



15th Legislative Assembly of the Northwest Territories

Standing Committee on Social Programs

Report on Community Consultations
on Proposed Safer Communities
and Neighbourhoods Legislation

Chair: Ms. Sandy Lee

MEMBERS OF THE STANDING COMMITTEE ON SOCIAL PROGRAMS

Sandy Lee
MLA Range Lake
Chair

Norman Yakeleya
MLA Sahtu
Deputy Chair

Bill Braden
MLA Great Slave

Jackson Lafferty
MLA Monfwi

Robert C. McLeod
MLA Inuvik
Twin Lakes

Calvin Pokiak
MLA Nunakput

COMMITTEE STAFF

Gail Bennett
Committee Clerk

Robert Collinson
Committee
Researcher

August 20, 2007

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Programs is pleased to provide its Report on Community Consultations on Proposed Safer Communities and Neighbourhoods Legislation and commends it to the House.

Sandy Lee, MLA
Chairperson

STANDING COMMITTEE ON SOCIAL PROGRAMS

REPORT ON COMMUNITY CONSULTATIONS ON PROPOSED SAFER COMMUNITIES AND NEIGHBOURHOODS LEGISLATION

TABLE OF CONTENTS

Introduction	1
Canada's Charter and the SCAN Legislation	1
Confidentiality ("Anonymous" Clause).....	3
Legal Process	4
Powers of the SCAN Investigators.....	5
Social Implications of SCAN Legislation	6
Impact of SCAN on Elders and Potential for Abuse	8
Centrally Based Delivery Model.....	8
Frustration With Courts and the RCMP.....	9
Cost Effectiveness of Proposed Legislation.....	9
Minister's Public Comments on SCAN Legislation.....	10
Need for SCAN Legislation	10

Appendix A: Submissions

- Northwest Territories Human Rights Commission
- BC Civil Liberties Association
- Shelagh Montgomery, Yellowknife Resident
- Ben McDonald
- Mathew Spence
- Alana Mero, MSW, Chair, Inuvik Justice Committee

Appendix B: Committee Transcripts of Public Review of Bill 7:

Safer Communities and Neighbourhoods Act

- April 19, 2007, Yellowknife
- April 20, 2007, Yellowknife
- April 23, 2007, Inuvik
- April 23, 2007, Tuktoyaktuk
- April 24, 2007, Ulukhaktok
- April 25, 2007, Colville Lake
- May 30, 2007, Fort Smith

STANDING COMMITTEE ON SOCIAL PROGRAMS

REPORT ON COMMUNITY CONSULTATIONS ON PROPOSED SAFER COMMUNITIES AND NEIGHBOURHOODS LEGISLATION

INTRODUCTION

The Standing Committee on Social Programs undertook extensive consultations on Bill 7, the *Safer Communities and Neighbourhoods Act*, also known as SCAN, in all regions of the Northwest Territories, and heard from 42 different persons and organizations.

Despite the initial excitement at the community level on the Department's first round of consultations in November and December 2006, it became obvious to Committee members as we proceeded that residents had serious reservations with the final version of the legislation.

The concerns raised by residents of the Northwest Territories centered on the social implications of enacting the SCAN; the rights of an individual to face their accuser and appeal orders made under the *Act*, and the extent of the powers that would be given to officers appointed under the *Act*.

Hearings were held in Yellowknife on April 19th and 20th and on August 14, 2007; in Inuvik and Tuktoyaktuk on April 23, 2007; in Ulukhaktok on April 24, 2007; in Colville Lake on April 25, 2007; in Behchoko on April 26, 2007, and finally in Fort Smith on May 30, 2007.

Residents of the Northwest Territories raised the following concerns with the proposed *Safer Communities and Neighbourhoods Act*.

CANADA'S CHARTER AND THE SCAN LEGISLATION

Even though the Committee received advice that Bill 7, as it is written, is in accordance with Canada's Charter, we should be mindful that Canada's Charter is an ever-evolving document that is constantly being reinterpreted by legislators and the judicial system.

With a program like the SCAN Office, it would not be unreasonable to assume that it, too, would evolve, and that the actual practices in enforcing the *Act* or the regulations could be in contradiction of the Charter at some point in the future.

With this in mind, the Committee believes it would be beneficial to quote the concerns raised by the NWT Human Rights Commission in their written submission:

“Section 2(d) of the Charter protects freedom of association. Bill 7 could be seen as punishing individuals for freedom of association. For example, persons living in a unit under investigation may be adversely affected even though they are not engaged in criminal or other activities. Yet, their privacy can be invaded and residence taken away. The appeal mechanisms are onerous and do not provide for meaningful protection for an innocent occupant.”

