

**LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES
10TH ASSEMBLY, 9TH SESSION**

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Northwest
territories Legislative Assembly

10th Assembly

Standing Committee on Legislation

Report on Bills
Introduced During the
8th Session.

Robert H. MacQuarrie
Chairman

FOREWARD

The Standing Committee on Legislation met September 7 and 8, 1986 to review legislation anticipated for the Fall Session. The Committee expected to review two bills tabled at the June Session: Forest Management Act; Arctic College Act and seven new or amended bills: Statute Law Act, Financial Administration Act, Income Tax Act, Insurance Act, Worker's Compensation Act, Education Act, and Elections Act. The meeting was scheduled five weeks prior to the Session. The committee found it regrettable that none of the new or amended legislation scheduled for the Fall Session was forwarded to the committee for its review. The committee only discussed those two bills which were tabled at the June Session. At meetings October 25 & 26 the Committee reviewed the Elections Act.

FOREST MANAGEMENT ACT - Introductory Comments

The Committee was informed three days before it met that the Minister of Renewable Resources, the sponsor of this bill, would not be available to appear as a witness before the committee. In his stead the Minister of Finance, Mr. Butters, agreed to appear. Other witnesses were: Dave Brackett, Assistant Deputy Minister, Renewable Resources; John Bailey, Coordinator of Program Transfers, Renewable Resources; and Deborah Meldazy, Chief, Legislation Division, Justice and Public Services.

As part of the review process copies of this bill were sent to individuals, groups and organizations which might have an interest. Responses were received from Eugene Patterson, owner of Patterson Enterprises Ltd. - a sawmill operator in Hay River and from the Dene-Metis Negotiations Secretariat. The Dene-Metis sent a representative to read a brief of their position to the Committee.

The Government in its opening commentary explained that the purpose of this legislation was to provide an enabling mechanism that would give this government the ability to assume responsibility for forest management as soon as an agreement with the Federal Government was reached. At the time of our meeting we were told that there were two stumbling blocks to those negotiations, that the Dene-Metis be in agreement and that the question of "proprietary interest" or ownership of the forests be resolved, - Ottawa did not seem prepared to give up its ownership rights. We were told that the Dene-Metis had come, in recent days, to agree with the transfer scheme and that agreement from the Federal Government would be forthcoming shortly. It was explained that the transfer would be a two-step process with step one giving the GNWT 'legislative capacity' to manage forest resources at this time, and with step two giving ownership or proprietary interest after the settlement of land claims.

Members of your committee asked if this bill would bring about the transfer. The answer was that it would not but was to enable that process to take place and would only come into force when negotiations had been completed and agreed upon.

Members asked what terms and conditions had the Dene-Metis required to provide their agreement? The committee was told that the most important concession was an agreement to form a Renewable Resource Management Board which would include 50% representation from the Dene-Metis, which would be responsible for providing direction in forest management.

The committee also asked if the Act covers responsibility for forests after land claims - that is will land claims settlements give the Dene-Metis total control over their lands or will the forests on those lands still be controlled, under this Act, by the GNWT? The committee heard that disposition and control of forests would be a part of the land claims negotiation process and that any rights given in the land claims settlement on Dene-Metis lands would take precedence over any existing Territorial legislation. That is to say that any of the rights and powers of this government over forests could be given in a settlement of land claims to the Dene-Metis without new legislation having to come forward.

Changes to Act

At the time of the Committee's review Legislation Counsel for the government advised the committee that one change had been made to the definition of 'forest'. The committee was told that the notation (1), following 2 was deleted and a new clause was added as 2(b) which reads, "any forest over which the Commissioner acting by and with the consent of the Legislative Assembly is given legislative jurisdiction pursuant to paragraph 13(z) of the Northwest Territories Act (Canada)." The former 2(b) was to remain intact as 2(c). This is not what was done. The wording provided to the Committee has not been used. The government also made other changes that are not the result of Committee recommendations or suggestions. This means that some of the clauses of this bill were not reviewed by the Committee and when they came up in the clause by clause review Members were told they could not benefit from the Committee's findings, interpretation or understanding.

Steve Whipp, Executive Director, Dene-Metis Secretariat, read a position paper on behalf of the Dene-Metis. Their concerns were:

1. That reference in the definition of forests refer to the NWT Act rather than to the Territorial Lands Act.
2. That the Act recognize Dene-Metis rights to timber and plants and to participation in the management of resources.
3. That the Dene-Metis be given the right to harvest timber for any subsistence use.
4. That the government recognize the proprietary interest of the Dene-Metis in the issuing of permits and licences.
5. That the Act should make specific reference to the principle of conservation in the sections, "Statement of Purpose" and "Administration".

In the discussion following the Dene-Metis presentation the committee questioned why reference to conservation was not included. The government contended that concerns about conservation could be addressed by the department under various clauses, particularly regulation 55(1)(m) but it did agree that adding "conservation" into the wording of the Statement of Purpose would be acceptable. NOTE: This has been done.

Committee members expressed concern about the absence of any reference to subsistence use of the forests for traditional activities and asked if such a clause could be included. At that time the government witnesses indicated that some clauses i.e. 10(2) gave the Minister power to provide for aboriginal people. It was also indicated that the rights of aboriginal people are recognized in both federal and territorial legislation. It was suggested that time for a legal review of such an inclusion was needed. The committee made the following recommendation:

"It is recommended that this act include a provision that would allow for subsistence use of the forests and plants in following a traditional lifestyle."

