



18th Legislative Assembly of the Northwest Territories

Standing Committee on Economic Development and Environment

Report on Bill 39: *Environmental Rights
Act*

Chair: Mr. Cory Vanthuyne

MEMBERS OF THE STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND ENVIRONMENT

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MLA Kam Lake

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Michael Ball
Committee Clerk

Stephen Dunbar
Committee Advisor

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Economic Development and Environment is pleased to provide its Report on Bill 39: *Environmental Rights Act*.

Cory Vanthuyne
Chair, Standing Committee on
Economic Development and Environment

**STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT AND ENVIRONMENT**

REPORT ON BILL 39: *ENVIRONMENTAL RIGHTS ACT*

TABLE OF CONTENTS

INTRODUCTION 1
PUBLIC CONSULTATION 1
WHAT WE HEARD 2
 Protection of the Public’s Right to Investigate 2
 Recommendation 1 3
 Appeal of Ministerial Decision 4
 Reports..... 4
 Recommendation 2 4
 Recommendation 3 5
 Review of Existing or Need for New Policies, Legislation or Regulations 5
 Public Awareness..... 6
 Recommendation 4 6
 Right to a Healthy Environment..... 7
 Response 7
CLAUSE-BY-CLAUSE REVIEW OF THE BILL 7
CONCLUSION..... 8
MOTIONS TO AMEND BILL 39..... APPENDIX A
SUBMISSIONS..... APPENDIX B

**STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT AND ENVIRONMENT**

REPORT ON BILL 39: *ENVIRONMENTAL RIGHTS ACT*

INTRODUCTION

Bill 39, *Environmental Rights Act*, recognizes the right to protect the integrity, biological diversity and productivity of the ecosystems in the Northwest Territories, and to provide NWT residents with the tools and processes needed to ensure these rights are protected by the GNWT.

The Bill received second reading and was referred to the Standing Committee on Economic Development and Environment on February 26, 2019.

PUBLIC CONSULTATION

The Committee held public meetings in Fort Smith, Hay River, K'atl'odeeche First Nation, Fort Providence, Behchokò, Inuvik, Norman Wells and Yellowknife. Numerous representatives of Indigenous governments and non-governmental organizations made public presentations to the Committee, along with several members of the public as individuals, including

- NWT Métis Nation,
- Tłı̨chǫ Government,
- Inuvialuit Game Council,
- Sahtu Secretariat Incorporated,
- North Slave Métis Alliance
- Dene Nation,
- NWT Chamber of Commerce,
- Council of Canadians – NWT Chapter
- And a written submission and presentation by Professor Lynda Collins on behalf of Alternatives North, Ecology North, Canadian Arctic Resources Committee, and Council of Canadians – NWT Chapter

The Committee received 11 written submissions. These submissions are attached as Appendix 2. The Committee heard broad support for the Bill from

every presenter, and heard from the Indigenous governments that they were mostly pleased with the drafting process used by the Department of Environment and Natural Resources. The Committee has decided that it will issue a separate report on the issue of the co-development process used for the post-devolution environmental and resource management legislation.

The Committee appreciates the plain language materials supplied by the Minister's office for the public hearings.

The work of the Standing Committee to amend Bill 39 is set out in this report. The report contains recommendations to government on the development of devolution related legislation, as well as the implementation of this legislation. It also provides a rationale for the motions moved by the Committee to amend specific provisions in the bill. These motions are listed in Appendix 1 in order of their appearance in the bill and are referred to in this report by the number assigned in the appendix.

WHAT WE HEARD

This part of the report is organized around the key themes or subject areas raised during the Committee's public hearings and in the written submissions received.

Protection of the Public's Right to Investigate

The Committee heard concerns from the public that all citizens who bring forward actions under the *Environmental Rights Act* be protected, and not just employees. The Committee had lengthy discussions about how best to address this concern. After reviewing legislation from other jurisdictions, the Committee found that the issue is wider than just this Bill, and other jurisdictions have enacted stand-alone legislation to address this issue. For example, British Columbia very recently passed the Protection of Public Participation Act, and Ontario did the same in 2015. Those laws give the Court a mechanism to screen out, at an early stage, unmeritorious claims designed to silence and intimidate, while allowing plaintiffs to continue with actions where they are able to meet merits-based and public interest hurdles. Those laws also provide for a number of remedies against strategic lawsuits against public participation (SLAPP) suits that would likely be beyond the scope of this Bill, such as ordering costs and

damages against the person seeking to intimidate others. The Committee is of the opinion that citizens would best be protected by stand-alone legislation prohibiting SLAPP legislation. Therefore, the Committee makes the following recommendation:

Recommendation 1

The Standing Committee on Economic Development and Environment recommends that the Government of the Northwest Territories begin work on anti-SLAPP legislation for introduction during the life of the 19th Legislative Assembly.

