

LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

1990 FIRST SESSION

BILL ____

**AN ACT TO PROVIDE
AN ENVIRONMENTAL BILL OF RIGHTS
FOR THE PEOPLE OF THE NORTHWEST TERRITORIES**

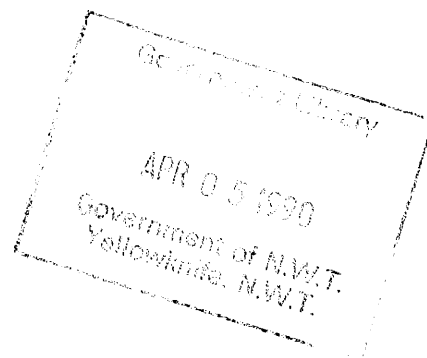
PRIVATE MEMBERS PUBLIC BILL

Statement of Purpose

The purpose of the Bill is to provide environmental rights for the people of the Northwest Territories. The Bill also provides for the commencement of investigations, and for the commencement of prosecution of alleged statutory offences, by the people of the Northwest Territories. The Bill provides access to environmental information in the possession or under the control of a minister of the Government. The Bill further provides for protection of employees from the actions of employers and for the preparation by the Minister of an annual report.

Private Members Public Bill

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AN ACT TO PROVIDE AN ENVIRONMENTAL BILL OF RIGHTS FOR THE PEOPLE OF THE NORTHWEST TERRITORIES

WHEREAS the people of the Northwest Territories possess a unique sense of their relationship to the land, the rich, vast diversity of which has shaped their values and experience; and

WHEREAS it is fitting that this relationship be recognized by the Legislative Assembly of the Northwest Territories in an enactment whereby rights in respect of the environment are established and means for protection of the environment are given to all persons;

THEREFORE, the Commissioner of the Northwest Territories, by and with the advice and consent of the Legislative Assembly of the Northwest Territories, enacts as follows:

Short Title

Short title

1. This Act may be cited as the Environmental Bill of Rights Act.

Interpretation

Definitions

2. In this Act:

"contaminant"

"contaminant" - means any solid, liquid, gas, odour, heat, sound or vibration, or any combination of them, the discharge or release of which into the environment:

- (a) causes or contributes to the impairment of the quality of the environment;
- (b) adversely affects the health, safety or comfort of any person;
- (c) causes injury or damage to plant or animal life;
- (d) causes harm or material discomfort to any person, or adversely affects or impairs the safety of any person; or
- (e) renders the environment, or any component thereof, unfit for use by any plant or animal life or by any person.

"environment"

"environment" - means the components of the Earth within the Territories and includes:

- (a) all air, land, water, snow and ice;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in paragraphs (a) to (c);

"public trust"

"public trust" - means the collective interest of residents of the Territories in the quality of the environment and the protection thereof and the heritage therein for future generations.

Application of Act

Application

3.(1) Subject to subsection (2), this Act applies to the whole of the Territories, including municipalities.

Paramountcy

(2) This Act does not apply to any person who is authorized under an Act of the Parliament of Canada to do those things but for such Act are in contravention of this Act.

Act prevails

(3) Subject to subsection (2), where there is a conflict between any provision of this Act and a provision of any other Act, the provision of this Act shall prevail.

Crown

(4) This Act binds the Government of the Northwest Territories.

Environmental Rights

Environmental rights

4.(1) Every person resident in the Territories has the right to protect the environment and the public trust from the release or discharge of contaminants by commencing an action in the Supreme Court against any person releasing or discharging any contaminant into the environment.

Standing

(2) No person is prohibited from commencing an action under subsection (1) by reason only that he is unable to show:

- (a) any greater or different right, harm or interest than any other person; or
- (b) any pecuniary or proprietary right or interest in the subject matter of the proceeding.

Relief

(3) Where it is established that a right under subsection (1) has been infringed, the Supreme Court may:

- (a) grant an interim or permanent injunction in respect of any activity of the defendant;
- (b) order the defendant to remedy any damage caused by his activity;
- (c) make any other order that it considers appropriate.

Defence

(4) It is a complete defence to any action commenced by any person under subsection (1) that:

- (a) the release or discharge of the contaminant:
 - (i) will be and will remain entirely restricted to lands owned by the defendant, or to lands in respect of which the owner has expressly authorized the defendant to release or discharge the contaminant; or
 - (ii) will not materially impair the quality of the environment or any component of the environment; or

- (b) the defendant's activity is in compliance with a standard established or an instrument issued under an Act of the Legislative Assembly of the Northwest Territories.