NOTE: The government later indicated that such a statement would be included in this bill. Members were directed to read section 2(2) as it appears that this is the effort the government made in this area.

The Committee examined this legislation clause by clause. The Chairman advised the House of the Committee's concerns when appropriate and of the changes made to the Legislation since the Committee's review.

CHAIRMAN'S REVIEW CLAUSE BY CLAUSE

Clause 2 - Definitions

As noted earlier the following changes were SUPPOSED TO HAVE BEEN MADE:

The notation (1), following 2 was to be deleted. A new clause was added as 2(b) which reads, "any forest over which the Commissioner acting by and with the consent of the Legislative Assembly is given legislative jurisdiction pursuant to paragraph 13(z) of the Northwest Territories Act (Canada)." The former 2(b) remains intact as 2(c).

IN FACT - There is a 2(1) as before, 2(1)(b) now describes forests as those described in an order of the Governor in Council. The Chairman could not tell Members what that meant or why the change had been made. 2(2) indicates that the Act is not to affect aboriginal rights. Members had to decide for themselves if this was an adequate response to the Committee recommendation that stated, "It is recommended that this act include a provision that would allow for subsistence use of the forests and plants in following a traditional lifestyle." Members were told that our legal counsel had not reviewed this clause..

**Clause 3 & 4 - Minister may appoint a Supervisor.
- Supervisor may delegate his authority to Officers.**

Mr. Patterson and some committee members were concerned with the levels of skill and experience that could be expected of the supervisor and the forest management officers and whether there were people available to take these positions. What training was being provided? The government's response was that every effort would be made to hire the best people available and further that courses now offered at Arctic College were producing some minimally qualified individuals. It was hoped that these programs could be improved to allow for better qualified northern employees.

Clause 10(2) - Authority given without permit or licence.

The government was asked in what instances and why it would entertain to provide a person rights without a permit or licence. The government was unable to provide examples or reasoning at that time and would review this clause. No change was made respecting the Committee's concern. HOWEVER, other changes have been made. Section 10(1) was split into 2 sections. 10(1) recognizes the Yukon and provinces, while 10(2) recognizes the Government of Canada. This was all inclusive before. The clause that was of concern was formerly 10(2) and is now 10(3).

Clause 11 - Types of permits to be issued.

11(1)(c) The question arose whether permits for transport of timber infringed on the jurisdiction of the Highway Transport Board or if it would require changes to the Public Service Vehicles Act. The government had indicated that discussions were to be held with the Executive Director of the Highway Transport Board to consider conflicts or overlap. The Committee was not advised of the outcome of those talks.

11(2) The need for this section, which said the Supervisor can authorize others to issue permits, especially in view of the powers given in section 4(5) was questioned. The government has agreed to delete this section and this has been done.

Clause 14 - "scalars" to measure timber.

Mr. Patterson asked whether or not the government had to specifically licence "scalars" or if such authority, subject to occasional inspection, could be done by operators. RESPONSE - The government felt it was important to ensure that only qualified operators actual do scaling.

Clause 16 - permits non-transferable.

The Committee's legal advisor pointed out that this clause might limit the ability of owners to sell a business. RESPONSE - The concern was that only knowledgable or capable owner/operators should be able to obtain permits and this can only be assured if each buyer has to apply rather than obtain the permit by transfer. The government has proposed a change that would read, "A permit or licence may not be assigned or transferred without the consent of the Supervisor."

Clause 20 - Suspension of permits.

Mr. Patterson expressed the concern that this gave one man too much authority. The committee's legal advisor indicated that this was consistent with the Province of B.C.

Clause 22(4) - Written reasons or accounting for a seizure of timber.

Concern was expressed that the time limit of seven days for the automatic assumption that the written response was received did not reflect the realities of the northern postal service and was too short. RESPONSE - The government indicated it would examine and attempt to replace this with a more acceptable limit. The legislation has changed that limit to 14 days from 7.

Clause 23(2) - Classes of permits for which appeal is allowed.

Several members expressed concern that once again they are being asked to approve legislation which is to be based on regulations not yet written and unavailable for perusal by members. Concern was also expressed as to which classes of licences might be given special status or consideration in these regulations and why there might not be a right of appeal for all classes of permits and licences as outlined in 11(1). RESPONSE - The department has promised a report on this item before the start of this session. No report was given to the Committee and no changes have been made.

Clause 25 - Appointment of Advisor.

The committee asked about the use of shall as opposed to may in this clause. RESPONSE - The government indicated that the Minister shall be too busy to hear all appeals and therefore the use of an advisor is recommended. No changes were requested by the committee, but a review of time limits was suggested. The government has added a 30 day time limit for the appointment of of the Advisor.

Clause 27 - Natural justice.

Considerable concern was expressed about the definition of "natural justice" and whether the people affected by this legislation would know what it was or be able to understand what it was. Following discussion no changes were recommended.

Clause 28 - Advisor's report to Minister.

The committee was concerned that the advisor's report, in going only to the Minister, might never be made public. The committee recommended:

"It is recommended that the phrase 'and the appellant' be added to section 28 following the words 'to the Minister'." This change was made as well as the addition of a 30 day time limit for the report.

Clause 29(2) - Minister's decision and reasons sent to appellant.

