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MLAs reviewing civil forfeiture law focus on its ability to reach back



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Mackenzie Delta MLA George Nerysoo. Ollie Williams/Cabin Radio

The NWT is advancing civil forfeiture legislation that lets the territory seize property linked to crime. But how far back does that go and when does it

become overreach?

Those two questions dominated a public briefing held on Wednesday evening by a committee of regular MLAs scrutinizing Bill 45, which would bring the NWT into line with most Canadian jurisdictions by introducing civil forfeiture.

The law would allow the GNWT to apply to a civil court whenever cash, vehicles or other property are believed to be associated with crime.

If the court agrees, the GNWT gets to keep that property and put it toward good causes (Indigenous-led healing programs were one example raised on Wednesday).

The GNWT likes the idea because it avoids criminal court. Whether the owner of the property has been criminally convicted doesn't matter.

The territory simply has to satisfy a civil court that on the balance of probabilities – a lower threshold than in criminal court – the property is connected to crime.

"We hear the same message from everyone, that drugs are destroying our communities," said justice minister Jay Macdonald.

"We need to provide the tools in the system that allow us to disrupt that activity. It's very profitable activity.

"This is an area in civil law that we can make a difference, and that's what we're trying to accomplish here."

Acting on old crimes

The bill is retroactive in nature. That means the GNWT can use it to go after property associated with crimes alleged to have happened years before this legislation was introduced.

Multiple MLAs sought to better understand that during Wednesday's briefing – expressing cautious optimism that it might be used to address old wounds in small communities with known dealers and bootleggers.

"I think of drug and alcohol activity that's been ongoing for years in my community," said Mackenzie Delta MLA George Nerysoo.

"These people have benefited. A lot of people walk around saying that these guys don't even have to pay for their vehicles, and yet people who work are making payments biweekly and just getting by."

Macdonald replied that targeting that kind of prosperity related to crime "is really a lot of the intent of what this tool is designed to do."

But Brad Patzer, an assistant deputy minister at the Department of Justice, cautioned MLAs that the further back you go, the less straightforward a civil action becomes.

"The more dated the alleged criminal activity, the more difficult it would become … to actually prove there was criminal activity and be able to seize whichever asset was used in the performance of the criminal activity," Patzer said.

What's the threshold?

Yellowknife North MLA Shauna Morgan asked questions that spoke to overreach: the idea that sure, this government might only use this to target drug dealers and bootleggers, but once it's on the books, a future government could use it for anything.

Morgan noted the bill does not specify which types of offence could trigger civil forfeiture.

"Is there a minimum threshold for how serious the unlawful activity has to be? There are lots of things that are unlawful, including trespassing. OK, it's against the law. But do you deserve to have your car taken away for that?" she asked, offering running a red light as another example.

"I hear loud and clear that the purpose of this legislation is to disrupt drug crime, and people are also talking a lot about bootlegging and alcohol-related crime.

"My concern is that right now, it's so broad that it could catch up in its net people doing other things that we might not consider to be all that serious, but it's technically unlawful."

The GNWT's response was that the courts would offer oversight of how the legislation is used.

"The intent is that the court will be the keeper of the gate, if you will, to determine that what is being brought forward is in the interest of justice," said Macdonald.

Review of the bill continues. It is expected to return to the House for a committee report, third reading and final vote in the coming months.

The bill is part of a broader package, including a Trespass Act and Scan legislation, being advanced by the territorial government in a bid to address concerns about public safety in NWT communities.