

**STANDING COMMITTEE ON SOCIAL PROGRAMS**

**Report On The**

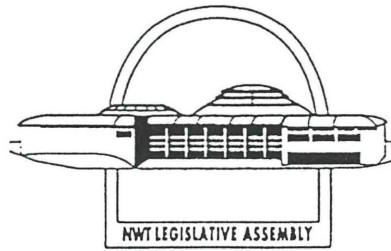
**Review of the Family Law Bills  
(Bill 3 - Family Law Act)  
(Bill 4 - Children's Law Act)  
(Bill 5 - Adoption Act)  
(Bill 6 - Child and Family Services Act)**

**Tommy Enuaraq, M.L.A.  
Chairperson**

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***13th Assembly***





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**STANDING COMMITTEE ON SOCIAL PROGRAMS**

**CHAIRPERSON**

Mr. Tommy Enuaraq,  
MLA, Baffin Central

**Deputy Chairperson**

J. Michael Miltenberger  
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Roy Erasmus  
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John Ningark  
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Floyd Roland  
MLA, Inuvik

**ALTERNATE MEMBERS**

Levi Barnabas  
MLA, High Arctic

Jane Groenewegen,  
MLA, Hay River

James Rabesca  
MLA, North Slave

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David Inch  
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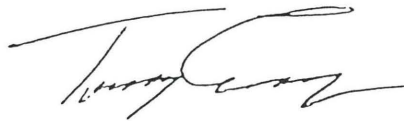


October 3, 1997

**THE SPEAKER  
LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES**

Mr. Speaker:

The Standing Committee on Social Programs is pleased to present its Report on the Review of the *Family Law Bills*.



TOMMY ENUARAQ, M.L.A.,  
CHAIRPERSON



# **STANDING COMMITTEE ON SOCIAL PROGRAMS**

## *Report on the Review of the Family Law Bills*

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## ***Report on the Review of the Family Law Bills***

### ***The Public Review***

The four Family Law bills cross the broad range of family law issues. At some point, most northerners are affected directly or indirectly by this legislation. For this reason, the Committee felt it was important to allow all northerners to comment on the bills. Unfortunately, financial reality prevented us from personally reaching all communities. However, we did provide opportunities for people to come to the Committee through meetings in every region.

To maximize the use of resources, we split into two sub-committees for the purpose of public hearings. The first group including Mr. Enuaraq, Mr. Ningark and Mr. Barnabas traveled to Rankin Inlet, Iqaluit and Cambridge Bay. In addition to the public meetings, Members also took part in local radio shows with a particularly successful phone-in show in Rankin. The second group consisting of Mr. Miltenberger, Mr. Erasmus and Mr. Roland traveled to Inuvik, Fort Simpson, Hay River and Fort Smith.

The full committee then met in Yellowknife in June for the final public hearings. Written submissions were accepted until late August. In mid-September, the Committee held clause by clause reviews on three of the bills with the Minister.

### ***General Issues***

#### Same Sex Couples

The family law bills expand eligibility from married couples to married and common-law couples. However, they stop short of recognizing same sex couples. The definition of spouse is limited to heterosexual couples. There were two areas where this was an issue.

1. The proposed Adoption Act does not allow for both partners in a same sex relationship to adopt a child.
2. Partners in same sex relationships are not given rights to spousal support and division of property under the proposed Family Law Act.

The Committee received many presentations relating to the inclusion of same sex couples in these bills. However, presenters were split on whether to amend the bills to include same sex couples.

Committee members agree that a change to include same sex couples would be a substantive change to the legislation. Since there was no clear indication on the preference of the public during our hearings, we have decided to leave this matter to debate in the House.

Any Member of the Assembly will have the opportunity to introduce amendments to one or both of the bills in question during Committee of the Whole. To assist in the debate, the Committee wrote to each MLA in early July. We provided an information sheet on the proposed changes and asked each Member to consult with their constituents on the matter.

### Preambles

The Committee asked that a preamble be added to each bill. These preambles will set the philosophical context of the legislation. During the public hearings, people raised concerns about issues such as the importance of family and making sure family law matters are dealt with quickly. We hope the preambles will address these kinds of concerns.

### Plain Language

The Committee wants any legislation to be understood by the people who read it. In our opinion, the proposed legislation is not yet written in plain language. We hope in the future the government will attempt to revise the Acts so they are written for all to read and understand.

### Implementation and Regulation

The success of these new bills will depend in large part on their implementation. Part of the implementation process will be the drafting of the regulations. We are pleased that the Minister has committed to working with us to ensure that the regulations will be consistent with public direction.