The committee was concerned that no time limit was placed on the Minister for his decision. The government has undertaken to review this entire procedure and to include appropriate revisions into the bill. NOTE: THIS WAS A CONCERN IN THE ENTIRE APPEALS PROCESS. In section 25 a 30 day limit was added and also in section 28. In 29(2) the same 30 day limit has been made.

Clause 32 - Officer may enter place OTHER THAN A RESIDENCE without a warrant.

Many members of the committee, its legal advisor, and Mr. Butters expressed their concern with the extent of the scope of power given an officer, including in 32(1) the right of entry without a warrant. While the committee made no specific recommendation it was expected that further consideration be given to this matter. HOWEVER, no changes were made. In the Assembly a motion was introduced that addressed this issue and it was adopted. That motion removed sections 32(2), 32(3) and the reference to 32(3)a)(ii) in section 33(4). This removes authority to search a persons home.

Clause 33(1) - Warrant and searches.

The legal advisor questioned the use of the word "any" in describing "place" and felt that the reference should be to the specific place in question. New words such as "such" place or "that" place were suggested. The government made several changes. The former clause 33(2) was moved ahead and is now 33(1). The old 33(1) becomes 33(2) with some changes - now the officer may search any place named in the warrant. The former 33(3) was rewritten and our legal counsel did not have an opportunity to examine the clause.

Clause 37 - Conditions re: seizure of timber.

It was noted that section (6) was removed that dealt with the responsibility for costs of transporting seized goods. The government agreed to replace this section but to change the original wording to put the onus for costs on the government and not the Minister. This has been done.

Clause 38 - Seized timber forfeited to government.

The committee expressed concern that this clause did not adequately provide instruction on the process for disposal of timber that had been forfeited to the GNWT. RESPONSE - The government will undertake to develop a policy in this regard that should be completed prior to the fall session. No policy papers were sent to the committee.

Clause 40- Officer has power of arrest.

The legal advisor pointed out that this section did not adequately provide procedures for conduct of officers and disposition of the detainee after an arrest. He questioned whether detention would be by the RCMP or by the officers themselves and in what manner and for what time that detention would be effected. RESPONSE - The government has indicated that the Department of Justice is examining whether these specifics are necessary. No changes have been made.

Clause 49(2) - Penalties to be set out in regulations.

Concern was expressed that the penalties are in regulations and not in the Act. RESPONSE - The government expressed its intent to redraft section 49 and delete regulation 55(1)(u). This has been done by deleting the section 49(2) with its reference to the regulations and with the deletion of 55(1)(u).

Clause 53(1) - Punishment imposed by regulations.

This shouldn't be possible with the change to section 459 and the deletion of 55(1)(u).

Clause 54 - Time limit on proceeding re: violations.

The committee questioned the shortness of a time limit of one year for action on violations and asked if this was consistent with other limitations (i.e. 6 years less a day for collection of accounts). There has been no response from the government and no changes have been made.

Clause 55 - Commissions to make regulations.

It was suggested to government that, "upon the recommendation of the Minister" be changed to, "upon the recommendation of the Assembly". This change has not been made. Section 55(1)(u) was deleted and therefore 55(1)(v) is now 55(1)(u).

ARCTIC COLLEGE ACT - Introductory Comments

The committee had agreed to excuse the Minister of Education from appearing, for valid personal reasons. Witnesses were: Joe Handley, Deputy Minister, Department of Education; Ken Lovely, Assistant Deputy Minister, Advanced Education; Gail Joyce, Policy Advisor, Education and Deborah Meldazy, Chief, Legislation Division. This bill had been tabled in June. The chairman sent copies to interested parties and had received no interventions.

Mr. Lovely gave a brief statement as to the intent of the bill. Of primary concern was that there be a mechanism to allow the development of adult and post-secondary education at arm's length from government. That is to say the educational facility must exist in an atmosphere that lets the educators provide direction, administration etc. but allows for the government to have a greater input than it would have with private institutions. This would be expected to be an improvement over the situation in other jurisdictions.

The purpose of this act is essentially to create the college system to be called Arctic College. The Act provides for some of this systems functions, namely: that it deliver adult and post-secondary education, the formation of regional campuses, that it be administered by a College Board of Governors, the provisions for appointment, remuneration, powers, and duties of the Board and staff; that it have a student association and council and their rules and procedures.

Clause by Clause Review

Clause 3

The committee questioned the use of the word "the" before every reference to Arctic College but left it to the discretion of the department to rewrite if it chose.

Clause 4

Concern was expressed with the use of the word "shall" as it seemed to imply that all adult education must be taken over and delivered through the Arctic College. This would be of considerable concern to communities that wish to deliver programs. RESPONSE - The government agreed to review and change the wording of this clause as it was clearly not its intent to take control of all adult education.

In regards to post-secondary education the committee asked if it was intended that the College give recognized degrees, i.e. B.A. or BSC. The answer was that it was not going to move into that direction at least not at this time.

Clause 5

Members asked if this clause would mean the establishment now of campuses in every region. RESPONSE - It was not the government's intent to do so now but the Act did give it the ability to set up a campus in any region that due to population growth or demonstrable interest warranted a regional campus.

Clause 7

Ms. Meldazy informed the committee of changes. The word "exercise" in 7(3) was changed to "performance". In all references to the Public Trustees Act, such as in 7(4), the word Public has been deleted.

The committee questioned the use of the word 'or' after 7(1)(b) and suggested the word 'and'.

