

# **17<sup>th</sup> Legislative Assembly of the Northwest Territories**

## **Standing Committee on Government Operations**

### **Report on Transition Matters**

Chair: Mr. Daryl Dolynny

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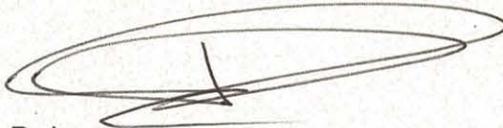
April Taylor  
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October 7, 2015

**SPEAKER OF THE LEGISLATIVE ASSEMBLY**

Mr. Speaker:

Your Standing Committee on Government Operations is pleased to provide its Report on Transition Matters and commends it to the House.



Daryl Dolynny  
Chairperson

## STANDING COMMITTEE ON GOVERNMENT OPERATIONS

### REPORT ON TRANSITION MATTERS

#### TABLE OF CONTENTS

INTRODUCTION.....	1
MANDATE OF THE STANDING COMMITTEE.....	1
REVIEW OF THE <i>OFFICIAL LANGUAGES ACT</i> .....	1
REVIEWS OF REPORTS OF THE AUDITOR GENERAL .....	2
REVIEW OF THE PUBLIC ACCOUNTS .....	3
CANADIAN COUNCIL OF PUBLIC ACCOUNTS COMMITTEES .....	3
REVIEWS OF REPORTS OF STATUTORY OFFICERS .....	4
Access to Information and Protection of Privacy Legislation for Community Government .....	5
Update to the <i>Access to Information and Protection of Privacy</i> ( <i>ATIPP</i> ) Act.....	5
Amendments to the <i>Human Rights Act</i> .....	5
ESTABLISHING AN OMBUDSMAN FOR THE NORTHWEST TERRITORIES ...	6
DEPARTMENTAL ISSUES .....	6
FINANCE.....	6
Legislative Initiatives .....	6
Implementation of the <i>Financial Administration Act</i> .....	7
Fiscal Responsibility Policy .....	7
Enterprise Risk Management Framework.....	7
Planning and Accountability Framework .....	8
Internal Audit Bureau .....	8
NWT Tax and Resource Royalty Regimes.....	9
ABORIGINAL AFFAIRS AND INTERGOVERNMENTAL RELATIONS.....	9
Timely Receipt of Quarterly Negotiations and Implementation Status Report.....	9
EXECUTIVE.....	9
Government Service Officers .....	9
NGO Stabilization Fund .....	10
HUMAN RESOURCES .....	10
Direct Appointments.....	10
Management of Vacant Positions .....	10
Safe Disclosure Legislative Proposal.....	11
Workforce Planning Strategy (Staff Retention and Regional Recruitment) ...	11
CONCLUSION .....	11

## **STANDING COMMITTEE ON GOVERNMENT OPERATIONS**

### **REPORT ON TRANSITION MATTERS**

#### **INTRODUCTION**

Over the course of the 17<sup>th</sup> Legislative Assembly, the Standing Committee on Government Operations (SCOGO or “the Committee”) has conducted a number of reviews, and issued nineteen reports containing a number of recommendations to the Government of the Northwest Territories (GNWT). In many instances, the GNWT has agreed with our recommendations and made commitments which it has not yet fulfilled. The intent of this report on transition matters is to advise members of the incoming Standing Committee on Government Operations of the 18<sup>th</sup> Legislative Assembly on the status of work in progress.

#### **MANDATE OF THE STANDING COMMITTEE**

The Standing Committee on Government Operations plays an important oversight role with respect to government operations. Its mandate includes the:

- Review of the departmental performance, budgets and multi-year business plans of the Departments of Aboriginal Affairs and Intergovernmental Relations, the Executive, Finance and Human Resources and their boards and agencies;
- Consideration of Bills sponsored by these departments;
- Statutory review of the *Official Languages Act*;
- Review of the annual and special reports of the statutory officers of the Legislative Assembly, including the Languages Commissioner, the Information and Privacy Commissioner, the Equal Pay Commissioner and the Human Rights Commission;
- Examination of the reports on the annual financial statements and public accounts of the GNWT and the reports of the Auditor General; and,
- Consideration of any other matter referred by the House.

