



**Safer Communities and Neighbourhoods Act
(SCAN)**

Why SCAN Is Not Safe For Women!

July 2007

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Introduction

The Provincial Advisory Council on the Status of Women (PACSW)¹ supports the goal of keeping the Province's communities safe and peaceful for women, children and men. We encourage Government to keep this goal in the forefront when considering programs, policy and legislation.

However, we cannot support the Safer Communities and Neighbourhoods Act (SCAN).

We have opposed this legislation since the concept was first introduced in December, 2006.² SCAN does more to diminish the rights of our residents than it does to increase our sense of security. We believe the Act's potential to make women's lives more difficult outweighs its benefits.

The following document outlines our position on SCAN and explains why we recommend Government take no further steps to implement this well-intentioned but ill-advised Act.

¹ The Provincial Advisory Council on the Status of Women was established in 1980 by the Government of Newfoundland and Labrador. It was created to advise Government on issues affecting the status of women as well as raise awareness of women's issues within the general public. The Women's Policy Office, Executive Council, is responsible for the implementation of the *Status of Women Advisory Council Act*.

² The Advisory Council gratefully acknowledges the contribution made by many women and equality-seeking organizations to the development of the position expressed in this brief.

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Analysis of Safer Communities and Neighbourhoods Act

Protection from What?

What exactly is SCAN protecting us from? We have consistently asked Government to provide the public with research which supports this initiative and shows its relevance to our Province. No such research has been provided. The Department of Justice rationalizes the introduction of this Act on the grounds it is concerned about the spread of crystal meth labs to our Province. Yet they have not provided information on the nature and number of the targeted “operations”. What are the details of the threat that justifies this over-bearing legislation which erodes our civil liberties and legal rights?

In a lecture to Members of the Law Society on April 24, 2007, Dr. David Marsh, an expert witness on addictions hired by the Department of Justice, stated that the threat of crystal meth spreading across the country is not nearly as great as the press would have us believe. It appears Government is not even sure about the need for this initiative. In a media interview in May 2007, Minister Osborne was unable to say exactly how big a problem was being addressed.

The Department of Justice has promoted SCAN by referencing Manitoba’s experience with a similar piece of legislation. We question the usefulness of this comparison. Manitoba presents different demographics, criminal activity and social concerns. However, even if our demographics mirrored Manitoba’s, we would still be opposed to this Act.

What Activities are Targeted?

Many of the activities targeted by this Act are activities which are criminal or quasi-criminal offences. The Advisory Council believes these activities should not be addressed through civil law. The criminal justice system has safeguards such as the presumption of innocence and the right to silence. If we bypass the criminal system, we lose those protections.

The Act does not limit its application only to illegal activities such as the use and sale of drugs and alcohol. It lists prostitution as an activity which can trigger an investigation and result in home eviction. Prostitution is not illegal in Canada.

The Federal Government has constitutional responsibility for criminal law in our country. They have legislated laws related to prostitution, such as soliciting for the purpose, but they have never made prostitution a criminal offence. This activity is not punishable in current Canadian law.

The Advisory Council considers it a punishment to be evicted from one’s home without notice. This is not an appropriate action to take against women in these circumstances.

Targeting activities, not individuals

When introducing this Act to the public, Government has emphasized it will target activities, not individuals. We question the effectiveness of this strategy. How does forcing a person to move from one location to another make other citizens safe? How are the new neighbours protected?

Our Government quotes the number of operations that have been shut down in Manitoba since they passed similar legislation. But they have provided no information regarding where the individuals went and whether they simply continued their activities in a new location. There has been no mention of whether the Act has changed the crime rate.

There has been no reference to the innocent people evicted through these shutdowns or their subsequent circumstances. There has been no analysis of the effect of this legislation on those who are not involved with the targeted activities. A full evaluation of the impact and effectiveness of the Manitoba program would assist Newfoundland and Labrador in considering options. The Advisory Council suggests it is premature to go forward with this initiative at this time.

Another claim made by Government is that unless properties are shut down, others will move in and continue the illegal activities in that location. If that's the case, wouldn't a second surveillance effort efficiently reveal illegal activities? Why wouldn't the people involved be arrested and charged? Solutions for problematic drug investigations are better left with the police who have experience with law enforcement and criminal law.

Why spend funds on a new agency?

The Government Consultation Paper circulated in December 2006, justifies this new investigative/enforcement office on the grounds that police will not undertake these investigations because they are too resource intensive. Does this mean the RNC and RCMP do not consider these concerns worthy of investigation? Isn't the safety of our residents their primary concern?

If it is too resource intensive for the RNC and RCMP, how will the creation of a new office be less expensive? Why is Government spending money on a new office which will entail duplication of capital expenditures on such things as surveillance equipment, cars and training investigators when both police forces already have all of this in place? If the funds were allocated to the police wouldn't they investigate these activities? Concerns have been expressed that the additional resources would be swallowed up within the overall police force budget. Surely there must be a way to dedicate the funds for activities related to these investigations.