It was asked if the power of the Minister in 7(2) was in conflict with the powers of the Board in 15(a) or the President in 21(h). RESPONSE - It was explained that the Minister's power was over operations of the buildings themselves such as construction, repairs etc., while the Board's power was over academic concerns of the college, and the President over operations within the buildings as residences etc.

Clause 9

The committee was told that the new format of the Board will be different from the present in that it will include two members from each region that is formed by regulation. It was suggested that these would likely be the GNWT administrative regions. This might mean as many as 14 Board Members as opposed to the ten at present.

Clause 15(g)

The concern was expressed whether the Board would be appointing a separate auditor or ask that the Auditor General for Canada act for the college as well as the Government. RESPONSE - The government saw this clause as allowing for a different auditor and was not sure whether under the new FAA the government would clarify the ways in which the Auditor General would be utilized. It admitted that if the Auditor General had to do a review than an independent auditor would perhaps be unnecessary duplication.

Clause 17(2)

Another reference to Public has been eliminated in favour of Trustee Act.

Clause 21(h)

The committee questioned why the president would be setting fees for accommodation when fees for the administration of the College are set by the Board in section 16(d) and (e). RESPONSE - Mr. Handley agreed that these fees could be set by the Board and that he would undertake to change this clause.

Clause 21(3)

It was clarified for the committee that this clause is for the purpose of determining remuneration and that the position of president would have status equivalent to that of a Deputy Minister. As such he would report to the Board and directly to the Minister.

Clause 23

It was pointed out that this clause means that employees will be civil servants and that hiring will be done by the Department of Personnel.

Clause 24

Considerable concern was expressed over the definition and function of an "Academic Council". It was explained by the government that this would be a group of educators that could provide advice to the Board on any and all matters in which it is concerned. These councils would be separate from the Trades Advisory Councils. Members suggested that the name be changed to reflect their role and avoid confusion. The term 'ad hoc advisory committee' was suggested.

Clause 27

Legal counsel asked whether provision was being made to incorporate student councils under the Societies Act, especially to cover liabilities of members etc. RESPONSE - The government agreed to address the issue.

Clause 28(3)

Concern was expressed that criteria for membership were to be addressed by the student councils and not be obtained automatically as a result of enrollment. The government agreed to review and rewrite this section.

Clause 33

It was suggested to the government that this clause might be better written in the order (1), (4), (3), (2) to provide clarity and to better describe the order of events.

Clause 37

Legal counsel asked whether the presently held buildings etc. would become the property of Arctic College. The government's response was that they would not and that the GNWT would retain ownership.

Closing Commentary

For the most part the Committee found little that was of major concern with this legislation. It made suggestions to government rather than drafting recommendations for changes. However, several changes to this legislation were made following the Committee's review. The Committee was advised October 16th - after the Session had commenced. To outline and explain the changes made a copy of the letter sent to the Chairman from Mr. Butters follows.



Northwest
Territories Minister of Finance

OCT 16 1986

MR. R.H. MacQUARRIE,
CHAIRMAN,
STANDING COMMITTEE ON LEGISLATION.

Forest Management Act

Please find enclosed a copy of the proposed Forest Management Act. This version of the Bill has been amended to take into account the concerns and points raised by your committee and to clarify certain matters of policy at the request of the Minister of Renewable Resources. There are other amendments of a technical nature. All amendments have been highlighted in yellow.

The following sets out all the changes made to the Bill:

1. The statement of purpose has been amended to add a reference to "conservation". This was added at the request of the Standing Committee on Legislation to make it clear that one of the purposes of the Bill is to conserve territorial forests.
2. I submitted, on behalf of Mr. Pedersen, a change to the definition of "forests" at the meeting of the Standing Committee and it was agreed that the new definition would be included in the Bill. Since that meeting, we have found it necessary to amend paragraph 2(1)(b) of the definition that was presented at the meeting of the Standing Committee in order to clarify its intent. The amended definition will ensure that it is clear that paragraph 2(1)(b) refers to forests described in the federal Order in Council that will designate the management of forests as a matter within the legislative competence of this government. The new wording takes into account the wording used in the latest version of the proposed federal Order in Council that we received after the meeting of the Standing Committee.

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3. Subsection 2(2) was added in response to a recommendation of your committee that the Bill contain a statement that it will not affect any rights of the aboriginal peoples using forests to subsist.
4. Subsection 4(5) has been amended by replacing "his" with "the Supervisor's" to eliminate any ambiguity respecting the use of this pronoun.
5. Subsection 10(1) of the Bill you reviewed has been divided into two subsections, now 10(1) and (2). The new subsection 10(1) authorizes the Minister, on behalf of the Government of the Northwest Territories, to enter into agreements with any government or person except the Government of Canada. The new subsection 10(2) authorizes the Commissioner and the Minister, on behalf of the Government of the Northwest Territories, to enter into agreements with the Government of Canada. This change was made to ensure that section 10 complies with section 15 of the Northwest Territories Act (Canada) which requires the Commissioner to be a party to agreements between the Government of the Northwest Territories and the Government of Canada. Subsection 10(3), formerly subsection 10(2), has been amended to change a reference to subsection 10(2).
6. At the request of the Standing Committee, subsection 11(2), which allowed the Supervisor to authorize any person to issue specific licences or permits, has been deleted. This has been deleted to satisfy the concern that the power to delegate to persons not associated with the administration of the Act may be undesirable. However, the government considers it acceptable for the Supervisor to delegate his duties and powers to a forest management officer pursuant to subsection 4(5).
7. Paragraph 11(a) has been amended by deleting "standing". This amendment is intended to make it clear that the cutting of any timber, whether standing or fallen, requires authorization under the Bill or its regulations.
8. The Standing Committee raised a concern that the requirement to obtain a licence to transport timber referred to in paragraph 11(c) may be already covered by the licensing requirements of the Public Service Vehicles Act. After contacting the Highway Transport Board, it was decided to leave paragraph 11(c) in. The Public Service Vehicles Act applies to carriers who do not own the goods they are transporting. Therefore, the Public Service Vehicles Act does not apply to a company that transports its own timber. Plus, a major timber operation may require the creation of "logging trails" over crown land to transport timber to highways. As there may be a question respecting the Highway Transport Board's authority over these trails, this aspect of the transportation of timber will be regulated under the Forest Management Act.

