

Standing Committee on
Social Development



Report on Bill 77: *Nursing Profession Act*

19th Northwest Territories Legislative Assembly

Chair: Ms. Caitlin Cleveland

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SOCIAL DEVELOPMENT**

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September 27, 2023

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Development is pleased to provide its report on *Bill 77: Nursing Profession Act* and commends it to the House.



Ms. Caitlin Cleveland, Chair
Standing Committee on Social Development

STANDING COMMITTEE ON SOCIAL DEVELOPMENT
REPORT ON BILL 77: *NURSING PROFESSION ACT*

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT**REPORT ON BILL 77: *NURSING PROFESSION ACT*****INTRODUCTION**

Bill 77: *Nursing Profession Act*ⁱ (Bill 77) received second reading on March 29, 2023, and was referred to the Standing Committee on Social Development (Committee) for review. Bill 77 repeals and replaces the *Licensed Practical Nurses Act (Act)*, which has only had minor amendments since coming into force in 2004. It is intended to improve regulatory function by establishing a single regulatory framework for all nurses in the Northwest Territories (NWT). It will also standardize the assessment of credentials and oversight of nursing practices under one regulatory structure.

Bill 77 was developed through close collaboration with Registered Nurses Association of Northwest Territories and Nunavut (RNANTNU), which will be renamed the College and Association of Nurses of the Northwest Territories and Nunavut. Regulatory bodies of this kind have been established in other jurisdictions.

Bill 77 changes the following:

- Repeals the *Licensed Practical Nurses Act* and transfers the authority of RNANTNU;
- Establishes new nursing designations, scopes of practice, registers, and associated requirements for Licensed Practical Nurse, Registered Nurse Authorized Prescriber,
- Registered Psychiatric Nurse, and Registered Psychiatric Nurse Authorized Prescriber;
- Allows Registered Nurses and Registered Psychiatric Nurses who meet certain qualifications to order and interpret specific diagnostic and screening tests, make diagnoses, and prescribe specific medications;
- Updates the complaints and discipline process, including the appointment of a Complaints Officer;
- Adds a requirement for employers to report to RNANTNU if they terminate a nurse, or if the nurse chooses to resign instead of being terminated, due to unprofessional conduct;
- Adds by-law making powers to regulate the practice of nurses, including nurses who practice solely through virtual care; and
- Modernizes language.ⁱⁱ

COMMITTEE CONSIDERED PUBLIC INPUT

Committee sought public feedback on Bill 77 with a public notice and targeted engagement letters. Committee received written submissions from the Canadian Nurses Protective Society (CNPS), Scott Robinson RN, and RNANTNU which are appended to this report.

On May 10, 2023, Committee held a public hearing to review Bill 77.ⁱⁱⁱ At that meeting, Committee heard remarks from the Minister of Health and Social Services and her staff, and they received oral comments from RNANTNU and the public. Committee thanks all these participants for their engagement.

One area of concern identified was the need to provide clarity and certainty with respect to the complaints process. Committee agreed with this concern. RNANTNU stressed the need to redact information in the complaints summary to protect client health and other sensitive information. In response, Committee stressed the importance of procedural fairness, specifically that nurses should receive full, unredacted copies of complaints made against them.

Committee also had concerns about how complaints regarding unprofessional conduct would be addressed by the new statutory officer created by Bill 77, and asked questions about complaints related to Cultural Safety competencies and standards of care for Indigenous residents and those living in small communities. The Minister referred to *Living Well Together: Indigenous Cultural Awareness and Sensitivity Training for GNWT employees*, and RNANTNU discussed existing standards of practice with respect to Cultural Safety during the public hearing. While these continuing Cultural Safety initiatives are important, Committee stressed the need for nurses to provide culturally safe care in the NWT.

Committee was initially concerned about changes to the scope of practice, job descriptions, and change of pay for some nurses. For instance, Registered Psychiatric nurses will see major changes with Bill 77 because they will now be regulated in the NWT.

Committee also asked questions about whether the Government of the Northwest Territories was corresponding with Nunavut on amendments to the *Act* and heard that the territories were working together but not aligned legislatively. RNANTNU maintains it will be able to operate under the NWT and Nunavut's respective *Acts* governing the practice of nursing in both jurisdictions.

One area that CNPS and other members of the public identified was the need to provide clarity around insurance and protection, as well as the appeal mechanism for respondents ordered to pay costs during the complaints process. Committee shared these concerns.

After careful consideration, Committee supported six motions amending Bill 77. Three of these proposed amendments were the direct result of public engagement. Committee negotiated the exact wording with the GNWT. The other three proposed amendments were non-contentious: two corrections were made to French language clauses in the *Act*, and one was an agreed upon change regarding insurance and liability protection.

COMMITTEE AMENDED SIX CLAUSES

Motion 1

Both Committee and the GNWT supported the submission made by CNPS to amend Clause 20 of Bill 77 by adding the words “liability insurance or protection” to paragraph 20(1)(t), striking out “liability insurance.” A motion reflecting this change was drafted and passed at the clause-by-clause review.

Motions 2 and 4

While Committee noted the mechanism in place to appeal decisions, submissions during public engagement noted this would not apply to costs of investigations in situations where complaints were dismissed by the Board of Inquiry.

Two motions related to this issue were drafted. The first proposed that Bill 77 be amended by adding language “establishing the procedure to be followed in appeals of directions to pay the costs of investigations” after clause 20(1)(z.19). The second amended clause 67 by introducing substantial changes regarding an “Appeal of Direction to Pay Costs of Investigation” where a hearing was not required 67.1(1), concerning notice of direction 67.1(2), appeal 67.1(3), referral to the Board of Inquiry 67.1(4), and language clarifying an order as to costs 67.1(5). The Minister concurred with both motions, and they were passed at the clause-by-clause review.

Motion 3

Committee feels that it is procedurally fair for nurses to receive full, unredacted copies of complaints made against them. Committee also noted that while nurses are entitled to receive a copy of a complaint made against them under the *Act*, they may be unaware of this right.

The GNWT and RNANTNU remain concerned about protecting client health information, and redacting potentially vexatious material from complaints, and therefore prefer to provide summaries of complaints.