“Section 6(2) of the Charter protects the right of every citizen of Canada and every person who has the status of a permanent resident of Canada to move and take up residence in any province. The Minister of Justice has made it clear that “if the people who are causing the problem move to another house, we will gather evidence and evict them again. We will follow them wherever they go until they stop their illegal activities or leave the NWT” (Safer Communities and Neighbourhoods Legislation: A consultation paper about a proposed new way to make their community safer, Page 1). Bill 7 sets up a process where privacy can be invaded, due process denied, and persons can be harassed until they are forced to leave the NWT.”

“Section 7 of the Charter protects the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Yet, there are violations of the principles of fundamental justice in Bill 7. For example:

- Bill 7 can require self-incrimination. Failure to do so could result in being charged with a criminal offence and imprisoned for up to a year (Section 30 and 66);
- Bill 7 can allow the Director of Safer Communities (the “Director”) to designate a fortified building as a threat to public safety in the absence of a hearing (Section 41). The Director can then impose a closure/eviction order without notice to the owner or occupant;
- Bill 7 requires a low standard of proof given the severity of losing one’s home or facing imprisonment;
- Bill 7 denies the rights of the accused person to face their accuser or to have all information necessary to mount a defence.

Indeed, Bill 7 does not even guarantee that occupants can argue in their own defence.”

“Section 8 of the Charter guarantees the right to be secure against unreasonable search or seizure. The search and seizure provisions in Bill 7 are broad. For example, neighbours could gather video surveillance in support of their own application for a Community Safety Order (“CSO”). Government agencies and individuals could be forced to provide confidential information or face fines or imprisonment if they refuse. There is no requirement for a warrant for this information. Also, Bill 7 allows for an intrusive investigative process in which the Director can place dwelling houses and other places under video surveillance.”

“Section 1 of the Charter states that a government can infringe upon Charter rights if the infringement is a reasonable limit “prescribed by law as can be demonstrably justified in a free and democratic society”. Bill 7 exceeds this reasonable limit.”

CONFIDENTIALITY (“ANONYMOUS” CLAUSE)

Many of the presenters, particularly in smaller communities, were concerned about the “confidentiality clause” because, while it does make it easier for people to report on what they see to SCAN investigators, there is no safeguard in place to protect innocent people from vexatious and frivolous accusations. Civil remedies and separate legal recourses are not seen to be practical. Such remedies should be available within this legislation.

In all communities, people told us that persons looking to settle old scores or vendettas could abuse the powers under SCAN. In particular, there are many persons in positions of authority and responsibility who need to deliver “bad news” to their fellow community members as a regular part of their work, e.g. housing association members and income support workers.

Many felt that they could be subject to false accusations from community members. Even if those accusations were eventually shown to be unsubstantiated, often an accusation or even rumours of an accusation alone can do a great deal of harm to one’s reputation and career in a small community. The lack of properly legislated recourse that ensures those being accused are given proper notice and have an opportunity to answer to the allegations does not sit well with the vast majority of the people who came and spoke to us.

Ms. Dorothy Loreen of Tuktoyaktuk supports Bill 7, but was very worried how she would be able to defend herself, pay for a lawyer and still look after her family, if someone has reported her under SCAN, even though she doesn't drink, do drugs or gamble.

The right to face one's accuser, know the case against one, and defend oneself against any charges is a basic right, and fundamental to democratic principles. People have told the Committee the Government must respect these rights and reflect them in the legislation at the same time as addressing the core issues targeted by the Bill.

LEGAL PROCESS

Many people who came before the Committee had concerns with the legal process under the SCAN legislation. One concern raised by a number of presenters was the fact that the legislation does not have any provisions for the service of respondents prior to the SCAN officer attending court and obtaining a community safety order. It is possible that the first time a respondent would learn of a SCAN investigation is when they are served with a community safety order. The Committee understands the Minister may propose such an amendment to address this concern, and Members may have the chance to review and debate this amendment.

Another concern with the legal process is that, although the *Act* provides for the respondent to apply for a variation of a community safety order, section 10 restricts this application to the portion of the community safety order requiring the property to be closed. The Committee feels that in order for a variation clause to be effective, it should permit a respondent to apply to vary all aspects of the order, including orders under section 8(3)(a) ordering individuals to vacate the property.

