

Standing Committee on  
Social Development



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# Report on Bill 82: *Legal Profession Act*

19<sup>th</sup> Northwest Territories Legislative Assembly

Chair: Ms. Caitlin Cleveland

**MEMBERS OF THE STANDING COMMITTEE ON  
SOCIAL DEVELOPMENT**

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September 27, 2023

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Development is pleased to provide its report on *Bill 82: Legal Profession Act* and commends it to the House.

Ms. Caitlin Cleveland,  
Chair  
Standing Committee on Social Development

**STANDING COMMITTEE ON  
SOCIAL DEVELOPMENT**

**REPORT ON BILL 82: *LEGAL PROFESSION ACT***

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## **STANDING COMMITTEE ON SOCIAL DEVELOPMENT**

### **REPORT ON BILL 82: *LEGAL PROFESSION ACT***

#### **INTRODUCTION**

Bill 82: *Legal Profession Act* (Bill 82) received second reading on March 30, 2023, and was referred to the Standing Committee on Social Development (Committee) for review.

Bill 82 repeals and replaces the existing *Legal Profession Act (Act)*. The changes modernize the legislation based on the recommendations from a discussion paper created by the Law Society of the Northwest Territories (Society) to the Department of Justice. Specifically, Bill 82 will:

- Specify the purpose and administration of the Society.
- Define "member" of the Society and revise conditions for membership.
- Broaden the definition of the "practice of law."
- Modernize and expand the tools available for dealing with lawyer misconduct.
- Define the Assurance Fund, create a time limit for claims, and permit the Society to make charges against the Fund and to pursue claims against lawyers.
- Give the Society the ability to appoint interim custodians of a member's property and practice and approve that a lawyer may open a trust account.
- Address other matters such as expanding on liability protections, disclosure and safeguarding of solicitor-client privilege, use of titles, violations under the Act and associated fines, and obligations related to financial inspections and audits of lawyers.

The existing *Legal Profession Act* was passed in 1976 and established the Society as the body that regulates lawyers in the NWT. In 2018, a Revision Committee was established by the Executive of the Society to consult on and recommend changes, as the *Act* has not been extensively reviewed since it was first enacted. Parts of the existing *Act* are considered obsolete, and key issues related to the regulation of lawyers remain unaddressed.

This report outlines key events leading up to the introduction of Bill 82; describes Committee's engagement with stakeholders; and summarizes stakeholder positions and Committee decisions.

#### **COMMITTEE WELCOMES IMPROVEMENTS TO LEGAL PROFESSION ACT**

In October 2022, the Standing Committee on Accountability and Oversight (AOC) received the Legislative Proposal for Bill 82. AOC confirmed support of the Bill with the

Government House Leader and Bill 82 was tabled in the House during the February-March 2023 Sitting.

Committee held a public hearing on May 10, 2023, and completed its clause-by-clause review of Bill 82 with the Minister of Justice on May 31, 2023. Committee did not propose any amendments to the Bill.

## **COMMITTEE CONSIDERED PUBLIC INPUT**

Committee sought public feedback on Bill 82 with a public notice and targeted engagement letters. Committee received written submissions from:

- The Law Society of the Northwest Territories;
- Mr. Brian Flewelling, a private resident;
- Northwest Territory Métis Nation; and
- Délı̨nę Got'ı̨nę Government.

All written submissions are included in an Appendix to this report.

Additionally, during the public hearing on Bill 82, Committee heard remarks from the Minister of Justice, asked questions to Departmental officials, and received oral comments from the Society and Mr. Flewelling. Committee thanks the Society and Mr. Flewelling for their engagement. Their participation helped inform Committee discussions on key issues for future consideration.

## **COMMITTEE CONCERNS**

Overall, Committee supported Bill 82 since it was first introduced. However, before advancing the Bill, there were several areas of concern that Committee wanted further feedback on from the public and the Minister of Justice. Those areas are:

- Access to justice;
- Cultural safety trainings taken by lawyers;
- Public access to law libraries and legal materials;
- Regulating paralegals; and
- Pro bono legal services.

