



17th Legislative Assembly of the Northwest Territories

Standing Committee on Social Programs

Report on the Review of
Bill 36: *Health and Social
Services Professions Act*

Chair: Mr. Alfred Moses

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**STANDING COMMITTEE ON
SOCIAL PROGRAMS**

**REPORT ON THE REVIEW OF
BILL36: *HEALTH AND SOCIAL SERVICES
PROFESSIONS ACT***

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**STANDING COMMITTEE ON
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**REPORT ON THE REVIEW OF
BILL 36: *HEALTH AND SOCIAL SERVICES
PROFESSIONS ACT***

INTRODUCTION

Bill 36, the *Health and Social Services Professions Act*, will enable the government to regulate numerous professions under a single law. As such, it mirrors umbrella legislation in six other Canadian jurisdictions. The *Act* will ensure that only qualified professionals are licensed to practice. It will also empower the Minister to establish a mechanism for hearing complaints and reviewing professional conduct.

The Standing Committee on Social Programs commends the Minister for developing the Bill. It is the result of five years of work by the Department of Health and Social Services, professional stakeholders, and the public. The Committee believes that the *Act* will enhance public safety, improve the level of care and professionalism in the Northwest Territories, and bring our jurisdiction into step with other parts of Canada.

Bill 36 was referred to the Committee on November 4, 2014. The public hearing was held on January 19, 2015 and the clause-by-clause review was held on February 24, 2015. During the review, the Committee passed two minor amendments to address drafting concerns identified by the Department and made at the request of the Minister.

Comments were received from more than a dozen stakeholders, including: the Northwest Territories Information and Privacy Commissioner; the Association of Psychologists of the Northwest Territories; the Northwest Territories Association of Naturopathic Doctors; the Canadian Association of Occupational Therapists; the Canadian Society for Medical Laboratory Science; the Northwest Territories Massage Therapists Association; the Canadian National Institute for the Blind; the Alliance of Medical Radiation Technologist Regulators of Canada; the Northern Nutrition Association; and a community advocate. All stakeholder comments were shared with the Minister.

Overall, stakeholders indicated strong support for the Bill. Many are eager to become regulated under the *Act*. Stakeholders also raised some concerns about how the legislation will be implemented. The remainder of this report addresses these concerns and recommends several courses of action.

PRIVACY CONCERNS

The Northwest Territories Information and Privacy Commission identified four concerns related to the protection of privacy.

(1) Authorities granted to an investigator under the Act may violate the Access to Information and Protection of Privacy Act (ATIPP) or the Health Information Act.

The Bill authorizes an investigator to make inquiries of “any person” when investigating a complaint. This leaves a person with no option but to produce records or other materials. The Committee considered this matter carefully and concluded that authorities granted to an investigator are consistent with *ATIPP* and the *Health Information Act*. Under *ATIPP*, information may be disclosed if another statute authorizes the disclosure. Under the *Health Information Act*, a health-information custodian must disclose information if it is requested during the course of an investigation into a health provider’s conduct.

The Committee noted that the Bill protects third-party information against inclusion in the investigator’s written report. The Bill requires an investigator to prepare a written report and provide it to the complaints officer. In turn, the Bill allows the complaints officer to refer the matter to a board of inquiry. However, the Bill stipulates that third-party information must not be included in the report and may only be used to determine how a complaint will be handled.

(2) Appointed officials under the Act may not be subject to ATIPP or the Health Information Act.

The Department of Health and Social Services advised the Committee that all health-related registrars and registry offices are housed within the Department and fall under the public service. Registrars and their records are therefore subject to *ATIPP*. In addition, the Department noted that other appointed or contracted officials are required to sign standard contracts which require compliance with *ATIPP*.

(3) The requirement to hold a public hearing may violate ATIPP, the Health Information Act, or the principles of the protection of personal information.

After careful review, the Committee concluded that the common-law doctrine of procedural fairness requires hearings to be held in public. Public hearings allow for scrutiny and ensure that proceedings are fair, transparent, and unbiased. Public hearings also give the respondent the right to be heard and to respond to evidence. Members further determined that the Bill’s provisions respecting public hearings are consistent with other health-related legislation.