The Committee also heard a number of concerns with respect to the appeal process. Under SCAN, an appeal of a community safety order may be made to the Court of Appeal on a question of law with leave of the Court.

Alana Mero of Inuvik stated her concerns with the appeal process in the following manner: "So I can't prove I didn't do it; I have to prove you made a legal mistake. It's impossible for me to prove I didn't do something? So I can't tell you that, no, I didn't deal drugs because I don't know even who made the complaint. I don't even know what you have against me. I don't know if it is my sister-in-law who's mad at me for breaking up with her brother or whatever things may be happening. All of a sudden, I am in a courtroom hoping your lawyer didn't put an "i" in the right spot and made a mistake so that I don't lose my home."

A further concern with the appeal process is that an application for leave must be filed within 14 days after the day the order of the Court is pronounced or within such further time as a judge of the Court of Appeal may allow. In most communities, it would not be possible to find a lawyer to file such a notice within this time. The same concerns were raised with respect to the variation process. By the time a respondent retained counsel and had the matter heard before the Court, the order could be expired.

The Minister has noted in correspondence to the Committee that experiences in other jurisdictions point to limited usage of the court processes in obtaining Community Safety Orders. The concern of the Committee is that legislation be properly crafted so that irrespective of the frequency of use, all northerners are treated fairly under law.

Our people have to live under laws that we as legislators enact. It is our duty to ensure that the laws we make are as good as they can be at the time of passage in this Assembly. If there are known defects, they must be fixed before a Bill becomes law. This is not happening with the *Safer Communities and Neighbourhoods Act*.

POWERS OF THE SCAN INVESTIGATORS

The powers of the investigators were seen as excessive by many of the presenters. One Member cited the provisions empowering SCAN investigators to obtain government records without a warrant and to share their information with the RCMP. The question then becomes whether the investigators could become nothing more than a tool for the RCMP to circumvent the existing justice system.

Another area of concern for some presenters and Members is the capacity of our government to manage and administer what is essentially its own armed and uniformed investigative force.

A case could be made for arming investigators in southern Canada, given the propensity for some gangs to use violence, however, it is not clear there is a demonstrable need for armed officers in the NWT. Some Members believe that if there is potential for violence, the RCMP should be called in.

Communities and Members also had concerns with the powers available to the SCAN office and their ability to determine the level of “punishment” each person determined to be in contravention of the SCAN legislation would receive.

Mrs. Eileen Beaver of Fort Smith offered the following observation on SCAN. “It reminds me of the *Indian Act*. A long time ago, if your dad signed out of treaty to drink, so was your wife and all of your kids, and this is the same type of Act you are bringing forth.”

A written submission from the NWT Human Rights Commission also expressed concerns with the broad powers that the Director will have, without any corresponding accountabilities. This was mentioned as one of the many reasons that the NWT Human Rights Commission recommended that the Assembly not pass the *Safer Communities and Neighbourhoods Act*.

Members are not willing to support the discretionary powers available to SCAN officers without an extensive rewrite curtailing these powers or some other mechanism that clearly establishes a progressive disciplinary regime for SCAN offenders.

SOCIAL IMPLICATIONS OF SCAN LEGISLATION

Most of the presenters expressed a view that while they would like to see the Government introduce better means to address illegal and illicit activities in their communities, evicting people from their homes may, in fact, cause more social problems in communities. There is also a question about how effectively SCAN legislation would address the issue it is designed to address.

In Yellowknife, Ben McDonald stated that “It seems like the *Act* is designed as good politics but I don’t think it’s necessarily designed as good social policy or as good social development policy...”

We heard repeatedly questions like: What happens to a person when they are evicted in a community without market housing? Who do they stay with? What are the consequences for families that rely on the person evicted under SCAN as the primary breadwinner? To where do these families move?

Even in the larger communities, questions were raised about whether the SCAN legislation is the most cost effective or efficient tool to address the issues we are all concerned about.

Lydia Bardak of Yellowknife, representing the John Howard Society, pointed out “Every bootlegger and every drug dealer that you remove will be replaced by someone else. So if this is an attempt to try and reduce substance abuse, it is not going to cut it. Restrictions don’t work; prohibition doesn’t work. The reasons persons turn to illegal substances or substance abuse are very strong and very compelling. Not addressing those reasons is irresponsible.”

A common perspective is that there are severe housing shortage issues in all communities in the Northwest Territories, and Bill 7 would only compound this problem in the absence of a plan by Government to address it in implementing the SCAN legislation.