#### **REVIEW OF THE *OFFICIAL LANGUAGES ACT***

The *Official Languages Act* requires the Committee to review the legislation at five-year intervals. In its report<sup>1</sup>, the Standing Committee found that Education,

Culture and Employment failed to respond fully to the findings of the 2009 review. The Committee also found that the department's model for the delivery of official languages programming and services differed from that recommended by the Standing Committee of the 16<sup>th</sup> Assembly, without adequate public explanation for its "new approach."

The Committee is particularly troubled by the fact that the department has, since 2006, been knowingly operating the Official Languages Board and the Aboriginal Languages Revitalization Board in contravention of its own legislation and has yet to revise its legislative proposal to remedy this.

The Committee is also concerned about the funding model for aboriginal language revitalization and how the department intends to ensure accountability for the funding provided to language communities.

The department's response to the Standing Committee's report on the 2014 review was tabled in the final Session of the 17<sup>th</sup> Assembly and was reviewed by the Committee. The incoming Committee is encouraged to monitor the Department's implementation of the Committee's recommendations and to ensure that the Department responds fully to the recommendations of the next review to take place towards the end of the 18<sup>th</sup> Assembly.

<sup>1</sup>SCOGO, *Report on the 2014 Review of the Official Languages Act*, CR 14-17(5), March 11, 2015.

## **REVIEWS OF REPORTS OF THE AUDITOR GENERAL**

The Office of the Auditor General of Canada (OAG) is the Auditor General for the Northwest Territories. The Committee reviewed the following reports of the Auditor General during the 17<sup>th</sup> Legislative Assembly:

- 2012 Status Report to the NWT Legislative Assembly (following up on recommendations made in previous audits)
- 2013 Report on Northwest Territories Income Security Programs: Department of Education, Culture and Employment
- 2014 Report on Child and Family Services: Department of Health and Social Services and Health and Social Services Authorities
- 2015 Report on Corrections in the Northwest Territories: Department of Justice

For each of these performance audits, the Committee tabled a report of its own. These reports<sup>2</sup> contain 69 recommendations to the relevant government

departments. Progress on the recommendations is being monitored by the Standing Committee on Social Programs (SCOSP), whose mandate includes oversight of the Departments of Justice, Education, Culture and Employment and Health and Social Services. The incoming SCOSP is encouraged, in particular, to watch for the implementation of a renewed strategic approach by the Department of Justice, referenced in their *Corrections Action Plan* and their Response to recommendation 6 of the *Committee's Report on the Review of the OAG's Report on Corrections*.

The departments tabled their responses to the Committee reports in the fall Session of each year following the presentation of the Auditor General's report.

The OAG advises that, effective in 2016, performance audits to the Legislative Assembly will be tabled in the fall instead of spring. The next performance audit will, therefore, be tabled in the fall of 2016.

<sup>2</sup>SCOGO, *Report on the Review of the 2015 Report of the Auditor General of Canada on Corrections in the Northwest Territories*, CR 9-17(5), June 4, 2015;  
SCOGO, *Report on the Review of the 2014 Report of the Auditor General of Canada on Northwest Territories Child and Family Services*, CR 6-17(5), May 29, 2014;  
SCOGO, *Report on the Review of the Report of the Auditor General of Canada on the 2013 Northwest Territories Income Security Programs*, CR 5-17(4), June 6, 2013;  
SCOGO, *Report on the Review of the Status Report of the Auditor General of Canada to the Northwest Territories Legislative Assembly*, CR 4-17(3), June 14, 2012.

## REVIEW OF THE PUBLIC ACCOUNTS

The Auditor General performs an annual financial audit of the public accounts of the GNWT. This year, the Committee completed its third annual review of the public accounts.<sup>3</sup> Over the three-year period that this Committee has undertaken reviews, Finance has made progress in completing the public accounts in a timely manner.