After negotiation with the GNWT, a motion was drafted concerning “notice of right to receive copy of complaint” which proposed to amend clause 56(5) by adding “(5.1) A summary of a complaint provided under paragraph (2)(a) or (5)(a) must include a statement advising the respondent of the right to receive a copy of the complaint under

paragraph (2)(b) or (5)(b) on request.” The Minister concurred with the motion, and it was passed at the clause-by-clause review.

Motions 5 and 6

Committee agreed to support the GNWT’s recommendation to correct the French versions of clause 70, under the heading “Renvoi à une commission d’enquête” and 119(3), by striking out “qui n’est pas un médecin” and substituting “qui est un médecin.” Two motions reflecting these amendments were drafted and passed at the clause-by-clause review.

CONCLUSION

On May 31, 2023, Committee held a clause-by-clause review.^{iv} Committee passed the motions to report Bill 77, as amended, to the Legislative Assembly as ready for consideration in Committee of the Whole. In the House on June 1, Bill 77, *Nursing Profession Act*, was orally reported as ready. On June 2, Bill 77 was cited in the Orders of the Day as one of the items under Consideration in Committee of the Whole of Bills and Other Matters.

This concludes Standing Committee on Social Development’s review of Bill 77: *Nursing Profession Act*.

ENDNOTES

ⁱ Bill 77 is available at: https://www.ntassembly.ca/sites/assembly/files/bill_77.pdf

ⁱⁱ A plain language summary of Bill 77 is available at:
https://www.ntassembly.ca/sites/assembly/files/td_905-192.pdf

ⁱⁱⁱ Northwest Territories Legislative Assembly, you tube channel, Standing Committee on Social Development, Public Hearing regarding: Bill 77, <https://www.youtube.com/watch?v=y9XxHALd6XQ>

^{iv} Northwest Territories Legislative Assembly, you tube channel, Standing Committee on Social Development, Clause by Clause review of Bill 77, <https://www.youtube.com/watch?v=kgmd8wlsRQU>

APPENDIX 1

APPENDIX 2

VIA EMAIL

May 10, 2023

Standing Committee on Social Development
Government of the Northwest Territories
P.O. Box 1320
Yellowknife, NT
X1A 2L9
Committees@ntassembly.ca

Dear Committee Members,

**Re: Canadian Nurses Protective Society Submission on
Bill 77 – Nursing Profession Act**

The Canadian Nurses Protective Society (CNPS) is a not-for-profit organization that provides professional liability protection, legal assistance and legal and risk management advice to over 150,000 nurses of all professional designations (registered nurses, nurse practitioners, registered psychiatric nurses and licensed practical nurses) across Canada, including all current registrants of the Registered Nurses Association of the Northwest Territories and Nunavut.

As a provider of individual professional liability protection to the registrants of the NWT and provider of legal services that advises the nurses of the NWT about the nursing regulatory framework, their legal and professional obligations, the CNPS appreciates the opportunity to provide input on Bill 77.

Our submission is attached. We remain at your disposal for any further questions or information.

All of which is respectfully submitted,



2023-05-10

Chantal Léonard
Chief Executive Officer

**SUBMISSION OF
THE CANADIAN NURSES PROTECTIVE SOCIETY
ON BILL 77**

Thank you for the opportunity to present submissions on this important legislation.

This submission will focus on paragraph 20(1)(t), which enables the College and Association of Nurses of the Northwest Territories and Nunavut (“the College”) to maintain professional liability insurance on behalf of its members and on two important details of the professional conduct review process (Part 7). It is structured as follows:

1. [About the CNPS](#)
2. [Professional Liability Insurance: paragraph 20\(1\)\(t\)](#)
3. [Review of professional conduct: Part 7](#)

1. About the CNPS

The CNPS is a not-for-profit corporation created in 1988 to ensure that Canadian nurses had access to a reliable and cost-effective source of professional liability protection and legal support services, “for the protection of nurses and the public”¹. Its mandate is to provide professional liability protection to over 150,000 eligible nurses of all professional designations practising in Canada: nurse practitioners (NPs), registered nurses (RNs), registered psychiatric nurses (RPNs), licensed practical nurses (LPNs). It provides assistance up to \$10,000,000 per claim for professional negligence, with a annual aggregate limit of \$10,000,000 per beneficiary. CNPS services also include legal representation in other legal proceedings arising from nursing practice, confidential access to legal advisors for advice and support as well as a broad range of educational materials and educational sessions to enhance patient safety and risk management in nursing practice. It strives to support nurses in their day to day practice to prevent adverse events. The CNPS is not an insurance company. It provides services on a membership model and assistance with legal proceedings is extended on a case-by-case basis, taking into account the circumstances of each case.

Within the Northwest Territories, the CNPS is the designated individual source of professional liability protection for all registrants of the Registered Nurses Association of the Northwest Territories and Nunavut (the “RNANT/NU”), which governs all practising registered nurses and nurse practitioners with the Northwest Territories. The RNANTNU has expressed an interest in expanding CNPS services, including professional liability protection, to RPNs and LPNs once Bill 77 comes into effect and it becomes the College, subject to the adoption of the necessary bylaws.

¹ As stated in the CNPS Letters of Incorporation

The CNPS is also the designated individual professional liability protection provider for all registered nurses, nurse practitioners and registered psychiatric registrants in most other Canadian provinces and territories.²

Professional liability insurance: Subsection 20(1)(t)

Paragraph 20(1)(t) of the Act provides the authority for the College to procure a source of professional liability coverage for its registrants. It reads as follows:

20. (1) The college may make bylaws

(t) authorizing the Board of Directors to maintain professional liability insurance on behalf of members or any class of members;

It has been a privilege for the CNPS to be able to support the registered nurses and nurse practitioners of the Northwest Territories and, by extension, their patients. The CNPS would welcome the opportunity to do so for all nursing registrants of the College, as the College may determine by way of bylaws.

However, to operate in accordance with a clear legislative authority, the CNPS recommends that paragraph 20(1)(t) be amended to be inclusive of sources of professional liability protection other than insurance. This would be consistent with the legislative language in other Canadian provinces and territories having adopted enabling provisions for professional liability protection, which all recognize forms of professional liability protection other than insurance (see Appendix A).