We are also pleased with the government's commitment to ensure adequate training and support for front-line workers as they adjust to the new approach in family law. We look forward to regular updates on this work by the Minister.



### Privacy Concerns

The Access to Information and Protection of Privacy Commissioner raised a number of concerns with the bills. The departments have been working with the Commissioner to identify the key issues. Amendments will be introduced in the House to address these concerns.

### Justices of the Peace

In the two bills put forward by the Department of Health and Social Services, there is a particularly strong focus on community involvement and community decision making. The Committee agree with this approach. We encourage the government and the judiciary to take this opportunity to expand the role of local Justices of the Peace. As community residents, they have the knowledge of families and individuals which make them uniquely qualified to deal with many family law issues.

### ***Thanks***

The Committee would like to thank the many territorial residents who made presentations or wrote to us with concerns about the proposed Family Law bills. We appreciate your comments and have done our best to ensure the issues are addressed by the Minister.

We would also like to thank the Minister and his staff for their efforts to work with us to produce the best possible legislation.

Finally, we would like to express our appreciation for the members of the original Family Law review in the early 1990's. While the bills could not accomplish everything they recommended, we believe they go a long way toward achieving the results the review members envisioned.

## ***FAMILY LAW ACT***

A number of amendments were made to the bill during the clause by clause review.

- The original bill did not allow people to make binding agreement respecting possession of the family home in a domestic contract. The Committee was concerned that there was no opportunity for people to protect a home which may have been in their family for many years. Amendments were made to allow protection of a family home in a contract between the partners.
- The bill provides for two components to spousal support. There is the standard support arising from sharing the advantages and disadvantages of the relationship. The second component is intended to provide short term support to allow a spouse to become self-sufficient. The section on spousal support was confusing to presenters. An amendment was made to more clearly identify the two types of spousal support.
- The dependent parent section was amended to more clearly define when a parent could apply for support from a child. This included the need for care over a significant period of the child's life. There was also a new section on what types of support could be ordered by the court.
- The commencement date under the Family Property Part was amended to begin at the start of a common-law relationship.
- The time limit for starting an action under this Act was different for married and common-law couples. This was amended to provide a two year period, regardless of common-law or married status.
- A change was made to the section on mediation, allowing the court to order the parties to attempt mediation.

There are some additional changes we would like to see made to the bill.

- Initially, we raised a concern about section 19 which referred to default in payment of support. We felt it was not clear and could apply after a single late payment. The department brought an amendment which allowed six months of missed payments before the section would apply. We feel this is too long and will propose an amendment to a shorter time period.
- In section 24(3), there is reference to the Canada Consumer Price Index. We understand the Minister's reasoning that this is an annual index which is reliable and consistent. However, the Committee continues to believe that an index more directly related to northern costs could be determined.

- In section 37, there is the potential for a person to die with more than one spouse. For example, they may have married and separated and then entered into a common-law relationship. The Minister is developing an amendment to address this problem.
- The part on family property allows one party to remain in the home. However, as currently written, there are potential problems with leased property. If the husband's name is on the lease, the wife and children may not be allowed to remain in the home although that would be the intent under this Act. With so many territorial residents living in leased homes, the department is preparing an amendment to address this concern.

There were complaints about the complexity of the current expense form for divorce. The need for a simplified form was stressed. The department has agreed to review this with the judiciary and in developing the regulations.



## **CHILDREN'S LAW ACT**

A number of amendments were made during the clause by clause review.

- Since the bill was introduced in the House, the Federal Child Support Guidelines have come into force. In an effort to ensure children are entitled to similar levels of support whether their parents are married or common-law partners, the Federal guidelines are being adopted as part of this legislation. A number of amendments were made to reflect this change.
- A blood sample is required for determining paternity. The section on consent inadvertently stopped a teenage father from giving consent to have a blood sample taken. This has been corrected.
- A "friendly parent" clause was added to the best interests section. This requires the court to consider the willingness of one parent to facilitate access for the other parent in determining custody and access arrangements.
- In making a judgment on custody and access, the bill only required written reasons when the judge ordered joint custody when one or both of the parties didn't request it. This has been changed to require written reasons in any case where the judge orders a custody arrangement that wasn't requested by one or both of the parties.
- Guardianship for a youth is normally ended at age 19. There was a provision allowing youth under 19 who were parents to apply to end guardianship. This subsection was removed, giving all youth equal treatment and equal opportunity to make application in unusual cases.
- The section on mediation was amended to allow the court to order a couple to participate in mediation. We are encouraged by the success of mandatory mediation in other jurisdictions and this provides a first step.

