

Standing Committee on
Social Development



Report on Bill 39: *An Act to Amend the Post-Secondary Education Act*

19th Northwest Territories Legislative Assembly

Chair: Ms. Caitlin Cleveland

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SOCIAL DEVELOPMENT**

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March 30, 2022

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Development is pleased to provide its *Report on Bill 39: An Act to Amend the Post-Secondary Education Act* and commends it to the House.



Ms. Caitlin Cleveland
Chair, Standing Committee on Social Development

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

**REPORT ON BILL 39: AN ACT TO AMEND THE
POST-SECONDARY EDUCATION ACT**

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THE STANDING COMMITTEE ON SOCIAL DEVELOPMENT
REPORT ON BILL 39: AN ACT TO AMEND THE POST-SECONDARY
EDUCATION ACT

INTRODUCTION

Bill 39: *An Act to Amend the Post-Secondary Education Act* (Bill 39)¹ was first introduced by the Department of Education, Culture and Employment on November 24, 2021, and then referred to the Standing Committee on Social Development (the Standing Committee) for review.

The Department proposed changes to the Northwest Territories' *Post-Secondary Education Act* (*PSE Act*) that would add details on quality assurance review, correct errors, and ensure alignment with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. Bill 39 proposes changes to:

- Remove a pre-condition to being recognized as an Indigenous institution;
- Allow for the charging of fees and costs related to applications and quality assurance review processes;
- Require a quality assurance review of an application for registration as a private training institution and for a renewal of that registration;
- Clarify the role of a Post-Secondary Education Advisory Committee;
- Give the Minister additional powers concerning the establishment of a committee and standards a committee must follow;
- Allow for regulations to prescribe the quality assurance body to which a particular type of application is referred and to prescribe matters relating to that referral;
- Allow the Minister to order a refund of tuition fees on suspension or revocation of an authorization;
- Require specific Boards or other governing bodies to establish quality assurance processes for programs of study offered by an institution; and,
- Improve the use of consistent language throughout the Act.

The proposed amendments focus on addressing gaps and inconsistencies as identified by the Department when drafting the regulations required for implementing the *PSE Act*. The Act received assent in August 2019 and is not yet in force.

The main changes proposed by the Standing Committee include:

1. Narrowing the powers of Post-Secondary Education Advisory Committees to quality assurance matters.
2. Requiring a minimum of half of the members to Post-Secondary Education Advisory Committees to be Indigenous.

¹ [Bill 39: An Act to Amend the Post-Secondary Education Act.](#)

3. Increasing consistency within the legislation.

The Standing Committee wishes to thank all those who participated.

WHAT WE HEARD

The Standing Committee held a public engagement period from December 22, 2021, to February 4, 2022, and a public hearing in Yellowknife on March 24, 2022.

The Standing Committee received written submissions from Aurora College, the City of Yellowknife, and the Office of the Information and Privacy Commissioner of the Northwest Territories.

Welcoming Bill 39

The *PSE Act* creates the structure for post-secondary education in the NWT and rules post-secondary education institutions to support the growth of the territorial post-secondary education system. This legislation will become operative once regulations are in place. Post-secondary education includes universities, colleges and trade and vocational schools.

Aurora College welcomed Bill 39 as the critical piece in transitioning to a polytechnic university. The College is pleased that the changes proposed in Bill 39 do not impact the relationships as they develop according to the Aurora College Transformation Implementation Plan.

The City of Yellowknife expressed support for the updates to the *PSE Act* because the changes are considered to result in a more clearly written and well-functioning piece of legislation.

Removing Barriers to the Establishment of Indigenous Institutions

Submissions welcomed removing the additional step for the recognition of an Indigenous institution required in the existing legislation. Amendments to the Definitions section and Part 3 of the *PSE Act* removed the condition that an organization must be recognized as a post-secondary institution before it can be recognized as an Indigenous Institution.

Aurora College welcomed the steps to expand the post-secondary education system in the Northwest Territories (NWT), including a new pathway for Indigenous institutions and expressed full support for the relevant changes in Bill 39.

We heard from Aurora College that the organization does not anticipate pursuing recognition as an Indigenous institution under the *PSE Act*.

The City of Yellowknife supported the removal of barriers to the establishment of Indigenous institutions but felt it could not provide comments because the process will be described in regulations.

Fees and Charges

Submissions welcomed the increase in clarity around fee collection. Aurora College recognized the importance of consistency and clarity around fees and welcomed changes in this area as proposed in Bill 39. The City of Yellowknife supported the amendment of the *PSE Act* to provide for the collection of fees and charges for quality assurance reviews.

Bill 39 proposes allowing the Department to charge fees related to quality assurance processes for Indigenous institutions, universities, degree-granting institutions, colleges, and private training institutions.