The Committee encourages its successor committee to continue to conduct this annual review, which is an important mechanism for monitoring government accountability, and to ensure compliance with current recommendations.

<sup>3</sup>SCOGO, *Report on the Review of the 2013-2014 Public Accounts*, CR 6-17(5), June 2, 2015.

## CANADIAN COUNCIL OF PUBLIC ACCOUNTS COMMITTEES

SCOGO participates in the Canadian Council of Public Accounts Committees (CCPAC). Members have found the annual conference held by the CCPAC to be very informative. The Committee encourages members of its successor committee to take advantage of this networking and learning opportunity.

The Standing Committee also notes that the Northwest Territories has been selected as host for the 37<sup>th</sup> Annual CCPAC Conference, to be held in Yellowknife August 21-23, 2016. This is only the second time in the history of the conference that the event has been held in the Northwest Territories. The Committee is confident that its successor committee will ensure that visiting Public Accounts Committees from other Canadian and international jurisdictions have an informative and memorable visit.

## **REVIEWS OF REPORTS OF STATUTORY OFFICERS**

The Legislative Assembly's statutory officers include the: Languages Commissioner, Information and Privacy Commissioner, Equal Pay Commissioner and Human Rights Commission.

In reviewing the annual reports of the Human Rights Commission<sup>4</sup> and the Information and Privacy Commissioner<sup>5</sup>, the Committee made a number of recommendations and continues to monitor progress on the issues identified.

Vacancies in the office of Languages Commissioner have resulted in the Committee's inability to complete thorough reviews of the Languages Commissioner's annual reports for the last three fiscal years. The Standing Committee is confident that with the appointment of a new Languages Commissioner, routine reviews of that office's annual reports will resume during the 18<sup>th</sup> Assembly.

With respect to the Legislative Assembly's statutory officers, the Committee wishes to bring the following related matters to the attention of its successor committee:

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<sup>4</sup>SCOGO, *Report on the Review of the 2012-2013 Northwest Territories Human Rights Commission Annual Report*, CR 5-17(5), March 13, 2014;  
SCOGO, *Report on the Review of the 2011-2012 Northwest Territories Human Rights Commission Annual Report*, CR 1-17(4), March 7, 2013;  
SCOGO, *Report on the Review of the 2010-2011 Northwest Territories Human Rights Commission Annual Report*, CR 2-17(3) May 31, 2012.

<sup>5</sup>SCOGO, *Report on the Review of the 2013-2014 Annual Report of the Information and Privacy Commissioner of the Northwest Territories*, CR 10-17(5) February 12, 2015;  
SCOGO, *Report on the Review of the 2012-2013 Annual Report of the Information and Privacy Commissioner of the Northwest Territories*, 9-17(5), June 5, 2014;  
SCOGO, *Report on the Review of the 2011-2012 Annual Report of the Information and Privacy Commissioner of the Northwest Territories*, CR 3-17(5), June 3, 2013.

### **Access to Information and Protection of Privacy (ATIPP) Legislation for Community Governments**

With the exception of one year, the Information and Privacy Commissioner has, since 1997-1998, annually called for legislation to be passed or amended so that municipal governments are bound by access and privacy requirements similar to those binding the GNWT. This Committee supports this recommendation, as did our predecessor committees in the 15<sup>th</sup> and 16<sup>th</sup> Legislative Assemblies. As well, the NWT Association of Communities expressed support for this initiative in a resolution passed in 2012, encouraging the Government to commence consultations.

In May 2015, the GNWT provided the Committee with a "What we Heard" Report, summarizing the consultations. The GNWT has committed that the "final report will be completed in the fall of 2015 as a transitional issue for the consideration of the 18th Assembly".

The Standing Committee strongly encourages its successor committee to follow-up on this long-standing issue.

### **Update to the *Access to Information and Protection of Privacy (ATIPP) Act***

Next year will be the 20<sup>th</sup> anniversary of the *ATIPP Act*. It has long been a matter of concern for the Committee and the Information and Privacy Commissioner that this Act is outdated and requires modernization.