Recommendation: That the word “insurance” be replaced with “protection”, which is inclusive of insurance or by stipulating professional liability protection as an alternative to insurance, as follows:

20. (1) The college may make bylaws

(t) authorizing the Board of Directors to maintain professional liability insurance or protection on behalf of members or any class of members;

2. Review of Professional Conduct: Part 7

The content of the legislation clearly reflects that thoughtful consideration has been given to achieving the purpose of protecting of the public in accordance with the application of principles of fairness to nursing registrants, as would be required of any regulatory process.

² It is mandated as the provider of individual professional liability protection for registered nurses and nurse practitioners in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince-Edward-Island, Newfoundland and Labrador and the Yukon, and for registered psychiatric nurses in British Columbia, Saskatchewan and Manitoba.

In keeping with this objective, we submit three recommendations in connection with the complaints review process.

A. Subsection 56(2): Notification and Disclosure of the Complaint

Upon receipt of a complaint, subsection 56(2) requires that a summary of the complaint be provided to the respondent. However, a copy of the complaint itself is only provided to the respondent if it is requested.

Nurses, who may not be familiar with the particularities of the legislative underpinnings of the regulatory complaint process, may not be attuned to the fact that they must formally request a copy of the complaint in order for it to be provided to them. Providing a summary of allegations in place of the original document can risk introducing inaccuracies (the summary is subject to interpretation), delay and possibly unfairness into the process.

Providing the respondent with a complete copy of the complaint at the outset, often alongside the original notification to the respondent of the filing of a complaint, allows the respondent to understand and appreciate the totality and scope of the allegations against them, to which they will be expected to provide a response. It is not only procedurally transparent and fair, but it can serve to facilitate a faster resolution of the matter and will lead to more complete and meaningful submissions and responses from the respondent when they can truly appreciate the nature and scope of the allegations made against them.

It is also, in our experience, in keeping with the practices of the majority of the Canadian nursing regulators such as British-Columbia, Ontario, Alberta, Saskatchewan, Manitoba, Prince-Edward Island, Newfoundland & Labrador and New Brunswick. Finally, this practice is also supported by Harry Cayton, who was retained back in 2019 by the College and Association of Registered Nurses of Alberta (“CARNA”) to review their complaints processes and outcomes. In this report, Mr. Cayton explicitly advocated for CARNA to share the complaint with a registrant once it has been received by the regulator and assessed as warranting investigation.³

Recommendation: That paragraph 56(2) be amended as follows:

56 (2) On receiving a complaint under subsection (1), the Complaints Officer shall provide a copy of the complaint to the respondent and the Chairperson.

B. Subsection 59(1): Acting on complaint

The feedback received in response to the consultation process preceding the adoption of Bill 77 highlighted the importance of an alternative dispute resolution process. We echo that perspective. ADR can be a meaningful and effective tool for a regulator to fulfill its role of public protection.

³ Harry Cayton, “A review of complaints processes and outcomes conducted for the College and Association of Registered Nurses of Alberta” (September 2019), at 40, online:
https://nurses.ab.ca/docs/defaultsource/latestnews/cayton-report.pdf?sfvrsn=2df588fc_6

Having the ability to divert less serious matters through an ADR stream, saves valuable resources to focus on more significant matters of allegations of professional misconduct and fitness to practice concerns, ensuring these matters can benefit from the appropriate time and resources that they require. The ADR process can be a meaningful way to “course correct” a nurse whose behaviour amounted to an error in skill or an instance of an error in judgement that cannot simply be dismissed and unaddressed, but does not necessarily reach the threshold warranting formal findings of professional misconduct or wrongdoing. A flexible and meaningful ADR process can be used to provide nurses with an opportunity to reflect, demonstrate insight and improve their practice without requiring a complete investigation nor requiring that a formal finding of misconduct be reached in every instance. This will only serve to ultimately fulfill the Regulator’s mandate to protect the public by encouraging participation, collaboration and reflection early on in the complaint resolution process. In his 2019 report, Mr. Cayton commended CARNA’s staff for its commitment to negotiating consent resolution agreements, which are the outcome of negotiations between the registrant and the regulator, and held that this was one of the strengths of the performance of CARNA’s complaints process.⁴

While paragraph 67(2)(d) enables the Professional Conduct Committee to resolve a complaint by way of undertaking, this can only take place after the completion of the investigation report, which requires a substantial investment of time and resources, which may not be necessary where a registrant demonstrates the required level of insight and motivation to address the concerns raised in a complaint at the outset of the process.

Recommendation: We recommend that the process include an opportunity to resolve a complaint by way of agreement at an earlier stage of the process, with the consent of the Committee by way of amendment to subsection 59(1), as follows:

59. (1) Subject to the bylaws and subsection (2), the Complaints Officer may, in respect of a complaint,
- (a) dismiss the complaint, in whole or in part, if the Complaints Officer is satisfied that
 - (i) the allegations do not pertain to conduct regulated under this Act or the bylaws,
 - (ii) the complaint is trivial, frivolous or vexatious, or
 - (iii) there is insufficient evidence of unprofessional conduct to provide a reasonable basis to continue with the complaints process;
 - (b) accept the voluntary surrender of the respondent’s registration and certificate and transfer the matter to the Committee under subsection 69(1);
 - (c) *with the consent of the Committee, accept*
 - (i) *an undertaking from the respondent that may provide for one or more of the following:*

4. Ibid at 1.

- a. the respondent to complete a specified course of studies or training, or individual learning activities;*
 - b. the respondent to attend specified counselling or undergo specified treatment;*
 - c. such other measure contemplated at paragraph 67(2)(d);*
 - (ii) any other appropriate term that is not inconsistent with or contrary to this Act, the regulations or the bylaws; or*
- (d) refer the complaint, in whole or in part, to the Committee.

C. Subsections 61 and 63: Interim Suspension

Section 63 provides the Pr with the ability to suspend a nurse's registration and certificate at any time during the review of a nurse's professional conduct should they deem it to be necessary to protect the public against a significant risk to health and safety.

Section 61 confers a similar authority to the Complaints Officer. To do so, the Complaints Officer must consult with the Executive Director and follow the procedures established in the College bylaws. The Complaints Officer's decision to suspend the nurse's licence on an interim basis must be presented to the Professional Conduct Committee to be confirmed within 3 business days or it is null and void.

We would like to highlight three concerns regarding this process.