Before the end of the May-June 2023 Sitting, Committee received feedback from both the Law Society and the Minister of Justice regarding these areas of concern. Based on that feedback, Committee considered the Bill ready to be advanced to the next stage.

### **Access to Justice**

In both its oral and written submissions, the Law Society explained that while access to justice is "an important and ever-present issue" for their profession, this is a broader issue that requires all justice system participants to help find the right solutions. The Society also stated that one of the recommendations in their discussion paper specifically addressed access to justice, which in Bill 82 is section 21(2)(e):

- S.21(2) No person shall carry on the practice of law in the Northwest Territories or hold out that they are entitled to practise law or that they are a registrant of the Law Society, unless the person is:
  - a. an active registrant of the Law Society;
  - b. authorized to practise law by the governing body for lawyers in an extra-territorial jurisdiction approved by the Executive and has met the requirements established by the Law Society of the Northwest Territories to engage in the practice of law in the Northwest Territories;
  - c. a student-at-law and is practising law in accordance with the rules;
  - d. a law student and is practising in accordance with the rules; or
  - e. **otherwise authorized under this Act or the rules to carry on the practice of law in the Northwest Territories.**

As well as section 22(4)(d) of Bill 82, which reads:

- S.22(4) The following classes of registrants exist for the Law Society:
  - a. Lawyers;
  - b. Students-at-law;
  - c. Law students;
  - d. **Any other class of individuals providing limited legal services set out in the rules.**

All specified rules throughout these two sections need to be further developed by the Law Society, with the end goal of greater access to justice. Upon learning this, Committee considered this concern sufficiently addressed.

### **Cultural Safety Training**

Committee initially contemplated whether Bill 82 should have included a provision requiring all legal professionals practicing in the NWT to undergo mandatory training for cultural safety and trauma-informed practices. However, in the Society's written submission, they explained that this area would be addressed through the Law Society's rules, not the *Act*. Committee also learned the Law Society requires cultural safety training on an annual basis. Upon learning this, Committee considered this concern sufficiently addressed.

### **Public Access to Legal Materials**

Committee recognizes that the NWT's sole Law Library was closed due to budgetary reasons, therefore there was concern that this created a barrier to public access to legal

materials for residents and legal professionals. While the Law Society did acknowledge this in their submissions, they state that the Law Foundation is granted a mandate under the *Act* to establish, maintain, and operate law libraries. The Society also stated that their organization does provide public access to legal resources such as the Legal Resource Center, with the support of the Department of Justice, and CanLii, a free online legal database, with the support of the Federation of Law Societies. While Committee agreed that the responsibility of law libraries did not lie with the Law Society, Committee did identify concerns that law libraries and support services to improve access to justice resources are not being made available through the Department of Justice. This concern remains.

### **Regulating Paralegals**

Committee wrote to the Minister of Justice on whether the Department considered including a provision within Bill 82 to regulate paralegals and clearly define what a paralegal is and what they can and cannot do. The Minister did not see this approach as practical given the limited number of paralegals in the NWT. Further, the Minister stated that this type of provision is out of scope of the Bill, would be too burdensome on the Law Society, and is better addressed through the rules of the Law Society itself. Upon hearing this, Committee considered this concern sufficiently addressed.

### **Pro bono Legal Services**

Committee is concerned about changes to the Law Society membership fee structure within the legislation for lawyers offering pro bono legal services to residents. The Minister indicated that as lawyers are a self-governing profession, the Law Society retains discretion over establishing fees through its rules. The Minister also stated that to protect the Law Society as a regulator, it is the Department's view that fees for pro bono services are an issue that is best addressed within the rules of the Law Society. Further, the Minister stated that the Law Society confirmed a willingness to reduce or waive fees in support of pro bono services through their rules. Upon hearing this, Committee considered this concern sufficiently addressed.

## **CONCLUSION**

On May 31, 2023, Committee held a clause-by-clause review. Committee passed a motion to report Bill 82 to the Legislative Assembly as ready for consideration in Committee of the Whole.

