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## **Centre for Addiction and Mental Health**

Written Submission to

### **Standing Committee on Regulations and Private Bills**

on

### ***Bill 106, An Act to provide for safer communities and neighbourhoods***

November 2009

*A PAHO/WHO  
Collaborating Centre*

*Un Centre collaborateur  
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*Affiliated with the  
University of Toronto*

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de Toronto*

The Centre for Addiction and Mental Health (CAMH) welcomes the opportunity to comment on The Safer Community and Neighbourhoods Act (SCAN), and is grateful to the *Standing Committee on Regulations and Private Bills* for holding public hearings. CAMH, the largest mental health and addictions facility in Canada, is a teaching hospital fully affiliated with the University of Toronto with central clinical and research facilities in Toronto, as well as 26 satellite offices across Ontario.

The objective of the SCAN legislation is to improve community safety by addressing community concerns about property that has been habitually used for criminal activity. Community concern about the use, manufacture and selling of illicit drugs is one of the types of illegal activity to be addressed by SCAN. These concerns are justified. Illicit drug abuse affects the lives of millions of people, and costs Ontario \$2.7 billion every year in health care expenses, enforcement costs, and lost productivity (Gnam et al, 2006). Illicit drug production and distribution disrupts community life, and makes neighbourhoods less safe.

In order to determine whether SCAN will constitute an effective response to this problem, it is important to address two key questions:

- Is this legislation necessary, given other laws that pertain to the problem?
- Would implementation of the legislation risk unintended consequences that it might be used inappropriately, or to discriminate on the basis of pre-existing stereotypes and stigma?

### **Is SCAN necessary?**

The majority of activities that are targeted under SCAN are those that are illegal, such as activities relating to illegal drugs, prohibited firearms, prostitution and sexual abuse. Our society has instituted laws that govern such activities; and governments allocate significant resources to police services to enforce those laws, and the justice system to prosecute them. Local municipalities also have bylaws that can be utilized to address concerns about activities in communities that impede the enjoyment and safety of neighbourhoods, including noise and occupancy bylaws. Some municipalities also have bylaws that address directly the activities in SCAN; for example the City of Toronto has a bylaw that prohibits marijuana grow operations and provides for the inspection of properties and the establishment of fines.

In the case of illegal activities committed by tenants, the Residential Tenancies Act (RTA) sets out clear regulations on when tenants can be evicted before the end of their term. The procedures for appealing evictions, however, include many of the safeguards that are absent from SCAN legislation, for example providing programs that can assist tenants with access to counsel. Many of the 'specified purposes' as outlined in Bill 106 are already provided for in the RTA. For example, the RTA allows landlords to terminate a tenancy early "if the tenant or another occupant of the rental unit commits an illegal act or carries on a illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex" (RTA, 2006, 61(1)). The RTA sets the date of termination for 10 days from the date of notice in situations involving the production,

possession or trafficking of illegal drugs (RTA, 2006, 61(2)). Bill 106 duplicates this provision as outlined in the 'specified purposes' for which a complaint can be made, including the possession, production or trafficking of illegal drugs (Bill 106, 1(1)).

Similarly, in Bill 106, an individual may bring a complaint forward if he/she believes that their neighbourhood or community is 'adversely affected' if the activities in question "negatively affect the health, safety or security of one or more persons" and "interfere with the enjoyment of one or more properties in the community or neighbourhood" (Bill 106, 1(2ab)). However the RTA also allows for early termination of a tenancy for these very same situations. For example, in the RTA a tenancy can be terminated if the conduct of the tenant or other occupant interferes with the reasonable enjoyment of building by the landlord or other tenants (RTA, 2006, 64 (1)). The landlord can also terminate a tenancy if either the tenant or someone allowed into the building by the tenant impairs anyone's safety (RTA, 2006, 66(1)).

### **What are the potential unintended consequences of SCAN?**

#### *Discrimination*

SCAN legislation provides a mechanism to evict tenants and seize properties from homeowners where a municipally appointed 'SCAN Director' has received a complaint from neighbours about activities they believe to be occurring in neighbouring properties. Activities may include drug use, trafficking, and grow operations. The Director then may exercise his/her discretion to investigate the complaint which may result in an application to Superior Court for a Community Safety Order (CSO) possibly leading to either the eviction of the tenant or the seizure of the property from the owner.

