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## NWT CHAPTER

April 29, 2019

Mr. Cory Vanthuyne,  
Chair, Standing Committee on Economic Development and Environment,  
NWT Legislative Assembly,  
Yellowknife, NT X1A2L9

Dear Mr. Vanthuyne:

### **Re: Feedback on Bill 39 Environmental Rights Act**

The Council of Canadians NWT Chapter has had occasion to use the *Environment Rights Act* and to participate in consultations on updating the Act. We fully support NWT legislation that protects the right of all northern people to a healthy, safe environment. We also support legislation that encourages environmental and ecosystem stewardship in ways that are consistent with Indigenous and human rights, northern values and traditions, and domestic and international laws, declarations, and conventions. We also support the harmonization of environmental and resources legislation within this jurisdiction.

We applaud efforts to broaden the scope of the current *Environment Rights Act* beyond the release of contaminants. We appreciate the ecosystem-like approach for reporting on the state of the environment outlined in draft Bill 39. There are other elements within the Bill that we also wholeheartedly support. While we are encouraged by improvements, we believe that draft Bill 39 is just the starting point for the legislation that is needed to protect northerners' right to a healthy, safe environment. Much work remains to be done to ensure that Bill 39 actually lives up to its name. We offer the following comments and recommendations for consideration for an amended Bill 39. Our comments and recommendations are in addition to or complementary to the submission authored by Professor Lynda Collins which we also support.

### **Preamble**

To some extent, the preamble in draft Bill 39 recognizes elements that are essential to the protection of the right to a healthy, safe environment. We recommend that the statements in the preamble be more clearly articulated and presented as principles that underpin the legislation. In terms of rearticulating the points in the preamble as principles, we recommend clear recognition of:

- The shared responsibility of environmental and ecosystem stewardship rather than the notion of 'wise management of the environment' presented in the draft.

- The right of all northern people to a healthy, safe environment and to environmental justice rather than inferring possible privilege to other regimes and rights related to the ‘use and management of the environment.’
- Not only Aboriginal and treaty rights as set out in territorial and Canadian law but also in such international laws, declarations, and conventions endorsed by the NWT Legislative Assembly including the United Nations Declaration on the Rights of Indigenous People (UNDRIP).
- The paramountcy of evidence-based decision making rooted in the best scientific, Indigenous, local, and community knowledge.
- Environmental integrity and biological diversity, productivity, and sustainability as characteristics of a healthy, safe environment.
- Ecosystem-wide approaches and traditional and modern-day relationships with the natural environment as central to shared stewardship of the NWT environment.
- The interconnectivity of ecosystem elements and influences including climate change, on environmental rights and stewardship.

We recommend that the UN’s *Framework Principles on Human Rights and the Environment*<sup>1</sup> (2018) be reviewed as a reference to this and other sections of draft Bill 39.

### **Definitions**

Draft Bill 39 provides some definitions but does not define ‘the right to a healthy environment.’ This is a fundamental flaw in legislation designed for this purpose.

In keeping with the principles suggested above, we advise including definitions of ‘stewardship’, ‘ecosystem’, ‘environmental justice’, and ‘ecosystem-wide approaches.’ Also, concepts such as ‘significant harm’ used elsewhere in the draft legislation, should be defined.

While draft Bill 39 currently defines ‘land, resources and self-government agreements’, we recommend replacing this reference throughout the legislation to language that ensures compliance or harmony with other territorial, federal, and international laws including declarations and conventions endorsed by the NWT Legislative Assembly. More inclusive, broader language would: 1) eliminate the need to constantly update the legislation to name new legislation; 2) strengthen opportunities to harmonize laws; and 3) improve legislative effectiveness.

### **Purposes**

We understood from the consultations leading up to draft Bill 39 that the purposes of the Act are to protect the right of northern people to a healthy, safe environment and ensure shared environmental and ecosystem stewardship. We also understood that every effort would be made to harmonize updated legislation with existing laws and policies throughout the Government of the NWT and evolving post-devolution legislation in order to give paramountcy to the right to a healthy environment. The purposes statements within draft Bill 39 are a very weak and narrow reflection of this intent. We recommend clearer and stronger wording of the purposes of the *Environmental Rights Act* and recognition of the paramountcy to the right to a healthy environment.