The Standing Committee heard the concern that the amendments should be precise on the process for fees and charges. The City of Yellowknife requested an amendment to clarify in all applicable sections, that a certain action will be undertaken upon receipt of an application and the prescribed fee.

Post-Secondary Education Advisory Committees

Section 7 amends the power of the Minister to establish Post-Secondary Education Advisory Committees, provides for Ministerial appointments to these Advisory Committees, and Section 66(e) allows the Minister to set regulations regarding the members' qualifications and duties of the Advisory Committees.

The quality assurance process under the *PSE Act* divides the responsibilities for conducting quality assurance reviews between an internal body and an external body. The external quality assurance body will be external to the Government of the Northwest Territories (GNWT), reviewing all Degree Programs, Universities and any institution that wants to deliver a Degree Program.

Bill 39 proposes that an internal body conducts reviews of vocational and private training institutions and colleges. This review body would be the Advisory Committee which functions as the internal quality assurance body. The Advisory Committee would include departmental staff and other subject matter experts according to regulations on *Private Vocational Training, Private Training Institutions*, and the Act that establishes the College.

In Canada, educational institutions, including colleges, are generally required to review their programs to assure compliance with standards and quality requirements. Provincial legislation or policy would set these requirements. Quality assurance bodies in the post-

secondary education sector are often review boards, panels or committees set up by departments to assess the program quality of institutions.²

The Department informed that it is in negotiations with the Campus Alberta Quality Council to be the external review body for NWT's degree programs and university reviews. It is planned that the Alberta Quality Council conduct the quality assurance review for the NWT polytechnic university in fall 2022.

In their submission, Aurora College has no concerns with the revised approach to assigning a quality assurance body through the Alberta Quality Council for degree-granting programs. The College notes that quality assurance requirements for all institutions are essential to maintaining students' and employers' confidence in the quality of credentials obtained in the NWT.

The City of Yellowknife, in its submission, supports clarification of the role and authority of the Post-Secondary Advisory Committee.

Access to Information and Privacy Protection

The Information and Privacy Commissioner raised questions concerning the Post-Secondary Education Advisory Committees and their relationship to the longer-term vision of NWT's post-secondary educational institutions and the *Access to Information and Protection of Privacy Act (ATIPPA)*.

The Commissioner asked whether post-secondary institutions are listed as 'public bodies' under *ATIPPA*, quality assurance bodies are identified as public bodies subject to the *ATIPPA*, the Advisory Committees' records are subject to *ATIPPA*, and the scope of duties of the Post-secondary Education Advisory Committees is defined.

The Commissioner also asked that it be considered to determine in advance any limitation to rights of access to the records of the Advisory Committees.

THE STANDING COMMITTEE'S CONSIDERATIONS

Removing Barriers to the Establishment of Indigenous Institutions

The Department explained that removing the condition to be recognized first as a post-secondary institution before being recognized as an Indigenous institution aligns the legislation with the United Nations Declaration on the Rights of Indigenous Peoples,

² See for example the [Post-secondary Education Choice and Excellence Act, 2000](#), that regulates the granting of degrees in Ontario and also establishes the [Postsecondary Education Quality Assessment Board](#), an advisory quality-review body that reviews submission from all private institutions that want to offer programs in Ontario leading to a degree. ([Canadian Information Centre for International Credential - index Canada](#))

particularly Articles 13 to 15.³ The Standing Committee supports the removal of this barrier and understands that this change improves the Act, prepares for a Post-Secondary education to have two knowledge streams and supports the Government Mandate by supporting the implementation of the United Nations Declaration

Fees and Charges

The City of Yellowknife requested an amendment to clarify in all applicable sections that a certain action will be undertaken upon receipt of an application and the prescribed fee. The amendment would add the words "and the prescribed application fee" when receipts of applications are issued.

The Standing Committee discussed this technical amendment. While Members understood the intent to clarify that the Minister cannot consider an application until the prescribed application fee has been paid, it was not sure why the requirement would need to be reiterated.

The Standing Committee decided that the preceding subsection 9(1) is sufficient in requiring payment and agreed to not proceed with the proposed amendment.

Post-Secondary Education Advisory Committees

The Standing Committee determined that the description of the creation and functioning of the quality assurance Advisory Committees and assurance bodies in the *Post-Secondary Education Act* is unclear.

