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Territories Legislative Assembly / ᓄᓇᑦᑦᑦᑦᑦ ᑕᑦᑕᑦᑦᑦᑦᑦ  
Standing Committee on Legislation  
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# 12th Assembly

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## Standing Committee on Legislation

### Report On Draft Bills Tabled During the Third Session

Silas Arngna'naaq, M.L.A.  
Chairperson





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18 November 1993

THE HONOURABLE MICHAEL A. BALLANTYNE, M.L.A.  
SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker,

Your Standing Committee on Legislation has the honour of presenting its Report on Draft Bills Tabled During the Third Session, and commends it to the House.

Silas Arngna'naaq, M.L.A.  
Chairperson



**Standing Committee on Legislation:**

*Terms of Reference:*

The Standing Committee on Legislation shall:

- a) examine such matters as may be referred to it by the Legislative Assembly;
- b) review all bills and legislative action papers referred to the committee;
- c) examine all orders, regulations or statutory instruments issued by the regulation-making authority;
- d) examine any other matter of a legislative nature as determined necessary by the Standing Committee; and
- e) establish its quorum to be five Members including the Chair.

**Members of the Standing Committee on Legislation**

Silas Arngna'naaq  
M.L.A., Kivallivik  
Chairperson

Brian Lewis  
M.L.A., Yellowknife Centre  
Deputy Chairperson

Sam Gargan  
M.L.A., Deh Cho

John Ningark  
M.L.A., Natilikmiot

Kenoayoak Pudlat  
M.L.A., Baffin South

Ludy Pudluk  
M.L.A., High Arctic

Tony Whitford  
M.L.A., Yellowknife South

**Alternate Members**

Fred Koe  
M.L.A., Inuvik

Jeannie Marie-Jewell  
M.L.A., Thebacha

Henry Zoe  
M.L.A., North Slave

**Staff Members**

Rhoda Perkison  
Committee Clerk

Darlene Jonsson  
Committee Researcher



## INTRODUCTION

The Standing Committee on Legislation, under the authority given to it by this House, has completed its review of Bills tabled in the Legislative Assembly during the Third Session.

The Standing Committee on Legislation has been established by the Twelfth Legislative Assembly to review all Bills and Legislative Action Papers referred to the Committee, and to examine orders, regulations and statutory instruments, any matters referred to it by the Legislative Assembly, and any other matter of a legislative nature as determined necessary by the Standing Committee.

During the Third Session of the Twelfth Legislative Assembly, seven draft Bills were tabled by the Government, and referred to the Standing Committee on Legislation for review by Formal Motion of the Assembly. A decision had been reached to prorogue the Third Session at the end of the April, 1993 sitting, in order to comply with the requirements of the federal *Northwest Territories Act*. There was a likelihood that any Bills introduced for First Reading late in the Session would have died on the Order Paper upon prorogation, as there was not sufficient time left for the Standing Committee on Legislation public review process.

The Standing Committee held public hearings to review the tabled draft Bills in Yellowknife, on May 26, 1993, and on September 28, 1993. The Standing Committee reviewed the following draft Bills tabled by the Honourable Stephen Kakfwi, Minister of Justice:

- TD 118-12(3), a proposed *Act to Amend the Partnership Act*, tabled March 24, 1993;
- TD 131-12(3), a proposed *Act to Amend the Maintenance Act*, tabled March 31, 1993;
- TD 132-12(3), a proposed *Act to Amend the Domestic Relations Act*, tabled March 31, 1993; and
- TD 142-12(3), a proposed *Personal Property Security Act*.

The Standing Committee also reviewed the following draft Bills tabled by the Honourable Titus Allooloo, Minister of Municipal and Community Affairs:

- TD 137-12(3), a proposed *Act to Amend the Cities, Towns and Villages Act*, tabled April 1, 1993;
- TD 138-12(3), a proposed *Act to Amend the Hamlets Act*, tabled April 1, 1993; and
- TD 139-12(3), a proposed *Act to Amend the Charter Communities Act*, tabled April 1, 1993.