This concludes the Standing Committee on Social Development's review of Bill 82: *Legal Profession Act*.



**APPENDIX**

**SUBMISSIONS**

**Oral Submissions to the Standing Committee on Social Development  
regarding Bill 82: *Legal Professions Act***

Submitted by:  
Christopher D. Buchanan  
Treasurer, Law Society of the Northwest Territories  
on May 10, 2023

Hello Honourable Committee Members,

My name is Chris Buchanan. I am the Treasurer of the Law Society of the Northwest Territories. I'm also a Partner with McLennan Ross LLP in Yellowknife.

I'm joined by my colleagues on the Executive Committee of the Law Society: Christina Duffy (President), Keelen Simpson (Treasurer), and Matthew Yap (Member-at-Large).

We are pleased to speak with you this evening about Bill 82, which would implement a new *Legal Professions Act*.

As you know, the Law Society governs the legal profession in the Northwest Territories. Its mandate is to ensure the public is well-served by legal professionals who are independent, responsible, and responsive. The legal profession is one of the few remaining self-governing professions in Canada, and the Law Society takes this responsibility seriously.

The *Legal Professions Act* is the foundation upon which the Law Society operates, so our members have a keen interest in Bill 82. The Law Society supports the passage of Bill 82.

The road to Bill 82 has been a long one. In August 2018, the Law Society struck a Revision Committee to review the current *Legal Profession Act*. In September 2019, the Revision Committee issued a Discussion Paper, which provided a comprehensive analysis of the Act. The Revision Committee then consulted with our members on the Discussion Paper and issued a summary of responses and committee comments in February 2020. The Department of Justice then drafted the present Bill and consulted with the Law Society

Executive Committee earlier this year. Now Bill 82 is before this Committee for review and consultation.

I understand from a letter issued by the Chair, Ms. Caitlin Cleveland, that the Committee is seeking input on four particular points, in addition to other aspects of the Bill. On behalf of the Law Society, I will address each of these points.

1. Access to Justice

The first point is that the Committee acknowledges that “access to justice” was a recommendation in the Discussion Paper of which the Bill is silent.

Access to justice is an important and ever-present issue for our profession, not only in the Northwest Territories, but across Canada. It’s not an issue that is easily addressed. The reality is that it requires the commitment of resources and the cooperation of all participants in the justice system to find the right solutions.

The Discussion Paper explored ways the Law Society could increase access to justice. Recommendation #19 was that the Act should adopt provisions similar to those in Saskatchewan that would allow the Law Society to licence, on a case-by-case basis, those who wish to provide limited legal services to the public, such as paralegals. Ontario also regulates paralegals and clerks.

This recommendation was debated by our members in 2020. There were concerns that the Law Society does not have the capacity to evaluate and licence paraprofessionals. Others thought that it was a good way to provide alternatives to lawyers, who can be expensive and hard to find. The conclusion was that the preferred approach would be to give the Law Society flexibility to pursue this matter further in the future without an immediate obligation to regulate a broader scope of members.

Bill 82 does permit the Law Society to register individuals providing limited legal services under section 21(2)(e) and 22(4)(d). The statutory scheme being set up is that the Law

Society create rules that authorize certain classes of individuals to provide limited legal service in the Northwest Territories. The specific rules to be applied will need to be developed by the Law Society in the future.

We are pleased to see this greater flexibility for the Law Society to expand the scope of legal services that may be offered to residents in the future. We believe this will result in greater access to justice.

Beyond this change, the Law Society can promote access to justice through education. However, our job is to regulate the profession, so there is only so far we can go to improve access to justice.

## 2. Discipline Process

The second point that the Committee wishes to hear about is the discipline process. The Committee acknowledges that there are several clauses in the Bill that improve and expand options in the discipline process for the legal profession.

Discipline is a hot topic for the Law Society, because it is a key element to self-regulation. The Executive Committee and our Discipline Committee have discussed in detail the proposed discipline process set out in Bill 82.

