



18th Legislative Assembly of the Northwest Territories

Standing Committee on Government Operations

Report on Transition Matters

Chair: Mr. Kieron Testart

**MEMBERS OF THE STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

Kieron Testart
MLA Kam Lake
Chair

R.J. Simpson
MLA Hay River North
Deputy Chair

Daniel McNeely
MLA Sahtu

Michael M. Nadli
MLA Deh Cho

Herbert Nakimayak
MLA Nunakput

COMMITTEE STAFF

Jennifer Franki-Smith
Committee Clerk

April Taylor
Committee Advisor

**STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

REPORT ON TRANSITION MATTERS

TABLE OF CONTENTS

INTRODUCTION	1
MANDATE OF THE STANDING COMMITTEE	1
WORK OF THE STANDING COMMITTEE	2
SCOGO by the Numbers	2
Highlights	2
TRANSITION MATTERS	7
CONCLUSION	11

STANDING COMMITTEE ON GOVERNMENT OPERATIONS

REPORT ON TRANSITION MATTERS

INTRODUCTION

The Standing Committee on Government Operations (SCOGO) is one of the standing committees of the 18th Legislative Assembly of the Northwest Territories charged with the responsibility of providing oversight over the ongoing business operations of the Government of the Northwest Territories.

The purpose of this report is twofold:

1. To briefly highlight the work completed by the Standing Committee on Government Operations during the 18th Assembly; and
2. To identify outstanding issues that will require consideration by SCOGO's successor Committee in the 19th Legislative Assembly.

MANDATE OF THE STANDING COMMITTEE

The mandates of the Legislative Assembly's standing committees are set out in Appendix 3 to the Rules of the Legislative Assembly.¹ The Standing Committee on Government Operations is responsible for:

- Reviewing the departmental performance, budgets and multi-year business plans of the departments of Executive and Indigenous Affairs, Finance, and Municipal and Community Affairs, and their boards and agencies;
- Considering legislative proposals and bills sponsored by these departments;
- Undertaking a statutory review of the *Official Languages Act* once every five years, as required under section 35 of the Act;
- Reviewing the annual and special reports of the statutory officers of the Legislative Assembly, including the Languages Commissioner, the

¹ *Rules of the Legislative Assembly of the Northwest Territories*, May 27, 2015.

Information and Privacy Commissioner, the Equal Pay Commissioner and the Human Rights Commission;

- Examining the annual public accounts of the Government of the Northwest Territories and the annual reports of the Auditor General submitted to the Legislative Assembly; and,
- Considering any other matter referred by the House.

WORK OF THE STANDING COMMITTEE

SCOGO by the Numbers

186 – Number of meetings held

29 – Number of bills or reports reviewed

56 – Number of public hearings held

19 – Number of communities outside Yellowknife visited by Committee

82 – Number of motions passed at the Committee stage to amend bills

73 – Number of recommendations made

19 – Number of Committee reports issued

Highlights

During the 18th Legislative Assembly, the Standing Committee on Government Operations undertook work ranging from the review of the Auditor General's annual reports to the Legislative Assembly and the annual review of the GNWT's Public Accounts, to the review of a number of significant pieces of legislation.

Committee wishes to highlight the work completed in the following four areas:

Renewed Access to Information and Protection of Privacy Legislation

According to the mandates of the Standing Committees, as agreed to by the 18th Legislative Assembly, the Standing Committee on Government Operations, which reviews the annual reports of the Information and Privacy Commissioner (IPC), has a working relationship with the Information and Privacy Commissioner. This provides Committee with the opportunity to become familiar with the workings of the *Access to Information and Protection of Privacy (ATIPP) Act* and aware of the issues that surround the administration of the legislation. For this reason, although the Standing Committee on Social Development has oversight for the Department of Justice and normally

reviews bills sponsored by the Minister of Justice, *Bill 29: An Act to Amend the Access to Information and Protection of Privacy Act*, was referred to SCOGO for review.