When the *PSE Act* was created as Bill 48⁴ in the 18th Assembly, our predecessor Standing Committee on Social Development made the following observations regarding Advisory Committees in its report on the Bill:

- That Bill 48 was unclear about the role of the Advisory Committees in the quality assurance process, as was the distinction between the work of an advisory committee and that of a quality assurance body.
- That as appropriate, the Department will use "homegrown" advisory committees, including for applications for recognition as an Indigenous institution, and in other instances may draw on the expertise of quality assurance bodies established elsewhere.⁵

Section 7 allows the Minister to establish more than one Advisory Committee. Bill 39 ensures the Minister follows regulations when appointing committee members (ss.7(2)). In the current *PSE Act*, the Post-Secondary Advisory Committee is intended to provide

³ United Nations General Assembly (UNGA), [61/295. United Nations Declaration on the Rights of Indigenous Peoples](#). October 2, 2007.

⁴ [Bill 48: Post-Secondary Education Act](#). Third Session, Eighteenth Legislative Assembly of the Northwest Territories.

⁵ Standing Committee on Social Development. [Report on the Review of Bill 48: Post-Secondary Education Act. CR 24-183](#), August 12, 2019. P.5.

reviews of post-secondary institutions operating in the NWT. However, the Act does not explain the difference between the Post-Secondary Advisory Committee and other quality assurance bodies. For Bill 39, the intent for changes to the language around Advisory Committees was to clarify the role of the Advisory Committee as a quality assurance body for non-degree-granting institutions, with further clarification to be set out in regulations.

Committee posed several questions on the work of the Post-Secondary Education Advisory Committee in correspondence with the Department and learned that the Post-Secondary Education Advisory Committees carry out reviews and then advise the Minister after the reviews are complete, as is common practice across Canada. The Advisory Committees will review applications, develop recommendations, advise on findings, seek input from subject matter experts specific to the application under review, compile the information, and provide advice and recommendations to the Minister of Education, Culture and Employment, but have no decision-making authority.

The Department informed the Standing Committee that the Terms of Reference for the Post-Secondary Education Advisory Committees would be completed when the Quality Assurance Regulations are drafted.

The Standing Committee found subsection 7(1)(b) challenging as it was positioned under the topic of quality assurance and did not refer to quality assurance but to administration. This was seen as a disconnect between the intention and what is expressed in the Bill. The resulting creation of a very broad decision-making power was a concern for the Standing Committee.

Consequently, the Standing Committee developed Motion 1 to clarify that the focus of the Advisory Committee is on matters of quality assurance. The Motion, as set out in Appendix 2, replaces paragraphs 7(1)(b) and (c) and relates both to quality assurance. Motion 1 includes a new subsection 7(2.1) requiring the Minister when appointing members,

to "make a reasonable effort to include members who reflect the unique and diverse values, histories and people of the Northwest Territories".

The Standing Committee had included this exact requirement for the Board of Governors when selecting members of the Indigenous Knowledge Holders Council. This change was made via Motion changing subsection 21(3) in review of Bill 30: *An Act to Amend the Aurora College Act*⁶. We understand this change as contributing to ensuring consistency in legislation related to the Aurora College transformation toward a polytechnic university.

Affirmative Action

Members of the Standing Committee feel strongly about affirmative action and want to be ensured that Post-Secondary Education Advisory Committees have appropriate

⁶ Standing Committee on Social Development. [Report on Review of Bill 30: An Act to Amend the Aurora College Act](#). CR 20-19(2), November 30, 2021.

Indigenous representation. In communication, the Department had maintained that it prefers flexibility in the composition of quality assurance Advisory Committees. We learned that depending on the type of institution applying, the composition of the Advisory Committees could change.

For example, with a review of an aviation school, such Advisory Committee would likely include membership from within and the outside of the GNWT, and likely aviation experts. In addition, the quality assurance process for Indigenous institutions will require an Advisory Committee under section 7 of the *PSE Act*. It is anticipated that such a committee would have significant Indigenous membership.

To this effect, Standing Committee developed Motion 2 requiring a minimum of Indigenous members to the Advisory Committee. This Motion is captured in Appendix 2 and adds 7(2.2), stating that "at least one-half of the members appointed by the Minister to an Advisory Committee under subsection (2) must be Indigenous residents of the Northwest Territories".

Access to Information and Privacy Protection

The Information and Privacy Commissioner asked the Standing Committee to clarify whether Post-Secondary Education Advisory Committees and their documents would be subject to the *Access to Information and Privacy Protection Act (ATIPPA)*. The Commissioner asked to clarify

- If post-secondary institutions are listed as 'public bodies' under *ATIPPA*
- If quality assurance bodies are identified as 'public bodies' subject to the *ATIPPA*
- If Post-Secondary Education Advisory Committees' records are subject to *ATIPPA*
- And determine in advance limitations to rights of access
- The scope of duties of Post-Secondary Education Advisory Committees.