9. With the deletion of subsection 11(2), the marginal note to sections 11 and 12 would be the same. Therefore, the marginal note to section 12 has been changed.
10. Your committee raised a concern that section 16 would prevent a business that has been issued a licence from selling that licence when the business is sold. Section 16 has been amended to allow a transfer or assignment of a licence with the consent of the Supervisor.
11. The Standing Committee raised a concern that the deeming of notice on seven days contained in subsection 22(4) was too short. This time period has been doubled to fourteen days.
12. The Standing Committee requested that time limits be placed on some of the steps in the appeal process contained in sections 25 to 30. Accordingly, subsection 25(1) has been amended by requiring the Minister to appoint an advisor within thirty days. Section 28 has been amended to require the advisor to send his report within thirty days of hearing his submissions. Section 29(2) has been amended to require the Minister to send out his reasons for the decision within thirty days of receiving the advisor's report.
13. At the request of the Standing Committee, section 28 has also been amended to require the advisor to send a copy of his report to the appellant, as well as to the Minister.
14. Your committee raised a concern that because subsection 33(1) uses "any", this subsection may be interpreted as allowing an officer to search any place, building or vehicle whether or not it is named in the warrant. As a result of this concern, subsection 33(2) has been renumbered as 33(1) and subsection 33(2) is now 33(1). The new subsection 33(2) has been redrafted to ensure that it is clear that an officer may search only a place, building or vehicle identified in the warrant and that the search must be conducted in accordance with the authority contained in the warrant. Subsection 33(3) has had to be amended to take into account the switching of subsections 33(1) and (2). There is no intention to change the substance of subsection 33(3). Subsection 33(4) has been amended to change a reference to the new subsection 33(1).
15. As was agreed at the meeting of the Standing Committee, subsection 37(6) has been added to the Bill. The Government of the Northwest Territories will be responsible for transportation charges and all of the charges that the Supervisor considers proper incurred by a carrier if his load is seized pursuant to subsection 37(5).

16. Paragraph 38(2)(c) has been amended by deleting "his" and substituting "that person's". This will eliminate any ambiguity caused by using "his".
17. The marginal note to subsection 38(4) has been amended by deleting "in disposal" and substituting "on disposal".
18. The Standing Committee raised a concern that although section 40 authorizes an officer to arrest without a warrant in certain situations, there were no post-arrest procedures contained in the Bill. Any person arrested for contravening a provision of this Bill would have the benefit of the rights contained in the Canadian Charter of Rights and Freedoms, e.g. the right to be informed of the right to retain and instruct counsel after arrest, even though these rights are not set out in the Bill. Because the Charter is part of our constitution, it is the supreme law of Canada and will apply to arrests made under the Bill.

I am advised by Legislative Counsel that the post-arrest procedures contained in the Criminal Code (Canada) relating to persons arrested in respect of summary conviction offences would also apply to a person arrested for an offence against the Bill. The code procedures apply by virtue of section 2.1 of the Summary Conviction Procedures Act which states that the provisions of the Code relating to summary conviction offences apply to offences created by a territorial Act.

19. The reference to "standing" in paragraph 41(a) has been deleted. See note 7 for an explanation. Note that the reference to "standing" in section 42 has been left in.
20. It was agreed at the meeting of the Standing Committee that the penalties for violating the regulations would be contained in the Bill rather than the regulations. Consequently, subsections 49(1) and (2) have been combined into one section. Section 51 has been amended by deleting "or the regulations". Paragraph 56(1)(u), which authorized the making of regulations respecting penalties for violations of the regulations, has also been deleted.
21. The Standing Committee asked how the maximum fine of \$1,000 set out in section 51 compared with other jurisdictions. Penalties for violations of similar Acts in Ontario, Alberta, Saskatchewan and New Brunswick are equal to or exceed \$1,000.
22. The Standing Committee asked if the one-year time limit for laying an information in section 54 was common in this type of legislation. British Columbia has a two-year time limit, while the other jurisdictions have a six-month time limit. It was felt that a one-year time limit is reasonable for the Territories. It may be six months before an offence under the Act is discovered because of the long winters.

23. References to "standing" have been deleted from subparagraph 55(1)(a) and paragraphs 55(1)(f) and (k). See note 7 for an explanation.
24. Section 57 of the Bill has been amended to allow for specific sections of the Act to be brought into force at different times. This will allow the Act to be brought into force with respect to forests on Commissioner's land if the federal government's amendments are not in place by April 1, 1987. Section 56 has been amended as a consequence of amending section 57. If the federal amending legislation is not enacted by April 1, 1987, then subsection 56(1) could be proclaimed in force prior to subsection 56(2).