Section 31 draws a distinction between “incompetent conduct” and “sanctionable conduct”. Incompetent conduct can be found by the Chair of the Complaint Investigation Committee or a tribunal, whereas sanctionable conduct can be found by a tribunal or the Court of Appeal. So the difference is that Chair of the Complaint Investigation Committee can issue sanctions to a member who has engaged in incompetent conduct, but not someone who has engaged in sanctionable conduct. A hearing before a tribunal is required before a sanction is issued for sanctionable conduct. An investigation into the conduct at issue is the deciding factor as to whether the conduct requires a hearing or not.

Bill 82 also provides for various alternative approaches to discipline, including alternative dispute resolution, referral to a wellness program, or advice to the registrant. The practice of law is stressful and complex, which can lead to mental health challenges for our members. Providing the Law Society with alternative methods to handle lawyer misconduct is a positive step in the right direction to protecting the public and regulating our profession.

The Law Society is supportive of Bill 82's approach to discipline.

### 3. Public Access to Legal Materials

The third point is whether there should be more of a role for the legal profession with respect to supporting the important role of law libraries and to ensure access to legal materials.

As you know, the territory's only law library was closed several years ago for budgetary reasons. Our members were critical of this choice and felt that it was a step backwards when it comes to access to justice.

As I mentioned earlier, the Law Society's mandate is to regulate the profession and does not necessarily have a mandate to improve access to justice. However, Bill 82 does authorize the Law Society to affect change in several ways:

- a. The Law Foundation has the express mandate under the Act of establishing, maintaining and operating law libraries. The Law Society appoints members to the executive of this Board, with a view to access to justice in mind. Further, the Law Foundation is funded under the Act through interest accruing on trust accounts. In this way, the Law Society indirectly plays a role.
- b. Further, while not directly covered by the Act, the Law Society in fact provides public access to legal resources through funding agreements with the Department of Justice for the funding of the Legal Resource Center, and through

an agreement with the Federation of Law Societies in which the law societies of Canada collectively purchased and fund CanLii, a free online legal database.

- c. The Law Society is an independent body and undertakes these activities where it views them to be within the mandate and purpose of the society. In our view, it would be inappropriate to encumber an independent regulator with these obligations.

The Law Society takes the issue of access to legal materials seriously, but it does not feel that this issue should be addressed through legislative means.

#### 4. Ongoing Legal Education

The fourth and final point is that the Bill does not specify ongoing education for lawyers, particularly in regard to training for cultural safety and trauma-informed practice.

The Discussion Paper addresses this point in Recommendation #10.

- a. In the Discussion Paper, it was always contemplated that this would be addressed through rules, and not in the Act.
- b. The Law Society is an independent regulator and needs to make appropriate decisions for how continuing competency of members is addressed. The model of these requirements being in rules is consistent with the approach taken in other Canadian jurisdictions.
- c. The Law Society regularly reviews the requirements of its CPD program and has recently made amendments to its policies to incorporate mandatory cultural competency training for all active lawyers. Neither of the approved courses to meet this requirement existed at the time the Discussion Paper was produced. The needs and offerings for ongoing continuing professional development are constantly in flux, and as such, the Law Society needs a high level of flexibility to

be able to respond and adapt appropriately. The Law Society views the use of the Rules as the appropriate mechanism for protecting the ability to be responsive and adaptable in these requirements.

- d. The Law Society is also always open to feedback on the public on how it can improve its regulatory scheme to protect the public. It will consider further the concepts of cultural safety and trauma-informed practice in the development of rules under the new Act.

We know that this is an important obligation of the Law Society, and we will address this issue in the new rules.

Subject to any questions, those are my submissions.

Thank you. Mashi cho.

**From:** Brian F  
**Sent:** Tuesday, April 25, 2023 12:19 PM  
**To:** [Committees@ntassembly.ca](mailto:Committees@ntassembly.ca)  
**Subject:** Bill 82 - Legal Professions Act

Good day Committee Members.