From the Department, the Standing Committee heard that the quality assurance bodies would not be considered a 'public body' under *ATIPPA*. Currently, Aurora College is listed as a public body in Column 1, Schedule A to the *Access to Information and Protection of Privacy Regulations*, as are the various Education Authorities and Councils created under the *Education Act*. Private education institutions are not subject to the *ATIPPA*.

The Standing Committee had identified that in other jurisdictions, quality assurance bodies are subject to their provincial privacy protection legislation. For example, as a public body, the Campus Alberta Quality Council is subject to the *Post-secondary Learning Act*, the *Freedom of Information and Protection of Privacy Act* and the *Programs of Study Regulation (AR 91/2009)* in the province of Alberta.⁷

The Ontario Post Secondary Education Quality Assessment Board requires Board Members to adhere to the intent and requirements of *Ontario's Freedom of Information*

⁷ [Campus Alberta Quality Council Handbook, revised 2021, Sec. 2.4.1, p.39](#)

and *Protection of Privacy Act, 1990*, which applies to all information, material, and records relating to, or obtained, created, maintained, submitted, or collected during a review.⁸

The Standing Committee determined that since no 'public bodies' that would be subject to *ATIPPA* had been created yet, this question would lie outside this Bill's scope.

Consistency

Bill 39 proposed to change wording in section 17, dealing with NWT Developed Degree Programs, and section 28, dealing with Private Training Institutions, to make the language around authorization consistent. The Standing Committee suggested with Motion 3, set out in Appendix 2, to make the same change to section 21, dealing with the Letter of Authorization, to make the legislation internally consistent.

CLAUSE BY CLAUSE REVIEW

The clause-by-clause review of Bill 39 was held on March 25, 2022. At this review, the Standing Committee moved three motions. The Minister concurred with two motions. The Minister did not agree with the second motion on the composition of the Post-secondary Education Advisory Board.

Motion 1 proposes changing section 7 by focusing the Post-secondary Education Advisory Committees and their work on quality assurance matters and adding a requirement for the Minister to ensure membership on the Advisory Committees reflects the uniqueness and diversity of the NWT.

The Minister concurred, and clause 3 has been amended.

Motion 2 – The Standing Committee moved that after subclause 7(2.1), a new subsection requires that at least one-half of the Minister's appointed members to a Post-secondary Education Advisory Committee under subsection (2) must be Indigenous residents of the Northwest Territories.

The Minister did not concur. The amendment will not take effect.

Motion 3 – The Standing Committee moved that clause 15 of Bill 39 be amended by making the language consistent with other sections in the Act.

The Minister concurred with the motion. Clause 15 has been amended.

⁸ [Post Secondary Education Quality Assessment Board \(PEQAB\) Manual for Public Organizations, 2000](#)

CONCLUSION

The Standing Committee on Social Development's review of Bill 39 resulted in three Motions. The Standing Committee thanks the public for their participation in the review process and everyone involved in the review of this Bill for their assistance and input.

Following the clause-by-clause review, a motion was carried to report Bill 39: *An Act to Amend the Post-Secondary Education Act*, as amended and reprinted, as ready for consideration in Committee of the Whole. This concludes the Standing Committee's review.

APPENDIX 1: WRITTEN SUBMISSIONS

1. Aurora College (February 8, 2022)
2. The City of Yellowknife (February 3, 2022)
3. Office of the Information and Privacy Commissioner of the Northwest Territories (February 8, 2022)

February 8, 2022

Chair and Members
Standing Committee on Social Development
Northwest Territories Legislative Assembly
PO Box 1320
4570-48th Street
Yellowknife, NT X1A 2L9

Re: Review of Bill 39: An Act to Amend the Post-Secondary Education Act

We appreciate the opportunity to provide the Standing Committee on Social Development with feedback on changes to the *Post-Secondary Education Act* proposed in Bill 39. Although it has not yet come into force, Aurora College continues to anticipate the wide-ranging benefits of the *Post-Secondary Education Act*. Since it received assent in 2019, the *Post-Secondary Education Act* has helped to frame key aspects of Aurora College's transformation into a polytechnic university and will create the legislative framework for the formal establishment of the polytechnic university expected in late 2024. This includes forming a basis for the quality assurance review anticipated under the Aurora College Transformation Implementation Plan.

Overall, the timing of when the *Post-Secondary Education Act* comes into force is the most pressing matter for Aurora College. The Aurora College Transformation Implementation Plan anticipates the legislation coming into force in the coming months as we prepare for a transition to a new governance system and a more arm's length relationship with government. Such a relationship will be defined by both the *Aurora College Act* and *Post-Secondary Education Act*. We are pleased the changes proposed in Bill 39 do not impact this relationship and the *Post-Secondary Education Act* will provide a basis for ensuring appropriate standards and best practices are followed by all institutions formally recognized in the Northwest Territories (NWT).