Your committee raised a concern about the types of permits and licences that will be designated under subsection 23(2) respecting an appeal from a decision to refuse to grant a permit or licence. Your committee was also concerned about the policy respecting the disposal of timber seized pursuant to subsection 38(3). The Minister of Renewable Resources will be contacting you directly about these concerns.

Please contact me if you have any questions about the changes I have identified or if you wish to discuss any matter raised in this memorandum.



Tom Butters,
Chairman,
Legislation and House
Planning Committee.

Enclosure.

ELECTIONS ACT - Introductory Comments

The Standing Committee on Legislation reviewed this Act which makes changes to the procedures respecting Elections in the Northwest Territories. Members of the House will recall that the Chief Electoral Officer reported to the Legislative Assembly after the 1983 election. His report was referred to this Committee for review and recommendations.

Following that review, suggestions for change were made and now, after Management and Services Board input, this new Legislation has been drafted.

Several individuals worked extremely hard to complete this Legislation. Guiseppa Bentivegna of the Legislation Division; Mr. Hamilton, Clerk; Trudy Gibson and Madelaine Menard of the CEO office in Ottawa - all deserve the thanks of this Assembly. They all appeared as witnesses before the Committee. Valuable input was also received from our Law Clerk, Mr. Fournier and Mr. Lavoie of the CEO's office and of course the CEO himself Mr. Hamel.

The Committee did not review this legislation clause by clause - rather it examined the several changes made to the Act. The Chairman advised the Assembly of each of those changes as it moved clause by clause during review in Committee of the Whole.

There were two issues, in particular, that were of concern. They were as follows:

- (1) In the Section ELECTION CONTRIBUTIONS AND EXPENSES
Clauses 169 to 187 pages 82 - 91
There was raised a particular concern. Members will note that the maximum allowable contribution is \$1,500.00 and the maximum allowable expense by a candidate is \$20,000.00.

The concern was that in some ridings costs of air travel and particularly air charters is extremely high. A contribution of a charter might easily exceed the \$1,500.00 limit. A solution suggested was that these be allowed an exemption status. The problem then becomes whether to consider these contributions as expenses. If they were not, a candidate could conceivably spend well beyond the \$20,000.00 limit.

The Legislation Division Counsel was asked to develop wording that met the Committee's concerns and to present it in the review of clause 169.

- (2) A second major concern of the Committee was the matter of a "group contribution". This is defined in Clause 169(4) and requires groups to declare the names and amounts given of each Member of the group. It was explained to the Committee that corporations and organizations incorporated as Societies under the Societies Act of the N.W.T. were considered, in legal terms, to be "persons" and not subject to these restrictions.

The concern came in the attempt to clarify the status of a trade union that wanted to make a contribution. It would appear, at present, that the trade union would have to declare the name of all of its members and how much from each was being contributed.

Again Legislation Division Counsel was asked to consider the problem and possible wording changes - IF this is a matter that this Assembly feels needs further consideration.

Subject to resolving these two issues the Standing Committee on Legislation was of the opinion that this Bill should receive the approval of the Assembly.

Clause by Clause

Clause 4 - 9

Recommendation: That the Northwest Territories take over administration of elections in the N.W.T. That the G.N.W.T. solicit funds from the Government of Canada to engage a Chief Electoral Officer for the N.W.T. and that the CEO develop a framework for running of elections in the N.W.T. That the CEO receive training in Ottawa and that the next general election be run by the CEO for the N.W.T. with support and advice from the CEO for Canada.

Response: Note: These clauses 4 - 9 deal with the appointment , duties, powers and staff of the Chief Electoral Officer (Also see section 209).

NOTE: The MSB recommends that the current Chief Electoral Officer, Mr. Hamel conduct the next election and that a CEO to be named in the N.W.T. (and the MSB suggests the Clerk of the Assembly) conduct all subsequent elections.

and NOTE: the following changes were made:

5(1)(b) line 16 - the word execute has been changed to exercise.

5(2) line 23 and 24 - following the word "form" - the wording "which is to be approved" has been deleted and replaced with "required by this Act".

Clause 15

Recommendation: That the appointment of R.O.'s be on a continuing basis. That in case of a vacancy in a R.O.'s position, that the Commissioner shall appoint a new R.O. forthwith if an election is imminent or within 60 days of the vacancy. That section 6 be amended to make clear that if a R.O. is not carrying out the duties or instructions of the CEO that the Commissioner may remove the R.O.

Response: Deals with the initial appointment, removal from office and new appointments of R.O.'s.

Members should note that authority and power in appointing and removing returning officers is being given to the C.E.O. not the Commissioner.

Section 26

Recommendation: That section 10(2) the words "Stereotype Blocks" be replaced by "Offset Reproduction".

Response: The section to "Offset Reproduction" is not needed as the CEO prints the ballots now.

Section 27 and various sections:

Recommendation: That the election period in the Northwest Territories be reduced to forty-five (45) days.

Response: Throughout the Act reflects the timeframe for an election now being 45 days from the issue of the Writ until Polling Day.

Section 28

The purpose of changes in this section was to make sure that wherever possible residents of the N.W.T. get to vote - certain restrictions have been deleted.

