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Territorial Counsel,
Government of the
Northwest Territories,
Yellowknife,
Northwest Territories,
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Attention: Mr. D. Nickerson, M.L.A.
Yellowknife North

Dear Sir:

I was recently discussing a problem which I find is becoming wide spread through the Northwest Territories with a member of the Territorial Counsel. That Honourable Member suggested that the best counsel initiating device would be a letter to each and every member of counsel.

The problem arises with regard to the application of Section 80 and 105 of the Liquor Ordinance of the Northwest Territories. To save you time I have enclosed photostat copies of those two Sections. (Note: all three sections)

(Before going further I should point out, due to recent items in the press, that the problem I am putting forth in this letter is not related to any issues involving myself personally.)

I have cross-examined recently several members of the Royal Canadian Mounted Police who appear to be unaware of sub-section 3 of section 80. Conversations with a number of Royal Canadian Mounted Police indicate that even those who are aware of sub-section 3 do not consider the tests set out in sub-section 3 as a test for making the arrest in the first place. Under a policy that the Royal Canadian Mounted Police call the "Quiet Street Policy" or the "Quiet Street Progam" anyone who appears to the police to be intoxicated on the street is arrested and lodged in cells for the night. It is becoming prevailant in many settlements, as I have been advised by workers in those settlements, that consideration is not being given whether the person being arrested is causing a disturbance, is a threat to himself, or a threat to other persons. The test is simply that he is showing signs of having been drinking substantially and so he is arrested. All the Native Court Workers have indicated to me in discussions that they are receiving considerable complaints of dissatisfaction in the settlements due to arrests of persons who were simply making their way home quite ably. I have in the course of my practice dealt with a growing number of cases where a person was clearly doing no harm to anyone or himself and causing no trouble to anyone but was showing significant signs of having consumed alcohol was then arrested and held in jail for the night.

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Discussions with members of the Royal Canadian Mounted Police and the Crown Office indicates that those bodies feel that although a number of innocent persons will suffer minimal inconvenience by being jailed for the night when they would have not caused any difficulty to other people, the incidents of crime will be decreased by this program by as much as thirty percent. I put two comments to you in that regard. The first is that if we jail everyone, every night we can reduce the incident of crime one hundred percent. The second is to indicate that authorities who deal with the jail process every day become calloused and I would suggest that even a few minutes in a jail is scarring, frightening, and highly detrimental experience for most people. Society should use jails and very especially the drunk tanks, which are especially dehumanizing, only as an absolute last resort.

It is my belief that the legislature of the Northwest Territories in enacting Section 80 intended to protect the public by avoiding the criminal process for those persons intoxicated and providing the criminal process for those persons intoxicated and providing a measure of protection for those who's intoxication would cause injury to themselves or others without burdening them with criminal actions. Unhappily, as sometimes happens, instead of protecting and aiding persons who party a bit too substantially, the section is being used in a distressly, rapidly growing number of incidences as a punitive device without consideration for sub-section 3 which would appear to have been the real guiding concept behind the section. Sub-section 3 is being ignored.

Time after time we hear in Court that persons arrested under the section will be released at 7:00 am or 8:00 am arbitrarly. Time and time in Court that persons were arrested and jailed under section 80 because, in the opinion of the officer, the person was intoxicated and no reference is made even on cross-examination to the tests set out in sub-section 3. Time after time in Court we see cases where arrests were made for the purpose of taking statements in criminal matters and the power of section 80 is used as the holding device because the Criminal Code will not permit an arrest in the circumstances.

But a Bill Reform Amendment to the Criminal Code, House of Arrest in summary and crown election, (hybrid) offences are severally curtailed. In theory at least the individual was being protected from an excess of zeal by an arresting peace officer. I would respectfully suggest that the legislature of the Northwest Territories never intended section 80 to be used as a device to evade provisions of the Criminal Code designed to protect people from excessives in use of power of arrest.

I should like to very respectfully suggest that the members of this Honourable Counsel may wish to consider a review of section 80. My respectful suggestion would be that the criterial in sub-section 3 be made a test for the arrest in the first incidence as well as a test for the release subsequent to arrest.

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With the greatest of respect I would also suggest that Section 105 might be subject to review as it is worded so broadly that it would grant the power to a policeman to arrest a person for even the most incredibly minor offence under the Liquor Ordinance and possibly even the regulations. Law Reform Commissions and learned Jurists and Criminalogists across the country have made it clear over the past few years that there should be strong restraints on excessive use of authority without removing that authority where it is needed. This is evident in the Bail Reform provisions of the Criminal Code and the Bill of Rights and the general social movement of our time. Might I very respectfully suggest that section 105 be considered for a possible rewriting so as to include some restriction. It would seem to fly in the face of provisions of the Criminal Code and other legislation where much more serious offences do not give rise to the power of arrest except in certain circumstances.

All of which is very respectfully submitted.

Yours respectfully,

Ed J. Brogden, B.A., LL.B.
Signed in his absence-secretary
EJB:smm

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