1. Removing a step for the recognition of an Indigenous institution.

The majority of Aurora College students are Indigenous, and Aurora College recognizes the need to continually attract Indigenous learners and support their success. As reflected in the Aurora College Strategic Plan, work in this area is a priority and will soon be driven by the establishment of a new governance system, including an Indigenous Knowledge Holders Council. However, Aurora College is a public College and is in the process of transforming into

a public polytechnic university. As such, we do not anticipate pursuing recognition as an Indigenous institution under the *Post-Secondary Education Act*.

Aurora College welcomes steps to expand the post-secondary education system in the NWT, including a new pathway for the establishment of Indigenous institutions. This pathway has the potential to create a more diverse post-secondary education landscape that will increase options for NWT residents to reach their education and career goals. New institutions also increase opportunities for the future polytechnic university to collaborate in teaching and research.

In anticipation of the *Post-Secondary Education Act* coming into force, Aurora College is taking steps to ensure it meets national standards and best practices in post-secondary education. Future students and employers depend on such standards being applied by governing jurisdictions. As such, we fully support the relevant changes in Bill 39 on the understanding they do not in any way alleviate the need for a comparable and contextually appropriate quality assurance process.

2. Establishing the authority for fees and charges to be collected for certain services, to ensure consistency and clarity within the Act.

We recognize the importance of consistency and clarity around fees and welcome changes in this area as proposed in Bill 39.

3. Clarifying the role and authority of the Post-Secondary Education Advisory Committee.

A Memorandum of Understanding (MOU) between the Minister of Education, Culture and Employment and the Minister of Advanced Education, Alberta, was developed to establish Campus Alberta Quality Council (CAQC) as the designated external quality assurance body under the *Post-Secondary Education Act*. Any program leading to a degree granted by the polytechnic university will have to meet CAQC established quality assurance standards.

The changes proposed in Bill 39 do not affect Aurora College's path to recognition as a public university and we have no concerns with the revised approach to assigning a quality assurance body.

4. Establishing a quality assurance requirement for Private Vocational Training and Private Training Institutions.

As noted above, Aurora College welcomes steps to expand the post-secondary education system in the NWT. Quality assurance requirements for all institutions is essential to maintaining the confidence of students and employers in the quality of credentials obtained in the NWT.

Thank you again for the opportunity to provide input as part of the legislative process.
Respectfully submitted,

Andy Bevan
President



Heather McCagg-Nystrom
Vice President, Community & Extensions



Joel McAlister
Vice President, Research



Jeff O'Keefe
Interim Vice President
Education & Training



Sarah Tilley
Interim Vice President
Student Affairs



Celestine Starling
Director of Finance/CFO



c. Jennifer Franki-Smith, Committee Clerk, Social Development, NWT Legislative Assembly



CITY OF YELLOWKNIFE
OFFICE OF THE MAYOR

February 3, 2022

Caitlin Cleveland
Chair, Standing Committee on Social Development
Legislative Assembly of the Northwest Territories
P.O. Box 1320
Yellowknife, NT X1A 2L9

Dear Caitlin Cleveland,

RE: Bill 39 – An Act to Amend the *Post-Secondary Education Act*

The City of Yellowknife appreciates the opportunity to provide feedback to the Standing Committee on Social Development regarding Bill 39, An Act to amend the *Post-Secondary Education Act*. Bill 39 proposes to address gaps or inconsistencies and correct errors discovered within the Act to ensure that it will function as desired when it comes into force. As well, Bill 39 amends the section regarding recognition of Indigenous institutions.

The City submitted comments regarding Bill 48 – *Post-Secondary Education Act* in May, 2019. The City's comments at the time centered around the broader themes of independence, ministerial control and the need for autonomy. As it is currently written, Bill 39 does not specifically address anything of substance related to the City's previous comments. However, the City of Yellowknife does support updates to this piece of legislation that result in a more clearly written and well-functioning piece of legislation.

The City offers the following specific comments regarding the proposed amendments:

- (i) **Removing a step for the recognition of an Indigenous institution**
The City supports the removal of barriers to the establishment of Indigenous institutions by eliminating the requirement for an Indigenous institution to first go through the process of recognition as a post-secondary institution. However, regulations governing the recognition of Indigenous institutions have not yet been developed and as such the City cannot provide specific comments on the process for such recognition at this time.
- (ii) **Establishing the authority for fees and charges to be collected for certain services, to ensure consistency and clarity within the Act**
The City supports amendment of the Act to provide for the collection of fees and charges in prescribed circumstances. The City submits that the applicable sections should also be amended to clarify that upon receipt of an application and the prescribed fee a certain action

will be undertaken. For example, Section 9 could be further clarified by adding the highlighted words as follows:

9. (1) A person may, in the form and manner directed by the Minister and on payment of any prescribed application fee, apply to the Minister for recognition as an Indigenous institution.