The Committee noted that the right to a public hearing is not unlimited. A board of inquiry may hold an *in camera* hearing where it decides that the public interest is outweighed by other considerations, such as protection of a person’s privacy.

(4) The power to compel witnesses at a public hearing may violate *ATIPP*, the *Health Information Act*, or the principles of the protection of personal information.

The Committee considered this matter in detail and concluded that the power to compel a witness is a common-law principle of procedural fairness. It allows the respondent and the complainant to put all relevant information before the decision-maker. The Committee also determined that the Bill's provisions respecting the power to compel witnesses, and the potential consequences of contempt, are consistent with other health-related legislation.

IMPLEMENTATION

The majority of stakeholders requested that professionals be given opportunities for substantive input into the development of regulations. The Committee was pleased to hear the Minister agree to this request.

Several stakeholders recommended that a majority of registration-committee members be licensed practitioners or at least very knowledgeable about the profession. The Committee noted that provisions pertaining to registration committees are flexible enough to accommodate this request.

Some stakeholders drew attention to the difficulty of regulating professions which have a small number of practitioners. For instance, the Northwest Territories is home to just a handful of naturopathic doctors. The association representing them noted potential for conflicts of interest or situations in which "friends are regulating friends".

One community advocate made several recommendations. First, she recommended that the Department ensure complainants are interviewed by the complaints officer. Second, she recommended that community members be given a stronger voice in the licensing, registration, and complaints processes. Third, she urged caution around the use of alternative dispute resolution processes, noting that such processes can result in hasty or inadequate remedies for complainants.

Another stakeholder expressed fear that professional standards will erode if foreign-trained professionals are licensed within the Northwest Territories. However, the Minister and his staff indicated that the Department does not have the capacity to assess or certify foreign-trained professionals and will therefore only accept foreign-trained professionals who are certified in other Canadian jurisdictions.

With respect to fees, several stakeholders cautioned against overburdening professionals who are required to pay fees to national associations or in other jurisdictions. They requested that the government keep its fees to a minimum. The Minister assured the Committee that annual fees in the Northwest Territories will be kept to three hundred dollars or less.

RECOMMENDED ACTIONS

The Standing Committee on Social Programs recommends the following courses of action:

- 1) That the Department of Health and Social Services proceed without delay in regulating the first four professions, including emergency medical service providers, psychologists, licensed practical nurses, and naturopathic doctors, and, further, that the Department of Health and Social Services respond swiftly to other professions requesting to be regulated;
- 2) That the Department of Health and Social Services provide professionals with opportunities for substantive input on the development of regulations;
- 3) That the Department of Health and Social Services ensure that the legislation is carefully implemented in accordance with *ATIPP* and the *Health Information Act*;
- 4) That the Department of Health and Social Services ensure that a majority of registration committee members be licensed practitioners of the profession;
- 5) That the Department of Health and Social Services seek the involvement of professionals in other jurisdictions where there is a small number of professionals practicing in the Northwest Territories;
- 6) That the Department of Health and Social Services provide community members with opportunities for input into the registration and complaint processes;
- 7) That the Department of Health and Social Services direct the complaints officer to interview every complainant to ensure that complaints are accurately understood;
- 8) That the Department of Health and Social Services exercise caution in the use of alternative dispute resolution processes and guard against hasty or inadequate remedies for complainants;
- 9) That the Department of Health and Social Services set reasonable and nominal fees for professional memberships; and
- 10) That the Department of Health and Social Services require professionals to meet national certification standards, engage in professional development, and keep abreast of best practices in their profession.

RECOMMENDATIONS

Recommendation 1

That the Government of the Northwest Territories provide a comprehensive response to this report within 120 days.

CONCLUSION

The Committee thanks all stakeholders who commented on the Bill or attended the public hearing.

The Standing Committee on Social Programs advises that it supports Bill 36 as amended and reprinted and presents it for consideration to the Committee of the Whole.