The Standing Committee on Legislation would like to thank the Honourable Stephen Kakfwi and the Honourable Titus Allooloo and their Department officials, for presenting these draft Bills and responding to Committee Members' questions and concerns. The Standing Committee also wishes to extend its appreciation to all those members of the public who appeared as witnesses before the Committee or who forwarded written submissions respecting the tabled draft Bills. The Standing Committee has considered these comments carefully, and found them to be of great assistance during its deliberations.

#### **TD 118-12(3): AN ACT TO AMEND THE PARTNERSHIP ACT**

The *Partnership Act* sets out a scheme for regulating partnerships, defined as persons carrying on business in common for the purpose of profit. It applies to both general and limited partnerships. Limited partnerships are those with one or more limited partners as well as general partners. Limited partners have a more restricted liability with respect to the obligations of the partnership.

Under the *Partnership Act*, partnerships are required to file certain documents in the Document Registry established under the *Document Registries Act*. This draft Bill proposes to require that documents be filed instead in the Companies Registry under the *Companies Act*. This is more consistent with the commercial nature of the Companies Registry, and with the plans of the Department of Justice to replace the Document Registry with a Personal Property Security Registry under the proposed *Personal Property Security Act*.



The draft Bill would also reduce the time period in which declarations required under the *Act* must be filed, from six months, to sixty days. Fines for offences under the *Act* would be increased, and the duties and powers of the Registrar would be clarified. As well, this Bill would require partnerships or individuals who must file a declaration of partnership, to file a second declaration within sixty days of the dissolution of the partnership or of the individual ceasing to use the business name. It would be more clear that partnerships which are not required to file an original declaration are not required to file a declaration of dissolution.

Currently, the *Partnership Act* does not recognize limited partnerships registered outside of the Northwest Territories. This Bill would add a Part to regulate these partnerships and would require that they register in the Northwest Territories within thirty days of beginning to carry on business here.

The Standing Committee on Legislation were generally in support of the proposed Bill. However, the Minister of Justice has advised the Legislative Assembly that his Department has embarked upon a significant new program of commercial law reform. Committee Members expressed concern that the amendments proposed in the draft *Partnership Act* do not go far enough in addressing some fundamental deficiencies in the legislation. Members were advised that the Department would be turning its attention to a more substantial revision of the *Partnership Act* following the introduction of other commercial law initiatives.

**TD 131-12(3): AN ACT TO AMEND THE MAINTENANCE ACT, AND  
TD 132-12(3): AN ACT TO AMEND THE DOMESTIC RELATIONS ACT**

The *Maintenance Act* establishes the legal responsibility of certain family members to provide, to the extent they are able, adequate food, shelter, clothing, and medical aid for other family members who are unable to provide for themselves. Where a person is in need, an application may be made to court for an order that maintenance be paid by another family member.

The *Domestic Relations Act* sets out a scheme by which legally married spouses may obtain a judgment of judicial separation from a court, and by which one spouse may obtain an order for alimony (financial support) from the other spouse. The *Act* also governs the guardianship of children.

The proposed draft Bills raise two main issues:

1. *Common-law spousal support*

Currently, the *Maintenance Act* allows only legally married spouses to claim spousal support from their spouses. The draft Bill relating to the *Maintenance Act* proposes that the *Act* be amended so that a common-law spouse would be legally responsible to provide maintenance for his or her spouse if the other provisions of the *Act* respecting need and ability to pay apply. There would be a two year limitation period on applications for maintenance. Common-law spouses could also exempt themselves from support responsibilities by written agreement.

