



17th Legislative Assembly of the Northwest Territories

Standing Committee on Social Programs

Report on the Review of
Bill 44: *An Act to Amend the
Hospital Insurance and Health and
Social Services Administration Act*

Chair: Mr. Alfred Moses

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SOCIAL PROGRAMS**

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BILL 44: *AN ACT TO AMEND THE HOSPITAL INSURANCE AND
HEALTH AND SOCIAL SERVICES ADMINISTRATION ACT***

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STANDING COMMITTEE ON SOCIAL PROGRAMS

REPORT ON THE REVIEW OF BILL 44: AN ACT TO AMEND THE HOSPITAL INSURANCE AND HEALTH AND SOCIAL SERVICES ADMINISTRATION ACT

INTRODUCTION

Bill 44: *An Act to Amend the Hospital Insurance and Health and Social Services Administration Act* will allow for the transformation of the health and social services system. It will require the Minister to establish a single strategic plan for the Northwest Territories and allow the Minister to establish an integrated territorial authority by amalgamating the regional health and social services authorities and Stanton Territorial Health Authority. The Bill includes transitional provisions to bring the Hay River Health and Social Services Authority into the public service at a later date. It also includes provisions pertaining to critical incidents.

The Committee congratulates the Minister for developing the Bill. It is the product of sustained efforts by the Department of Health and Social Services and key stakeholders. In broad terms, system transformation is intended to address inefficiencies; correct inconsistencies in the management of financial and human resources; and create less fragmented experiences for patients and clients.

Bill 44 was referred to the Committee on February 10, 2015. The public hearing with the Minister was held on April 20, 2015. The clause-by-clause review was held on June 1, 2015. During the clause-by-clause review, the Committee passed nine motions to amend the Bill, with the Minister's agreement. These amendments are discussed below.

In its review of Bill 44, the Committee heard from many stakeholders, including the Northwest Territories Information and Privacy Commissioner; the Union of Northern Workers (UNW) under the affiliation of the Public Service Alliance of Canada (PSAC); UNW local 21, which represents employees at the Hay River Health and Social Services Authority; the Tlicho Community Services Agency; the K'at'odeeche First Nation; the Yellowknife Seniors' Society; the Canadian Association of Occupational Therapists; the Northwest Territories Human Rights Commission; and dozens of private residents who attended public meetings.

The Committee held public meetings in Yellowknife, N'Dilo, Hay River, K'at'odeeche First Nation (Hay River Reserve), Fort Simpson, Behchokò, Délne, Inuvik and Aklavik. Poor weather prevented the Committee from flying to Fort Liard and

Tuktoyaktuk as planned. During the two-week itinerary, Members also heard from residents about Bill 47: *An Act to Amend the Child and Family Services Act*.

While Bill 44 generated some negative commentary, the feedback was generally positive. Where serious concerns were raised, the Committee typically sought to address them through amendments. The remainder of this report outlines these key concerns and associated amendments. The concluding section includes recommendations for additional courses of action.

MINISTER'S POWERS

Bill 44 in its original form proposed to give substantial new powers to the Minister. The Committee introduced two motions to amend the Bill to narrow the Minister's powers. The first amendment will ensure that the Minister can only disregard this *Act* or another enactment for reasons of public safety or to address a pressing gap in service delivery. The second amendment places a restriction on the provision under the regulation-making authority. The original provision would have authorized an exemption through regulations from "any provision of this *Act*." However, the Committee felt strongly that a subordinate form of legislation—a set of regulations—should not circumvent the wish of the Legislative Assembly as expressed in a statute. The Minister agreed to both of these motions at the clause-by-clause review.