- i) The absence of an opportunity to make submissions before the interim suspension takes effect

Sections 61 and 63 do not at any point contemplate that the registrant whose registration would be summarily suspended be given the opportunity to address the Committee in advance of the suspension. An interim suspension is a matter of public record. Not only will the nurse be notified of the interim suspension, but so will their employer and members of the public. It will necessarily have a significant and immediate impact on their ability to obtain employment and on their reputation. Pursuant to sections 61 and 63, an interim suspension can occur at any time upon receipt of a complaint, before the registrant/nurse who is the subject of a complaint has been given an opportunity to provide a response. At the same time, allegations against a nurse are not vetted prior to a complaint being submitted. Any individual can submit a complaint against a nurse, and those allegations cannot be presumed to be true.

We believe that in these circumstances, the ability to summarily suspend a nurse prior to having received their response to the complaint and without providing them with the right to make submissions in advance of the suspension does not accord with the principles of procedural fairness. We also submit that this cannot be cured by a right of appeal, which, while necessary, is both onerous and expensive.

We submit that notice that the College is considering an interim suspension be provided in advance of any decision being made so that the nurse may be given an opportunity to provide submissions, as is the case in Ontario, for instance, where section 63 of the Health Professions Procedural Code provides for a 14 day notice of an intention to make an interim suspension order unless “the panel is of the opinion on reasonable and probable grounds that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed.” Should the legislation provide for such notice, given the ability of the Professional Conduct Committee to meet with a three-day notice period, section 61 would become obsolete and the right to issue an interim suspension would only need to vest with the Professional Conduct Committee.

ii) Notification of the suspension

Pursuant to paragraphs 61(2)(a), 63(2)(a) and 63(4)(a) the nurse must be notified in writing of the suspension before the suspension can take effect. Given the immediate effect of the suspension of a nurse’s licence, the vast expanse of the Northwest Territory requiring that nursing services be provided in remote areas, and the fact that many registrants may have a permanent address outside of the Northwest Territories, it is easy to contemplate that there may be a legitimate delay between the time when the notification is issued and when it is received by the nurse. Without confirmation of receipt of the notification, nurses may inadvertently find themselves practicing without a license until such time that they return to a location with internet access, or to their permanent residence at which point they may finally receive the written notice of suspension that had previously been provided. Delays in delivery (regular mail) or receipt (internet access/network access issues) can increase the risk of inadvertent practice while suspended. These concerns are less acute if the nurse has been provided with advance notice of the consideration of an interim suspension and an opportunity to provide submissions in advance of a decision being made, as a decision is then expected.

We therefore recommend that confirmation of receipt of notice of suspension be obtained prior to it becoming effective.

iii) The time constraints to initiate an appeal from an interim suspension

Section 64 provides for a right to appeal an interim suspension within 30 days of the decision to the Supreme Court. Subsection 63(5) also provides that an interim suspension “must be revoked” if it is no longer necessary to protect the public. This provides a nurse who is subject to an interim suspension two mechanisms to have the suspension lifted: an appeal to the Supreme Court, or a submission to the Professional Conduct Committee to reconsider the suspension pursuant to paragraph 63(5). As the second mechanism is much more readily accessible and less expensive than the first, both for the nurse and the College, it should therefore be the preferred route to have an interim suspension reconsidered, particularly if it was initially ordered without the benefit of

any input from the nurse. However, a reconsideration by the Professional Conduct Committee is unlikely to take place within a 30 day period from the date of the suspension, with the result that the right of appeal would be lost. For that reason, we recommend that the right of appeal be set at 30 days from the date of the decision to issue an interim suspension *or* from the date of a decision by the Professional Conduct Committee to confirm or revoke a suspension pursuant to subsection 63(5).

Recommendation: Having regard to the considerations above, we recommend that paragraph 61 be amended, that new paragraphs 63(1.1) and 63(1.1) be introduced and that paragraph 64(1) be amended as follows:

61. If, at any time before a complaint is referred to the Committee, the Complaints Officer determines that a suspension of a nurse's registration and certificate may be necessary to protect the public against a significant risk to health or safety, the Complaints Officer may, in accordance with the procedure established in the bylaws and in consultation with the Executive Director, refer the matter to the Committee for consideration in accordance with paragraph 63.

63(1.1) Where the Committee contemplates imposing a suspension under paragraph (1)(a), or placing limitations, terms or conditions on a nurse's entitlement to practice under paragraph (1)(b), the Chairperson shall, without delay, give the nurse written notice of

- (a) the determination that a suspension, or limitations, terms or conditions may be necessary;*
- (b) the grounds for that determination;*
- (c) the date when the Committee will make a decision, which shall not be less than 14 days from the date of the notice; and*
- (d) the nurse's right to present submissions to the Committee in advance of that decision.*

63(1.2) Despite subsection (1.1), an order may be made without notice to the member, subject to the right of the member to make submissions while the suspension is in place to the panel that made the order, if the panel is of the opinion on reasonable and probable grounds that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed.

64. (1) A nurse who

- (a) has had their registration and certificate suspended under paragraph 63(1)(a),*
- (b) has had limitations, terms or conditions placed on their entitlement to practice under paragraph 63(1)(b), or*

(c) has submitted a request to revoke a suspension or remove the limitations, terms or conditions placed on their license pursuant to paragraph 63(5), may, within 30 days of receiving written notice of the suspension under subsection 61(2) or 63(2) or of the limitations, terms or conditions under subsection 63(2), or of the denial, in full or in part, of their request for revocation or removal pursuant a reconsideration under paragraph 63(5), appeal the decision of the Committee to the Supreme Court by filing a notice of appeal with the Supreme Court and serving it on the college.

