



18th Legislative Assembly of the Northwest Territories

Standing Committee on Social Development

Report on the Review of
Bill 48: *Post-Secondary Education Act*

Chair: Mr. Shane Thompson

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SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Development is pleased to provide its Report on the Review of Bill 48: *Post-Secondary Education Act*.

Shane Thompson
Chair, Standing Committee on
Social Development

**STANDING COMMITTEE ON
SOCIAL DEVELOPMENT**

**REPORT ON THE REVIEW OF
BILL 48: *POST-SECONDARY EDUCATION ACT***

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

REPORT ON THE REVIEW OF BILL 48: *POST-SECONDARY EDUCATION ACT*

INTRODUCTION

Bill 48: *Post-Secondary Education Act*, sponsored by the Department of Education, Culture and Employment (ECE), received Second Reading in the Legislative Assembly on March 14, 2019 and was referred to the Standing Committee on Social Development (Committee) for review, the results of which are reported below.

BACKGROUND

Bill 48 proposes to create a structure for recognizing post-secondary institutions within the Northwest Territories (NWT).

In summary, Bill 48:

- prohibits the establishment or operation of a university without the consent of the Minister and an Act of the Legislative Assembly;
- prohibits the granting of a degree or the offering of any degree program without the authorization of the Minister;
- allows a college to be recognized under the Act if its establishment or operation has the consent of the Minister and is authorized by an Act of the Legislative Assembly;
- provides, with exceptions, that before a consent or authorization can be given for any of the above the Minister must have received a recommendation from a post-secondary education advisory committee or a quality assurance body;
- provides for the recognition and regulation of private training institutions and vocational training programs, including the issuance of certificates of registration and providing for the appointment of a Director of Private Vocational Training;
- requires reporting by public post-secondary institutions that receive regular and ongoing funding from the Government of the Northwest Territories (GNWT) and by other institutions, including those that receive grants or contributions;

- requires public institutions to seek Ministerial approval of tuition fees, regularly evaluate programs, prepare a mandate statement as well as strategic and corporate plans, and prepare and submit annual operating and capital budgets; and
- contains provisions with respect to information sharing, enforcement, and offences and penalties.

The term “consent” in Bill 48 refers to agreement from the Minister in response to a request from an applicant that the entity may move to the next step of being established as a post-secondary institution, specifically a college or university. On receiving the Minister’s consent, an entity may then seek “authorization” for its establishment as a college or university in the form of legislation passed by the Legislative Assembly setting out the details of the particular institution. In the case of other institutions, such as an out-of-territory university, authorization would be required from the Minister rather than the Legislative Assembly.

WHAT WE HEARD & WHAT WE DID

Public Review of Bill 48

To commence our review, Committee sent letters inviting input on Bill 48 to an extensive list of stakeholders, including community governments, Indigenous organizations and educational entities in the NWT.

Between May 13 and May 17, 2019, Committee traveled to the communities of Fort Smith, Hay River, Fort Providence, Behchokò, Inuvik and Tuktoyaktuk to hold public hearings on Bill 48, followed by a public hearing in Yellowknife on May 23, 2019.

In addition to these meetings, Committee received three written submissions. Copies of these submissions are attached in Appendix B.

Post-Secondary Institutions

Subsection 1(1) of Bill 48 defines such terms as “post-secondary institution,” “public post-secondary institution,” “private college,” “private training institution” and “public college” but not others like “university,” “college” and “private university.” It became apparent to Committee during the public hearings on Bill 48 that the Bill is unclear about

what kind of entity might qualify for each type of post-secondary institution, particularly a university, college or Indigenous institution.¹

While Committee agrees the distinction between the various institution types possibly could be clearer in Bill 48, we have determined that it would be difficult to incorporate definitions for terms like “university” and “college” without being unintentionally limiting. There is more than one kind of institution-type in some cases, a university-college that grants both diplomas and degrees being one example. We believe this necessitates some flexibility in the meaning of such terms. Further, we understand that if definitions for these terms were incorporated problems may arise with respect to other institutions that are not established under the Act and to which the Act is not intended to apply.

Further, Bill 48 allows the Minister to make regulations setting out the prescribed circumstances and prescribed criteria an entity must meet to be eligible for status (e.g. ss. 66(g) and (l) and ss. 67(a)). Colleges and universities would be established under specific legislation following an in-depth application process. In the meantime, Committee understands the Department can assist entities in assessing their ability to meet the requirements of the quality assurance process, and we encourage the Department to involve stakeholders in the development of the regulations.