Members of the Standing Committee on Legislation were aware that a recommendation in favour of common-law spousal support liability had been made in both the Report of the Special Advisor on Gender Equality (the *Justice House*, tabled November 17, 1992) and in the Family Law Review Report (tabled October 2, 1992). Committee Members agreed with this concept. The Standing Committee was concerned, however, with the wording of Clause 3 of the draft Bill, which proposed to place a two year limitation period on applications for support. The Standing Committee felt that there was a potential for this clause to be interpreted to apply to applications for child support under the *Maintenance Act*, as well as to spousal support. Witnesses before the Standing Committee expressed the same concerns. In the view of the Standing Committee, such an interpretation would be clearly unacceptable. During the public hearings, the Standing Committee was assured by the Minister that the clause would be redrafted prior to a Bill being introduced in the House, in order to make it clear that the two year limitation on applications for maintenance would not apply to applications for child support.

2. *Non-monetary support payments*

Under both the *Maintenance Act* and the *Domestic Relations Act*, payments of support made to a spouse are characterized in terms of money. The draft Bills propose that both *Acts* be amended to allow a court to order that such payments be made in a non-monetary form, rather than, or in addition to money. Non-monetary payments could be made in the form of country food, firewood, or similar goods.

Members of the Standing Committee on Legislation recognize that there are many valid concerns with respect to the current state of family law in the Northwest Territories. A complete restructuring is overdue. Committee Members also support the concept that family law must be made more relevant to the lifestyle and traditions of aboriginal people. In creating a family law system that suits the needs of the people of the Northwest Territories, we will have to be creative. The Standing Committee also recognizes the value of country foods within the aboriginal lifestyle, to ensure an adequate diet, and to help maintain cultural values and traditions. However, these Bills raised several questions, which in the view of the Standing Committee must be addressed by the Department.

The Standing Committee questioned the Minister as to the implications that these Bills would have on the current maintenance enforcement system. The *Maintenance Enforcement Act* provides a scheme by which an order or written agreement for maintenance or support may be registered with the Maintenance Enforcement Office. Payments are then sent directly to the Office, and the Office is empowered to take various steps to collect defaulted payments. This system, which also exists in other Canadian jurisdictions, relieves the spouse to whom the maintenance is owed from pursuing the defaulting spouse for outstanding payments. However, the *Maintenance Enforcement Act* defines maintenance only in terms of money. At present, an order for non-monetary support would not fit within the maintenance enforcement system.

The Standing Committee is of the opinion that the proposed legislation must be designed to include non-monetary support orders or agreements within the maintenance enforcement system. Those who receive support in a non-monetary form should not receive less assistance from the government than those who receive financial support. Indeed, the lack of enforcement would be a significant factor both for spouses to consider when deciding whether to accept the option, and for courts to consider when making support orders.

The issue of enforcement was also of concern to several witnesses before the Committee. Suggestions were made that the enforcement of non-monetary support payments might be designed with community involvement, or coordinated through existing community resources, such as justice committees. The Standing Committee is of the opinion that there may be practical value in these suggestions, and that these should be explored further by the Minister.

Committee Members questioned the rationale for differing default provisions related to non-monetary support orders in the Bills. In the proposed amendment to the *Domestic Relations Act*, a provision was included allowing a court to order a monetary sum in default of the payment of non-monetary support. A similar clause was not included in the proposed amendment to the *Maintenance Act*. This is a very appropriate option for courts, and might also assist the design of a maintenance enforcement component to non-monetary support. The Standing Committee was advised that this was an oversight in the proposed *Maintenance Act* amendment, and would be added to the Bill prior to its introduction in the House.

The Standing Committee also questioned the Minister as to whether his Department had determined how non-monetary payments would be treated within the income tax system. Currently, the federal *Income Tax Act* allows a spouse who is paying support pursuant to a court order to deduct the amount of support paid from his or her taxable income. This factor is taken into account when the amount of support is determined. It is questionable whether the payment of non-monetary support would be deductible, as it would not relate directly to earned income. The Standing Committee was informed that in the Minister's view, such payments would not be included within the income tax system. However, this is not certain, and the issue should be clarified with Revenue Canada, to determine the federal government's position.