All of which is respectively submitted,

THE CANADIAN NURSES PROTECTIVE SOCIETY


2023-03-30

Chantal Léonard, LLB, CEO


2023-03-30

Alanna Lawson, LLB, LLL, Legal Counsel

Appendix A

British Columbia: Health Professions Act, RSBC 1996, c. 183, par. 19(1)(o):

19 (1)A board may make bylaws, consistent with the duties and objects of a college under section 16, that it considers necessary or advisable, including bylaws to do the following:

(o) establish requirements respecting maintenance of professional liability protection or insurance coverage by registrants;

Alberta: Health Professions Act, RSA 2000, c.H-7, par. 132(1)(x):

132(1) A council may make bylaws

(x) respecting the type and amount of liability insurance that regulated members are required to carry, or the organization in which regulated members must have membership, for the purposes of section 28 or 40;

Saskatchewan: Registered Nurses Act, SA 1988-89, c. R.12.2, par. 15(2)(o), as amended

15(2) Subject to this Act, bylaws made pursuant to section 14 may be made for the following purposes:

(o) prescribing the minimum amount of liability protection that nurses or a category of nurses are required to obtain;

Manitoba: The Regulated Health Professions Act, C.C.S.M., c. R117, par. 221(1)(n)

221(1) A council may make regulations

(n) respecting professional liability insurance or coverage, or other liability protection, for members and health profession corporations;

Ontario: Regulated Health Professions Act, S.O. 1991, c. 18, par. 94(1)(y), as amended

94 (1) The Council may make by-laws relating to the administrative and internal affairs of the College and, without limiting the generality of the foregoing, the Council may make by-laws,

(y) requiring members to have professional liability insurance that satisfies the requirements specified in the by-laws or to belong to a specified association that provides protection against professional liability and requiring members to give proof of the insurance or membership to the Registrar in the manner set out in the by-laws;

Nova Scotia: Nursing Act, SNS 2019, c. 8,

7 (1) The Board shall govern the College and in so doing shall

(f) set the form and amount of professional liability insurance or other form of malpractice coverage or liability protection a registrant must have;

Prince-Edward-Island: Regulated Health Professions Act, RSPEI 1988, c. R-10.1, par. 96(2)(m)

96(2) The Lieutenant Governor in Council, in consultation with a council, may make regulations relating to matters associated with the regulation of entitlement to practice, standards of practice and discipline for a regulated health profession and for any purpose authorized by this Act and, in particular,

(m) respecting the type and amount of professional liability insurance or protection that members and health profession corporations are required to hold or be covered by;

Newfoundland and Labrador: The Registered Nurses Act, SNL 2008, c. R-9.1, par 11(1)(d)

11. (1) The council may, with the approval of the minister, make regulations respecting

(d) the requirement of registered nurses to carry professional liability protection;

Standing Committee on Social Development
Legislative Assembly of the Northwest Territories
Yellowknife NT

via email

Dear Chair and Committee Members:

Input on Public Review of Bill 77: Nursing Profession Act

As a registered nurse who has practised in the Northwest Territories and Nunavut for most of my 24 year career in clinical, administrative, policy, education, and leadership roles, I welcome the changes proposed in the new *Nursing Profession Act*.

First, I would like to recognize the work of our nursing colleagues at the Registered Nurses Association of the Northwest Territories and Nunavut (RNANT/NU) and the staff of the Department of Health and Social Services for this important work to update the *Act*. It is extremely timely to add the category of authorized prescriber to allow Registered Nurses (RNs) and Registered Psychiatric Nurses (RPNs) an expanded role. This is a valuable tool for RNs and RPNs to utilize their skills and evidence-based knowledge to enhance the care options available for the public and help to relieve the tremendous demands our health systems are facing. I also look forward to welcoming Licensed Practical Nurses in joining the regulated nursing family and the opportunities this also provides for the health system.

After careful review of the draft of the *Act* I provide the following input on two sections where clarification should be considered.

Section 67: Direction to Pay Costs

In 67(3)(a) there does not appear to be a mechanism for a respondent to appeal the direction of the College to pay for costs of an investigation. The *Act* should be explicit that, similar to other decisions of a Professional Conduct Committee or Board of Inquiry, the respondent may appeal such direction to the Supreme Court and that the Court may make any order as to costs that it considers appropriate. Without this mechanism, the Committee could order costs of an investigation to be paid by a respondent even if the complaint being investigated is ultimately dismissed. It appears the *Act* does not permit a respondent to dispute an order to pay for costs of an investigation unless the appeal is part of a decision of a complaint or an order of a Board of Inquiry.

Section 61 - Suspension by a Complaints Officer

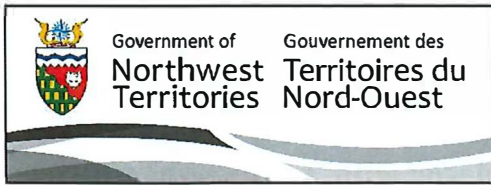
For clarity, it should be specified that a suspension issued by a complaints officer cannot be extended or renewed for an additional period beyond three days for the same complaint.

Thank-you for considering my comments and I look forward to this important legislation coming into effect.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Robertson', with a long horizontal stroke extending to the right.

Scott Robertson RN
Yellowknife



Public Information

May 19, 2023

CAITLIN CLEVELAND
CHAIRPERSON
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Response to Public Hearing Submissions

Thank you for your consideration of Bill 77: *Nursing Profession Act*. We are writing in follow-up to the Registered Nurses Association of the Northwest Territories and Nunavut's (RNANTNU) commitment at the May 10, 2023 public hearing to provide the Standing Committee on Social Development (SCOSD) with additional information respecting the Canadian Nurses Protective Society's (CNPS) submission, as well as to provide additional information respecting the other public submission raised at the public hearing on Bill 77: *Nursing Profession Act*.

Protection of the public is the driving principle by which our positions have been developed. Protecting the public in the northern context is complex; it must consider not only best practices and standards, but also our diverse cultures, the long-standing impacts of colonization, our ongoing capacity challenges, and the evolving knowledge and understanding of how to address these issues. Being its primary mandate as the regulator, protecting the public is a responsibility taken very seriously by RNANTNU. It is also taken very seriously by the Department of Health and Social Services (DHSS) as the legislative authority for granting RNANTNU the privilege of self-regulation.

While the Bill is largely consistent with legislative frameworks for the regulation of nursing across Canada, the nature of delivering nursing services in a small, remote jurisdiction that relies so heavily on nurses to deliver essential health care services will require that there be some differences. The Northwest Territories context is unique and requires solutions that fit our capacity, system, and the needs of our population. There may be cases where solutions that work in a northern context differ from practices that would be the norm to southern stakeholder groups. However, it is our position that these differences will strengthen the regulation of nursing in the Northwest Territories and better meet the needs of the residents we serve, thus better protecting both the public and the nursing profession.