(2) The Minister may, on receipt of an application and the prescribed application fee under subsection (1) and in accordance with the regulations, recognize an applicant as an Indigenous institution for the purposes of this Act and the regulations.

(iii) Clarifying the role and authority of the Post-Secondary Education Advisory Committee

The City supports clarification of the role and authority of the Post-Secondary Advisory Committee. However, the City reiterates that the details outlining such authority will be found in the regulations that have yet to be drafted or available for review.

(iv) Establishing a quality assurance requirement for Private Vocational Training and Private Training Institutions

The City supports the amendments to establish this requirement.

Thank you for this opportunity to provide feedback to the Standing Committee on Social Development.

Sincerely,



Rebecca Alty
Mayor

DM# 678369



February 8, 2022

VIA Electronic mail: Jennifer.Franki-Smith@ntassembly.ca

Standing Committee on Social Development
Legislative Assembly of the Northwest Territories
PO Box 1320
Yellowknife, NT, X1A 2L9

Attention: Jennifer Franki-Smith, Committee Clerk

Dear Madam,

Re: Comments to Bill 39 - AN ACT TO AMEND THE POST-SECONDARY EDUCATION ACT

This is in response to the December 22, 2021, email from Glen Rutland, Deputy Clerk of House Procedures and Committees, soliciting comment regarding Bill-39. First, thank you to the Deputy Clerk and the Committee for the opportunity to review the Bill and to provide input on it. I understand that the proposed amendments to the *Post-Secondary Education Act* (PSEA) are intended to support the development of post secondary education in the Northwest Territories.

The following questions and comments are shared from my purview as the Information and Privacy Commissioner. My use of 'public body' here, reflects the meaning of the term under the *Access to Information and Protection of Privacy Act* (ATIPPA).¹

1. Will post-secondary institutions be listed as 'public bodies' under ATIPPA?
 - i. Currently, the Aurora College is listed as a public body in Column 1, Schedule A to the *Access to Information and Protection of Privacy Regulations*, as are

¹ "public body" means

- (a) a department, branch or office of the Government of the Northwest Territories,
- (b) an agency, board, commission, corporation, office or other body designated in the regulations, or
- (b.1) any municipality under the Cities, Towns and Villages Act, the Charter Communities Act or the Hamlets Act, that is designated as a public body in the regulations,

but does not include

- (c) the Office of the Legislative Assembly or the office of a member of the Legislative Assembly or a member of the Executive Council;

the various education Authorities and Councils created under the *Education Act*. Private education institutions are not subject to the ATIPPA.

- ii. Bill-39 does not address whether the post-secondary institutions governed by the amended *Post-Secondary Education Act* (PSEA) will be treated as public bodies under ATIPPA. It would be appropriate to clarify which if any types of post-secondary institutions will be designated as public bodies and whether this will be stipulated in the PSEA or regulations, noting such change would require amending the ATIPP Regulations.

Section 7:

- 2. Will the “quality assurance bodies” established under section 7 or prescribed under section 8 of the PSEA be identified as separate public bodies subject to the ATIPPA? This is not addressed in the PSEA, but it is an important aspect of these new statutory creations.
 - i. The Section 7(1) amendments empower the Minister to establish one or more Post-Secondary Education Advisory Committees to
 - (a) review matters relating to quality assurance referred to it by the Minister,
 - (b) to advise the Minister, upon the Minister’s request, on any matter respecting the administration of post-secondary education in the Northwest Territories, and
 - (c) to perform other duties as directed by the Minister.
 - ii. Section 7(2) provides for Ministerial appointments to these committees, for terms not exceeding 5 years. Section 7(3) provides for continuity of the membership of the committees and section 7(4) allows the Minister to prescribe the number of terms a person may be appointed to a committee. Section 66(e) of the PSEA allows the Minister to set regulations regarding committee members’ qualifications, organization and procedures, and powers and duties of the committees.
 - iii. Will the records generated by or otherwise handled by these committees be subject to access by the public in accordance with ATIPPA?
 - (a) If the committees are intended to be part of the Department of Education, and therefore subject to ATIPPA, declaration of that within the PSEA would be appropriate. As the amendment stands, the committees do not appear to be part of the public body.
 - (b) If the committees are separate and apart from the public body, then the records of these committees may not be subject to ATIPPA unless listed

in Schedule A to the ATIPP Regulations.² It bears consideration here that section 66(e) of the PSEA allows the Minister to create regulations in regard to these committees, but also that section 73(a) of the ATIPPA allows the Commissioner in Executive Council to make regulations designating agencies, boards, commissions, corporations, officers or other bodies as public bodies. There is a potential 'gap' between the creation of committees by the Minister and designation of such committees as public bodies subject to the ATIPPA regulations. This gap 'begs the question' whether the legislative assembly intends these committees' records to be subject to ATIPPA or not. The issue of whether the committees are subject to ATIPPA is separate from the issue of whether access to their records may be refused by the head of the public body under section 14(1)(a) of ATIPPA.