Members of the Standing Committee raised concerns with respect to the potential relationship of the proposed legislation with the restrictions in the *NWT Wildlife Act*, particularly for non-aboriginal people. The Minister advised that discussions were taking place with the Department of Renewable Resources to avoid any inconsistency between the two statutes.

In general, the Standing Committee on Legislation agreed with the concept of extending support obligations to common-law spouses, and with that of allowing support payments to be made in the form of country food. Some Members questioned whether it might be more appropriate to wait, and to include such provisions in a more extensive reform of family law for the Northwest Territories. Concerns were also raised with the general concept of attempting to fit aboriginal traditions within a non-aboriginal legal system. However, it was more widely felt that these initiatives should be pursued if possible.

Any Bills introduced by the Minister for First and Second Reading would again be referred to the Standing Committee on Legislation for review. Should this occur, the Standing Committee will address any outstanding issues from this review in the new Bills with the Minister.

**TD 137-12(3): AN ACT TO AMEND THE CITIES, TOWNS AND VILLAGES ACT;**  
**TD 138-12(3): AN ACT TO AMEND THE HAMLETS ACT; AND**  
**TD 130-12(3): AN ACT TO AMEND THE CHARTER COMMUNITIES ACT**

The *Cities, Towns and Villages Act*, *Hamlets Act* and *Charter Communities Act* outline the powers and procedures of municipal corporations established as cities, towns, hamlets, or charter communities under those statutes, as well as those of municipal councils.

These proposed draft Bills would amend the *Acts* to set out a land administration scheme to govern the disposal of land by municipalities. Before being entitled to sell or lease their land to others, municipalities would be required to pass a land administration by-law to provide guidelines for the disposition of land. The by-law would also include provisions for the management and use of the proceeds of disposition of land. Public notice of the by-law would be required, as well as the approval of the Minister. Committee Members were informed that this land administration scheme is proposed in preparation for the greater degree of land management control and responsibility which will be exercised by communities with the implementation of the Nunavut land claim, as well as Dene land claims.

These Bills would also clarify that these municipal corporations have the power to lease and to subdivide land, and to lease personal property. It would also specify when municipalities may dispose of personal property. As well, the Bills would allow municipalities to carry out a business to provide a service that may not necessarily be connected to a traditional municipal purpose, if the Minister agrees that it is in the public interest. Currently, such a business must be connected to municipal purposes.

Members of the Standing Committee on Legislation questioned the Minister extensively, particularly on the proposed land administration provisions. Members noted that general support was expressed for the scheme from the City of Yellowknife, although some time would be required to implement the new process. Members were generally satisfied that the proposed Bill was consistent with the provisions of the Nunavut agreement, and would provide an appropriate structure within which municipalities may manage and administer land.

#### **TD 142-12(3): A PERSONAL PROPERTY SECURITY ACT**

The proposed *Personal Property Security Act* would establish a new scheme of commercial law to regulate all transactions which create a security interest in personal property. This covers all situations where money is loaned or credit is given, and the lender or creditor acquires the right to seize personal property of the borrower or debtor if the loan or credit is not repaid. Personal property includes all assets other than land.

The proposed *Act* would regulate all levels of financing transactions of this kind, ranging from loans for the purchase of a snowmobile or car to large business transactions involving the financing of mining or oil drilling equipment.

The Bill would establish a single registry system, where lenders and creditors would register their security interests in the property, or collateral. People who are interested in buying goods, or in lending money on the security of certain goods as collateral, would be able to check the registry to determine whether other creditors have an interest in the property, before entering into an agreement. The Registry would eventually be computerized, and telephone searches would be available from communities outside Yellowknife.

The Bill would also set out a single set of rules covering situations of default, or nonpayment of the debt, and the seizure of the property pledged as collateral. In general, these rules would provide more protection to debtors than is provided under existing law.

