



April 18, 2007

Sandy Lee, Chair and Members  
Standing Committee on Social Programs  
c/o Legislative Assembly  
PO Box 1320  
Yellowknife, NWT X1A 2L9

BY FAX: (867) 873-0276

**RE: Proposed SCAN Act (Bill 7) – Civil Liberties and Constitutional Concerns**

Dear Ms. Lee and Committee Members:

We are writing to provide the B.C. Civil Liberties Association's (BCCLA) concerns regarding Bill 7, *The Safer Communities and Neighbourhoods Act* (the "Act"). The BCCLA has serious concerns that the Act does not adequately respect the values of due process, privacy, and federalism (constitutional division of powers). We also believe the Act does not sufficiently respect the rights of individuals in a free and democratic society.

Before elaborating our concerns in more detail, we would like to provide a brief introduction to the BCCLA. Established in 1962, the BCCLA is a registered charitable organization that is a non-partisan advocate for civil liberties. Our mandate is to promote civil liberties and human rights in British Columbia and Canada. The promotion of civil liberties may be broadly defined as the maximization of individual freedom, recognizing that individual rights in a democratic society may sometimes necessarily give way to a compelling public interest.

We work to achieve our mandate in several ways, including research on civil liberties matters and public education. We also provide assistance to any individual who has a civil liberties related concern regardless of the personal characteristics of the individual. We routinely appear before parliamentary and legislative committees to encourage law-makers to respect civil libertarian values. If these advocacy efforts fail, we are prepared to go to court to ensure that civil liberties are protected.

For more information about our organization, please consult our website at [www.bccla.org](http://www.bccla.org).

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### *Due Process and Section 7 of the Charter*

We will first outline our specific objections with respect to the Act's failure to provide adequate due process protections. We will then discuss the applicability of section 7 of the *Canadian Charter of Rights and Freedoms* (the "Charter").

Under the Act, no notice is given to the tenants that their landlord has been approached under section 4 by the Director of Safer Communities, even though, by the time the Director is making use of these powers, the landlord is already faced with the decision of either evicting the tenants or being called as a respondent in court. No rights of application to vary an order, and extremely limited rights of appeal, are permitted for a resident who "caused or contributed" to a listed activity. In fact, the Act does not provide any explicit rights for a resident to be notified, attend a hearing or make submissions in their own defence.

Family members and other individuals who were not involved in the activities may apply to vary the order, but section 15 of the Act provides that such an application does not stay the operation of the order. This means that they must find the means to rush to court to vary the order within days of being served with an eviction, of which they had no prior notice. The Director is given a weak duty to 'make efforts' to accommodate the emergency needs of those, such as children, who might suddenly find themselves facing displacement and exposure through no fault of their own, but does not actually require their protection.

This extraordinary eviction process can occur purely on either on the combined 'belief' of the complainant, Director and the landlord, or on the Court's 'satisfaction' after a hearing at which the tenant has no legal right to be represented or heard. Reasonable and probable grounds are never required for any step of this procedure.

Thus, the Act creates a seriously flawed process that denies basic principles of fairness and due process.

Given the importance of the entitlement at stake in the Act – housing, a most basic necessity of life – and the fact that the *Charter* applies to state action, we believe that section 7 of the *Charter* would apply to the Act's provisions. Section 7 of the *Charter* states that "Everyone has 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." This right applies to the interaction of individuals with the justice system and its administration. It underwrites the protections people expect when they face serious sanctions, such as criminal charges or other penalties carrying jail time.

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Section 7 protection can extend to any matter which "can properly be characterized as fundamentally or inherently personal such that, by [its] very nature, [it] implicate[s] basic choices going to the core of what it means to enjoy individual dignity and independence":

*Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844. Examples have included child welfare hearings and the enforcement of environmental legislation. We believe people's entitlement to live in their own homes, particularly in their home communities and ancestral lands, would also qualify for protection under section 7 because the Act seeks to give the government the means to *deprive* people of shelter which they already lawfully inhabit – i.e. to evict them. Thus, the legislation empowers government to directly impinge on the basic liberty and security of Northwest Territories (NWT) residents.

Furthermore, the operation of this legislation is directly analogous to the operation of the criminal justice system. In the NWT, we understand that replacement housing can be extremely difficult to find, especially in small communities. Also, the weather conditions faced by the homeless are extremely harsh. In this context, there is little significant difference between investigating "harmful" or "disruptive" activity and then evicting individuals for those alleged activities, and investigating criminal activity and then charging them for those alleged activities. Both impose very serious punishments which directly threaten the liberty and security of individuals who commit acts perceived to be harmful to society. Arguably, the Act creates a harsher penalty than most criminal sanctions. Ironically, those charged with a crime do not face immediate loss of their home.