While we appreciate the expertise and interest these stakeholders have brought to this legislation, we also need to ensure all feedback is taken in context. To this end, the DHSS's and RNANTNU's positions on the recommendations put forward through public submissions on Bill 77, and corresponding rationale, are outlined below for the consideration of Committee.

1. CNPS Recommendation: Professional liability insurance: Subsection 20(1)(t)

“Recommendation: That the word “insurance” be replaced with “protection”, which is inclusive of insurance or by stipulating professional liability protection as an alternative to insurance, as follows:

***20.(1) The college may make bylaws
(t) authorizing the Board of Directors to maintain professional liability insurance or protection on behalf of members of any class of members;”***

Response:

To be inclusive of sources of professional liability protection other than insurance, and to be consistent with the legislative language in other province and territories, DHSS and RNANTNU would be supportive of a Motion to include the wording “or protection” in s.20(1)(t) of the Bill.

2. CNPS Recommendation: Review of Professional Conduct: Part 7 Subsection 56(2): Notification and Disclosure of the Complaint

“Recommendation: That paragraph 56(2) be amended as follows:

56(2) On receiving a complaint under subsection (1), the Complaints Officer shall provide a copy of the complaint to the respondent and the Chairperson”

Response:

The CNPS's concerns respecting the provision of a summary of allegations in place of the original are understood. However, as indicated during the public hearing, it has been RNANTNU's experience that there is often a more sensitive nature to the complaints in the Northwest Territories (NWT) compared to southern jurisdictions. This may include the provision of very personal information and substantial amounts of information unrelated to the complaint. Sharing information of this nature must be carefully considered, especially in small, tight-knit communities where everyone knows each other.

Providing a summary allows RNANTNU to look diligently at the complaint first to ensure only the substantive information of the complaint is provided, thus reducing the risk of inaccuracies or confounding information being introduced. The option remains for the respondent to ask for a full copy of the complaint if desired. It is therefore the opinion of DHSS and RNANTNU that any risks of introducing inaccuracies, delaying the process, or jeopardizing the fairness of the process are more appropriately mitigated with the current requirements. For this reason, the amendment as proposed by CNPS would not be supported by DHSS or RNANTNU.

3. CNPS Recommendation: Review of Professional Conduct: Part 7 Subsection 59(1): Acting on Complaint

“Recommendation: We recommend that the process include an opportunity to resolve a complaint by way of agreement at an earlier stage of the process, with the consent of the Committee by way of amendment to subsection 59(1) as follows:

59. (1) Subject to the bylaws and subsection (2), the Complaints Officer may, in respect of a complaint,

(a) dismiss the complaint, in whole or in part, if the Complaints Officer is satisfied that

(i) the allegations do not pertain to conduct regulated under this Act or the bylaws,

(ii) the complaint is trivial, frivolous or vexatious, or

(iii) there is insufficient evidence of unprofessional conduct to provide a reasonable basis to continue with the complaints process;

(b) accept the voluntary surrender of the respondent’s registration and certificate and transfer the matter to the Committee under subsection 69(1);

(c) with the consent of the Committee, accept

(i) an undertaking from the respondent that may provide for one or more of the following:

a. the respondent to complete a specified course of studies or training, or individual learning activities;

b. the respondent to attend specified counselling or undergo specified treatment;

c. such other measure contemplated at paragraph 67(2)(d);

(ii) any other appropriate term that is not inconsistent with or contrary to this Act, the regulations or the bylaws; or

(d) refer the complaint, in whole or in part, to the Committee.”

Response:

The role of the Complaints Officer is to complete the initial intake and handling of complaints brought forward to RNANTNU against nurses registered to practice under the Act. Where the Complaints Officer cannot clearly dismiss the complaint or accept a voluntary surrender of a nurse’s registration and certificate, the process proposed in the Bill allows for the Complaints Officer to refer a complaint to the Professional Conduct Committee (PCC) to investigate the complaint as needed and determine the most appropriate action. This includes the ability for the PCC to accept an undertaking from the respondent under s.67(2)(d).

The CNPS submission notes that an undertaking accepted by the PCC can only take place after the completion of an investigation report, which they argue requires a substantial investment of time and resources that may not always be necessary. However, the scope of an investigation and what goes into an investigation report can and will vary based on the nature of the complaint. This means that an in-depth investigation may not be necessary where a preliminary investigation reveals that the registrant has the required level of insight and motivation to address the concerns raised in a complaint at the outset of the process. The Bill also includes bylaw making powers to provide RNANTNU with the flexibility to establish processes and requirements respecting investigations (s.20(1)(z.19) as well as for processing undertakings (s.20(1)(z.18)).

It is also important to note that the Bill does not require that the Complaints Officer be a nurse; however, the membership of the PCC must include members of the College (i.e., nurses who are licensed to practice in the NWT) in addition to members of the public. As mentioned at the Public Hearing, it is the opinion of DHSS and RNANTNU that an undertaking is most appropriately developed between the respondent and members of the nursing profession, as opposed to a single individual who may not be as well versed in nursing practice as nurses themselves.

With these considerations in mind, the amendments proposed by CNPS would not be supported by DHSS or RNANTNU.

4. CNPS Recommendation: Review of Professional Conduct: Part 7 Subsections 61 and 63: Interim Suspension

Recommendation: Having regard to the considerations above, we recommend that paragraph 61 be amended, that new paragraphs 63(1.1) and 63(1.1) be introduced and that paragraph 64(1) be amended as follows:

61. If, at any time before a complaint is referred to the Committee, the Complaints Officer determines that a suspension of a nurse's registration and certificate may be necessary to protect the public against a significant risk to health or safety, the Complaints Officer may, in accordance with the procedure established in the bylaws and in consultation with the Executive Director, refer the matter to the Committee for consideration in accordance with paragraph 63.

63(1.1) Where the Committee contemplates imposing a suspension under paragraph (1)(a), or placing limitations, terms or conditions on a nurse's entitlement to practice under paragraph (1)(b), the Chairperson shall, without delay, give the nurse written notice of
(a) the determination that a suspension, or limitations, terms or conditions may be necessary;

- (b) the grounds for that determination;*
- (c) the date when the Committee will make a decision, which shall not be less than 14 days from the date of the notice; and*
- (d) the nurse's right to present submissions to the Committee in advance of that decision.*

63(1.2) Despite subsection (1.1), an order may be made without notice to the member, subject to the right of the member to make submissions while the suspension is in place to the panel that made the order, if the panel is of the opinion on reasonable and probable grounds that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed.