Investigations

- Investigations 5.(1) This section applies whether or not it is alleged that an offence has been committed pursuant to any Act listed in Schedule A.
- Application (2) Any two persons resident in the Northwest Territories who are not less than 18 years of age and who are of the opinion that a contaminant is being discharged or released into the environment, or is likely to be discharged or released into the environment, may apply to the Minister for an investigation of the discharge or release or the likely discharge or release.
- Declaration (3) An application for an investigation shall be accompanied by a declaration, duly sworn or affirmed:
- (a) stating the names and addresses of the applicants;
 - (b) stating the nature of the discharge or release or the likely discharge or release, and the name of each person alleged to have been involved in the discharge or release or the likely discharge or release; and
 - (c) containing a concise statement of the observations of witnesses and all available documentation supporting the allegations of the applicants.
- Acknowledgement (4) On receipt of an application under subsection (2), the Minister shall acknowledge in writing receipt of the application and investigate all matters that the Minister considers necessary for a determination of the facts relating to the application.
- Progress report (5) Within ninety (90) days after receiving an application under subsection (2), the Minister shall report in writing to the applicant on the progress of the investigation and the action, if any, that the Minister proposes to take.
- Discontinuance (6) The Minister may discontinue an investigation where the Minister is of the opinion that the discharge or release or the likely discharge or release does not constitute a threat to the environment.
- Discontinuance report (7) When an investigation is discontinued, the Minister shall within ninety (90) days of the discontinuance of the investigation:
- (a) prepare a report in writing describing the information obtained during the investigation and the findings which led to the conclusion that the discharge or release or likely discharge or release does not constitute a threat to the environment; and
 - (b) send a copy of the report to the applicants and to any person whose conduct was investigated.

Prosecution of Statutory Offences

Standing to
prosecute
statutory offences

6.(1) Notwithstanding any other Act, and subject to subsection (3), where any Act listed in Schedule A provides for an offence every person resident in the Territories shall have standing to prosecute any person committing the offence by laying an information and prosecuting the offence under that Act in the manner provided in the Act as if the granting of standing were contained in the Act.

Application

(2) Before a person may commence to prosecute an offence under subsection (1) he shall appear before a judge of the Supreme Court upon an ex parte application and satisfy him upon affidavit evidence or such other evidence as the judge may require that:

- (a) he has given notice by registered mail of the alleged offence to the Minister of Justice and the Minister of Justice has failed to give a written undertaking to commence prosecution of the alleged offence within sixty (60) days of mailing of the notice, or such lesser time as the judge may deem appropriate considering the seriousness of the alleged offence and the consequences of its continuance;
- (b) the information discloses an offence under the Act in question; and
- (c) he has evidence which tends to show that an offence has been committed by the proposed defendant;

and the judge, if satisfied under clauses (a), (b) and (c), shall endorse the information with his fiat.

Fiat

(3) No prosecution shall be maintained on any information laid pursuant to subsection (1) unless such information is endorsed with a judge's fiat pursuant to subsection (2).

Intervention

(4) The Minister of Justice may intervene at any stage of a proceeding commenced under this section by serving written notice upon the person prosecuting the offence, and upon receiving the notice such person shall no longer have standing and the continued prosecution of the offence shall become the responsibility of the Minister of Justice.

Dismissal of
prosecution

7.(1) At any time prior to a trial of the issue in any prosecution commenced under section 6 a defendant may apply to a judge of the Supreme Court, upon notice to the person prosecuting the alleged offence, for an order summarily dismissing the prosecution or directing that the prosecution be stayed.

Improper purpose

(2) The judge, upon being satisfied that the prosecution is without merit or is brought for an improper purpose, shall dismiss or stay such prosecution.

Access to Information

Access to
information

8.(1) Every person has the right to obtain from any minister of the Government of the Northwest Territories any information in the possession of, under the control of or otherwise available to the minister concerning the quantity, quality or concentration of any contaminant discharged or released, or likely to be discharged or released, into the environment.