- (c) The amendment to section 7 of the PSEA states these committees will provide advice to the Minister. If they are designated as 'public bodies' under the ATIPPA, public access to committee records would be governed by section 14(1)(a) of the ATIPPA and would only be disclosed to the public if the Minister so decides.³ It would be appropriate to determine in advance what reasonable limitations there should be, if any, on the public's right of access to records collected or used by these post secondary advisory committees. Given the potential for the committees to inform and influence a Minister's decisions and policy choices on a potentially broad range of issues, it would serve the public's interest in accountability to make the work of these committees more available to the public than section 14(1)(a) of ATIPPA may provide.⁴

² This follows from the definition of "public body" in section 2 of the ATIPPA:

"public body" means

- (a) a department, branch or office of the Government of the Northwest Territories,
- (b) an agency, board, commission, corporation, office or other body designated in the regulations, or
- (b.1) any municipality under the Cities, Towns and Villages Act, the Charter Communities Act or the Hamlets Act, that is designated as a public body in the regulations,
but does not include
- (c) the Office of the Legislative Assembly or the office of a member of the Legislative Assembly or a member of the Executive Council;

³ *Disclosure of advice from officials*

14. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to reveal

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council;

Appendix A to this letter sets out the full text of section 14 of the *Access to Information and Protection of Privacy Act* as reference.

⁴ There is an observed tendency of some public bodies to exercise their discretion under section 14(1)(a) to refuse access to records without providing clear or having obvious reason for doing so. The Act does not create an

- iv. Of further concern, the amendment to PSEA section 7(1)(c) allows the Minister to direct a committee to perform duties. The scope of such duties may be set out in an order creating the committee and may be informed by regulations created by the Minister. This allows a potentially broad range of duties, as yet undefined by regulations, to be assigned to appointed committees and there is no distinction made between duties that might be performed by an independent committee and duties that are performed by the Department of Education⁵. Clarification on the potential scope of duties that may be assigned pursuant to section 7(1)(c) would greatly assist to understand the types of records the committee may collect and hold and how the public's access should be regulated.
- v. The Department of Education is subject to the ATIPPA, as are Aurora College and the various public education boards and divisional education councils. The Post Secondary Advisory Committees may be doing quality assurance reviews and other publicly funded work to serve the public's interest in providing quality post-secondary education. These are matters that the public has a deep and abiding interest in. It would be appropriate to clarify whether the committees' records are intended to be subject to the ATIPPA.

Section 8:

- 3. Section 8 allows the Minister to establish a quality assurance body to review post-secondary quality assurance matters in a province or another territory. As with the Post Secondary Advisory Committees, the question arises: Will quality assurance bodies be created by regulation as separate entities and, if so, will such a body be listed as a 'public body' in Schedule A to the ATIPP Regulations.

In my opinion, the public's right of access to these committees' records, as well as privacy considerations regarding the potential collection, use and disclosure of personal information, requires further consideration. The application of the ATIPPA to these new statutorily created bodies should be clarified and expressly addressed, possibly either in the PSEA amendments or in Schedule A to the ATIPP Regulations.

unfettered discretion: a public body must exercise discretion reasonably. This generally means that the public body's decision must be consistent with the overall intent and purpose of the statute recognizing individuals' rights and public interest, as the circumstances demand.

⁵ The Department of Education is a public body under ATIPPA.

I would like to express my thanks for the opportunity to review this draft legislation and provide questions and I hope my comments are helpful to the Committee in crafting the Bill. If there are any questions arising, I would be pleased to respond.

Yours truly

A handwritten signature in black ink, appearing to read 'A. Fox', written in a cursive style.