TRANSITIONAL PROVISIONS FOR HAY RIVER EMPLOYEES

The Union of Northern Workers (UNW) presented a convincing case that Bill 44 in its original form violates workers' rights to engage in collective bargaining. This right, the UNW argued, is enshrined under section 2(d) of the *Charter of Rights and Freedoms*. The UNW specifically took issue with the proposed subsection 17(2) which releases the government of any contractual obligations or liabilities pertaining to the Hay River Health and Social Services Authority except to the extent that it expressly agrees to assume them. The Committee agreed with the UNW's analysis on this matter, including its claim that three recent cases have significantly altered the Canadian landscape with respect to workers' right to engage in collective bargaining. Each case hinges on section 2(d) of the *Charter* and protects workers' rights to advance workplace goals through collective bargaining. The Committee further agreed that Bill 44 in its original form would leave the government vulnerable to a legal challenge and subsequently sought to ensure that the entitlements of employees belonging to UNW Local 21 would be handled through a clearly-legislated succession of those entitlements.

It is worth noting that, in the midst of the review, the Committee asked the Minister if he would concur with an amendment to provide for mediation wherever the GNWT and Hay River employees were unable to reach agreement. The Committee also asked about the status of negotiations between the GNWT and the union representing the Hay River employees, and what assurance could be provided that

Hay River employees will not lose seniority or pension benefits. Regrettably, there was no formal reply. In the absence of clear information, the Committee prepared an amendment that would simultaneously align with the spirit of the Bill and give peace of mind to Hay River employees. Specifically, this motion to amend Bill 44 ensures that the transitional provisions will not be brought into force until a contract negotiated through collective bargaining has come into force.

Other issues were raised by the UNW, including the matter of pension entitlements for employees transitioning from the Hay River Health and Social Services Authority to the GNWT. The Committee concluded that this matter is outside the scope of the Bill but is urging the government to give it careful consideration.

The UNW also expressed fear over the loss of regional positions, arguing that amalgamation will create economies of scale in procurement, records management and diagnostics, and may in turn create redundancies. The Committee supports the UNW's request for assurance that the government will provide retraining for any affected employees.

CRITICAL INCIDENTS

The Committee commends the Minister for introducing provisions pertaining to critical incidents. However, the Committee noted a number of concerns. First, the Committee sought to clarify who will be eligible to report a critical incident, and prepared a motion to amend which would allow any patient or client, or any relative of a patient or client, or any staff member to report a critical incident. The motion was modeled on provisions in Manitoba's *Regional Health Authorities Act*. The Minister concurred with this motion at the clause-by-clause review.

Second, the Committee prepared a motion to amend which would compel the Minister to conduct a critical-incident investigation based on a motion of the Legislative Assembly. The Minister also concurred with this motion.

Third, the Committee inquired about the proposed section 25.2 which does not expressly stipulate that a legal guardian or substitute decision-maker must be notified in the case of a critical incident. The Committee subsequently determined that provisions in the *Health Information Act* will apply, establishing a clear protocol for the sharing of medical information pertaining to a child or a person with diminished mental capacities.

Fourth, the Committee expressed concern about how critical-incident investigations will be handled and whether the results of investigations will be communicated in a culturally-sensitive manner.

Fifth, the UNW noted that clause 9 of Bill 44 would impose a duty on employees to cooperate in any investigation and, further, that investigations could result in disciplinary action or discharge on account of employee misconduct. The UNW

sought an amendment to provide for union representation for employees during any investigation, inspection or audit. The Committee determined that collective agreements already provide adequate provisions and protections.

Sixth, the Information and Privacy Commissioner noted some privacy implications pertaining to critical-incident investigations, inspections, and reporting. She recommended including a general provision stating that personal health information should be protected to the greatest extent possible. However, the Committee concluded that the new *Health Information Act* will establish adequate safeguards pertaining to the use, collection and disclosure of information. In addition, Members noted that reports will have limited circulation.

PRIVACY CONCERNS

The Information and Privacy Commissioner raised several privacy concerns. First, a general concern was raised about the combined effect of the proposed amalgamation and the new *Health Information Act*. The Commissioner noted that these changes will significantly expand the “circle” within which personal health information can be shared without the patient’s express consent. The Commissioner recommended that the Department of Health and Social Services undertake a privacy impact assessment for the proposed amalgamation. The Committee agrees with this recommendation.