Further, the Committee heard strong support for broadening who may request an investigation to more than just adult residents. Several impassioned presentations focused on the current activism on climate change being demonstrated by students in the Northwest Territories and globally. Intergenerational equity was also cited as the youth of today will bear disproportionate burdens caused by climate change and environmental damage. Further, the Committee notes that there have been very few requests for investigations under the existing *Environmental Rights Act*, and only one actual investigation. The Committee feels there is a need to make investigations easier to access. To address this, Committee moved motion 3 to allow any individual resident to request an investigation.

The Committee also heard concern that the Bill allowed for too much discretion to the Minister on whether or not to investigate an application. The Committee looked at materials from the Mackenzie Valley Environmental Impact Review Board regarding the significance of harm. The Committee felt that there should be some guidance to the Minister in the legislation when determining whether to undertake an investigation. To address this, Committee moved motions 5 and 6 to ensure certain factors are taken into consideration when determining whether an act or omission has or is likely to cause significant harm to the environment.

The Committee was also concerned with a 90 day timeframe for the Minister to respond to an applicant if an investigation was being discontinued or declined for the reasons why. The Committee also felt that 90 days was too long a time to advise an applicant of an investigation being completed, or in the case where it is ongoing, every 90 days until it is completed. The Committee felt a 60 day timeframe was more reasonable, and therefore moved motions 8 and 10.

Appeal of Ministerial Decision

The Committee heard from several presenters that there were concerns that the Bill did not provide for an explicit right to appeal a Ministerial decision to decline to investigate. Some presenters felt that this could be a mechanism to make the rights under this Bill unenforceable, and that a Minister would rarely if ever be inclined to investigate harm to the environment.

The Committee discussed this issue at length. While all Ministerial decisions are subject to judicial review as part of common law, this right may not be apparent to residents. To address this issue, Committee moved motion 9 to expressly allow for appeal to the Supreme Court.

Reports

The Committee has heard some concerns on reporting provisions in various Devolution related Bills. While the Committee understands the desire to be less prescriptive in the legislation, the Committee feels the public should have a high expectation of transparency and openness from the government on how the environment is being protected.

The Committee moved motion 15 to broaden what is captured in the annual report. However, this motion did not pass.

Furthermore, the Committee supports the need for flexibility and coordination with other reporting that falls under the Department of Environment and Natural Resources. The Committee also notes that there are similar efforts in relation to public reporting on environmental and resource management that have the potential to overlap with the public reporting contemplated in Bill 39: *Environmental Rights Act*. To help prevent duplication of efforts, the Committee makes the following recommendations:

Recommendation 2

The Standing Committee on Economic Development and Environment recommends that a registry be created to capture all the reporting requirements found in the various environment and resource management bills, allowing the public a one-window access point to information.

Recommendation 3

The Standing Committee on Economic Development and Environment recommends that the Department of Environment and Natural Resources coordinate to the highest possible degree the required report under the *Environmental Rights Act* with reporting requirements found in other environmental legislation for which it is responsible.

Review of Existing or Need for New Policies, Legislation or Regulations

The Committee heard that other jurisdictions provide for residents to request a Ministerial review of existing policies, acts or regulations, or for a need for a new policy, act or regulation if that instrument could have a significant impact on the environment. The Minister must make a decision on whether to review or not within a set amount of time, and to advise the applicants of the decision.

The Committee reviewed the Ontario *Environmental Bill of Rights 1993* for an example of how such a provision could be phrased. While the Committee understands the need for such a provision in a more populous jurisdiction where government is more removed from the people, it was felt that such a provision was not as needed in the Northwest Territories at this moment in time. Given the recent inheritance of province-like responsibilities through devolution, and the ongoing legislative initiatives to address resources, land, water and the environment, it is premature to create a mechanism to potentially compel a review of existing legislation or the lack thereof.