This legal process relies on the perception of illegal behaviour, a perception that could very likely be tainted by the stigma that exists toward those with addictions and/or mental illness. Such perceptions and stereotypes are the foundation for the documented discrimination faced by people with mental health and addiction problems – and by visible minorities – in Ontario today. A recent report by the Centre for Equality Rights in Accommodation found that those with mental health problems, black lone parents, South Asians and those on social assistance faced the greatest rates of discrimination in accessing rental housing in Toronto (CERA 2009). This legislation could perpetuate such discrimination against those with substance abuse and/or mental health problems and those from racialized groups.

Media reports from other provinces, where similar legislation has been implemented, bring to light the stigma faced by individuals as a result of a SCAN investigation. In one report from Alberta, a 61 year old mother was shunned by her neighbours and faced the possibility to losing the home she had lived in for 35 years because of complaints about her adult son, who was living with her while he struggled with a ten year addiction to methamphetamines (Dykstra, July 4, 2009).

*Would SCAN threaten provincially-funded health initiatives?*

Although the legislation primarily addresses residential properties, there is nothing in Bill 106 that precludes it being applied to commercial properties such as needle exchanges, methadone maintenance treatment clinics and street outreach programs. These programs already face significant opposition due to stigma held by those in communities where they operate, known as 'NIMBYism' (not in my backyard) (Strike, Myers and Millson, 2004). This legislation could potentially shut down critical health services in our communities, services funded by the Ontario government.

In 2009, the Ontario Ministry of Health and Long-term Care announced funding for 1000 units of housing for those with addictions and concurrent disorders. This announcement reflected the government's recognition that recovery from addiction and/or mental illness is more successful if the individual has stable, safe and affordable housing. These new units will be based on the *Housing First* model where individuals are not required to cease their alcohol or drug use or to be in treatment to be eligible for supportive housing (Champlain LHIN, 2009). SCAN legislation could potentially target these same individuals, increasing the harm such housing policies are intended to reduce.

*Does SCAN threaten fundamental rights?*

SCAN legislation sets up a quasi-judicial process without key safeguards that exist within our judicial system and are intended to ensure fairness and due process. For example, the initial complaints' process and investigation as set out in the Bill lacks checks and balances to ensure accountability on the part of the Director and fairness to the individual who is the target of the complaint. In deciding whether to investigate a complaint, in the actual investigation or in the decision to apply for a Community Safety Order, the Director is not required to provide any reasons or even an evidentiary basis for his/her decisions. This puts a property owner at a great disadvantage when attempting to respond or defend the allegations made in the complaint process.

Further, the Director is under no obligation to inform the individual(s) at the centre of a complaint that a complaint has been made against him/her and that he/she is under investigation until an application to the Superior Court for a Community Safety Order is made. This results in individual tenants being unaware and therefore unable to respond to complaints until such time as it has become an official court process. Further, it means that a landlord or property owner will be made aware of alleged activities which could be the basis for an eviction notice. This results in the tenant now having to respond to a second parallel process (eviction) without being aware of the originating complaint. This possibility of a double process goes against the basic principles of fairness in law.

In the Bill, the SCAN director is entitled to conduct an investigation and present the findings of that investigation to the court. The Bill specifically allows for the Director to add to the application for a CSO any additional information gathered during the investigation. Given the potential lack of involvement of the individual at issue, this allows for the complaint to be bolstered unfairly. The identity of the complainant is kept

confidential. None of the witnesses who provided information during the investigation is named or is compelled to give evidence at court. This results in the respondent(s) having no opportunity to challenge the evidence entered against them. In the Yukon, where SCAN legislation has been in place since 2006, one woman challenged the legislation in court. She had been evicted from her home based only on the testimony of a confidential informant who alleged that she had been dealing drugs out of her home. The court ruled that the Yukon government needed more than the suspicions of a single individual to make an individual homeless (CBC, June 1, 2009). There is also an overriding concern regarding the availability of counsel for those responding to the application as there is no provision in the Bill to provide counsel for an individual who may require legal assistance but has no means to retain counsel.

## Conclusion

As a means to address problematic properties or unlawful activity in our communities, SCAN utilizes a process that may exacerbate community conflict, and result in problems being moved elsewhere, rather than resolved. Also, this legislation will likely incur significant provincial and municipal costs. CAMH would rather see resources directed towards treatment for substance abuse problems and an expansion of housing and case management services that assist individuals with crisis intervention and landlord-tenant issues. We believe these interventions constitute a more effective, sustainable and equitable way of achieving the underlying objective of this legislation: safe communities and neighbourhoods for everyone in Ontario.

For more information on this submission, please contact Barney Savage, CAMH Director of Public Policy, at 416 535-8501, ext. 2129, or [barney\\_savage@camh.net](mailto:barney_savage@camh.net).

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