Second, the Commissioner’s submission alerted the Committee to a pair of provisions that would permit a board of management to close a meeting, or a portion of a meeting, if privacy issues warrant it. The Commissioner noted that any meeting should be closed to the public if personal health information is being discussed. Upon reviewing this concern, the Minister agreed and two motions to amend the Bill were passed at the clause-by-clause review.

Third, the Commissioner noted that Bill 44 does include a duty to inform a patient if their personal health information is used in the course of an investigation, inspection or audit. The Committee determined that the *Health Information Act* will place appropriate limits in such circumstances. While the use of information for an investigation, inspection or inquiry is a permitted use under the *Health Information Act*, there are limits and obligations placed on anyone who receives the information. Moreover, the disclosure of information must be recorded by the person disclosing it.

REGIONAL CONSIDERATIONS

With respect to regional involvement in the new system, some concerns were raised. A handful of stakeholders indicated that regional influence may be unduly diminished under the new system. This viewpoint was also expressed by the Public Administrator of the Deh Cho Health and Social Services Authority, who spoke on behalf of a number of Deh Cho residents.

As well, because Bill 44 is silent on the role envisioned for the Tlicho Community Services Agency under the new system, Members are seeking clarity about how this board of management, or any others which might come into existence as a result of self-government agreements, will be accommodated. For their part, the Tlicho Community Services Agency expects things to be business as usual under the new system, although in some areas they intend to seek greater autonomy from the GNWT. One example is housing. The GNWT does not currently permit the Tlicho Community Services Agency to guarantee its staff long-term security of tenure which has a negative impact on staff retention.

K'atl'odeeche First Nation is looking for greater clarity with respect to how its unique interests will be represented under the new system. Similarly, Hay River employees seek clarity as to how their needs and interests will be represented on the Territorial Health and Social Services Authority in the absence of an agreement with the GNWT. Once again, the Committee invited the Minister to reply to these queries but no reply was given.

RECOMMENDED ACTIONS

The Standing Committee on Social Programs recommends the following courses of action:

- 1) That the Department of Health and Social Services conduct a privacy impact assessment pertaining to the proposed amalgamation and the new *Health Information Act*;
- 2) That the Government of the Northwest Territories move swiftly to complete negotiations for a new contract with UNW Local 21;
- 3) That the Department of Health and Social Services give careful consideration to the matter of pension entitlements for employees of UNW Local 21;
- 4) That the Department of Health and Social Services take reasonable steps to retrain employees if regional positions are lost or threatened as a result of system transformation;
- 5) That the Department of Health and Social Services ensure that inspections, investigations and reporting pertaining to critical incidents be conducted in careful adherence to privacy legislation;
- 6) That the Department of Health and Social Services ensure that critical incident investigations, and the communication of their results, get handled in a culturally-sensitive manner;

- 7) That the Department of Health and Social Services establish rules in the regulations around the taking of samples for the purposes of an investigation;
- 8) That the Department of Health and Social Services ensure that clear terms of reference are in place for each regional council;
- 9) That the Minister of Health and Social Services ensure that the chairs of regional councils have a sound base of experience in the delivery of health and social services; and
- 10) That the Department of Health and Social Services give due care to information shared between the Territorial Health and Social Services Authority and charitable foundations; and
- 11) That the Department of Health and Social Services communicate effectively with stakeholders regarding its change-management plan.

RECOMMENDATIONS

Recommendation 1

That the Government of the Northwest Territories provide a comprehensive response to this report within 120 days.

CONCLUSION

The Standing Committee on Social Programs thanks all stakeholders who provided written submissions on Bill 44 or attended public meetings.

The Committee advises that it supports Bill 44 as amended and reprinted and presents it for consideration to the Committee of the Whole.