Chief Leon Lafferty of Behchoko pointed out that if you want to clean up the communities, make sure that you do not hurt the people by making the social problems worse.

It should be made clear that the people do not object to holding the perpetrators under the SCAN legislation accountable. What they are saying is that in small communities, once these people are evicted under SCAN, not all of them are going to move out of town which means that most of them will become homeless and ineligible for public housing. They will then rely on their families and friends to provide housing, and this would exacerbate over-crowding in situations where there are already housing shortages.

This was made abundantly clear in comments made by Veryl Gruben of Tuktoyaktuk in speaking of the impacts on a small community, who stated “If someone gets evicted immediately for something, some illegal activity, whether it be alcohol, drugs or gambling, they’re only going to go to someone else’s house and create more problems.”

Saeed Sheshegar, a Social Worker in Tuktoyatuk, said, “I have a concern about what would happen to people thrown out of their homes.” He went on to say, “A lot of these people are going to end up at Social Services and trying to ask for help because they are homeless.”

As well, there are questions about whether more than a million dollars that would be allocated for this program could not be better used by employing more police drug dogs or more RCMP officers in communities. Addressing the lack of treatment programs and services for those affected by substance abuse is another issue that people feel should be weighed against the priority of investing in SCAN.

Saeed Sheshegar of Tuktoyatuk was quite eloquent in stating, “People are suffering here in this community. Bootlegging and other gambling problems are actually bleeding the whole community. If we haven’t answered that question yet, trying to come up with an Act like this is a band-aid solution.”

The Committee appreciates that Justice, Health and Social Services and Housing issues are separate and fall under different departmental mandates.

However, our people do not understand why one part of the Government would, in pursuing its mandate, create a whole set of new problems for other parts of the Government that are working together to address the existing issues.

IMPACT OF SCAN ON ELDERS AND POTENTIAL FOR ABUSE

Many of the presenters were either concerned about or had themselves been subjected to elder abuse. In small communities, they could not see how the SCAN legislation would help an elder being taken advantage of by a relative or being kept awake and harassed by neighbours partying and drinking all night, without there being repercussions for the elder who reported the activity.

Many elders who came to speak to us are looking for solutions from the Government to address the behavior of those who are abusing substances and abusing them. However, they expect those resources to be based in their communities where immediate actions can be taken as events happen. Elders do not expect that they should need to call a 1-800 telephone number in Yellowknife, and have to wait for a SCAN investigator to travel to their community, conduct an investigation and make application to the Supreme Court in Yellowknife before they receive any assistance. They do not see how SCAN investigators can possibly address their concerns and have doubts about how effective a program like SCAN could be in responding to their important concerns.

CENTRALLY BASED DELIVERY MODEL

Many northern residents, like Mayor Peter Martselos of Fort Smith, expressed concerns with the fact that all of the investigators will be based in a central office located in Yellowknife. Others have taken the time to contact members of the Standing Committee to voice their frustration with another service that is supposed to help the residents of smaller communities being based in an urban centre.

There is a concern that people will be reluctant to contact an office in Yellowknife because it is seen to be remote and to be slow in responding at the community level, and as a result, the service will end up being focused on Yellowknife and the larger communities with daily jet service.

FRUSTRATION WITH COURTS AND THE RCMP

Some presenters saw the SCAN legislation as an attempt by government to be seen to be doing something without actually producing results.

The existing justice system was seen to be time-consuming and increasingly lenient in dealing with offenders. SCAN legislation could be seen as a way of warning offenders rather than prosecuting them under criminal law.

Members believe that while SCAN legislation may be able to speed up the justice process, it will do nothing to help alleviate the systemic problems in the justice system or to deal with the root causes of the behaviour that make legislation like SCAN desirable for some individuals.

The Committee heard a great deal of frustration in communities with the inability of the courts and RCMP to deal with crime at the local level.

How can the Government expect four officers to do what 150 RCMP officers have not been able to do? A community with a dozen RCMP officers still has to dispatch calls from its residents through Yellowknife. Can Members of the 16th Assembly expect to see requests for further personnel if SCAN does not meet initial expectations of success?