Further amendments will be required in the House on some issues.

- The section on the Vital Statistics Registrar's ability to change a birth record is unclear. The department is looking into this problem.
- We are concerned about section 18 and the rights of parents who leave the family home. There is the potential for a parent to make promises about access and then not follow through once the other parent is out of the house. One parent moving out of the home also establishes a status quo which may be difficult to overturn later in court.

- The bill would not require assessors to be available to the court to provide testimony regarding assessment reports. This is contrary to the normal rules of evidence. The Committee has discussed this point with the Minister a number of times. In our opinion and based on the public feedback, section 29(9) should be deleted to ensure assessments follow the rules of evidence.
- Section 30 deals with problems with access - either a custodial parent denies the other parent access or a parent does not use their access. We felt the section was not strong enough. The department is preparing an amendment which would provide specific sanctions in these cases.
- There is no provision for recognizing the differing costs in NWT communities in the child support guidelines. The Committee felt strongly that these differences must be taken into account. The Minister has indicated that, at some point, the NWT could develop its own guidelines. This is a step we would like to see taken in the future.
- Section 59(3) deals with setting aside a contract on default. While the bill was amended in committee to give a six month default period, we would like to see a further amendment to a shorter period of time.
- Section 72 deals with restraining orders. The Committee felt that third parties, such as a family member or concerned relative, should have the ability to obtain a restraining order.

The Committee did raise a concern about the cost of assessments. There are no qualified assessors practicing in the NWT. This means couples in dispute have to bring in an expert from outside the NWT. The costs to have an assessment are extremely high. Since legal aid will not cover these costs, this becomes an option only available to those with money. We suggest that there is the need for a government assessment service. This would significantly decrease the costs. It will also encourage couples and courts to use assessments since the service would be available locally. The Committee would like the Minister to continue to consider this option.

Many individuals raised concerns with maintenance enforcement. They asked what the point of a new law was if parents were not forced to live up to their support obligations. Although this is not directly part of this bill, we share the concern and will be addressing this in detail with the Minister of Justice.



## **ADOPTION ACT**

One of the concerns with the Adoption Act was the order of the different sections. During the public hearings, we heard that it was difficult to determine what sections applied to private adoptions versus departmental adoptions. Addressing this concern required a major re-formatting of the bill. For that reason, the Minister agreed to table a new version of the Adoption Act. The original version will be allowed to die on the Order Paper.

In the new version of the Adoption Act, the Committee expects to see changes to reflect the issues raised during the public hearings. This includes the following points.

- In determining the best interests of a child, child and parental preference should be considered.
- A mother should be required to identify the father of a child, if she knows who it is. While we recognize the mother's right to privacy, it is our opinion that the right of a child to be aware of his background overrides the right to privacy of the mother.
- Section 14(2) restricts financial assistance for adoptive parents to those special needs identified prior to the adoption. We acknowledge the Minister's concern about liability. However, there must be some flexibility to address congenital problems which surface after the adoption. This would be consistent with the intent of the section.
- Section 14(4) allows the department to change the amount paid to adoptive parents. We would like to see a process available for parents who want to dispute a decision to change financial support.
- In determining preference for an adoptive placement, we would like to see preference given, not just to the grandparents, but to members of the extended family including siblings, aunts, and uncles.
- For private adoptions, there should be a requirement for adoptive parents to attempt to have a pre-placement report done prior to accepting a child. Whether a child is adopted through a private or departmental placement, there should still be that initial check on the home.
- For out-of-territory adoptions, all aboriginal groups need to have the opportunity for input. The original bill only covered Dene chiefs. We would also like the bill to allow more pro-active involvement in out-of territories births.
- Where the Director revokes consent for departmental adoptions, written reasons should be provided.

- Section 27 deals with a parent revoking consent. We were concerned about a case where, for example, the mother has physical custody of the child before the adoption but the father revokes the consent. The placement of the child needs to be clarified in a timely way which protects the best interests of the child.
- When a child revokes his consent to an adoption, we would like a mandatory requirement for an investigation.
- Adopted children and biological parents should be able to readily access adoption information. The Minister has agreed to take further steps toward open adoptions. This will include eliminating the distinction between identifying and non-identifying information.
- Many people said that although legally a biological parent ceases to be the parent with adoption, they thought that bond was still important. We think this should be addressed in the preamble.
- In keeping with the intent of providing complete information through the adoption registry, the bill should allow other interested parties to have information placed on the Registry.