The Committee is pleased that a review of the *Act* will be completed in 2015-2016, according to the Department of Justice's business plan. The Committee encourages the GNWT to include a triggering provision requiring a mandatory statutory review, to ensure that the *Act* is kept current in future years.

The Committee encourages its successor committee to carefully monitor the department's progress on this important initiative.

### **Amendments to the *Human Rights Act***

The NWT Human Rights Commission, established under the *Human Rights Act*, celebrated its tenth anniversary in 2014. The Commission has conducted a comprehensive review of the *Act* and will submit its recommendations early in the life of the 18<sup>th</sup> Assembly.

The Committee stresses the importance of monitoring this work to its successor committee.

## **ESTABLISHING AN OMBUDSMAN FOR THE NORTHWEST TERRITORIES**

Establishing an office of the ombudsman for the Northwest Territories has been intermittently under discussion since the 12<sup>th</sup> Legislative Assembly. Most recently, three motions<sup>6</sup> passed during the 17<sup>th</sup> Assembly have punctuated the dialogue. The first called on the GNWT to bring forward legislation establishing an ombudsman for the NWT. In response, the GNWT argued that the various appeal processes provided for in NWT legislation reduce the need for an ombudsman.

This prompted a second motion referring the matter to SCOGO for further research and analysis. In June 2014, the Committee tabled its report<sup>7</sup>, which found that the complexity of the appeal processes in NWT legislation make it difficult for members of the public to understand their rights and that an ombudsman provides a single point of contact for people who have difficulty dealing with the GNWT.

A final motion again called for legislation establishing an NWT ombudsman. The GNWT's response was tabled in February 2015, concluding that the matter would be referred for consideration by the 18<sup>th</sup> Assembly.

The Committee recommends that incoming SCOGO members urge their Caucus colleagues to set the creation of an ombudsman's office as a priority for the 18<sup>th</sup> Assembly.

<sup>6</sup>Motion 9-17(3), carried June 8, 2012; Motion 12-17(4); carried March 14, 2013; Motion 31-17(5), November 6, 2014.

<sup>7</sup>SCOGO, *Establishing an Office of the Ombudsman for the Northwest Territories*, TD 103-17(5), June 4, 2014.

## **DEPARTMENTAL ISSUES**

### **FINANCE**

#### **Legislative Initiatives**

The Department of Finance has an ambitious legislative agenda. The Department has advised the Committee that it will be bringing forward legislative proposals for establishing a *Public Private Partnerships (P3) Corporation Act* and for amending the *Tobacco Tax Act*, the *Petroleum Products Tax Act*, and existing Chartered Professional Accountant (CPA) legislation. The Department will also propose amendments to liquor regulations to allow for direct sales from a manufacturing facility.

The incoming Committee is encouraged to watch for these proposals.

### **Implementation of the *Financial Administration Act***

A new *Financial Administration Act* was given assent on June 4, 2015 and comes into force on April 1, 2016. One of the key thrusts of this legislation is a movement away from the requirement for the GNWT to seek Legislative Assembly approval for expenditure decisions that have already been made, in favour of increased reporting requirements. The Committee's report<sup>8</sup> provides a discussion of the key changes to the *Act*.

The incoming Committee is encouraged to monitor compliance with the new *Financial Administration Act*, particularly with respect to ensuring that government is meeting its new reporting requirements.

<sup>8</sup>SCOGO, *Report on the Review of Bill 37*, CR 15-17(5), June 1, 2015.

### **Fiscal Responsibility Policy**

The GNWT introduced the Fiscal Responsibility Policy during the 16<sup>th</sup> Assembly. This policy is composed of the 1400 Section of the Financial Administration Manual and contains key rules that bind the Government's borrowing. Despite the significance of the policy and the GNWT's commitment to it, the policy was never formally approved by the Commissioner in Executive Council or signed by the Premier.