Recommendation 1

The Standing Committee on Social Development recommends that the Department of Education, Culture and Employment consult stakeholders in the development of the eligibility requirements by which applications for status as a post-secondary institution will be measured.

In order to address a specific concern raised by Collège nordique francophone that Bill 48 does not anticipate partnership models like the one Collège Nordique intends to pursue,² the Minister collaborated with Committee to develop Motion 7, set out in Appendix A. This motion seeks to expand the definition in section 27 for “program of instruction” to capture a course or series of courses that results in a certificate, diploma “or degree” from a private training institution “or from another institution in partnership with the private training institution.”

¹ E.g. Town of Fort Smith and Richard Daitch, Public Hearing on Bill 48, Fort Smith (May 13, 2019).

² Collège nordique francophone, Public Hearing on Bill 48, Yellowknife (May 23, 2019); Submission of Collège nordique francophone (June 28, 2019).

Under section 9 of the Bill, the Minister may, on the application of a post-secondary institution and in accordance with regulations, recognize an institution as an “Indigenous institution,” defined under subsection 1(1) as “a post-secondary institution recognized as an Indigenous institution under section 9.” Bill 48 contains less detail in relation to Indigenous institutions than it does for other post-secondary institutions, and Committee heard concern about the lack of clarity about the meaning of the term “Indigenous institution” and the processes and status associated with qualifying as an Indigenous institution.

A representative of the Gwich’in Tribal Council told Committee they would like to see more structure and details on Indigenous institutions set out in Bill 48. Specifically, the Gwich’in Tribal Council recommended the inclusion of a set of aspirational principles resembling those in Ontario’s *Indigenous Institutes Act, 2017* to guide the eventual development of regulations respecting the recognition of Indigenous institutions under paragraph (a) of section 67.³ The Executive Director of Dechinta Centre for Research and Learning agreed that section 9 is skeletal and appears to be a placeholder.⁴ She went on to say that consultation with Indigenous leaders, students, governments and organizations will be necessary in the development of regulations establishing the process and criteria for qualifying as an Indigenous institution.⁵

Committee has been informed that these regulations will be developed following extensive engagement with Indigenous governments and organizations. We encourage the Department to be as inclusive as possible in this engagement process, in light of the recommendations we heard from stakeholders.

Recommendation 2

The Standing Committee on Social Development recommends that the Department of Education, Culture and Employment target a comprehensive group of interested stakeholders in the development of regulations concerning the recognition of Indigenous institutions.

Section 3 of the Bill requires the Minister to facilitate the development of a post-secondary education system in the NWT that, among other things, promotes excellence, is accessible and affordable, and respects academic freedom. To guide the Minister’s work and the development of regulations pertaining to the recognition of

³ Gwich’in Tribal Council, Public Hearing on Bill 48, Inuvik (May 16, 2019).

⁴ Dechinta Centre for Research and Learning, Public Hearing on Bill 48, Yellowknife (May 23, 2019).

⁵ Dechinta Centre for Research and Learning, Public Hearing on Bill 48, Yellowknife (May 23, 2019).

Indigenous institutions, Committee collaborated with the Minister to develop Motion 2, set out in Appendix A. This motion expands the principles guiding the work of the Minister under section 3 to include respect for the unique values, history and cultures of the people of the NWT.

In addition, we proposed Motion 6, set out in Appendix A, to clarify that only those entities that have received recognition as some other form of post-secondary institution, such as a college, may seek recognition as an Indigenous institution.

Advisory Committees and Quality Assurance Bodies

Subsection 7(1) of Bill 48 authorizes the Minister to, in accordance with regulations, establish a “post-secondary education advisory committee.” The duties of an advisory committee include reviewing matters referred to it by the Minister, including the review of and the making of recommendations on applications for recognition as a post-secondary institution, and advising the Minister at his or her request on any matter respecting the administration of post-secondary education in the NWT. Subsection 7(2) requires the Minister to appoint a chairperson, a vice-chairperson and one to five other persons to serve on a committee. Section 8 also authorizes the Minister to, in accordance with regulations, designate a “quality assurance body” to review matters referred to it by the Minister.

Committee determined that Bill 48 was unclear about the role of the advisory committees in the quality assurance process, as was the distinction between the work of an advisory committee and that of a quality assurance body. To clarify the role of advisory committees in the quality assurance process, Committee worked with the Minister to develop Motion 3, set out in Appendix A. As appropriate, the Department will use “homegrown” advisory committees, including for applications for recognition as an Indigenous institution, and in other instances may draw on the expertise of quality assurance bodies established elsewhere.

