STATEMENT at SECOND READING—KEVIN O'REILLY, MLA FRAME LAKE

BILL 44: FOREST ACT
March 12, 2019

MR. O'REILLY: Merci, Monsieur le President. I will speak to the process that resulted in the bill, also provide some comments on the bill and concerns with what is there and what is missing. The bill is really just supposed to modernize our forestry practices and management. There have been some recent media tension and news releases related to the way in which it was developed, how inclusive that process was, and whether there is appropriate recognition and incorporation of Indigenous rights and agreements.

ENR's approach on the development of its environmental legislation appears to have been similar to other departments in a post-devolution world, but there were some significant difference. ENR created a two-level approach from consultation. A large stakeholder advisory group, consisting of NGOs, industry, and others, was invited to a series of three large workshops that were held October 12, 2017; February 28 to March 1, 2018; and May 9 and 10, 2018. Participants were promised a chance to review the draft bills before introduction to the House, but this was not done.

There was also a broader public engagement for the Forest Act that closed on December 14, 2018. A bulleted list of possible principles and content was posted to the ENR website. A "what we heard" report was promised but never delivered. Submissions were also not posted. Public consultation and engagement appears to have ended in late 2018.

Technical working groups were established for each of the five ENR bills being considered, including the Forest Act. Indigenous governments were invited to participate in detailed discussions and exchanges of proposals and drafts. Co-management bodies were sometimes allowed to participate in the technical working groups as some of them would be expected to implement parts of the bills.

Indigenous governments that were not members of the inter-governmental council and some NGOs without paid staff were provided some limited financial assistance from ENR. I believe that is a good step.

As I understand it, notes were kept for all the stakeholder advisory group and technical working group meetings. ENR did not share any of its research, best practices, or cross-jurisdictional analysis publicly. Despite repeated attempts by standing committee and Regular MLAs, ENR did not share anything substantive from its consultation and drafting process with Regular Members.

The Minster said in writing on March 28, 2018, that he was "committed to provide SCEDI with updates on ENR's legislative initiatives and the technical working group and stakeholder advisory group meetings." That never happened. Despite several reminders to the Minister and even the Premier, the standing committee had no idea what the actual bills would contain or what stakeholder and Indigenous government feedback ENR had received. The Minister did provide some information on a confidential basis last Friday on this in the past week following media reports of dissatisfaction with the co-

drafting process.

The secrecy surrounding this bill was not helpful and was worse than the ITI bills, much worse, and will make the job of standing committee that much more difficult, especially when it comes to inviting public commentary. This is not how consensus government is supposed to work.

ENR has not provided any plain-language summaries for its legislation, although the Minister did commit to do this in Committee of the Whole review of the department's budget last week. This needs to happen very quickly as the public needs help to participate democratically in the review of Bill 44 and the other proposed ENR legislation.

There are lots of lessons we can learn about the development of these bills. There is a need for formal review across departments of how we did with our first steps in the post-devolution world.

Mr. Speaker, I would now like to turn to the principles and merit of the bill.

GNWT has a Forest Management Act and four sets of regulations under it. That legislation allows for the establishment of a supervisor and officers. The powers of the Minister are also set out. Agreements can be entered into, and permits and licences issued for forestry activities. An appeal process is also set up. An enforcement regime is established, including offences and penalties that are set out, along with regulation-making authority.

There are regulations that set out more detail for permits and licences for harvesting, commercial operations, and research. Charges and fees are laid out, including those related to reforestation. Record-keeping is also required. The other three regulations create a forest management unit near Cameron Hills for the cutting of timber, zones for management purposes, and other areas for management. There is also a Forest Protection Act with no regulations under it. It deals largely with fire suppression, duties to report, and duties to assist. Offences and penalties are established with ministerial power to create regulations.

Bill 44, the Forest Act, will repeal and replace these two pieces of legislation and their regulations. Modern forestry legislation should establish a planning and management regime, and the bill purports to do this, but it is going to take a lot of hard work to get it in order.

The Forest Act sets out some overall administrative roles and responsibilities. Sustainable forest management is outlined, followed by a detailed section on forest fires and suppression. Agreements, permits, and licences are provided for in the bill, and there is a detailed appeal process. Officers are created to provide enforcement through inspections, investigations, and seizures, with fines and penalties, as well. Alternative measures may be agreed upon. Regulation-making authority is spelled out. Lastly, there are some transitional provisions.

There are some laudable aspects to this bill, such as the extensive preamble and the purpose section. There is a commitment to work in a cooperative and collaborative

manner, use best available information, including traditional knowledge and adaptive management, recognition of wildfire as a natural process, ecological integrity, and sustainability. However, the bill does little to translate these lofty ideas into actual practice in a coherent, consistent, and logical fashion.

There are a number of very serious issues with this bill as I see it. It is almost as if the bill was half-done before it was introduced. There is no logical order or flow to it. One might expect to see research and inventory work that would lead into the development of forest management plans, which would then form the basis for forest use through agreements, followed by licences and permits that would authorize specific forestry activities, which would be monitored and reported on.