I am sending this email as my submission to the Committee re: Bill 82. I would like the opportunity to contact the Committee during your hearings, via telephone and/or video chat to answer any questions, you may have regarding my submission. Not sure if all committee members received information attached so am sending again just in case.

The following are items I feel should be updated and/or added to any changes to Bill 82:

***A. New Section for An Appeal Process or Appeal Board.***

As I disagreed with the results of my appeal, my only option at the time, was to file for a judicial review. This would cost me \$ 25,000.00, and I would not be guaranteed a hearing by a judge. As a taxpayer and the public, this is too expensive for me to proceed. However, if there is a new Appeal Process / Board going forward this should include a lawyer, someone from public and a Government appointee. At the very least, the public would have opportunity to Appeal – with Cause - and be heard. In my case, I would have had the opportunity to prove, in a hearing, the lawyer in question did not tell truth – I had someone prepared to testify they overheard the Dec 2, 2020, telephone conversation between me and the lawyer. Also, I could have proven the lawyer **falsified** his evidence in his statement about a “rather threatening email” by sending copies of emails which had nothing to do the email I had sent to him stating what I would do if not paid. This in itself should be grounds for a hearing and violated Sec 22 of the Act. Why should I have to consider suing the Lawyer personally since Law Society did not do the proper thing in my case. Also, this could allow one to discuss the instigator’s report (which I tried to do by email and never addressed fully) as in my case there were many errors and recording of what the truth was.

***B. People Appointed to Review and Make Decision For the Appeal***

Two lawyers and one non-legal person make up the panel who review an appeal and make recommendation / decision. I asked who they were and was told it is confidential. These people should be identified so all parties can determine if there is/are any conflicts of interest. The lawyer involved in a complaint and anyone filing complaint should not be allowed to contact these people directly at any time.

***C. Investigator***

Investigators should be required to include in their report how they found the defendant lawyer and the complainant. In my case, I was found to be credible, yet the lawyer was found to be co-operation and somewhat willing to share. Since I was found to be credible, it made me feel good and got my



hopes up I might win the Appeal. Yet the appeal decision was ruled against me and one of theirs was believed.- I guess the investigator did not believe me after all Investigators should have to make a judgement call in their report about both parties being credible or not and be honest about it. There should be a procedure in place to challenge an investigator's report. In my case, report has many errors and missed statements. The investigator did not ask questions on a lot of items in my complaint the lawyer's response.

**D. *File Transfers / Takeover***

There should be an update to the laws and procedures to follow when releasing a file and receiving a file from another lawyer. I recommend all lawyers involved be required to notify all persons involved in a file within 15 days (maybe 30 days). In my case, I had to contact the original estate lawyer to see who new lawyer was , then had to contact this lawyer to see who replaced him – so 3 lawyers were not being responsible in their duties regarding contacting me. Very unprofessional by these lawyers and I should not have had to go through hell to find information myself.

In conclusion, I hope this government will consider these suggestions which may help the public be on a fair playing field in dealing with The Law Society and its members.

I await your reply and notice when to appear.

Brian Flewelling  
867-875-0204



NORTHWEST TERRITORY MÉTIS NATION

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May 10, 2023

**Attention: Standing Committee on Social Development**  
[committees@ntassembly.ca](mailto:committees@ntassembly.ca)

Standing Committee on Bill 82  
Government of the Northwest Territories  
P.O. Box 1320  
Yellowknife, NT X1A 2L9

Dear Standing Committee:

**Re: Consultation on Bill 82: *Legal Professional Act***

We confirm receipt of your email dated May 4, 2023 requesting comments from the Northwest Territory Métis Nation, as an Indigenous Government, on the *Legal Professions Act* of the Northwest Territories.

The NWTMN provides the following comments in respect to the proposed *Legal Professions Act* of the NWT:

- “Access to justice” was a recommendation in the discussion paper prepared by the Law Society of the NWT. It is important to include “access to justice” within the Bill because lack of access to justice reinforces inequities facing indigenous peoples.
- The Bill does not specify ongoing education for lawyers, particularly in regard to training for cultural safety and trauma-informed practice. It is important to specify ongoing education for lawyers as it was a recommendation within the Truth and Reconciliation Committee’s final report:

“We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the [United Nations Declaration on the Rights of Indigenous Peoples](#), Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown

relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.”