Committee heard a general concern expressed by some presenters about the degree of power and discretion the Minister has under Bill 48 and a desire for assurances that the quality assurance processes will be proper and independent.⁶ Given that conflict can arise between post-secondary institutions and governments, such as in the context of debates about principles of academic freedom, Committee agrees that the advisory committees should have a measure of independence so that they may review and advise the Minister on matters without fear of consequence. To that end, we are

⁶ E.g. Jessica Cox, Public Hearing on Bill 48, Fort Smith (May 13, 2019); N. Kabiri and Ray Levesque, Public Hearing on Bill 48, Hay River (May 14, 2019); City of Yellowknife, Public Hearing on Bill 48, Yellowknife (May 23, 2019); Submission of N. Kabiri (June 28, 2019).

satisfied with the specification of membership details in regulations as anticipated in paragraph (e) of section 66.

Committee identified an issue, however, with the limit placed on the number of members of an advisory committee to no more than seven individuals under subsection 7(2). Committee believes that broader representation than that permitted under subsection 7(2) may be needed in some cases, such as where regional perspectives may be beneficial. As such, Committee and the Minister collaborated on Motion 4, set out in Appendix A, to remove this cap on membership.

Ministerial Discretion

A common theme among the concerns heard by Committee was the degree and vastness of the Minister's power and discretion under Bill 48. Presenters indicated the Minister should have clear guidance and parameters to ensure the Minister exercises his or her discretion appropriately, and that post-secondary institutions should run at arm's length from the GNWT.⁷

More specifically, a few presenters expressed concern about the Bill's stipulation in several instances that a decision of the Minister is final (e.g. ss. 11(7), ss. 12(4), s. 18, s. 22, ss. 25(7), s. 32), regardless of the fairness or justness of a decision.⁸ This was indicated as a concern in cases where an advisory committee or quality assurance body makes a positive recommendation to the Minister with respect to an application for establishment as, for example, a university under section 11, but the Minister rejects the application regardless.⁹

Presenters offered some suggestions aimed at ensuring there are fair processes around decision-making, such as requiring the Minister to give written reasons for his or her decisions,¹⁰ setting time limits for the Minister's decisions,¹¹ and providing for appeals of the Minister's decisions to the courts.¹²

⁷ E.g. City of Yellowknife, Public Hearing on Bill 48, Yellowknife (May 23, 2019); Gwich'in Tribal Council, Public Hearing on Bill 48, Inuvik (May 16, 2019); Valentina deKrom, Public Hearing on Bill 48, Fort Smith (May 13, 2019); Submission of N. Kabiri (June 28, 2019).

⁸ Jessica Cox, Public Hearing on Bill 48, Fort Smith (May 13, 2019); N. Kabiri and Ray Levesque, Public Hearing on Bill 48, Hay River (May 14, 2019); City of Yellowknife, Public Hearing on Bill 48, Yellowknife (May 23, 2019); Submission of N. Kabiri (June 28, 2019).

⁹ N. Kabiri, Public Hearing on Bill 48, Hay River (May 14, 2019); Submission of N. Kabiri (June 28, 2019).

¹⁰ N. Kabiri and Member for Hay River North, Public Hearing on Bill 48, Hay River (May 14, 2019); Submission of N. Kabiri (June 28, 2019).

¹¹ Submission of N. Kabiri (June 28, 2019).

¹² Ray Levesque, Public Hearing on Bill 48, Hay River (May 14, 2019).

Committee agrees that decision-making should be fair and transparent and that there should be clear recourse for entities seeking status as a post-secondary institution. For these reasons, Committee recommends that regulations be developed to address various procedural matters for ensuring fair decision-making, such as notice requirements, the right to be heard and timeframes, and that they require that the Minister provide written reasons for his or her decisions.

Recommendation 3

The Standing Committee on Social Development recommends that the Department of Education, Culture and Employment develop regulations containing a requirement that the Minister provide reasons, in writing, for his or her decisions under the Act.

Privacy

The Information and Privacy Commissioner advised Committee that the rights of individuals to privacy are set aside in several instances in Bill 48 without justification. Committee sought clarification and worked with the Department to address several of the privacy-related matters flagged by the Information and Privacy Commissioner, as outlined below.

