



17th Legislative Assembly of the Northwest Territories

Standing Committee on Priorities and Planning

Report on the Review of
Bills 1, 2, 3 and Other Legislation
to Implement Devolution of
Lands and Resources Responsibility
to the GNWT

Chair: Ms. Wendy Bisaro

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RESPONSIBILITY TO THE GNWT**

TABLE OF CONTENTS

Introduction.....	1
The Review Process	2
Bill 1 – <i>Reindeer Act</i>	2
Bill 2 – <i>Archaeological Sites Act</i>	2
Bill 3 – Surface Rights Board Act	3
Other Bills Required to Implement Devolution.....	4
Bill 10 – <i>Northwest Territories Lands Act</i>	5
Bill 11 – <i>Petroleum Resources Act</i>	6
Recommendations	6

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INTRODUCTION

The Standing Committee on Priorities and Planning is pleased to report on its review of Bills 1, 2, and 3, and comment on other legislation required to implement the devolution of land and resources responsibility and associated revenue to the Government of the Northwest Territories and aboriginal governments.

Collectively, this legislation marks an historic step in the evolution of responsible government in the Northwest Territories, as set out in the *NWT Lands and Resources Devolution Agreement*. These bills either mirror existing federal legislation, or were required under the terms of that agreement. This suite of legislation includes:

- Bill 1, *Reindeer Act*;
- Bill 2, *Archaeological Sites Act*;
- Bill 3, *Surface Rights Board Act*;
- Bill 10, *Northwest Territories Lands Act*;
- Bill 11, *Petroleum Resources Act*;
- Bill 13, *Devolution Measures Act*;
- Bill 14, *Waters Act*;
- Bill 15, *Oil and Gas Operations Act*;
- Bill 16, *Northwest Territories Intergovernmental Agreement on Land and Resources Management Act*; and
- Bill 17, *Northwest Territories Intergovernmental Resource Revenue Sharing Act*

These bills represent a great deal of work by this government and its many partners. They are proposed as the cornerstone for NWT control and management of lands, waters and resources within its boundaries, and for ground-breaking partnerships with aboriginal governments. The health of these crucial partnerships will depend on the responsiveness of our government in adapting the federal management regime to meet the needs and aspirations of the people of the Northwest Territories, today and long into the future.

THE REVIEW PROCESS

The review of bills to implement devolution was somewhat unusual due to many constraints beyond the Committee's control, and in some cases, beyond our government's control. For example, Bill C-15, Canada's legislation to enable devolution, was not passed in the Senate until March 6, 2014, and at this writing, has still not received Royal Assent. Most of our own devolution-related bills were only introduced in the Legislative Assembly in the last few weeks. The process unfolding in our legislature is lightning fast by any reasonable measure.

Within these very challenging limits, Members have done their best to scrutinize the bills and seek public input to the greatest extent possible. A territory-wide call for public submissions was made on February 3, 2014, supported by a press release and media interviews, a prominent advertising campaign, and public service announcements. The feedback we have received will help guide our future work on devolution-related legislation, and we thank all who responded.

BILL 1 – REINDEER ACT

Bill 1 provides for a peace officer or wildlife officer to seize a reindeer, reindeer parts, vehicles or other articles that he or she believes have been involved in the killing or moving of reindeer, contrary to regulations. The bill sets out the legal process for the potential forfeit of these items to the GNWT, and sets penalties for infractions.

Bill 1 mirrors the *Reindeer Regulations* made under the federal *Northwest Territories Act*, which are to be replaced by this legislation.

Bill 1 received Second Reading in the Legislative Assembly on November 7, 2013 and was referred to the Standing Committee on Priorities and Planning for review. At a public hearing on March 5, 2014, Premier McLeod spoke to the bill and responded to questions prior to a clause-by-clause review. Bill 1 was then referred by motion to Committee of the Whole.

BILL 2 – ARCHEOLOGICAL SITES ACT

Bill 2 provides for a peace officer to seize any object that has been dealt with contrary to regulations respecting archaeological sites. The bill sets out the legal process for the potential forfeit of these items to the GNWT, and sets penalties for infractions of the *Act*.

This bill mirrors federal *Archaeological Sites Regulations* made pursuant to the current *Northwest Territories Act*.

Bill 2 received Second Reading in the Legislative Assembly on November 7, 2013 and was referred to the Standing Committee on Priorities and Planning for review. At a public hearing on March 5, 2014, Premier McLeod spoke to the bill and responded to questions prior to a clause-by-clause review. Bill 2 was then referred by motion to Committee of the Whole.

BILL 3 – SURFACE RIGHTS BOARD ACT

As stipulated by the *NWT Land and Resources Devolution Agreement*, Bill 3 mirrors the federal *Northwest Territories Surface Rights Board Act*, a relatively new law passed by Parliament in 2013. However, many sections are not yet in force, and a board has not been appointed.

The *Act* provides for a Surface Rights Board with authority to resolve disputes over terms and conditions of access to land and waters, chiefly for commercial purposes. This includes disputes over compensation for access.

The Board is to consist of five to nine members, resident in the NWT and appointed by the Minister, including at least one resident of each region where there are settled aboriginal land claims.

Bill 3 received Second Reading in the Legislative Assembly on November 7, 2013 and was referred to the Standing Committee on Priorities and Planning for review. In response to the Committee's calls for public input on devolution bills, Alternatives North provided specific and thoughtful comments on Bill 3, including the following suggestions:

- The Surface Rights Board should have the power to deny access if appropriate;
- The *Act* should not apply within municipal boundaries, and municipal governments should have the ability to prohibit mineral rights acquisition within their boundaries;
- An integrated resource management system, including environmental audits and land-use plans, should be completed before this legislation comes into force;
- The board should have the ability to require financial security to ensure compliance with its orders, and shift the burden of proof to the developer rather than the surface rights holder;
- The Board should have the ability to set its own procedures, including discretion to hear from other parties besides the developer and the rights holder; and

- The regime should not apply in regions lacking recognition or settlement of aboriginal claims.