Committee put a great deal of work into the review of Bill 29, including undertaking a jurisdictional review of the operation of access and privacy legislation in other provinces and territories, to better understand their legislation and how it compares with the Northwest Territories'. Committee also received a comprehensive submission from the Information and Privacy Commissioner for the Northwest Territories, Ms. Elaine Keenan Bengts. Committee again thanks the Commissioner for her input, which was vital in assisting the Committee to determine how it wished to amend Bill 29.

Committee's report on the review of Bill 29 was delivered in the Legislative Assembly on May 28, 2019 and is available on the Assembly's website. Committee moved 25 motions to amend Bill 29, all of which were concurred with by the Honourable Louis Sebert, Minister of Justice. Committee encourages all interested members of the public and the incoming Members of its successor committee in the 19th Assembly to review the Committee's findings and recommendations.

One of the most notable changes to Bill 29 made at the Committee stage was to significantly strengthen the powers of the Information and Privacy Commissioner. For the twenty-plus years that ATIPP legislation has been in force in the Northwest Territories, the IPC has operated in a manner akin to an Ombud, with powers to investigate complaints and to make non-binding recommendations to government. As the Act was originally conceived, a person who is unhappy with a government decision related to an access request may appeal to the IPC. Once the IPC has ruled on the matter and made a recommendation to government, should the applicant be unhappy with the GNWT's response, the only remaining recourse would be for the applicant to file an appeal with the NWT Supreme Court. This is an expensive and daunting last resort for most people.

Once the new Act comes into force, the IPC will have order-making power, as do the Information and Privacy Commissioners in Prince Edward Island, Quebec, Ontario, Alberta and British Columbia. This power will make the IPC's recommendations mandatory for GNWT departments, boards and agencies and will give the public body in question 40 days to comply. The revised Act also includes a new section, similar to that found in the Northwest Territories' *Health Information Act*, making it mandatory for a public body to notify affected parties whenever there is a breach of privacy respecting personal information held by the public body. The Act also provides for municipalities to become subject to the requirements of the ATIPP Act once they are prescribed in regulations.

Cannabis Legislation

In April 2017, the federal government introduced Bill C-45 and Bill C-46 to legalize cannabis in Canada. This required the Government of the Northwest Territories, like other provinces and territories across Canada, to introduce legislation to govern the control, administration, sale and consumption of cannabis within its borders. Bill 6 –the *Cannabis Legalization and Regulation Implementation Act* proposed two new laws in the Northwest Territories for cannabis control: the *Cannabis Products Act*, administered by the Department of Finance, sets out authorities for the transportation, distribution, possession, importation and sale of cannabis; and the *Cannabis Smoking Control Act*, administered by the Department of Health and Social Services provides the authority for the *Cannabis Smoking Control Regulations*, which set out where cannabis may be legally consumed. These regulations also provide for signage by vendors advising of risks related to cannabis use, and allow for the inspection of cannabis stores or other places where cannabis may be being sold or consumed. To address drug-impaired driving, Bill 6 also proposed amendments to current provisions of the territorial *Motor Vehicles Act*.

Because Bill 6 was an omnibus bill, creating two new acts and proposing to amend an existing one, it was sponsored by the Minister of Justice. In this instance, the Standing Committee on Government Operations and the Standing Committee on Social Development agreed to establish a joint Committee for the purpose of reviewing Bill 6. This collaborative approach worked well in this instance, as it allowed a larger pool of Members to participate in consultations on the bill, which in turn enabled the joint Committee to travel to more communities than would have been the case had the bill been reviewed solely by the Standing Committee on Social Development. Collectively, the joint Committee visited and held public hearings in 16 communities and visited 6 secondary schools.

The joint Committee moved 22 motions to amend Bill 6 and made 8 recommendations to government related to cannabis legalization. The Committees' work was responsible for ensuring that cannabis legislation in the Northwest Territories provides for the sale of cannabis by private vendors, not just through the Northwest Territories Liquor and Cannabis Commission. The Committees' work also ensured that Bill 6 was amended to ensure a one-time review of territorial cannabis legislation, to take place within one year after the start of the 19th Legislative Assembly.