## **CHILD AND FAMILY SERVICES ACT**

A number of amendments were made in committee to address issues raised by the public and to correct problems with the bill.

- A series of amendments were made to deal with apprehension of children. The intent of the bill is to allow the full process, including plans of care committees, in cases where the child remains in the family home and in cases where the child is apprehended. There were problems with the original bill which would have forced a court hearing in some situations.
- The definition of abuse has been broadened to include emotional and psychological abuse.
- Rather than having the Child Protection Worker as chairperson, an amendment was made to allow plan of care committees to select their own chairpersons.
- An amendment was made to require written notice as follow-up when oral notice is given.
- The catch-all section of the reasons why a child would be in need of protection was removed. As well, the section referring to alcohol and drug abuse was revised to clarify its application to a child's abuse of these substances.
- The bill was amended to reflect the importance of the local Child and Family Services Committee in partnership with the Child Protection Worker.
- An amendment was made allowing a parent of a child to make an application to end permanent custody.
- Protection of the confidentiality of the plan of care process was added to the bill.

Unfortunately, the Government did not have sufficient time to prepare amendments on many issues of concern to the Committee. We expect a number of areas to be amended in the House.

- The entire section on plan of care committees needs to be revisited. We believe the proposed membership is too restrictive and does not allow flexibility in ensuring the best interests of the child. Committees should be allowed to continue even with a change in membership. There is also a need for continuity in plans of care after a child becomes a permanent ward. The plan of care process is one of the key parts of this bill. It is important that it reflect the best interests of the child and true community involvement.
- There is a need for a broader definition of aboriginal group. At this point, only Dene bands are covered. There is no mention of Metis, Inuit, and Inuvialuit.



- Amendments are coming to clarify whether the five days to put the plan of care process in place are working or calendar days.
- Under the bill, plan of care decisions must be unanimous. While unanimity is preferable, we would like to see amendments made that would not allow a single individual to hijack a decision; decision by majority should be possible to implement. We understand the department is trying to address this concern.
- After a child is taken into permanent custody, the family and community should be kept informed of that child's progress. We recognize that there will be some cases where this would not be appropriate, but believe that for most cases it should be done. An amendment is being prepared to deal with this concern.
- The Committee has a concern about the limited access by children or parents to information on their files. We have asked the Minister to take another look at this issue.

Many items raised during the public hearings will be addressed by the department through policies, guidelines or regulations.

- The bill states as a principle that parents should not use force in disciplining their children. We have asked that this be clarified.
- The bill clearly outlines the obligation of the department to support young people age 16 and over. There must be an assurance that this support not be abused by youth who are looking for a way to leave home because they do not get along with their parents. It must clearly be a case where it is emotionally or physically harmful for the young person to remain in the family home.
- The Committee was very supportive of the idea of working with families before a situation deteriorates. Although the bill lists an impressive list of possible voluntary services, we share the public concern about the availability and the costs of these services. We hope the Minister will work with Health and Social Services Boards to maximize services available for families.
- The bill places a strong emphasis on keeping children within the family and extended family. The current foster care rules limit the ability of families to provide foster placements. The Minister has agreed to revise the guidelines to support extended family members who can provide a placement for a child.
- The Committee stressed the need to inform families of any investigation process as soon as possible. Unless there is a danger that the child will be harmed, the families should not be the last to know.
- With a community-based approach, there is a need for involved individuals to have enough information to help children in difficulty. The department has advised that they are developing a protocol to assist the sharing of relevant information with people like teachers.

- The Child and Family Services Committee in a community will have significant responsibilities. Therefore, it is important that the committee represent a cross-section of community residents. The Minister has indicated the regulations will address this concern.
- The clear responsibilities and timelines in the bill give the basis for an effective way of dealing with children in difficulty. However, success will depend on how well the legislation and guidelines are followed. Regular monitoring and evaluation are essential to making this work for children.