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<sup>1</sup> <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>

Draft Bill 39 provides for the Minister to delegate powers and duties (sec. 7). In keeping with the 18<sup>th</sup> NWT Legislative Assembly's commitment to transparency and accountability, we recommend that the delegation of Ministerial powers and duties require the rationale for such a decision and notice of the same be provided to the NWT Legislative Assembly within 30 days of the decision to delegate. We also recommend that the public and any applicant be made aware of the decision to delegate Ministerial powers.

### **Investigations**

We appreciate efforts to improve access to the Act but draft Bill 39 now poses new barriers. Specifically, the requirement for an applicant's statement to be validated by a commissioner of oaths in the NWT (sec. 8.4) will undoubtedly deter northerners in communities with limited or no access to these services, from requesting an investigation. Wouldn't it be better to maintain the existing requirement of two people? Since 'adult resident' (sec. 8.1) is not defined, we are uncertain whether young adults including students are able to request an investigation. Wouldn't it be better to allow any legal person in the NWT to request an investigation?

Having requested an investigation under the current *Environmental Rights Act* and had the request denied, the NWT Chapter has advocated for a mechanism to appeal Ministerial decisions to decline or suspend an investigation. The absence of this provision is a significant gap in the draft legislation. We have also advocated for more timely and transparent decisions. The draft legislation does little to address these concerns. We worry that requests could be dismissed arbitrarily having been judged as 'frivolous or vexatious or 'not serious enough' without applicants understanding the reasons for denial given the lack of definition of these terms (se. 9.3). Further, applicants would have to wait 90 days to hear that a request has been declined (sec. 9.6). Applicants would have to wait the same amount of time to hear that an investigation has been discontinued or completed (sec. 9.7). Surely applicants should be able to expect more timely notice (e.g. within 30 days) if we agree that the right of a healthy environment is of paramount importance to the Government of the NWT and northerners. Surely applicants should have the opportunity to appeal decisions.

The proposed legislation makes no reference either in definition or provisions to requests for an investigation in an emergency situation. This is a serious omission given the risks posed to the right to a healthy environment due to unpredictable forces such as climate change, that are often associated with emergencies.

The draft legislation limits the liability of the Government of the NWT and employees acting in 'good faith' (sec.11). This is reasonable. But it is also reasonable to recognize negligence that puts the right to a healthy environment at risk. Negligence can happen in spite of 'good faith'.

### **Protection of Employees**

We appreciate the whistle blower-like protection given to all employees who seek to protect the 'environment and the public trust from harm' (sec.15).

Prosecution and state violence targeting the rights of water protectors and land defenders around the world are growing concerns in these times of climate breakdown and intense competition for ever diminishing natural resources. We recommend that a provision be included to protect citizens who are not

employees but who seek to protect the environment and the public trust from harm. Again, the UN report referenced previously provides some direction for these protections.

### **Statement of Environmental Values**

This section lacks any legal or policy authority to bind all agencies of the Government of the NWT to protecting the right to a healthy environment. During consultations, a legislation-based environmental bill of rights was envisioned as one tool to ensure a shared commitment to the right of northern people to a healthy, safe environment. We recommend that a provision be included in Bill 39 that requires all agencies of the Government of the NWT to protect the right to a healthy environment.

### **Reports**

We are pleased to see state of the environment reporting and the scope of report requirements which include climate change. We recommend that the legislation provide for regular review of state of the environment reporting requirements in order that these reports remain relevant to environment and ecosystem matters.

In closing, we note that two elements discussed at length during consultations - 1) a public registry and 2) protection of the rights of nature - were left on the cutting room floor. These omissions are very troubling in the first case as the lack of a public registry negatively impacts public information about decisions, authorizations, orders, and convictions of offences relevant to the right to a healthy environment. In the second case, the omission of the rights of nature has implications for environmental integrity and biological diversity, productivity and sustainability and challenges the very essence of a healthy, safe environment. We recommend that these two elements be included in an amended Bill 39.

We look forward to commenting on an amended Bill 39 that incorporates our recommendations and addresses our concerns.

Sincerely,



Lois Little,  
Co-Chair, NWT Chapter  
Council of Canadians