Renewed Human Rights Legislation

Just as SCOGO has a relationship with the Information and Privacy Commissioner, Committee also has a relationship with the Human Rights Commission, which is also a statutory office of the Legislative Assembly.

In 2014, to recognize the 10th year of human rights legislation in the Northwest Territories, the Human Rights Commission contracted an independent review of the *Human Rights Act*, conducted by a panel of three experts in the field of human rights. One of the key recommendations coming from this review was that the Human Rights Commission move from an adversarial approach to one that is restorative in nature. The review informed subsequent discussions between the Department of Justice and the Human Rights Commission, which culminated in the introduction of *Bill 30 – An Act to Amend the Human Rights Act*, which was sponsored by the Minister of Justice.

In its report on the review of Bill 30, Committee recommended that the Human Rights Commission develop an evaluation framework for assessing the efficacy of moving to a restorative process, which includes in its methodology a gender-based analysis and an assessment of the impacts on Indigenous people. Committee further recommended that the findings of this review be tabled in the Legislative Assembly in the first sitting following April 1, 2021, at which time the amendments to the *Human Rights Act* made by Bill 30 will be fully implemented.

During the clause-by-clause review of Bill 30, on March 7, 2019, Committee moved 8 motions to amend the bill, to which Minister Sebert concurred with 7. The motion the Minister declined to concur with was a motion to add genetic characteristics to the list prohibited grounds of discrimination under the Act.

Committee supported the inclusion of genetic characteristics as a prohibited ground of discrimination, noting that it was a recommendation made by the NWT Human Rights Commission to the Department of Justice when it was developing the bill. Committee learned through its own research that discrimination on the basis of genetic characteristics is prohibited under the federal Human Rights Act, and that Canada was the last G7 country to add genetic characteristics to its list of prohibited grounds when federal Bill S-201 received assent on May 4, 2017.

Committee understands that the Minister's reluctance to concur with this proposal was based, in large part, on a letter the Department of Justice solicited from the Canadian

Life and Health Insurance Association.² This led to what could arguably be characterized as one of the most important and least reported debates to take place in the Legislative Assembly in recent memory.³ In Committee of the Whole, the Chair of the Committee again moved the motion to include genetic characteristics as a prohibited ground of discrimination in the NWT Human Rights Act. This motion was defeated by a vote of 9-7. The Chair also tabled documents,⁴ supporting Committee's position, which interested members of the public and Members of SCOGO's successor Committee are encouraged to read.

When Committee toured on Bill 30, it heard unanimous support from members of the public for the inclusion of genetic characteristics as a prohibited ground of discrimination in the Human Rights Act. Committee was disappointed not to have the Minister's concurrence with this proposed amendment, but does not believe that it signifies the end of this debate. Committee encourages incoming Members of the 19th Legislative Assembly to continue to keep apprised of legal developments related to genetic non-discrimination.

Establishment of the Office of the Ombud for the Northwest Territories

At the start of the 18th Assembly, Committee Members were aware that SCOGO's predecessor Committee had tabled a report in the 17th Assembly supporting the appointment of an Ombud as an independent officer of the Legislative Assembly, with a mandate to investigate complaints about the administrative fairness of the Government of the Northwest Territories' operations and practices.

Committee believes that ensuring the public has access to an independent office, to provide assistance to citizens who feel they have not been treated fairly by government, is an important element of an open, transparent and accountable territorial government. Committee, therefore, acknowledges the Government of the Northwest Territories for including this initiative in its mandate and for meeting its commitment to bring forward legislation governing the Ombud's work.