COST EFFECTIVENESS OF PROPOSED LEGISLATION

There were also the previously mentioned concerns with having all investigators located in Yellowknife. People who came to talk to us would like to see personnel in their communities. At minimum, a regional presence is required. This is not what is being proposed. From what we have been able to learn as to how this Bill would be implemented, the Committee is unable to see how it could work without substantially more resources and effectively setting up a second tier of policing services in the NWT. If the end result of this legislation is the setting up of almost a parallel policing service, there is a need for a public policy discussion on the merit of such a policing structure in the Northwest Territories. This would in turn require an in-depth cost-benefit analysis of whether this is how and where we need to invest as opposed to enhancing our existing policing and justice services.

In a presentation to the Standing Committee in the community of Fort Smith, Ms. Mary Pat Short, who is the Chair of the NWT Human Rights Commission but was speaking as a private citizen, offered the following observation: "Manitoba has a population of one million people. They introduced SCAN in 2002. Initially,

they had two investigators and four employees. Now they have expanded to seven. They have investigated 13,068 complaints, and this has resulted in 198 evictions over four years. Now, if we put these figures in terms of the Northwest Territories, the Northwest Territories has one twenty-fifth of Manitoba's population, which would be eight evictions over four years, if it was the same pattern. So we spend \$1.0 million a year for two evictions. Obviously, I don't know if that is actually what would happen here, but that would certainly not be a good use of public money."

In talking about the role of community in dealing with social problems, Yetta Finsborg of Fort Smith stated that "So I can only agree that this legislation seems more or less a waste of money, a waste of time for everyone involved. It does take a community to raise a child. It also takes a community to deal with drugs. So that is where I think we need to look. We need to get together and decide for our community what we want to do about people who deal drugs and bootleg and whatever else."

MINISTER'S PUBLIC COMMENTS ON SCAN LEGISLATION

The Committee has received advice that the SCAN legislation itself may not directly violate the Charter the way it is written. The Committee does recognize that the evolving nature of the law believes that all steps should be taken by government to ensure respect for individual rights. One area of concern is public comments that the Minister of Justice has made with respect to the purpose of the legislation. The concern of the Committee is that SCAN must not be an attempt to infringe on Federal jurisdiction with respect to criminal law or be a vehicle to chase citizens from the Northwest Territories.

The NWT Human Rights Commission also pointed out in its written submission that the comments made by the Minister in the consultation document are problematic in relation to Section 6(2) of the Charter as it relates to mobility rights in Canada.

It has been suggested that if the Government wants to ensure the viability of the SCAN Office, it would be helpful for the Minister to clarify the comments that the Committee has brought to his attention.

NEED FOR SCAN LEGISLATION

The Committee agrees that there is a need for legislation and policy to deal with substance abuse, trafficking and bootlegging of illegal substances and other undesirable and illegal activities the SCAN legislation attempts to address.

However, the Committee believes that Bill 7, in its current form, has too many deficiencies to be successfully amended and passed during the short time available to the Members of the 15th Assembly prior to dissolution.

Other northerners also thought that the process was too rushed, like Ms. Debbie Raddi of Tuktoyaktuk who said, "I myself feel it is too rushed. In order for something to work properly, it has to be properly looked into."

Ms. Raddi's comments are particularly relevant given the weight and depth of the concerns raised and the need to have the concerns addressed in a coordinated multi-departmental approach. The Committee also believes that further work is required in program design to address the realities of life in the NWT, particularly in the smaller communities, and that further thought has to be given to the diversity and transportation challenges our vast territory presents for running a successful government program of this nature.

As Members, we cannot dismiss any of the concerns that are brought to our attention through the Committee process without full deliberation and consideration. Nor should we as legislators characterize these concerns as representative of a vocal minority in order to justify the approval and passage of legislation like this. The Committee believes that the questions and issues that were brought forward by the public warrant thoughtful and meaningful response.

We are disappointed that this government has chosen to ignore the Committee process and the views of the many northerners who took the time to appear before Committee and has decided to proceed without the concurrence of the Standing Committee simply because they have the numbers.

It is a sad day for consensus government in the Northwest Territories.

Thank you, Mr. Speaker.

APPENDIX A

SUBMISSIONS TO THE STANDING COMMITTEE ON SOCIAL PROGRAMS

-

REPORT ON COMMUNITY CONSULTATIONS ON PROPOSED SAFER COMMUNITIES AND NEIGHBOURHOODS LEGISLATION

APPENDIX B

**COMMITTEE TRANSCRIPTS -
STANDING COMMITTEE ON
SOCIAL PROGRAMS**

-

**REPORT ON COMMUNITY CONSULTATIONS ON
PROPOSED SAFER COMMUNITIES AND
NEIGHBOURHOODS LEGISLATION**