The recommendation was that the issue of whether judges and inmates should receive a vote should be discussed by the Legislature after the Report of the Federal Privileges and Elections Committee has been tabled in Ottawa.

Response: 28(3) deals with persons who are disqualified from voting at an election. The M.S.B. approved that judges should receive the vote but did not wish to extend the vote to inmates.

Recommendation: That section 12(1) concerning "Persons in receipt of pay disqualified" be deleted.

Response: Note: This section was deleted.

Section 30

Recommendation: That section 15 be rewritten to look at the concern of temporary residence and if this concept is not necessary to delete all sections dealing with temporary residence.

A concern had been expressed about where students at a campus of the Arctic College should or could vote.

Response: Note: This section was reviewed and sections not necessary were deleted and others redrafted to reflect current situations in the N.W.T.

With changes in this section particularly 30(2) it is now clear that a student could return to his home community or vote by proxy in his home community if it is his intention to return there to reside after his studies. However, if that student intends to remain in the community in which the campus is located he would be intitled to vote there rather than in the home community.

Section 31(3)

Recommendation: That the marginal note in section 15(9) be changed from "Summer" to "Seasonal Residents".

Response: After review, the marginal note "Secondary Residence" was felt better to describe the section.

Clause 44

The Committee was advised that 44(4) was to be added to the Bill concerning the appeal of a decision of a returning officer.

A 5 day period in which this is allowed was considered too short by some members because of mail delays. However members might note that a postmark on a letter or a telex or phone call to the CEO should be sufficient proof that the 5 day limit has been complied with.

Clause 45(2)(b)

Recommendation: That Section 16, Rule (19) be amended to require that each candidate be given a copy of the statement of changes and additions.

Response: Requires statements of change to be sent to each candidate.

Clause 50 - 52

Recommendation: That Section 19 concerning "Persons ineligible as candidates" be given to a lawyer to be rewritten to make it less restrictive and in line with The Charter of Rights and Freedoms. The Section should, however, include ineligibility where there is clear danger to the public interest. That the "Conflict of Interest" section of the Legislative Assembly and Executive Council Act be reviewed by the M.S.B. to ensure that the public interest is safeguarded.

Response: Deals with qualifications of and reasons why candidates are ineligible as candidates. This section has been drafted to ensure as many people as possible are able to be nominated yet the legislation still has a number of ineligibilities.

The concern was that roadblocks and restrictions on candidates be eliminated - if and only if - conflict of interest guidelines protected the House after a candidates election.

Section 52 - in this section it is clear that a judge, as he holds an office, can only run if he resigns.

Sections 53(1)

Recommendation: That Section 21(1) be amended to increase from 10 to 15 the number of persons required to nominate a candidate.

Response: Act has been changed.

Clause 53 - 64

Recommendation: That the Section on "Nomination of Candidates" be referred to Election Canada to be cleaned up so as to make the process as fair and easily accomplished as possible, while still safeguarding the candidates's candidacy.

Response: Has been drafted to simplify the procedure for nomination.

Section 53(2)

This clause now means that a potential candidate has 14 days to file nomination papers.

Section 53(4)(g) or (h) - Recommendation: That Section 21(1) be amended to delete the requirement to include the occupation of those persons nominating a candidate.

Response: Act has been changed.

NOTE: Addresses of electors signing the nomination paper are required but we no longer require occupations.

NOTE: to 55(4) - the nomination paper should now be on a form or forms that includes room for all of this information.

Clause 54

Members of the Committee had concerns about the restrictive nature of this clause - as it had eliminated all of the relatives and employees of a candidate - as well as the employees or partners of an election officer - from acting as an Official Agent.

The Committee recommended by motion that this clause be changed to disqualify only candidates and certain election officer.

The new wording as prepared by the Legislation division is (read from new bill).

Clause 56(4)

Recommendation: That the Section include a provision to allow for the option of individual witnesses, or for the official agent to serve as witnesses for all nominators.

Response: Act has been changed.

Section 57

Recommendation: That Section 21(1)(h) be amended to make Hudson's Bay and Co-op drafts legal tender for nomination fees.

Response: Act has been changed.

Clause 64

Recommendation: That the Section include a provision for candidates to be able to file nomination papers in any community.

Response: Act now permits the filing of nomination papers in any community with the prior approval of the CEO.

Members expressed concern that this wording did not consider a potential candidate who did in fact live in a community with a returning officer but was stuck by inclement weather in a community where there was no returning officer and could not meet filing deadlines. Only those who live in such communities can take advantage of the provision of this clause.

Witnesses advised the Committee that under Clause 6(1) if the individual contacted the CEO he has the authority to apply or change rules to meet special or unusual circumstances and could allow filing of the paper in the community where he was stuck.

Section 70(4)

Recommendation: That Section 26(2)(c) be amended to allow for maps outlining polling divisions to be posted as an option to the posting of polling division boundary descriptions.

Response: This has been added since our review to allow for maps of divisions.

Section 77(1)

Recommendation: That Section 30(1) be amended to substitute the words "Returning Officer" with the words "Chief Electoral Officer".

Response: Act has been changed.

Section 102(1)

Recommendation: That the method of getting on the voter's list on Election Day be as simple as possible and, in particular, that a provision be included whereby an elector at the poll, who is not on the list, can sign a sworn statement before a witness and be placed on the list.

Response: Act has been drafted to permit open lists in polls.