Access to licence	(2) A minister referred to in subsection (1) shall permit any person who applies to examine any licence, permit, approval, order or notice and any information in support of any such document and, on payment of a reasonable fee reflective of the cost of reproduction, the person shall be provided with a copy thereof.
Access to report	(3) A minister referred to in subsection (1) shall permit any person who applies to examine any report or memorandum concerning any test, observation, inspection or analysis relating to the discharge or release, or the likely discharge or release, of a contaminant into the environment and, on payment of a reasonable fee reflective of the cost of reproduction, the person shall be provided with a copy thereof.
Refusal	(4) Notwithstanding subsections (1), (2) and (3), a minister may refuse an application under this section if, in the reasonable opinion of the minister, the release of the information would: <ul style="list-style-type: none"> (a) be detrimental to the security of the Territories or Canada; (b) reveal trade secrets or prejudice commercial competition; (c) constitute an unwarranted invasion of personal privacy; (d) prejudice the administration of justice; or (e) prejudice contractual negotiations involving the Government of the Northwest Territories.
Notice	(5) Where a minister refuses an application under this section, the minister shall cause a notice of the refusal to be sent to the person who made the application and the notice shall set out the reasons for the refusal.
Application to judge	(6) Where the Minister refuses to permit the release of information under subsection (4), the person who made the application may apply to a judge of the Supreme Court, within thirty (30) days after receiving notice of the refusal, for an order directing that the information be disclosed and, upon completion of a hearing on the matter, the judge may make such order as the judge considers appropriate in the circumstances.
Statement of particulars	(7) The minister, in a proceeding commenced under subsection (6), may file a statement of particulars in a sealed envelope with the judge in support of the minister's refusal.
Order	(8) At any stage of the proceedings the judge may order that the statement of particulars be disclosed in whole or in part to the other party or otherwise dealt with as the judge determines proper.
Onus	(9) In a proceeding commenced under subsection (6) the onus of establishing that the information should not be released is on the minister.
Commissioner	(10) Notwithstanding anything contained in this section, the Commissioner may order the release of any document in the possession of, under the control of or otherwise available to a minister of the Government of the Northwest Territories that may fall within the criteria contained in subsection (4) where in the reasonable opinion of the Commissioner the release of the document is in the public interest.

Protection of Informants

Protection of
informants

9.(1) No person shall:

- (a) dismiss or threaten to dismiss an employee;
- (b) discipline or suspend an employee;
- (c) impose any penalty upon an employee; or
- (d) intimidate or coerce an employee;

because the employee:

- (e) has reported or proposes to report to the appropriate authority any discharge or release, or any likely discharge or release, of a contaminant to the environment;
- (f) has commenced or proposes to commence an action under section 4(1);
- (g) has made or proposes to make an application under section 5(2);
- (h) has commenced or proposes to commence to prosecute an offence under section 6(1); or
- (i) has made or proposes to make an application under section 8(2), (3) or (6).

Improper Purpose

(2) Subsection (1) does not apply in respect of any employee who proceeds or proposes to proceed in a manner described in paragraph (e), (f), (g), (h) or (i) for an improper purpose.

Remedy

(3) Where an employer is convicted of an offence under subsection (1), the judge may, in addition to prescribing a penalty provided for under subsection (4), order what action the employer shall take or what the employer shall refrain from doing and such order may include the reinstatement and employment of the employee with compensation for loss of wages and other benefits to be assessed against the employer.

Penalty

(4) Every person who contravenes subsection (1) is guilty of an offence and upon conviction is liable to a fine or imprisonment.

Annual Report

Annual report

10. The Minister, as soon as possible after the end of each year, shall prepare and cause to be laid before the Legislature a report describing:

- (a) all actions commenced under section 4(1);
- (b) all applications made under section 5(2);
- (c) all prosecutions commenced under section 6(1);
- (d) all requests for information made under section 8(1), (2) or (3);
- (e) all applications under section 8(6); and
- (f) all convictions under section 9(4);

that the Minister is aware of for that year in sufficient detail so as to provide a reader of such report with an understanding of all such actions, applications, prosecutions, requests and convictions.

Miscellaneous

Remedies
preserved

11. Nothing herein contained shall be construed so as to repeal, remove or reduce any existing remedy available at law to any person.

SCHEDULE A

The Environmental Protection Act

The Forest Protection Act

The Pesticides Act

The Territorial Parks Act

The Transportation of Dangerous Goods Act

The Wildlife Act