

**LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES
10TH ASSEMBLY, 1ST SESSION**

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STANDING COMMITTEE ON LEGISLATION - REPORT 1ST OF 10TH ASSEMBLY

The Standing Committee on Legislation has reviewed three Bills that are being brought forward in this session.

YOUNG OFFENDERS ORDINANCE

I will first deal with the Young Offenders Ordinance. This Ordinance has been brought forward by the GNWT in response, and as complementary legislation, to an Act that has been passed by the Government of Canada called The Young Offenders Act.

I think it would be useful to Members of this House, and to the public at large, if I were to summarize the major features of the Federal Act, and then to note its implications to the Territories that have made a GNWT Ordinance a necessity.

In summarizing the federal measures, I am relying heavily on an article entitled "Legislative Note: The Young Offenders Act" by William Wardell as published in the Saskatchewan Law Review, Vol. 47

On May 17, 1982 the House of Commons passed The Young Offenders Act. It will be proclaimed on April 1 of this year.

The Young Offenders Act

The Young Offenders Act is the result of 10 or more years effort to replace the Juvenile Delinquents Act as the criminal law statute governing the conduct of young people,

Change in Philosophy

The Juvenile Delinquents Act defined a child having committed delinquency, "not as an offender, but as a person in a condition of delinquency and therefore requiring help and guidance and proper supervision".

The Young Offenders Act "Declaration of Principle" reads quite differently declaring that "young persons who commit offences should nonetheless bear responsibility for their contravention" although conceding that "young persons should not in all instances be held accountable in the same manner...as adults. "Society must,... be afforded the necessary protection from illegal behavior.

The new legislation amends the criminal code raising the minimum age of criminality from seven to 12 years. "Children" become persons under age 12. Persons between 12 and 18 years become a new group of "young persons".

The Young Offenders Act extracts from the adult system those 16 and 17 years olds in provinces which used under 16 as the Juvenile Delinquent Act minority age. The Young Offenders Act excludes from the adult system 16 and 17 year olds. The new Act may facilitate a somewhat more lenient treatment of this group. It appears as a policy choice that the federal government felt that the 16 and 17 old group might better be rehabilitated if dealt with quite separately from older offenders. The Young Offenders Act will give much more latitude in the sentencing process to impose more stringent sentences on the 12 to 16 year old group.

DUE PROCESS CHANGES

The new Young Offenders Act has a host of "due process" type changes which significantly clarify and increase the rights of an accused young person .

A young person who commits another youth offence, or an offence while an adult can have his youth court record brought up in sentencing.

Dispositions

The Juvenile Delinquents Act provided a rather limited range of possible dispositions as compared with the Young Offenders Act.

Custody may be "open" or "secure". "Open" custody relates to group homes, child care institutions, community residential centres or forest or wilderness camps, as opposed to secure custody which refers to places designated by the province "for the secure containment or restraint of young persons."

Twelve and 13 year olds are treated more leniently. They will be placed in secure custody only if, among other things, the offence carries a term of life imprisonment; if they escape; or if the young offender has a record of serious offences under the Juvenile Delinquents Act or the Young Offenders Act.

Review of Dispositions

The Young Offenders Act has a welcome system of review of disposition at intervals prescribed by the Act during a young person's sentence.

Alternate Measures (Diversion)

The Young Offenders Act also outlines methods of dealing with young offenders other than the normal court process. The Act calls these "alternative measures" and is very specific about the situation in which a young person can avoid the normal court process.

It is not clear at this time what exactly an alternative measure is. The Act only states that it will be the province's responsibility to authorize these programs. Presumably these programs may be operated by provincial governments directly, or by non-government organizations, and may include some forms of community work programs or special education programs.

Alternative measures could only be used where the young person freely and fully consents to participate in the program. The Act is very careful about the rights of a young person while deciding on alternative measures, because, by deciding to join such a program, a young person could be admitting guilt to a crime.

Summary

Many issues remain unresolved. Will the Charter of Rights require jury trials for young offenders? Will diversion programs actually be implemented? Will legal aid plans cope with the added burden? What legislation will provinces pass to deal with provincial offences and criminal acts by those under age 12?

In Summary, more rights are granted but considerably more responsibilities are also imposed. Without sufficient resources, the punishment aspect may be resorted to by courts by default of having few palatable alternatives.