In addition, as expressly stated by the Minister in his consultation document, this legislation is specifically designed to make it as easy as possible to evict residents from their homes for engaging in crimes (or other activities which the drafters of the Act apparently wish were crimes, such as prostitution or drinking alcohol in a manner which 'adversely affects' the neighbourhood). To achieve these ends, the Director and his deputies are granted all the powers and protections of peace officers (by s.59(2)), and are backed by criminal sanctions for non-compliance. In this way, the Act effectively seeks to introduce a new level of pre-trial punishment to the criminal justice system. Given these provisions, we believe that section 7 of the *Charter* would apply to the exercise of many of the powers set out in the Act.

Finally, it is important to note that the legislation, either in intent or effect, may have a major negative impact on aboriginal individuals either in their ancestral homes on First Nations territory or within urban areas. At a time when aboriginal people are already over-represented in the prison population, this legislation has the potential to further unfairly marginalize aboriginal people. Given the importance that ancestral homes and community ties have for aboriginal culture, and given the Minister's desire to banish individuals targeted under the Act by chasing them out of the NWT (as expressed in the

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consultation document), we believe that section 7 *Charter* concerns are even more serious.

Taken together, we believe these factors should persuade you that these evictions will deprive NWT residents of their life, liberty and security of the person. As a result, they should only occur in accordance with “the principles of fundamental justice” as required by section 7 of the *Charter*. We urge you and your Committee to re-examine the legislation in light of *Charter* requirements.

Given what is at stake for individuals and families, some of whom live in small, isolated communities with few resources and no place to go, we believe that the Act’s eviction procedures are an unconscionable way for a government to treat its citizens.

### *Privacy*

It is important to note that the Act’s purview focuses on activities in relation to the use of a resident’s home. Courts have traditionally afforded the highest degree of legal protection to dwellings because there is a heightened reasonable expectation of privacy protected by section 8 of the *Charter*.

Subsection 60(1) of the Act provides the Director with the power to collect information on a person who is a subject of investigation, including their “whereabouts” and place of employment, as well as information “from any source about the occurrence of activities in respect of which an application under Part I [for a ‘Community Safety Order’] may be made.” This investigation may take place on the strength of a mere *belief* by a complainant that “specified uses” are habitually occurring. Moreover, given that subsection 59(2) grants the Director, her deputies and her inspectors all the powers of peace officers, this could potentially amount to quite a large body of information and surveillance. Paragraph 60(1)(e) then allows the Director to impart this information to “a person”, “for the purpose of exercising a power or performing a duty under Part 1.” This could allow the Director to distribute the information gathered to an unacceptably large group of people, including the complainant in a letter of notification under subsection 4(2).

In our view, such provisions are overly intrusive into the privacy of residents.

### *Division of Powers*

The Act defines a sphere of activity – some of which is actually illegal, and some of which the Act attempts to regulate as though it were illegal – which may be sanctioned by serious penalties. For many of the same reasons outlined above with regard to how this legislation violates rights to life, liberty and security of the person, it is also, in pith and

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substance, criminal law. The Minister expresses frustrations with the criminal justice system and seems to envision this legislation as a creative way for the NWT to circumvent the practical problems created by the protections afforded to individuals by criminal law. We believe that the Act is likely *ultra vires* the NWT, or any province, because it seeks to usurp federal jurisdiction over criminal law.

### *Conclusion*

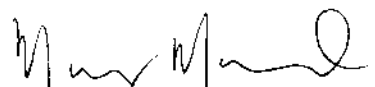
The criminal law has, over countless judicial decisions and hundreds of years, sought to strike an appropriate balance between the power of the state and the rights of individuals. The adoption of the *Charter of Rights and Freedoms* guarantees that individual rights can no longer be overridden by governments in the absence of due process (such as adequate notice and full rights of appeal), compelling governmental objectives, and a genuine effort to tailor the solution to the problem in a minimally infringing way when people's fundamental rights are at stake.

Though there may be a legitimate concern and problem with the activities targeted by the Act, the government of the NWT must ensure that any legislation designed to deal with a particular problem is reasonable and demonstrably justified in a free and democratic society (section 1 of the *Charter*).

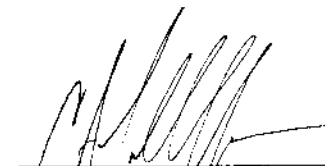
Therefore, we call on you and the government of the NWT to reject this legislation in its current form. The Act, if passed, would undermine basic rights to due process based on the lowest available standards of proof. The Act threatens to turn neighbours into government spies and to conscript landlords against their tenants. The Act imposes very serious sanctions without adequate protections and in a manner that is constitutionally suspect. Its constitutional flaws are so glaring, one wonders whether its supporters are counting on the inability of most of those affected to mount a challenge in court. The people of the Northwest Territories deserve better from their elected officials.

Thank you for taking the time to consider these submissions. Please feel free to contact our organization if you have any questions or options you would like to discuss.

Yours sincerely,



Murray Mollard, Executive Director



Christina Godlewska, Articled Student

Cc: Northwest Territories MLAs, c/o Tim Mercer, Clerk  
Therese Boullard, Northwest Territories Human Rights Commission