**PUBLIC HEARING WITNESSES**

**Rankin Inlet**

Cathy Towntongie, Private Citizen  
Bernadette Makpah, Executive Director  
KonoTattuinee, 2nd Vice President  
Kivalliq Inuit Association  
David Aglukark, Private Citizen  
Johnny Karetak, Private Citizen  
Lizzie Ittinuar, Private Citizen  
Mary Eecherk, Private Citizen  
Monica Bruce, Private Citizen  
Susan Sangusaaq, Private Citizen  
Cathy Towntongie, Private Citizen  
Tommy Kasaluak, Private Citizen  
Lizzie Ittinuar, Private Citizen  
Harry Towntongie, Hamlet Counselor  
Charlie Panigoniak, Private Citizen  
MaryAnn Taparti, Private Citizen  
MaryAnn Tattuinee, Private Citizen

**IQALUIT**

Sarah Qaqqaq, Private Citizen  
Broughton Island  
Elijah Kautuq, Private Citizen  
Clyde River  
Ed Picco, M.L.A.  
Iqaluit

**IQALUIT CONTINUED**

Moses Attalugark, Hamlet of Pangnirtung

James Arreak, Private Citizen  
Clyde River

Lizza Ningiuk, Private Citizen  
Grise Fiord

Roger Sevigny, A/Director  
Social Services, Town of Iqaluit

Rebecca Williams, Private Citizen  
Igloolik

**CAMBRIDGE BAY**

Sharon Ehaloak, Chairperson  
Paula Ehaloak, Supervisor  
Kitikmeot Health and Social Services Board

Wilfred Wilcox, Mayor

Mary Rose Maksagak, Private Citizen

Agnes Allen, Hamlet of Kugluktuk

Helen Tologanak, Private Citizen

Allen Maksagak, Community Wellness

Pat File, Coordinator,  
Community Wellness

Jessie Lyall, Justice Committee

Joanne Apsimik, Community Wellness

Peggy Tologanak, Private Citizen

Harry Maksagak, Private Citizen

**FORT SIMPSON**

Cheryl Bonnetrouge, Sana?ah Nutrition Program

Normond Prevost, Mayor

Tom Wilson, Village Council

Wayne Williams, Private Citizen

Christina Holman, Private Citizen

Eric Menicoche, Liidli Koe First Nation

Elizabeth Hardisty, Private Citizen

Jonas Antoine, Liidli Koe First Nation

Sonny Lenoir, Liidli Koe First Nation

Bill Lafferty, Private Citizen

Christina Holman, Private Citizen

**INUVIK**

Dale Sharkey, Transition House

Andrew Fox, Private Citizen

Martina T'seleie, Private Citizen

**FORT SMITH**

Dennis Bevington, Mayor

Kathy O'Hare, Chairperson  
Sutherland House

**HAY RIVER**

Cathy Heron, Mackenzie Court Workers

Janice Mitchell, Health and Social Services



**HAY RIVER CONTINUED**

Cindy Coudron, Health and Social Services

Ben Greenfield, Hay River Seniors

Joanne Barnaby, Private Citizen

Sam Gargan, M.L.A.  
Deh Cho

Eliza Lawrence, Private Citizen

Sharon Ruttell, Private Citizen

**YELLOWKNIFE**

Vera Morin and Marsha Argue  
NWT Status of Women Council

Paul Conway, NWT Family Services

Pat McKeon, Community Mental Health  
Fort Good Hope

Olivia Rebeiro and Andrea Markowski  
Out North

Lorne Gushue, Private Citizen

Nadine Scott, NWT Nurses Association

Jane Hamilton, Private Citizen

Jane Bishop, NWT Medical Association

Linda Lawrence, Private Citizen

Arlene Hache, Yellowknife Women's Centre

Lucy Austin, Chairperson  
Elaine Keenan-Bengts, Family Law Section  
Olivia Rebeiro, Family Law Section  
Canadian Bar Association

Louise Delorme, Private Citizen

**YELLOWKNIFE CONTINUED**

Henry Zoe, Chairperson  
Dogrib Treaty 11 Community Services Board

Frank Hamilton, Private Citizen

**WRITTEN SUBMISSIONS**

Elaine Keenan Bengts, NWT Information and Privacy Commissioner

Bradley W. Enge, Barrister & Solicitor

Esther Braden, Chairperson  
NWT Seniors Advisory Council

Jackie Simpson, President  
Union of Northern Workers

John Fisher, Executive Director  
Equality for Gays and Lesbians Everywhere

Gary Black, Chairperson  
Yellowknife Education District No. 1

Raymond Bilodeau, President  
The Church of Jesus Christ of Latter-Day Saints

Angel McKay, Private Citizen

Rosa Wah-Shee, Private Citizen

Frank and Jane Hamilton, Private Citizens

Family Law Bill Petitioners

Norma Giovanetto, Private Citizen

Donald R. Giovanetto, MD, FRCSC, Private Citizen

Sharmala Buell, Private Citizen

Chloe Buell, Private Citizen

**WRITTEN SUBMISSIONS CONTINUED**

Bernice Westergreen, Private Citizen

Nell Vrolyk, President  
NWT Registered Nurses Association



