "If the provision of this act is inconsistent or in conflict with a provision of another act, the provision of this act prevails unless the other act expressly provides that it, or a provision of it, prevails notwithstanding this act."

My understanding is that if we have an act that conflicts with this act, then this act wins. Is my understanding correct?

**CHAIRMAN (Mr. Whitford):** Thank you, Mr. Allooloo. I shall direct that question to the Minister. Mr. Minister.

**HON. STEPHEN KAKFWI:** Thank you, Mr. Chairman. Mr. Mark Aitken will respond to that question.

**CHAIRMAN (Mr. Whitford):** Thank you, Mr. Minister. Mr. Aitken, please.

**MR. AITKEN:** Thank you, Mr. Chairman. The Member is right. Once this particular subsection comes into force, which will be two years after the rest of the act comes into force, this act will prevail over any other act to the extent of any inconsistency between the two acts. However, it only prevails over other acts where there is, in fact, an inconsistency in the two acts. I would anticipate that many of those inconsistencies will, in fact, be dealt with by amendment in the period leading up to the coming into force of subsection 4.2.

**CHAIRMAN (Mr. Whitford):** Thank you. Mr. Allooloo.

**MR. ALLOOLOO:** Thank you. I presume that we are talking about territorial statutes in this case. One of the acts we are so proud of is the Languages Act, where we are able to make an act that would be used by the public. If there are sections that conflict with this act, which we are so proud of as a people in the Northwest Territories, then would that act be struck down if it conflicts with this one?

**CHAIRMAN (Mr. Whitford):** Thank you, Mr. Allooloo. I shall direct that question to the Minister. Mr. Minister.

**HON. STEPHEN KAKFWI:** Yes, Mr. Aitken will answer.

**MR. AITKEN:** Thank you, Mr. Chairman. If there is an inconsistency between the Official Languages Act and the Access to Information Act with respect to a certain provision, that provision would not be struck down. However, this provision would prevail in respect to that inconsistency and