Cultural competency training on the issues listed in the TRC recommendations will require ongoing training for lawyers to promote equity, diversity and inclusion in the legal profession and in the delivery of legal services, particularly for achieving justice for Indigenous peoples.

We look forward to the Committee giving due consideration to the concerns of the NWTMN. Please advise if you have any questions.

Sincerely,

**NORTHWEST TERRITORY MÉTIS NATION**

A handwritten signature in black ink, appearing to read "Garry Bailey". The signature is written in a cursive, flowing style.

Garry Bailey,  
President

cc: Mr. Arthur Beck, President, Fort Resolution Métis Government  
Mr. Allan Heron, President, Fort Smith Métis Council  
Mr. Trevor Beck, President, Hay River Métis Government Council



The Honourable Caitlin Cleveland  
Chair, Standing Committee on Social Development  
Northwest Territories Legislative Assembly  
PO Box 1320  
Yellowknife, NT  
X1A 2L9

**Sent via email:** [committees@ntassembly.ca](mailto:committees@ntassembly.ca)

Chair Cleveland,

**Re: Response to request for comments relating to Bill 82: *Legal Professions Act***

On behalf of the Déline ę Got'ine ę Government (DGG), I write in response to the Standing Committee on Social Development request for comments on Bill 82: *Legal Professions Act*. Given the legal frameworks within which and between which our peoples and our respective governments operate, the DGG supports efforts to ensure the effective regulation of the legal profession in the Northwest Territories.

I note that s. 3(2)(a) of Bill 82 requires the Law Society of the Northwest Territories (Law Society) to “establish standards for the education, professional responsibility, ethical conduct and competence of persons practising or seeking to practise law in the Northwest Territories”. I also note that the Law Society has described its own mandate as ensuring “the public is well served by a legal profession that is independent, responsible and responsive”. It is our position that for a lawyer to be a truly responsive professional requires a substantial level of understanding of our communities, our members and our collective and respective histories. It also requires a level of self-awareness that compels a professional in their practice and a regulator in the setting of rules to identify and acknowledge biases and assumptions. While it is recognized that an aim of the Bill is to extend flexibility to the regulator in its role, a greater level of prescription in the nature of the education NWT practitioners receive is warranted.

The DGG observed with interest your comments during the Session of the Standing Committee on Social Development on May 10, 2023. In line with those comments, our government would recommend that the Law Society be required to mandate trauma-informed cultural safety training for all practicing members. While the President of the Law Society’s remarks regarding voluntary Continuing Professional Development training through the *Living Well Together* and the *Path* series are acknowledged, we are aware of the challenge in early 2023 from members of the Law Society of Alberta to similar training. Given the proportion of lawyers that practice in NWT and do not reside here, this is of sufficient import that it be included at the legislative level.

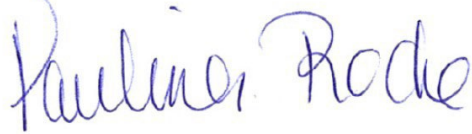
I would note, finally, that Article 2 of the Declaration: “Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.” Section 5 of Bill 85: *United Nations Declaration on the Rights of Indigenous Peoples Implementation Act* states that “The Government of the Northwest Territories shall, in collaboration and cooperation with Indigenous peoples, take all reasonable measures to ensure that the laws of the Northwest Territories are consistent with the [*United Nations Declaration*



on the Rights of Indigenous Peoples]”. A legal profession that is adequately educated of systemic racism and sufficiently aware of its own inherent biases contributes directly to the fulfilment of Article 2 of the Declaration.

If you have any questions, please do not hesitate to contact our General Counsel, Kate Darling, at [general.counsel@gov.deline.ca](mailto:general.counsel@gov.deline.ca) or 867-678-0099.

Mahsi,



Paulina Roche  
Chief Executive Officer  
Délina Government