During its review of Bill 37: *Financial Administration Act*, the Minister clarified for the Standing Committee Finance's interpretation that Section 13(2)(d) of the new *Act* requires the Minister to bring forward the Fiscal Responsibility Policy for formal approval before the April 1, 2016, coming-into-force date. In addition, the Minister concurred with an amendment to Bill 37 to ensure that the Legislative Assembly or one of its Standing Committees is consulted before the Financial Management Board (FMB) approves or amends the Fiscal Responsibility Policy.

The incoming committee should expect to review the *new Fiscal Responsibility Policy* very early in its term.

### **Enterprise Risk Management Framework**

The Committee is pleased that the Department is responsive to the observation made by the OAG that the lack of a comprehensive risk management framework was an issue for the GNWT. However, the Committee is concerned about the lack of transparency with respect to the work the Government is doing in this area. The Committee has not been provided a copy of the framework document, if one exists, and the department has declined to share copies of the departmental risk assessment profiles when they are completed.

The Committee feels that some of the confusion surrounding this work could be addressed by determining with the Department of Finance what role, if any, the Standing Committee has in this work and what some of the public deliverables are with respect to enterprise risk management. Enterprise risk management is both a process and a series of outputs. The Standing Committee must have access to outputs, and the information they contain, if it is to have any meaningful oversight role with respect to the process.

The incoming Committee is strongly encouraged to explore this further with the Department.

### **Planning and Accountability Framework**

The new *Financial Administration Act* is intended to increase fiscal accountability by giving the FMB authority to establish a framework for planning by and accountability of government and public agencies. The *Act* requires that the Planning and Accountability Framework be tabled in the Legislative Assembly at the earliest opportunity after being established and after any amendments.

The *Act* ensures that the Legislative Assembly or one of its Standing Committees is consulted before the FMB approves or amends the Planning and Accountability Framework, therefore, the incoming Committee should expect to review this document.

### **Internal Audit Bureau**

The Standing Committee is concerned with the lack of transparency and public accountability with respect to the Internal Audit Bureau (IAB). In its Report on the Review of the 2013-14 Public Accounts<sup>3</sup>, the Committee recommended that, "in the interests of transparency and accountability, the Department of Finance share the findings and recommendations of the Internal Audit Bureau with the Committee in confidence, particularly where the Government of the Northwest Territories relies on those findings and recommendations as substantiation for actions taken".

The Department replied that the "Internal Audit Bureau provides independent assurance and advice to senior officials within the GNWT, whereas the OAG performs the same role for GNWT elected representatives to the Legislative Assembly. Therefore, disclosure to the Committee of IAB findings and recommendations related to a particular audit would only be appropriate if it formed an integral part of a Department's response on a particular question that Committee had related to the Public Accounts."

The Committee is dissatisfied with this response, as it fails to take into account the Standing Committee' oversight role. The Committee feels strongly that there

should be full disclosure and encourages the incoming Committee to seek it from the next Government.

<sup>9</sup> TD 282-17(5): Government of the Northwest Territories Response to Committee Report CR16-17(5) on the Review of the 2013-2014 Public Accounts

### **NWT Tax and Resource Royalty Regimes**

The Standing Committee has repeatedly challenged the Department to find ways to increase the NWT's own-source revenues. Some of the suggestions made by the Committee include maximizing self-reporting taxes, adding an upper bracket to the NWT's tax regime and making innovative changes to the resource royalty regime.

The Committee urges its successor Committee to continue to press the department to find ways to generate additional revenues for the GNWT.

## **ABORIGINAL AFFAIRS AND INTERGOVERNMENTAL RELATIONS**

### **Timely Receipt of Quarterly Negotiations and Implementation Status Report**

These confidential reports provide the Committee with useful information for understanding the status of the Department's work with respect to the negotiation of land, resources and self-government agreements. Although these reports are quarterly, the Committee has received fewer than four reports in the last four years and the most recent report was received late.

The incoming Committee is encouraged to pursue the timely submission of these reports from the Department.