64. (1) A nurse who

- (a) has had their registration and certificate suspended under paragraph 63(1)(a),*
 - (b) has had limitations, terms or conditions placed on their entitlement to practice under paragraph 63(1)(b), or*
 - (c) has submitted a request to revoke a suspension or remove the limitations, terms or conditions placed on their license pursuant to paragraph 63(5),*
- may, within 30 days of receiving written notice of the suspension under subsection 61(2) or 63(2) or of the limitations, terms or conditions under subsection 63(2), or of the denial, in full or in part, of their request for revocation or removal pursuant a reconsideration under paragraph 63(5), appeal the decision of the Committee to the Supreme Court by filing a notice of appeal with the Supreme Court and serving it on the college.*

Response:

The intent of the ability for the Complaints Officer and PCC to be able to suspend a nurse's certificate and registration while the nurse's conduct is being reviewed is to protect the health and safety of the public where the nurse's conduct poses an imminent and serious risk of harm. The Bill requires that the nurse be notified of such a suspension before it can take effect (s.63(4)(a)) and provides the nurse the ability to appeal the suspension (s.64). Further, case law requires that decision makers like the Complaints Officer and PCC consider factors such as the seriousness of the allegations, the conduct of the parties in the process, and the reasonableness of the decision before any decision is rendered. The decision to suspend a nurse's certificate and registration under any circumstance would not be taken lightly and would only be a measure of last resort.

CNPS has recommended that the Complaints Officer's power to suspend a nurse's registration and certificate in these circumstances be removed, and that this power instead rest solely with the PCC. They have further recommended that such a decision not be made until the nurse has been

provided with 14 days notice. The recommendation put forward by CNPS maintains the ability to suspend a nurse's registration and certificate, but without notice, in exigent circumstances (proposed s.63(1.1)).

It is important to note that the proposed s.63(1.1) appears to align with the intent of the current power provided to the Complaints Officer under s.61, and to the PCC under s.63, to suspend a nurse's certificate and registration while the nurse's conduct is being reviewed. However, DHSS and RNANTNU believe that leaving this ability only to the PCC, rather than allowing the Complaints Officer to make this decision and having the PCC confirm it, adds an unnecessary step and delay in circumstances where the Complaints Officer or PCC has reason to believe that there is an imminent risk to the health or safety of the public.

With these considerations in mind, the amendments proposed by CNPS would not be supported by DHSS or RNANTNU.

5. Public Recommendation: examine s.67(3) where the Committee may direct the respondent to pay the college all or part of the costs of an investigation or the costs of monitoring compliance with any limitations, terms or conditions placed on a respondent's entitlement to practice under (2)(d)(iv).

Response:

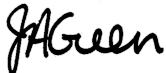
It is the position of DHSS and RNANTNU that the ability to direct a respondent to pay for costs associated with an investigation (s.67(3)(a)), and/or costs associated with monitoring compliance with any limitations, terms, or conditions placed on a respondent's entitlement to practice (s.67(3)(b)) are reasonable and in line with powers provided to other regulatory bodies. Further, we believe that there are sufficient opportunities to appeal such decisions and directions in the Bill.

Final decisions made by the PCC under s.67, with the exception dismissing a complaint or referring a complaint to a Board of Inquiry, require agreement from the respondent. As such, discussions respecting any costs that may be incurred by the respondent in accepting that decision would take place before the decision could be finalized. Further, the words "all or part" of the costs are significant, since the PCC's discretion to direct a nurse to pay costs is subject to legal principles about how that discretion should be exercised. As noted in a response above, case law requires that decision makers like the Complaints Officer and PCC consider factors such as the seriousness of the allegations, the conduct of the parties in the process, and the reasonableness of the decision before any decision is rendered. The PCC cannot order nurses under investigation to pay all of the costs in all cases; costs are not intended as an additional punishment and may not be justified on that basis. It is also important to note that a nurse's professional liability protection and/or insurance may cover these costs where they are not covered by the employer.

The public submission also raised questions regarding the ability of the respondent to appeal a direction made by the PCC to pay costs. The Bill provides multiple opportunities for a respondent to appeal decisions that may impact their ability to practice, which would include any direction issued by the PCC or a Board of Inquiry respecting costs. In the event that a complaint is not resolved to the satisfaction of the PCC, which may include refusal by the respondent to pay costs directed under s.67(3), the PCC can refer the complaint to a Board of Inquiry under s.70 to conduct a hearing. Following a hearing, the respondent has the right to appeal any decision or order issued by the Board of Inquiry to the Appeals Committee under s.91. Decisions of the Appeals Committee can be further appealed to the Supreme Court under s.92.

DHSS and RNANTNU would like to thank Committee for taking the time to review Bill 77 and for the opportunity to provide additional information following the public hearing. We would be happy to answer any further questions that Committee may have to inform their review of the Bill.

Sincerely,



Julie Green
Minister of Health and Social Services



Vivian-Lei Silverio-Chua
President, Registered Nurses Association of
the Northwest Territories and Nunavut

- c. Members of the Legislative Assembly
 - Principal Secretary
 - Secretary to Cabinet/Deputy Minister, Executive and Indigenous Affairs
 - Deputy Minister, Department of Health and Social Services
 - Clerk, Standing Committee on Social Development
 - Advisor, Standing Committee on Social Development
 - Committee Members, Standing Committee on Social Development

MOTION

NURSING PROFESSION ACT

That paragraph 20(1)(t) of Bill 77 be amended by striking out "liability insurance" and substituting "liability insurance or protection".

MOTION

LOI SUR LA PROFESSION INFIRMIÈRE

Il est proposé que l'alinéa 20(1)t) du projet de loi 77 soit modifié par suppression de «une assurance responsabilité professionnelle» et par substitution de «à une assurance-responsabilité professionnelle ou une protection contre la responsabilité professionnelle».