These suggested changes are beyond the scope of mirror legislation as stipulated by the devolution agreement. However, these issues were raised by Committee members during a public hearing on Bill 3 held on March 5, 2014. During this hearing, Premier McLeod committed to further public review of devolution legislation as soon as it falls under the control of the Government of the Northwest Territories on April 1, 2014. The Committee recommends that these matters be considered during that review.

A public clause-by-clause review of Bill 3 was held in Yellowknife on March 5, 2014. A small amendment was made to the French version of the bill, with which the Premier concurred. The bill, as amended and reprinted, was then referred by motion for consideration in Committee of the Whole.

OTHER BILLS REQUIRED TO IMPLEMENT DEVOLUTION

It is unfortunate that most of the bills required to implement devolution – including the most complex and important legislation – could not be reviewed by the Standing Committee on Priorities and Planning due to time constraints. Among these bills are the *Northwest Territories Lands Act*, the *Waters Act*, two bills pertaining to oil and gas regulation, and two bills to implement GNWT agreements with aboriginal governments, related to land, water and resource management, and revenue sharing. The latter two bills are brand new (not mirrored federal legislation), stemming from obligations in the Devolution Agreement itself. First Reading only occurred on March 5, 2014.

This lack of scrutiny by the appropriate Standing Committee is a serious departure from the normal process, which provides for a detailed review and valuable advice from our constituents on proposed laws in the Northwest Territories. During this phase of legislative oversight, bills are often improved and amended, frequently with the agreement of the sponsoring Minister. This speaks to the value of Committee and public comment, and an additional layer of accountability to our citizens. Committee members deeply regret that time limits resulted in seven bills circumventing the normal review process in favour of direct referral to Committee of the Whole.

To partially mitigate this situation, some additional measures were taken by members of the Standing Committee on Priorities and Planning. Several members and Committee staff attended the federal Parliamentary Standing Committee on Aboriginal Affairs and Northern Development's Yellowknife hearing on Bill C-15 to hear the views of Northwest Territories residents and

organizations firsthand. These included many aboriginal governments, and numerous prominent non-governmental organizations.

These submissions made it abundantly clear that support for devolution is broad but not universal, particularly in regions where aboriginal land and self-government claims remain unresolved. Opposition to regulatory changes within the federal jurisdiction under the *Mackenzie Valley Resource Management Act* (MVRMA) is much stronger and more widespread. Representatives of major aboriginal governments in all five Dene claim regions are adamantly opposed to the regulatory changes, and several reported they are considering court action. The elimination of regional land and water boards by the federal government will likely result in pressure by aboriginal governments for increased input in management regimes within the GNWT's control, perhaps testing the latitude of the soon-to-be-established Intergovernmental Council on Land and Resources Management. This council, made up of the responsible minister and leaders of each aboriginal government party to the Devolution Agreement, is to coordinate the management of lands and waters across regions, and between public and land claim settlement lands.

The issues raised with the Standing Committee on Aboriginal Affairs and Northern Development were reinforced before the Senate Committee on Energy, the Environment and Natural Resources, which also reviewed Bill C-15, albeit without a hearing in the Northwest Territories.

In addition to monitoring public response to Bill C-15, the Standing Committee on Priorities and Planning sought public opinion on all devolution legislation in its call for input on February 3, 2014. This too was outside the norm, as seven of these bills were not technically before the Committee and then only available in un-mirrored form in the existing federal legislation. In light of such hurdles, it is a great credit to those who submitted feedback to the Committee that they were able to provide very useful comments. It is further evidence that it will be fruitful to review devolution legislation after April 1, 2014.

Such a review is supported by Alternatives North, which also provided specific comments. The Committee takes no position on these matters, pending a thorough review in the future. What follows is a summary of some of the key points made to the Committee by Alternatives North:

Bill 10 – *Northwest Territories Lands Act*

- Ensure that development is accompanied by closure and reclamation plans and financial security, as under the *Commissioner's Lands Act*;
- Leases of public lands should be on the public record and easily accessible;

- Longer-term, there should be one piece of legislation to administer all public lands to ensure a coordinated and effective system;
- Royalty rates and fees should be reviewed to ensure adequate return to the public; and
- Alternatives to the free entry system for mineral rights administration should be reviewed and considered.

Bill 11 – *Petroleum Resources Act*

- Public input should be sought with respect to determining which department should be the responsible regulator of petroleum resources;
- Oil and gas decisions should be taken out of the political realm and placed with an independent, transparent and accountable board, based on a co-management approach with aboriginal governments;
- There should be a clear requirement for financial security to cover all aspects of oil and gas operations in the NWT, particularly for accidents, malfunctions and spills;
- There should be a coordinated approach to closure and reclamation between oil and gas regulatory systems and the land and water regulatory systems, to ensure fairness for operators and protection for the public and the environment;
- Composition of the Environmental Studies Management Board should be reviewed to ensure greater representativeness and accountability; and
- Royalty rates and fees should be reviewed to ensure an adequate return to the public.

At minimum, the comments from Alternatives North illustrate that many important issues should be widely studied and discussed across the Northwest Territories once jurisdiction over these laws resides here.

RECOMMENDATIONS

Recommendation 1

The Standing Committee on Priorities and Planning recommends that the Premier initiate a broad and thorough public review of all devolution-related legislation as soon as it is within the jurisdiction of the Government of the Northwest Territories.