Currently, there are several statutes and common law rules which cover agreements where personal property is pledged as collateral for a loan or for credit. Current *Acts* require that certain financing transactions be registered in the Document Registry maintained within the Department of Justice, in order for the creditor to maintain his or her common law rights against third parties. However, these rights may be quite different depending on the form of the agreement which is used. These statutes also do not provide any scheme to determine the rights and priorities of creditors. As well, the information may only be obtained through a manual search of several record books at the Registry.

The proposed *Personal Property Security Act* would repeal the current *Acts* which govern financing transactions. These are the *Document Registry Act*, the *Assignment of Book Debts Act*, the *Bills of Sale Act*, the *Conditional Sales Act*, and the *Corporation Securities Registration Act*. Other statutes would be amended to conform with the concepts and terms of the *Personal Property Security Act*. These are the *Change of Name Act*, the *Companies Act*, the *Condominium Act*, the *Consumer Protection Act*, the *Factors Act*, the *Garage Keepers' Lien Act*, the *Labour Standards Act*, the *Land Titles Act*, the *Matrimonial Property Act*, the *Sale of Goods Act*, the *Securities Act* and the *Warehouse Keepers' Lien Act*.

Personal property security legislation is in place in most Canadian jurisdictions. The proposed *Act* is based on a model which is either currently in place or has been proposed in British Columbia, Alberta, Saskatchewan, Manitoba and New Brunswick. Legislative uniformity in this area should simplify secured financing for business debtors with assets outside the Northwest Territories, and assist businesses to obtain financing from other jurisdictions.

To assist the Standing Committee in its review of the tabled Bill, the Committee retained the services of Professor Ron Cuming, from the College of Law at the University of Saskatchewan. Professor Cuming is the leading authority in Canadian personal property security legislation. With Professor Cuming's assistance, the Standing Committee raised several technical matters respecting the Bill that were of some concern. These included drafting questions, and issues such as the manner in which the proposed *Act* would be coordinated with the provisions of the *Consumer Protection Act*, and the inclusion of licences, such as taxi licences, as personal property. The Standing Committee was informed by the Minister and Department officials that there was agreement on substantially all of the issues raised.

The Standing Committee on Legislation will follow up on these issues should a Bill to enact the *Personal Property Security Act* be introduced in the House, and referred to the Standing Committee.

Standing Committee Members also questioned the Minister as to the extent to which information on the proposed Personal Property Security Registry would be available to the public. The Committee was advised that although information as to the collateral given would be available more quickly and conveniently, detailed information on the exact agreement between the parties would be available only from the secured party, to individuals identified within the *Act* as having a legitimate interest. Detailed information would thus be less easily obtained by the general public than is presently the case.

The Standing Committee was generally in support of the proposed Bill. However, the Committee wishes to make its views clear on one issue of concern. Generally, the sponsoring Minister ensures that both tabled Bills and Bills introduced for First Reading are translated into Inuktitut prior to their review by the Standing Committee on Legislation. However, the proposed *Personal Property Security Act* was not translated. A two page summary of the Bill in Inuktitut was provided by the Minister.

In the view of the Standing Committee, the information provided in Inuktitut was not adequate. The proposed *Act* is very long and complex, and a brief summary is not sufficient to convey the same level of information in Inuktitut as was available in English. The Committee addressed this issue with the Minister, and requested a summary of each section, or each group of sections dealing with same concept, in Inuktitut. This summary should be tabled in the House along with the introduction of a Bill to enact the *Personal Property Security Act*. In the opinion of the Standing Committee, the process in this instance was not acceptable. Full information must be provided to all Members if a thorough debate on all issues is to be possible.

The Standing Committee wishes to note as well, that although it feels that a summary of the Bill is sufficient for the time being, planning for division should begin now. Nunavut will require the translation of many technical and complex Bills and documents into Inuktitut. The process will be difficult and time consuming, and preparation should get underway.