As the government passes more legislation dealing with environmental matters, the need may arise in the future. Best practices in environmental rights are continuously evolving, especially around the rights of nature, and it is not enough to wait another 28 years to review this legislation. The Committee heard from individuals who had taken part in the stakeholders working group that they had expected a greater expansion of environmental rights than what is contained in Bill 39. The fact that the existing Act was not well used shows that it was not as effective as it should have been. It is for these reasons that the Committee moved motion 17 to require a legislative review in the 20th Assembly, so that should the need exist to allow the public to request such a review, it could be incorporated into the Act at that time. However, this motion did not pass.

Public Awareness

While the Committee is very supportive of the intent of Bill 39 to expand the rights of residents to protect the environment, the Committee notes that in order to be fully empowered by these rights, the public must be made aware that they have them. Several submissions received by the Committee stressed that the public needs to be more aware of their ability to protect the environment, and the Committee noted that under the existing *Environmental Rights Act*, there have been very limited actions started by members of the public.

To improve the public's awareness of their rights under Bill 39, the Committee strongly supports a public awareness campaign to highlight what is in the Act, as well as the creation of plain language documents on how to use the various provisions of the Act. To that end, the Committee makes the following recommendation:

Recommendation 4

The Standing Committee on Economic Development and Environment recommends that the Department of Environment and Natural Resources undertake a public awareness campaign of the *Environmental Rights Act*, including plain language materials on how the public can avail themselves of the various protections and provisions of the Act.

Furthermore, the Committee heard that the public has a vested interest in knowing how the government plans to protect the environment, and for the government to explain how environmental considerations will be integrated into the decision-making process when there could be harm to the environment. Accordingly, Committee moved motion 13 to allow for public comment on the draft Statement of Environmental Values prior to it being finalized, and requiring written responses to any public comment received.

The Committee also moved motion 12 to ensure that the principles of environmental law inform the development of the Statement of Environmental Values.

Right to a Healthy Environment

The right to a healthy environment is perhaps the most important right guaranteed by Bill 39. The Committee heard from numerous presenters that a healthy environment underpins not just environmental rights but human rights.

The Committee heard from some presenters that the rights of nature should be included in Bill 39, as has been done in the constitutions of some countries. The Committee listened to all these presentations with great interest, and they were very helpful in defining the discussions Committee had when reviewing potential amendments to Bill 39. The Committee felt the best way to enshrine the right to a healthy environment was through strengthening the purpose statement of the Act, and moved motion 2 to broaden the relevant clause of the Bill.

Response

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.

CLAUSE-BY-CLAUSE REVIEW OF THE BILL

The clause-by-clause review of the bill was held on August 9, 2019. The Committee thanks the Honourable Robert C. McLeod, Minister of Environment and Natural Resources, and members of his staff, for their appearance before the Committee.

At this meeting, the Committee moved 17 separate motions to amend Bill 39. These motions are set out in Appendix 1. Three motions did not pass.

Minister McLeod concurred with all of the Committee's motions that passed.

CONCLUSION

The Committee thanks all those who took the time to appear before Committee to share their thoughts on this legislation.

Following the clause-by-clause review, a motion was carried to report Bill 39: *Environmental Rights Act*, as amended and reprinted, as ready for consideration in Committee of the Whole.

This concludes the Standing Committee's review of Bill 39.

APPENDIX A

MOTIONS TO AMEND BILL 39

The Standing Committee moved the following motions to amend Bill 39, with motions 14, 15 and 17 not passing, and the Minister concurred with all of the motions that passed:

- Motion 1
- Motion 2
- Motion 3
- Motion 4
- Motion 5
- Motion 6
- Motion 7
- Motion 10
- Motion 11
- Motion 12
- Motion 13
- Motion 14 - defeated
- Motion 15 - defeated
- Motion 16
- Motion 17 - defeated

APPENDIX B

SUBMISSIONS

The Standing Committee received written submissions from:

Professor Lynda Collins on behalf of

- Alternatives North,
- Ecology North,
- Canadian Arctic Resources Committee,
- Canadian Parks and Wilderness Society - NWT Chapter and
- Council of Canadians - NWT Chapter

Council of Canadians – NWT Chapter

NWT Chamber of Commerce

NWT Metis Nation

Inuvialuit Game Council

Sahtu Secretariat Incorporated

Tlicho Government

Dr. David R. Boyd

Matilda Becker

Nancy Vail