GOVERNMENT OF THE NORTHWEST TERRITORIES RESPONSE TO COMMITTEE REPORT 13-17(5), REPORT ON THE REVIEW OF BILL 42 AN ACT TO AMEND THE RESIDENTIAL TENANCIES ACT

The Standing Committee on Social Programs (Standing Committee) conducted a review of Bill 42, *An Act to Amend the Residential Tenancies Act* ("the Bill"). The Standing Committee recommended that a number of actions be undertaken by the Department of Justice, and that the Government of the Northwest Territories (GNWT) provide a comprehensive response to the report within 120 days.

The following is the Government of the Northwest Territories' response to the recommendations contained in *Committee Report 13-17(5), Report on the Review of Bill 42, An Act to Amend the Residential Tenancies Act*.

Standing Committee Recommendations

1) **That the Department of Justice develop a communication campaign to ensure that stakeholders are aware of new statutory requirements.**

GNWT Response

The Department of Justice is currently finalizing a communications plan related to the implementation of Bill 42, *An Act to Amend the Residential Tenancies Act*. Information on the changes to the Act will be available to the public through the Rental Office as well as the Department's website. The Department will also place newspaper ads to advise the public and stakeholders of the changes to the Act and the coming into force date. It is expected that the amendments will come into force in July 2015.

The Department may also utilize social media to further raise public awareness of the changes.

2) **That the Department of Justice establish a definition for transitional housing in the regulations.**

GNWT Response

Crafting a definition and including it in regulations would not be in line with current legislative practice in the Northwest Territories. Any definition of transitional housing would more appropriately be created as an amendment to the Act, and would require considerable consultation with transitional housing providers.

The Department continues to have reservations about including an amendment that would define transitional housing.

As the Department has previously stated, there is a concern that defining transitional housing may have unintended consequences. For example, it has been suggested that a threshold period of time could be established to determine what transitional housing would be covered under the Act. Setting such a threshold could lead transitional housing providers to only provide accommodation for a period of time that falls short of

this limit, so as to avoid subjecting themselves to the Act. This could foreseeably lead to individuals not receiving the level of support they now enjoy. It has also been pointed out that those who rely upon emergency shelter are often in critical need of this type of housing, and return to it for significant periods of time despite its "short term" character, making an application statement difficult as well.

3) **That the Department of Justice provide a definition for transitional housing in the next round of statutory amendments and clarify its position on an exemption for this type of housing.**

GNWT Response

After careful consideration of feedback received during consultation and information from other jurisdictions, the Department concluded that the exemption should be maintained. If, when the Act is next amended, there is support for the inclusion of transitional housing under the legislation, the Department of Justice will consider this issue again.

The Department continues to have concerns, as discussed in the response to recommendation 2, with including transitional housing on a "duration" based definition or application statement. As a general rule, legislation does not define terms that are not then subsequently used in an Act. The *Residential Tenancies Act* currently lists a number of types of housing that are exempt – this list captures transitional housing (i.e. paragraph 6(2)(e) exempts living accommodations established to temporarily shelter persons in need). Given that the exemption of transitional housing is currently being maintained, and that legislation cannot define terms that the Act does not then go on to use, the Department does not believe an amendment in this area is advisable.

The issue of whether a change should be made to include transitional housing under the Act generated a considerable response during consultation on amendments. Although several respondents supported inclusion (including the Deputy Rental Officer), transitional housing providers strongly supported maintaining the exemption. The current exemption affords the operators of transitional housing and emergency shelters the flexibility and discretion needed to run their programs, including the ability to ban individuals temporarily or for the longer term, in the interests of protecting staff and residents.

One of the largest transitional housing providers expressed the view that if transitional housing were brought under the Act it could not continue to provide housing tailored to the needs of the residents they serve with the flexibility required to be successful. If that step were taken, the provider suggested it would no longer be able to provide its programs and services in the NWT.

There are options available to individuals seeking redress should they believe they have been treated unfairly in a transitional housing situation. For example, they could file a complaint with the program provider, with the Human Rights Commission, MLAs, or with the Minister of a Department that provides funding to the provider. It should also be noted that the Supreme Court retains an inherent jurisdiction in matters related to tenancies.

Residential tenancy legislation varies quite significantly across Canada, and some Acts do not include comparable protections even in respect of market housing tenants. In the provinces and territories that do clearly lay out exemptions for specific types of housing situations (Alberta, British Columbia, Newfoundland and Labrador, Nunavut, Ontario, and Yukon), exemptions for transitional housing or similar accommodation are common.