The Advisory Council questions whether the rationale behind this Act is partially based on cost efficiencies. Will it be cheaper to use civil law to move people out of their homes than properly investigate alleged criminal activity? Is Government eliminating the rights provided by the criminal justice system in order to spend less money?

The Director's Powers and the Standard of Proof

SCAN gives sweeping powers to the Director – authority to obtain and disclose information about people, the power to make decisions about other people's property, and the power to apply to court to close the property down and evict all occupants immediately. No consultation with the tenants or owners of the property is required.

Anyone can make a complaint to the Director but the Director does not have to provide reasons for what is done with a complaint.

All of this is authorized by SCAN without the protections we take for granted. No safeguards are in place to ensure proper procedures are followed by the officials of this new office. There will be no complaints procedure such as citizens have in relation to police actions. For the purpose of privacy law, the director and all investigations will be considered a law enforcement agency. This means more authority than other agencies to access personal information.

Applications in Court will be decided on a civil standard of proof – the Justice of the Court will have to be satisfied that the activities give rise to a reasonable inference the property is being used for a specified use and the community is adversely affected. The standard of proof for criminal matters is proof beyond a reasonable doubt, a much more difficult standard to meet. Since much of the targeted activity is illegal activity that can result in criminal charges, we are left wondering why Government finds it acceptable to apply this lower standard. In the current reality of under-funded legal aid, vulnerable citizens with the least resources will be left to challenge this legislation.

Can Government assure us that SCAN does not violate rights protected by the Charter of Rights – such as the right to life, liberty and security?

Impact on Women and Children

When introducing this legislation in the House of Assembly, the Justice Minister emphasized that individuals are not targeted and innocent individuals should not be affected. We do not agree with the Minister and it is on this point that the Advisory Council has the most concerns. The following outlines some of these concerns.

Opportunities for harassment and discrimination

In June 2007, the media reported that Jim Baker, Lab West MHA, stated the legislation is “only meant to rid the neighbourhood of undesirables...”. The Advisory Council would like to know who will decide if a person is undesirable. Without the legal protections afforded by the Charter and criminal law, innocent people can be targeted by their neighbours, ex-partners or anyone who bears them a grudge. Landlords will be able to evict tenants they don’t like.

Owners' and tenants' rights affected

When the Director decides to take an application to Court, it is the owner of the building who is named as the respondent, not the person investigated. Owners will be required to do everything reasonably possible to stop the activities from continuing, including serving the eviction orders. They can be required to pay the costs of some actions taken by the Director.

The Act appears to focus on tenants. In fact, “owner” is not defined in the Act; it has been left to Cabinet to determine by regulation. It is not clear what will happen when there is a complaint about an owner-occupied home. Will people be evicted from the properties they own? Will citizens who can afford to own a home be protected while tenants are penalized? This would result in the unequal treatment of citizens.

Tenant’s rights are significantly affected and the protections they have under the Residential Tenancies Act are over-ridden by SCAN. The Act authorizes immediate eviction of all occupants of buildings which are targeted, whether or not the occupants had anything to do with the activities or even know about them. As originally drafted, occupants were not going to be informed of the court action or given the chance to speak at court. Amendments were made so that some occupants will now be notified.

While the Director’s applications will be heard on an urgent basis, any subsequent variation application does not have this status. So, if evicted, you will have to wait for an available court date. Applications will only be heard in Supreme Court. In many rural areas this will be at great expense to individuals as the Court is a long distance away. For example, there is only one Supreme Court in Labrador and it is located in Happy Valley-Goose Bay.

Assistance to find alternate accommodation

The Act does include provision for the Director to provide occupants who are required to leave a property with assistance in locating alternative accommodations, but only to the extent the Director considers reasonable – not what the tenant may consider reasonable. In the current context of lack of shelters and housing shortages in many of our communities, this is significant.

This assistance only becomes available after an application goes to court. If the Director pursues alternate means of resolving a complaint, there is no responsibility to assist anyone living in the property.

The Advisory Council believes many women and children living with partners targeted by the SCAN legislation will be forced into greater isolation. Their ability to make choices about their lives will be even more limited by this Act.

Report to Child, Youth and Family Services

Another provision of the Act unfairly impacts women. If children live in a building which is subject to a court application, Child, Youth and Family Services must be notified. This report must be made whether or not there are concerns about the children or whether they even have anything to do with the person being investigated. If the present duty to report concerns about children under the Child, Youth and Family Services does not adequately protect children, that Act should be amended immediately. Why create an unnecessary investigation which will surely cause stress to the mother and the children?

Conclusion

This initiative does nothing to address the root cause of why people are involved with illegal activities. Addictions and poverty are just some of the underlying factors. The Act offers the solution of moving people from one location to another and perhaps, to homelessness.

Government is responsible for effectively protecting women and children. We count on Government to develop legislation which fulfills this purpose without creating more harm than it cures.



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Equality, Equity and Inclusion for Women