Although the bill contains most of these functions, they are scattered about in an almost incomprehensible fashion. It is going to take a lot of work to organize these steps into a logical and orderly process for forest protection and management. It is like parts of the previous two bills were glued together, rather than woven into a pattern that is clear and makes sense. I will have some specific comments on some of these functions a little later.

There are few, if any, cross-references to other resource management legislation, which creates a potential for overlap and duplication, or even conflicting provisions. For example, the definition of "forest ecosystem" includes all wildlife. There are provisions for ecosystem management plans, while we already have a detailed Wildlife Act in place for wildlife plans.

While the bill does acknowledge and recognize the prevailing co-management system established under constitutionally entrenched land rights agreements, it does not fully embrace or support the role of the Renewable Resources Boards or Indigenous governments in those areas in the bill itself. There are no clear roles for the co-management bodies or Indigenous governments in the development and approval of forest ecosystem management plans, forest harvesting agreements, permits and licences, or monitoring and reporting on the state of forest ecosystems. The Minister can develop and implement plans, policies, and programs, but there is no requirement for notice or any kind of a review process. There are lots of provisions and approaches from the Wildlife Act that could and should have been incorporated into this bill to fully incorporate co-management.

In a very strange twist, the only defined role for co-management bodies and Indigenous governments in this bill is a right to be notified when an appeal is received by the Minister from a third party for denial of a permit or licence or suspension of same or a seizure. Co-management bodies and Indigenous governments don't even have the ability to file an appeal themselves if they disagree with the decision by the Minister. Once notified of an appeal by a third party, co-management bodies and Indigenous governments have a right to intervene in that appeal process. Surely we can do much better in recognizing the roles and responsibilities of our resource management partners who already have constitutionally protected rights to manage forest resources.

There is the ability for the Minister to enter into agreements with others to carry out forest management. This may allow the Renewable Resources Boards to substitute for

the poorly organized and drafted functions provided for in this bill. There are provisions for a public registry in the protected areas bill, and such is also the practice with the Land and Water Board of the Mackenzie Valley and the Mackenzie Valley Environmental Impact Review Board. There is no requirement for, or even a mention of, a public registry for management plans, licences, permits, inspections, or the plans, policies, and programs that the Minister may develop to manage forests under Bill 44. How is anyone supposed to know what is going on without a public registry?

The lack of a public registry is just the tip of the iceberg, as there are no provisions anywhere in the bill for public notice or participation in the development of forest ecosystem management plans, forestry agreements, permits, licences, or state-of-the-forest reporting. Surely there should be some role for the public in knowing about and commenting on at least some, if not all, of these tools for forest management and protection.

I want to highlight one glaring example of how the bill does not tie together the forest management tools that it contains. There is the potential for the supervisor to develop forest ecosystem management plans. That is great. I believe that it should be a duty as well. However, these plans must be completed before a forest harvest agreement can be issued. This is, in principle, a good thing and mirrors how land use permits and water licences must conform with an approved regional land use plan or, at the municipal level, how a development permit must confirm the zoning and a general plan. While a forest ecosystem management plan needs to be in place before harvesting can take place, there is nothing in the bill that says that the harvesting has to conform to, and be consistent with, the completed forest ecosystem management plan.

The bill is almost devoid of any public notice or reporting requirements, except when it comes to fire management and suppression. The supervisor may monitor the state of forest ecosystems, but there is no duty to do so or to report publicly. This oversight needs to be corrected and coordinated with the state-of-environment reporting requirement in the proposed Environmental Rights Act and similar requirements for the environmental audit performed under the Mackenzie Valley Resource Management Act.

The bill deals with fire suppression, and there is a mandatory requirement for prevention and preparedness plans for industrial activities. This is a good feature, but there is no provision for any kind of review or public participation, even by a community government that may be nearby or called upon for assistance. The supervisor can provide reimbursement for those called upon to assist with forest fires, but there does not appear to be any dispute resolution process if the amount offered is not acceptable.

Fees or charges in respect of reforestation or clearing are to be tracked as a special purpose fund and are to be used only for forest renewal activities. This is, in principle, a good step. However, there is no requirement for any monitoring or evaluation of the effectiveness of such efforts and no public reporting, either. This does not create any accountability or transparency.

Again, as we have seen with most of the resource management bills coming from Cabinet, there is a very troubling pattern of extensive and sweeping ministerial power and discretion without many checks or balances. There are 40 listed areas for potential

regulations that take up more than two pages in the 57-page bill.

This bill, Mr. Speaker, is going to take a lot of time and effort to fix up. I have to wonder if it would have been better to allow more time for the parties involved to bring it to the level where it should have been for a public review. I believe that the public interest would be better served by sending this bill back for further work. I will not be supporting this bill moving forward at this point. Mahsi, Mr. Speaker.