Andrew E. Fox
Information and Privacy Commissioner for the Northwest Territories
/af

Encl. : Appendix

APPENDIX – STATUTORY EXCEPTION TO RIGHT TO ACCESS – ADVICE TO A PUBLIC BODY

Disclosure of advice from officials

14. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to reveal

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council;
- (b) Repealed, SNWT 2019, c.8, s.12;
- (c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of the Northwest Territories or a public body, or considerations that relate to those negotiations;
- (d) plans that relate to the management of personnel or the administration of a public body that have not yet been implemented;
- (e) the contents of draft legislation, regulations and orders; or
- (f) Repealed, SNWT 2019, c.8, s.12;
- (g) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

Exceptions

(2) Subsection (1) does not apply to information that

- (a) has been in existence in a record for more than 15 years;
- (b) is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;
- (c) is the result of product or environmental testing carried out by or for a public body, unless the testing was done
 - (i) for a fee as a service to a person other than a public body, or
 - (ii) for the purpose of developing methods of testing or testing products for possible purchase;
- (d) is a statistical survey;
- (e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal;
- (f) is an instruction or guideline issued to officers or employees of a public body; or
- (g) is a substantive rule or statement of policy that has been adopted by a public body for the purpose of interpreting an enactment or administering a program or activity of the public body. SNWT 2019, c.8, s.12.

APPENDIX 2: MOTIONS

Motion 1 - Clause 3 (amending 7(2) and adding (2.1))

Motion 2 - Clause 3 (adding 7(2.2))

Motion 3 – Clause 15 (consistency)

MOTION

AN ACT TO AMEND THE POST-SECONDARY
EDUCATION ACT

That clause 3 of Bill 39 be amended

(a) by deleting proposed paragraphs 7(1)(b) and (c) and substituting the following:

- (b) advise the Minister, at the Minister's request, on matters of quality assurance in post-secondary education in the Northwest Territories; and
- (c) perform other duties with respect to matters of quality assurance in post-secondary education in the Northwest Territories as directed by the Minister.

(b) by adding the following after proposed subclause 7(2):

(2.1) In appointing members of a Committee under subsection (2), the Minister shall make reasonable efforts to ensure that the membership of the Committee reflects the unique and diverse values, histories and people of the Northwest Territories.

Minister shall make reasonable efforts

MOTION

LOI MODIFIANT LA LOI SUR
L'ÉDUCATION POSTSECONDAIRE

Il est proposé que l'article 3 du projet de loi 39 soit modifié :

a) par suppression des alinéas 7(1)(b) et c) proposés et par substitution de ce qui suit :

- b) à sa demande, le conseiller sur les questions relatives à l'assurance de la qualité de l'éducation postsecondaire dans les Territoires du Nord-Ouest;
- c) selon ses directives, exécuter d'autres fonctions à l'égard des questions relatives à l'assurance de la qualité de l'éducation postsecondaire dans les Territoires du Nord-Ouest.

b) par insertion après le paragraphe 7(2) de ce qui suit :

(2.1) Lors de la nomination des membres à un comité au titre du paragraphe (2), le ministre déploie les efforts raisonnables pour s'assurer que la composition du comité reflète les valeurs uniques et diverses, ainsi que l'histoire et la population des Territoires du Nord-Ouest.

Efforts raisonnables du ministre

MOTION

AN ACT TO AMEND THE POST-SECONDARY
EDUCATION ACT

That clause 3 of Bill 39 be amended by adding the following after proposed subclause 7(2.1):

Indigenous
representation

(2.2) At least one half of the members appointed by the Minister to a Committee under subsection (2) must be Indigenous residents of the Northwest Territories.

MOTION

LOI MODIFIANT LA LOI SUR
L'ÉDUCATION POSTSECONDAIRE

Il est proposé que l'article 3 du projet de loi 39 soit modifié par insertion, après le paragraphe 7(2.1) proposé, de ce qui suit :

Représentation
autochtone

(2.2) Au moins la moitié des membres qui sont nommés à un comité par le ministre en vertu du paragraphe (2) doivent être des résidents autochtones des Territoires du Nord-Ouest.

MOTION

AN ACT TO AMEND THE POST-SECONDARY
EDUCATION ACT

That clause 15 of Bill 39 be amended

- (a) by striking out "Subsection 21(1)" and substituting "Section 21"; and**
- (b) by adding the following after proposed subclause 21(1):**

Minister may
renew

(2) The Minister may, in accordance with any applicable regulations, renew an authorization given under subsection 20(1) or (2) and may attach any terms or conditions to that authorization that the Minister considers appropriate.

MOTION

LOI MODIFIANT LA LOI SUR
L'ÉDUCATION POSTSECONDAIRE

Il est proposé que l'article 15 du projet de loi 39 soit modifié :

- a) par suppression de «Le paragraphe 21(1)» et par substitution de «L'article 21»;**
- b) par adjonction de ce qui suit après le paragraphe 21(1) proposé :**

(2) Le ministre peut, conformément aux règlements applicables, renouveler une autorisation accordée en vertu du paragraphe 20(1) ou (2) et peut assortir cette autorisation des conditions qu'il estime indiquées.

Renouvellement par le ministre