In short, the passage and implementation of this federal legislation means that we in the Territories must, for example among other things, establish youth courts, be prepared for the custody of young offenders, and be prepared for the alternate measures that are enabled under the Act.

To take care of these various matters, the GNWT has prepared The Young Offenders Ordinance and submitted it to the Standing Committee on Legislation for review.

The Standing Committee was concerned at being asked to deal with such a significant piece of legislation on such short notice, and expressed its reluctance to do so.

- x The Government was asked to explain why it did not have the legislation prepared at an earlier date since the federal government had passed this Bill in 1982. The Government explained that it - like most provincial jurisdictions - had not wished to indicate to the federal government that it was supportive of the federal initiative until such time as it was satisfied that it would receive adequate funding to address the new demands that would be placed on GNWT resources. Also, the events related to the November territorial election added to the difficulty of getting this Bill to Committee members at an earlier date.

The Government was also asked what the implications would be if the NWT did not have a complimentary Ordinance in place when the Act was proclaimed on April 1 of this year. The Government provided a number of answers to this, the most important of them being that youth would be treated differently depending on whether they were charged under a Federal Statute, or under a Territorial Ordinance, and that this could mean that a youth could be subjected to a more serious procedure for a less serious offence.

Secondly, we would not be prepared to handle alternate dispositions, thus resulting in conventional treatment for young offenders here, while they would be treated in new ways elsewhere in Canada. And thirdly that the Juvenile Delinquents Act will be repealed with the proclamation of the Young Offenders Act thus leaving a legal vacuum.

Taking all of these matters into account and seeing that a thorough review was impossible at this time, the Standing Committee reluctantly agreed to refer The Young Offenders Ordinance to the Committee of the Whole as it stands. The Committee, however, sees this Ordinance as being very important, and it will do a thorough review, seeking public input, as soon as is reasonably possible - probably in August when people have had a chance to see the results of implementation. The Government has readily agreed to participate in this review, and has indicated that it will be very receptive to any recommendations or amendments that the Committee might propose. I now ask the Minister to make that commitment publicly in this House.

TERRITORIAL PARKS ORDINANCE

The original Ordinance allowed for the Minister to enter into agreements with municipalities to maintain Territorial Parks. The proposed amendment to the Ordinance will allow the Minister to enter into agreements with, in addition to municipalities, other such groups as associations, societies, companies and individuals to operate and maintain Territorial Parks within the immediate area of a municipality.

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One word was changed in the last sentence of the "statement of Purpose"; the word "Community" was deleted and replaced with the word "Territorial". The same change was done to the new clause 7.(1).

The Committee then agreed to refer the bill to the Committee of the Whole.

PETROLEUM PRODUCTS TAX ORDINANCE

The proposed amendments to the Petroleum Products Tax Ordinance was referred to the Standing Committee on Finance for review.

REVIEWING LEGISLATION (DIFFICULTIES)

In a general way, the Standing Committee on Legislation has been concerned over the past few years with ensuring that proposed legislation is in its hands early enough to enable it to do a thorough job. This concern is reflected in the Committee's report of March 4, 1982 in which it was stated:

"The Committee continues to be faced with the task of carrying out its legislative review on short notice ... The Committee concluded that if it is to perform its function effectively, legislation must be in its hands prior to the session at which it is to be introduced. The Committee agreed that where legislation is not provided, complete with translations, six weeks prior to a session, the Committee would decline to deal with it until it can do so thoroughly and without haste. The

Committee agreed to exceptions with respect to legislation:

- 1) That has been specifically designated or urgent by the Executive Council; or
- 2) That has been prepared in response to a specific request by the Legislative Assembly.

Since then, Committee reports to the Assembly occasionally have made reference to the Committee being expected to examine the Government legislation in a hurried and superficial manner, before or during a session. Six weeks advance is not unreasonable, as it would allow time for mailing proposed legislation to members, review by them prior to meeting, and travel to and from meetings, and also allows for public response and input where necessary. This time frame would end the necessity of meetings during sessions, when time can be used more profitably by other committees.

The Committee established by the 10th Assembly has recently affirmed its commitment to this policy and will be pressing the government to abide by it. Moreover, it trusts that the government will continue its practice - where potentially contentious legislation is concerned - of tabling such proposed legislation in one session, and dealing with it in the next.

Indeed, Mr. Butters who is the Chairman of Executive Committee's sub-Committee on Legislation has called for a meeting to address the development of legislation in a spirit of co-operation and I am very willing to participate.