## **EXECUTIVE**

### **Government Service Officers**

In its review of the Department's 2015-2016 Business Plan, the Committee acknowledged the positive public response to the Department's flagship program placing 18 Government Services Officers (GSOs) in smaller communities. The Committee urged the Department to take the necessary steps to create at least one or two more GSO positions in 2015-2016 and to confirm the overall rollout plan for this initiative, which would see a GSO in each of the 23 small communities.

The Committee hopes that its successor committee will continue to pressure the Government for full implementation of this program in all small communities.

## **NGO Stabilization Fund**

In May 2013, SCOGO issued a news release calling on the GNWT to increase the funding to the \$350,000 Non-Governmental Organization (NGO) Stabilization Fund. The Committee was concerned that the total funding available to NGOs had not increased since the program's first full year of operation in 2010-2011. The Committee was also concerned about the need to provide clearer information to applicants, overly-restrictive screening criteria, prioritization of projects and the transfer of fund administration from the Department of Executive to the Department of Municipal and Community Affairs.

Oversight of the NGO Stabilization Fund now falls to the Standing Committee on Economic Development and Infrastructure (SCEDI). The Committee encourages the incoming Members of SCEDI in the 18<sup>th</sup> Assembly to continue to monitor the disposition of this fund.

## **HUMAN RESOURCES**

### **Direct Appointments**

In the 2013 calendar year, 6.4%<sup>9</sup> of the GNWT's employees were directly appointed to their positions in the public service. In its review of the 2015-2016 Business Plans, the Standing Committee expressed concern that this tool is being used too liberally by government.

Whenever a direct appointment takes place, potential applicants for that job are deprived of a fair competition for the job. The Committee called upon the Minister to work with his Cabinet colleagues to review and strengthen the guidelines governing the use of direct appointments and to require stronger reasons for their use.

The Department's response indicated that Cabinet supports and will continue to use direct appointments to the GNWT public service. The Committee is disappointed by this response and urges the incoming Committee to follow up with the GNWT to minimize the use of direct appointments wherever possible.

<sup>9</sup>Hansard, February 19, 2014.

### **Management of Vacant Positions**

The Standing Committee is also concerned with the management practice of accessing unspent funds from vacant positions to use in other ways. The Committee worries that this provides a disincentive to managers to keep positions fully staffed and has the potential to enable the use of funds for expenditures for which they were not appropriated.

The Committee has called on the Department of Human Resources to demonstrate leadership in this area, to reduce and eliminate the practice of artificially maintaining vacancies as a means for increasing funding flexibility. The Committee recommends that its successor committee be vigilant in monitoring this issue.

### **Safe Disclosure Legislative Proposal**

The Standing Committee was expecting a legislative proposal from the Department to develop safe disclosure (whistleblower) legislation to protect those who come forward with information regarding government impropriety or illegal activities. The Committee was displeased with the Department's decision to suspend work on this initiative pending the results of SCOGO's work on establishing an ombudsman.

In the absence of any discussion between the Committee and the Department on the relationship between these two initiatives, the Committee views this delay as unfortunate. The establishment of an NWT Ombudsman might enhance the implementation of safe disclosure legislation by providing a system for independent investigation of questionable government activities, but it does not replace the statutory protection that would be provided to whistleblowers under appropriate legislation.

The Committee sees no valid reason to delay this work and encourages its successor committee to ensure that this initiative is back on track.

### **Workforce Planning Strategy (Staff Retention and Regional Recruitment)**

During the 2015-2016 business plan review, the Committee noted that six of the eight key sub-strategies in the Workforce Planning Strategy are directly related to matters of recruitment. The Committee is also concerned that the Department has not done enough work in the area of succession planning. The Committee has urged the Department to increase its focus on retention activities as a means for stabilizing the NWT workforce.

The Committee encourages its successor committee to continue to pay close attention to the Department's efforts to recruit and retain a qualified and stable NWT workforce.

## **CONCLUSION**

This concludes the Standing Committee on Government Operations Report on Transition Matters. Members respectfully suggest that our successor committee

consider requesting updates on the above matters from Committee staff and Government, and wish them the utmost success in fulfilling their mandate.