Section 102(3)

Recommendation: That it be made an offence to make a false statement in order to cast a vote.

Response: Act reflects this recommendation.

Section 114 - 119

Recommendation: That a provision to allow voting by mobile ballot be incorporated.

Response: These provisions have been incorporated.

Clause 120(1)

Recommendation: That proxy voting be opened up to permit any elector who will not be in his constituency on polling day, or one of the advance polling days, to be allowed to vote by proxy. That there be a provision that persons voting by proxy must come from the constituency, but not necessarily from the same polling division, as the voter conferring the proxy.

Response: Act has been changed.

Line 39 - the words "same list of electors" has been changed to "a list of electors for the same electoral district".

Section 122(1)

Recommendation: That the method of voting by proxy be as simple as possible, concluding with a simple declaration before the Deputy Returning Officer at the poll, concerning one's eligibility to vote by proxy for another voter.

Response: Act has been changed.

Section 122(5)

Recommendation: That there continue to be only three proxy per elector allowed.

Response: Act reflects this recommendation.

Section 123

Recommendation: That a provision be included that it is an offence to solicit proxy votes, but not an offence for candidates to provide information on the opportunity and the method of proxy voting.

Response: Act reflects this recommendation.

Sections 169 to 178 and 245

Recommendation: That a system of tax credits for campaign contributions be introduced for N.W.T. elections. That the Law Clerk prepare a brief that would illustrate a workable tax credit plan similar to those in effect in other jurisdictions and would outline consequential changes to various acts and agreements required to implement a tax credit system. That section 59 and 60 dealing with "Elections Expenses" be referred to Election Canada for simplification to include accounting of cash and goods and services in kind contributions.

Response: Act now contains sections to allow for a tax credit system as approved by the M.S.B.

Clause 169

Refer back to opening commentary. Re: 169 (2), (3), (4), (5).

Section 177(1)

Recommendation: That surplus campaign funds be given to a registered charitable organization of the candidate's choice within a limited time period.

Response: M.S.B. amended this recommendation to allow the option to give surplus to a charitable organization or to the Consolidated Revenue Fund.

Section 180 - 187

Recommendation: That the forms required by section 60(2) be consolidated into one form.

Response: These sections deal with "Returns" and forms will be simplified after legislation is passed.

Section 204

In line 12 the word "following" has been changed to "any or all".

Section 218

Recommendation: That Section 69 be amended to delete the reference to "Printer".

Response: Act has been changed.

Sections 238-239

Recommendation: That the Act be amended to include the procedure for setting the tariff of fees for N.W.T. election officials. That an equitable system reflecting the amount of work required be developed for the tariff of fees regarding the payment of Returning Officers and Election Clerks.

Response: Act has been amended to implement these recommendations.

Section 240

The Committee suggested a change to this section so that the C.E.O. wasn't recommending his own salary. It suggested:

in line 14 and 15 delete "upon the recommendation of the C.E.O." and adding that phrase immediately at the start of clause 249(b).

Section 245

A Committee member questioned the use of the word Minister in section 245(5.2)(2) and Legislation Counsel indicated that it should read Commissioner (check new Act to see if this is done).

Form 3

It should be noted that the form seen by the Committee did not include the circles in the right hand column that are intended for the marking of an X.

Other Recommendations

That the Assembly seek a legal opinion on the extent of French language required in the administration of the Election Act.

Response: Note: Management and Services Board will review paper on this matter within the next two months.

That all forms used in Territorial Elections be reviewed by Elections Canada and simplified where possible.

Response: All forms will be reviewed once Act is passed.

CHANGES MADE IN THE HOUSE

Members of the Legislative Assembly made several changes, by motion, during the review of this Bill in Committee of the Whole. These were:

Section 36(1) - This clause was reworded to:

The returning officer shall, commencing on Wednesday, the thirty-third day before polling day, ensure that preliminary lists of all persons who are qualified as electors in the polling divisions comprising his electoral district are prepared.

Section 52 (3)(a) The last word was changed to "employment".
(3)(b) The last line was changed to "is not qualified to vote; or"
(3)(c) This clause was added: is a member of the Parliament of Canada or of a legislature of any province or the Yukon Territory, during the time he is such a member,

Section 169 - This section dealing with Election Contributions had two changes.

Definition - "election expenses" - This is now written as, "election expenses" means any amounts paid or liabilities incurred to promote or oppose the election of a candidate and includes any contribution of services or goods.

169(6) - This clause was added in response to the concern about air charters donated to a candidate. It reads:

"where transportation for a candidate is given as a contribution of services or goods, the value of the contribution may exceed one thousand five hundred dollars."

Section 185(3) - This clause was deleted.

Forms: Section references were added to two forms - a reference Section 27 on Form 2; a reference to Section 75 on form 3.

FINAL COMMENTARY

The Standing Committee on Legislation was disturbed that the Government was unable to provide it with copies of the other legislation which it is expected to put forth at the fall session. The committee has emphatically stated in the past that new legislation should come to it six weeks in advance of a session. This has not been done. A motion was presented that calls on the committee chairman to advise the government that this committee would not review any of the other legislation it chose to bring forward for the fall session, with the exception of the Elections Act. As a result your committee cannot provide advice on the content of any other bills. It is the committee's opinion that the government is free to introduce other bills - without the benefit of prior review and commentary. However, the government must recognize that these bills will face the scrutiny of the entire House and will be subject to immediate change as a result of approved motions from members.