The educational institutions contemplated in Bill 48 will have to collect, use and disclose significant amounts of personal information. Most, if not all, Canadian jurisdictions include public post-secondary institutions under their public sector access and privacy laws. Committee understands that public post-secondary institutions in the NWT will continue to be subject to the *Access to Information and Protection of Privacy Act (ATIPPA)* as designated public bodies under that Act, whereas private educational institutions will not, consistent with the practice elsewhere.

Section 55 allows the Minister to request information from either a post-secondary institution or a department or public agency “for the purposes of fulfilling his or her role under the Act.” The provision goes on to say in subsection (2) that, “notwithstanding the *Access to Information and Protection of Privacy Act*,” an entity that receives such a request must provide that information in the form and within the time specified. Similarly, subsection 56(1) of Bill 48 authorizes the Minister to collect personal information “directly or indirectly” under section 55 and that such collection and use is “notwithstanding the *Access to Information and Protection of Privacy Act*.”

Committee was advised that the “notwithstanding” phrase in subsections 55(2) and 56(1) provides a wide scope for the collection and use of personal information under Bill 48. The unintended effect of the phrase was the removal of the right of the individual to seek an independent review by the Information and Privacy Commissioner, making the Minister the sole arbiter of whether or not personal information collected, used or disclosed under section 55 and 56 was necessary or appropriate. As such, Committee and the Minister collaborated to develop Motions 15 and 16, set out in Appendix A, to remove the references to “notwithstanding the *Access to Information and Protection of Privacy Act*” from subsections 55(2) and 56(1).

Part 7 (Private Training Institutions) and Part 8 (Private Vocational Training) of Bill 48 both refer to “student contracts,” agreements between a student and their vocational training program or private training institution. There was concern that the term “student contract” could be interpreted as referring to a private agreement between a student and his or her institution, and that these contracts may be subject to review by the Minister. Committee determined that the intention of the term “student contract” in Bill 48 is to refer to an institution’s standard contract with its students rather than an individual student’s contract with his or her institution. As such, Committee collaborated with the Minister to develop Motion 18, set out in Appendix A, to provide more clarity around the intended meaning of the term “student contract” in Bill 48.

Part 7 (Private Training Institutions) and Part 8 (Private Vocational Training) of Bill 48 contain provisions requiring an institution to “provide to the Minister as soon as possible a list of the names and addresses of the students registered at the institution.” The Information and Privacy Commissioner flagged for Committee that any limitations on the use of this personal information are not clear from the Bill. Committee worked with the Minister to develop Motions 10, 11, 13 and 14, set out in Appendix A, to clarify that subsections 31(5), 33(2), 39(5) and 41(2) require a post-secondary institution to provide the Minister with student names and addresses only for the purposes of giving notice to those students.

CLAUSE-BY-CLAUSE REVIEW OF BILL

The clause-by-clause review of Bill 48 was held on August 6, 2019. At this review, the Committee moved the motions attached in Appendix A. Committee thanks the Minister for her concurrence with the motions to amend Bill 48 that were moved during the clause-by-clause review.

Following the clause-by-clause review, a motion was carried to report Bill 48: *Post-Secondary Education Act*, as amended and reprinted, as ready for consideration in Committee of the Whole.

CONCLUSION

Committee wishes to thank every individual and organization who participated in the review process for Bill 48.

Recommendation 4

Rule 100(5) of the *Rules of the Legislative Assembly of the Northwest Territories* requires Cabinet, in response to a motion by Committee, to table a comprehensive response that addresses the Committee report and any related motions adopted by the House. As required by this rule, Committee usually includes a recommendation in each report, which is moved as a motion in the House, requesting a response from government within 120 days.

Given that the 18th Legislative Assembly will dissolve prior to the conclusion of the 120 day time period allowed by the rules, Committee has opted to forego this recommendation. Committee nonetheless requests, to the extent it is possible before the dissolution of the 18th Assembly and for the public record, that government provide a response to this recommendation, even of a preliminary nature, that Committee may publicly disclose.

This concludes Committee's report on Bill 48: *Post-Secondary Education Act*.

Committee reports are available on the Legislative Assembly website at www.assembly.gov.nt.ca.

APPENDIX A
MOTIONS ON BILL 48

Committee moved the following motions on Bill 48:

APPENDIX B

SUBMISSIONS ON BILL 48

In addition to the presentations heard by Committee at the public hearings for Bill 48, Committee received written submissions from the following parties, as attached:

- Information and Privacy Commissioner (May 14, 2019)
- NWT Recreation and Parks Association (June 24, 2019)
- Collège nordique francophone (June 28, 2019)
- Ngeta Kabiri (June 28, 2019)