4) **That the Department of Justice provide better protection for transitional housing tenants against unreasonable restrictions on personal freedom and arbitrary evictions.**

GNWT Response

The Department of Justice is not aware of any ongoing or systemic issues related to unreasonable restrictions on personal freedom or arbitrary evictions occurring in existing transitional housing programs in the NWT. However, the Department is open to considering new approaches to ensure the protections and avenues of redress currently available to transitional housing tenants are effective. At the same time, it must be kept in mind that the nature and intent of transitional housing is to operate as an aspect of social programming - this requires that a certain degree of flexibility and discretion be afforded to providers.

5) **That the Department of Justice ensure that fees are reasonable and align with fee amounts in other jurisdictions.**

GNWT Response

Many jurisdictions in Canada charge landlords and tenants fees to make applications to their Rental Officer or equivalent authority. In the NWT, applications are sometimes filed with the Rental Office at the first sign of a problem. Many of these applications are not pursued, but still require considerable administrative work on the part of the Rental Office. Introducing a fee will discourage landlords and some tenants from making applications that are not necessary. These fees will also help to offset the cost of operating the Rental Office, and would be in line with fees charged in other jurisdictions.

Consistent with the practice elsewhere in Canada, the Department intends to establish application fees that are lower for tenants than they are for landlords (~$40 versus ~$120). It should also be noted that applications by tenants are a small subset of the overall applications. In 2012-13 landlords filed 595 applications, but tenants brought only 49. The previous fiscal year (2011/12) saw 641 landlord applications versus 49 tenant applications.

6) **That the Department of Justice increase its support for the rental office to ensure that applications are handled in a timely manner.**

GNWT Response

The Standing Committee has noted concern surrounding the volume of inquiries and the Rental Officer's capacity to resolve disputes in a timely manner. In 2011/12 and 2012/13, the Rental Officer heard 72% of applications within 60 days. However, this percentage decreased in 2013/14 to 57%, despite the appointment of a Deputy Rental Officer. Several factors contributed to this increased time between the filing of

applications and the hearing of matters, including a rise in the number of applications originating from communities outside of Yellowknife. Hearings outside of Yellowknife often require additional time to secure meeting facilities and make travel arrangements. These applications often require extended reviews of documentary evidence owing to the nature of the applications. Since the parties must be notified of the hearing, additional time is also required to affect service. This sometimes results in cases being adjourned due to lack of service, and rescheduled at a later date. It is expected that the fee to file an application with the Rental Office will reduce the volume of applications filed by certain large commercial landlords.

If demand for the services of the Rental Office continues to increase, the Department will consider increasing the "cap" on the hours of service that may be provided by the Rental Officer and the Deputy Rental Officer, and at some point it may be necessary to explore the appointment of a second Deputy Rental Officer.

7) **That the Department of Justice allow police reports or convictions to qualify as evidence for an application for early termination due to domestic violence;**

GNWT Response

With the changes to the Act victims of domestic violence will now be able to terminate a tenancy agreement with appropriate documentation confirming that violence has occurred (an Emergency Protection Order, or Protection Order). Once the amendment has come into force and the Department of Justice has had the opportunity to consider the effectiveness of the new provisions, the Committee's recommendation will be considered. If it is found that additional evidence such as police reports or information on convictions would be helpful these changes will be considered the next time the Act is amended. It must be considered however, that an application for early termination is brought on an "*ex parte"* basis. Neither the landlord nor the allegedly abusive partner is a party. A rental officer is not in a position to "weigh the facts."

8) **That the Department of Justice address the potential for increased costs of filing with the Supreme Court of the Northwest Territories by creating a separate fee schedule specific to enforcement of rental officer orders and by ensuring that Supreme Court fees are in line with existing Territorial Court fees.**

GNWT Response

There is currently no cost to file an order with the Territorial Court, and this will remain the case for decisions or orders filed with the Supreme Court.

9) **That the Department of Justice work with the Department of Education, Culture and Employment to ensure that any students who reside at Aurora College are provided with a copy of their tenancy agreement on request and therefore not unduly prevented from voting.**

GNWT Response

The Department of Justice has raised this concern about Aurora College student access to documentation confirming their northern residency for the purposes of voting with the Department of Education, Culture and Employment.