MOTION

NURSING PROFESSION ACT

That Bill 77 be amended by adding the following after paragraph 20(1)(z.19):

(z.19.1) establishing the procedure to be followed in appeals of directions to pay the costs of investigations;

MOTION

LOI SUR LA PROFESSION INFIRMIÈRE

Il est proposé que le projet de loi 77 soit modifié par insertion, après l'alinéa 20(1)z.19), de ce qui suit :

z.19.1) établir une procédure à suivre dans le cadre des appels des directives de paiement des frais d'enquête;

MOTION

NURSING PROFESSION ACT

That Bill 77 be amended by adding the following after subclause 56(5):

Notice of right
to receive copy
of complaint

(5.1) A summary of a complaint provided under paragraph (2)(a) or (5)(a) must include a statement advising the respondent of the right to receive a copy of the complaint under paragraph (2)(b) or (5)(b) on request.

MOTION

LOI SUR LA PROFESSION INFIRMIÈRE

Il est proposé que le projet de loi 77 soit modifié par insertion, après le paragraphe 56(5), de ce qui suit :

(5.1) Le résumé de la plainte fourni en vertu de l'alinéa (2)a) ou (5)a) comprend un énoncé informant l'infirmière visée de son droit de recevoir, sur demande, une copie de la plainte en vertu de l'alinéa (2)b) ou (5)b).

Avis du droit
de recevoir
copie de la
plainte

MOTION

NURSING PROFESSION ACT

That Bill 77 be amended by adding the following after clause 67:

Appeal of Direction to Pay Costs
of Investigation

Hearing not
required

67.1. (1) Before making a direction to pay the costs of an investigation under paragraph 67(3)(a), the Committee shall

- (a) invite the respondent to make a written submission within 15 days or within such longer period of time as the Committee may specify, and
- (b) consider any written submission made under paragraph (a),

but the Committee is not required to hold a hearing.

Notice of
direction

(2) Where the Committee makes a direction referred to subsection (1), the Committee shall, without delay, give to the respondent

- (a) a copy of the direction;
- (b) written reasons for the direction; and
- (c) written notice of the right to appeal the direction under subsection (3).

Appeal

(3) A respondent who is issued a direction referred to in subsection (1) may, within 30 days after receiving a copy of the direction under paragraph (2)(a), appeal the direction to a Board of Inquiry by submitting a written notice of appeal to the Board of Directors.

Referral to
Board of
Inquiry

(4) On receiving a written notice of appeal under subsection (3), the Board of Directors shall,

- (a) if the complaint has been referred to a Board of Inquiry under paragraph 67(2)(e), refer the appeal to the Board of Inquiry; or
- (b) if the complaint has not been referred to a Board of Inquiry under paragraph 67(2)(e),

MOTION

LOI SUR LA PROFESSION INFIRMIÈRE

Il est proposé que le projet de loi 77 soit modifié par insertion, après l'article 67, de ce qui suit :

Appel de la directive de paiement
des frais d'enquête

Audience non
obligatoire

67.1. (1) Avant d'émettre une directive de paiement des frais d'enquête en vertu de l'alinéa 67(3)a) et sans être obligé de tenir une audience, le comité :

- a) invite l'infirmière visée à présenter ses observations par écrit dans les 15 jours ou un délai plus long qu'il précise;
- b) étudie les observations écrites présentées en vertu de l'alinéa a).

Avis de la
directive

(2) Lorsqu'il émet une directive visée au paragraphe (1), le comité, sans délai, donne à l'infirmière visée, à la fois :

- a) une copie de la directive;
- b) les motifs écrits à l'appui de la directive;
- c) un avis écrit du droit d'appel de la directive prévu au paragraphe (3).

Appel

(3) L'infirmière visée qui s'est vue imposer une directive en vertu du paragraphe (1) peut, dans les 30 jours de la réception d'une copie de la directive prévue à l'alinéa (2)a), interjeter appel de la directive à une commission d'enquête en déposant un avis d'appel écrit au conseil d'administration.

Renvoi à la
commission
d'enquête

(4) Sur réception de l'avis écrit d'appel en vertu du paragraphe (3), le conseil d'administration :

- a) si la plainte a été renvoyée à une commission d'enquête en vertu de l'alinéa 67(2)e), renvoie l'appel à la commission d'enquête;
- b) si la plainte n'a pas été renvoyée à une commission d'enquête en vertu de l'alinéa 67(2)e) :

- (i) establish a Board of Inquiry, in accordance with section 71, to hear the appeal, and
- (ii) refer the appeal to the Board of Inquiry.

- (i) désigne une commission d'enquête, conformément à l'article 71, chargée d'instruire l'appel,
- (ii) renvoie l'appel à la commission d'enquête.

Order

(5) A Board of Inquiry, on hearing an appeal under subsection (4), may make any order as to costs that it considers appropriate.

(5) La commission d'enquête, après avoir instruit l'appel en vertu du paragraphe (4), peut rendre toute ordonnance qu'elle juge indiquée portant sur les frais. Ordonnance

MOTION

NURSING PROFESSION ACT

That the French version of Bill 77 be amended by deleting that portion of clause 70 preceding paragraph (a) and the heading immediately preceding clause 70 and substituting the following:

Renvoi à une commission d'enquête

Renvoi à une commission d'enquête

70. Le comité peut renvoyer la plainte, en totalité ou en partie, à une commission d'enquête pour qu'elle tienne une audience, si, selon le cas :

MOTION

LOI SUR LA PROFESSION INFIRMIÈRE

Il est proposé que la version française du projet de loi 77 soit modifiée par suppression du passage introductif de l'article 70 et de l'intertitre qui le précède immédiatement, et par remplacement de ce qui suit :

Renvoi à une commission d'enquête

70. Le comité peut renvoyer la plainte, en totalité ou en partie, à une commission d'enquête pour qu'elle tienne une audience, si, selon le cas :

Renvoi à une commission d'enquête

MOTION

NURSING PROFESSION ACT

That Bill 77 be amended in the French version of subclause 119(3) by striking out "qui n'est pas un médecin" and substituting "qui est un médecin".

MOTION

LOI SUR LA PROFESSION INFIRMIÈRE

Il est proposé que la version française du paragraphe 119(3) du projet de loi 77 soit modifiée par suppression de «qui n'est pas un médecin» et par substitution de «qui est un médecin».