² *Letter from Stephen Frank, President and CEO, Canadian Life and Health Insurance Association, to Mark Aitken, Assistant Deputy Minister, Attorney General, Department of Justice, GNWT, March 5, 2019 [Tabled Document 379-18(3)].*

³ *Hansard, May 30, 2019, p. 5701-5710.*

⁴ Mike Hoy, "Why insurers are wrong about Canada's genetic non-discrimination law," September, 2017 [TD 376-18(3)]; Office of the Privacy Commissioner of Canada, "The Potential Economic Impact of a Ban on the Use of Genetic Information for Life and Health Insurance," March, 2012 [TD 377-18(3)]; and Julian Walker, "Genetic Discrimination and Canadian Law," September, 2014 [TD 378-18(3)].

Committee is pleased to have played a part in the establishment of the first Office of the Ombud for the Northwest Territories by reviewing this draft legislation, Bill 20, which was introduced by the Minister Responsible for Public Engagement and Transparency. Committee held public hearings on Bill 20 in Inuvik, Norman Wells, Fort Resolution, Hay River, Behchokò, Ndilo and Yellowknife and, subsequently moved 19 motions to amend Bill 20. Sixteen of these motions were passed with the concurrence of the Minister.

Committee congratulates Ms. Colette Langlois on her appointment by the Legislative Assembly as the first NWT Ombud and wishes her well as she takes on her new role.

TRANSITION MATTERS

SCOGO Public Hearings on Reports of the Auditor General

At present, the Office of the Auditor General of Canada undertakes one compliance audit per year of the Government of the Northwest Territories, which assesses the performance of the audited department with respect to the administration of the existing legislative and policy framework for which it is responsible. It has been the mandate of SCOGO to review the Auditor General's report and to hold a public hearing with the Deputy Minister of the affected department, as her or she is the most senior official responsible for departmental administration. It has been the mandate of the Standing Committee which has oversight responsibility for the affected department to carry out any subsequent, follow-up reviews.

Any department that is called to appear before SCOGO as a result of a compliance audit by the OAG, should be prepared to provide the Standing Committee with a draft of its action plan in response to the audit, so that the Standing Committee may have input into this plan before it is finalized.

The Legislative Assembly has in place a process convention for *Communication between Cabinet Ministers, Standing Committees and Regular Members*⁵ requiring that all presentation decks and briefing materials be provided to the appropriate standing committee at least three days prior to the scheduled date of delivery. Despite this, for the last three reviews SCOGO has not received the department's action plan in response to the audit within the time allowed by the process convention, which has limited the Committee's ability to have meaningful input into the plan.

⁵ Legislative Assembly Caucus, "Consensus Government in the Northwest Territories: Guiding Principles and Process Conventions," TD 207-18(2), October 31, 2016.

For future hearings, Committee recommends that its successor committee reach out to the audited department at the earliest possible opportunity to set out its expectations with respect to the public hearing.

It should be further noted that the Special Committee on Transition Matters has considered the establishment of a public accounts committee in the 19th Legislative Assembly. Committee endorses this proposal, which will result in significant change to this Committee's mandate, as the review of all reports of the Auditor General would become the purview of the Public Accounts Committee, along with the annual review of the GNWT's public accounts.

ATIPP Implementation

As previously noted, the Access to Information and Protection of Privacy Act was amended in the 18th Legislative Assembly to allow for municipalities noted in the regulations, to be subject to the requirements of the Act. The Committee supported the inclusion of municipalities under ATIPP, which the IPC has long called for, but recognizes that there is considerable trepidation on the part of municipal governments about what this entails. Committee supported designating affected municipalities in the regulations, because this mechanism allows for municipalities to be phased in after a period of time to allow for preparation.

Considerable work needs to be done with respect to the implementation of ATIPP for municipal governments. The Committee made the following recommendations to help guide this implementation:

- That the Department of Municipal and Community Affairs, working with the Department of Justice, develop a detailed and costed plan to guide the implementation of ATIPP for municipalities.
- That the plan identify: i) time lines for the inclusion of different categories of municipalities in the ATIPP Regulations; ii) the resources needed by each municipal government to comply with ATIPP, to ensure adequate funding for initial implementation and ongoing operational requirements; along with iii) any other significant considerations as determined through consultation on development of the plan; and
- That, before being finalized, the plan be provided in draft so that input may be obtained from: the appropriate Standing Committee; the NWT Association of Communities; and the Local Government Administrators of the Northwest Territories.

Committee encourages its successor Committee to watch for this draft plan and to follow up with the Departments of Justice and Municipal and Community Affairs on its progress.

Statutory Review of the *Official Languages Act*

Section 35(1) of the *Official Languages Act* requires that “the Legislative Assembly or a committee of the Legislative Assembly designated or established by it shall review the provisions and operation of the *Official Languages Act* at the next session following December 31, 2007, and subsequently at the next session following each successive fifth anniversary of that date.”

The 17th Assembly Standing Committee on Government Operations completed a review of the *Official Languages Act* in 2014. The next review should commence during the first full session of the 19th Legislative Assembly. The Standing Committee has a great deal of latitude as to how such a review is structured. Committee encourages the Members of its successor Committee to look at the past recommendations of the Languages Commissioner and to engage her early in the process to seek her advice on setting out a process for the review.

9-1-1 Emergency Service Implementation

When Committee reviewed Bill 31 – Northwest Territories 9-1-1 Act, Committee was concerned that, through no fault of its own, the Department of Municipal and Community Affairs could not, at the time, access all of the information necessary to fully assess the potential monthly costs to residents for this service. This is because certain proprietary information would not be developed by NorthwTel until the company had the certainty of 9-1-1 legislation. It was also because CRTC hearings had yet to take place to determine charges that NorthwTel could levy for the use of its equipment in the delivery of 9-1-1.

To address this concern, Committee amended the bill to include a limit setting the monthly cost recovery fee at no more than \$1.70 per month per phone, for the first three years after the bill comes into force.

Committee encourages the Members of its successor committee to stay apprised of the Department of Municipal and Community Affairs’ work on the implementation of 9-1-1 emergency service in the Northwest Territories, particularly as it pertains to the amount of the CRTC approved levy and the cost-recovery fee set by the GNWT, as based on actual operational data.

Heritage Fund Act

In its mandate, the GNWT committed to “*review and develop amendments to the Northwest Territories Heritage Fund Act in light of devolution to ensure a defined revenue stream and stronger public governance.*” This is a mandate commitment is one that the GNWT failed to complete in the 18th Legislative Assembly.

The purpose of this commitment, which regular Members requested be included in the mandate, was to ensure the Act is amended to incorporate a legal commitment with respect to the amount of revenue that the GNWT is required to set aside annually from resource revenues. With respect to putting aside resource revenues for future generations, the only commitment in place right now is one that was made by the Finance Minister in the 17th Assembly that 25% of the net fiscal benefit from resource revenues would be deposited in the Heritage Fund. Regular members wanted to see this commitment entrenched in the Act that governs the fund.

Members also wanted to see the Act amended to address the governance of the fund which, at present time, is administered by the Department of Finance.

Small Business Tax Relief

This is another mandate commitment that the GNWT failed to meet, which has been a source of frustration for Committee members. After promising the Committee a copy of a paper on small business tax filers for more than a year, Committee learned through the business planning process that this paper had been completed and the Department of Finance had come to the conclusion that there would be no tax relief measures for small businesses. When Finance engaged with Committee on the carbon tax, Committee again asked for special measures for small business, to no avail. The Deputy Chair of the Committee even introduced a private Member’s bill, *Bill 49 – Small Business Tax Relief Act*, in the hopes of introducing measures to make things easier for small business owners in the Northwest Territories. When the Member moved that the bill be given first reading, the Committee Chair seconded the motion, which was subsequently defeated.

CONCLUSION

This concludes the Standing Committee on Government Operations Report on Transition Matters. Members respectfully suggest that the Members of our successor committee consider requesting updates on the above matters from committee staff and from the appropriate Ministers in the 19th Assembly, and wish them the utmost success in fulfilling their mandate.