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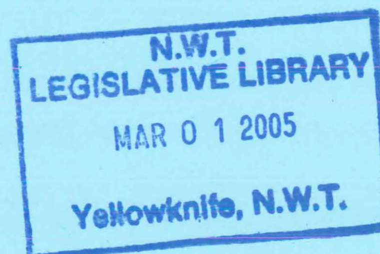
AMENDMENTS TO THE *RESIDENTIAL TENANCIES ACT*

A CONSULTATION PAPER

March 2005



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AMENDMENTS TO THE *RESIDENTIAL TENANCIES ACT*

CONSULTATION PAPER

The *Residential Tenancies Act* of the Northwest Territories was first enacted in 1987 and was modeled on legislation in effect across the country. It has been amended over the years on a piece meal basis. Similar legislation continues to be in force in all Provinces and Territories.

The *Residential Tenancies Act* regulates the relationship between residential landlords and tenants. The Act strikes a balance between the interests of tenants and landlords. It also provides for the resolution of disputes between landlords and tenants by a rental officer, and gives him or her the authority to make orders on certain matters, including the termination of tenancy agreements.

This paper contains a commentary on the major components of residential tenancy legislation, proposes directions for change and poses questions for discussion.

The Department of Justice is interested in hearing your views on the specific proposals and questions raised, as well as any other comments or suggestions you may have regarding the reform of the *Residential Tenancies Act*.

After the consultation process is completed, the Department of Justice will determine the changes it wishes to initiate.

The Honourable Charles Dent
Minister of Justice

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Introduction

The law relating to the relationship between residential landlords and tenants is prescribed in Canadian jurisdictions by legislation. In the Northwest Territories the applicable legislation is the *Residential Tenancies Act*. The intent of the Act is to define, and strike a balance between, the rights and obligations of landlords and tenants. It is in many ways social legislation as it balances an owner's interest in receiving a reasonable return on investment with guaranteeing some security of tenure, as well as other rights, for the tenant.

Legislation governing residential tenancies determines:

- Which contractual relationships are governed by it;
- The provisions which must be contained in a tenancy agreement;
- When and how assignments and sublets are done;
- The mutual obligations of landlords and tenants;
- The obligations of landlords to tenants, and vice versa;
- Rent increases;
- Security of tenure;
- The termination of tenancies; and
- How disputes are resolved.

Scope of the Review of the *Residential Tenancies Act*

Since it was enacted, the Act has served its purpose and been effective. Although it is in need of reform, the intent is not to alter the basic philosophy currently followed. Overall the current approach has served both landlords and tenants fairly well by striking a balance in their respective rights and obligations. The intent in reviewing and amending the Act is to modernize it, make it more focused, ensure that disputes are resolved more quickly and that effective remedies are provided.

Across Canada there are of course differences in approach, with strict rent controls imposed in some provinces, while others do not intervene in any way in the setting of rents. The Act does not currently control the amount by which a landlord may increase rent. It does restrict rent increases to one in any 12-month period and requires the landlord to give 3 months notice in writing of any increase. The Department of Justice does not contemplate the imposition of rent controls in the NWT as that would be a major intervention in the housing market. Every indication is that rent control, as a way of dealing with excessive rental increases for some tenants, would be expensive to implement and administer, and the negative aspects could well outweigh the positive by a large measure. Research and the experience of other jurisdictions suggests that rent control could divert resources away from the provision of housing and could even contribute to existing housing problems. For these reasons it is not discussed in this paper, but that does not preclude anyone from commenting on such a system.

This paper divides the proposed amendments to the *Residential Tenancies Act* into three broad categories:

Minor Amendments: There are a number of areas in the Act that require revision because of errors, omissions or outdated references and definitions. These changes are primarily "housekeeping items" which serve to update the Act and correct errors.

Additional Remedies: Other proposed changes would introduce provisions and additional remedies to protect landlords and tenants better.

Major Changes: These are intended to shorten some of the administrative processes required by the Act, including the time required to determine undisputed applications for unpaid rent, and permit the Rental Officer to issue eviction orders.

Throughout the paper a provision or part of the Act is discussed, the view of the Department expressed, followed by a question or questions for consideration and comment.

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Minor Amendments

The following amendments to the Act are necessary to correct errors or update the Act:

<u>Security Deposit Interest</u>

The landlord must pay interest on the security deposit held on behalf of the tenant. The Act currently determines the interest to be paid based on a Bank of Canada rate no longer in use. Currently the rate set for security deposits is 2.71% per annum. As an interest rate for deposits, it is higher than can be obtained in a trust account at a bank, meaning the landlord who holds a deposit and pays interest is doing so at a loss.

The rate landlords are required to pay on security deposits should not be significantly more than a landlord can earn while holding the deposit in trust.

> *The Department believes that the Bank of Canada Chartered Bank Administered Interest Rate for One-Year Guaranteed Investment Certificates (Series V122524) be used as the amended benchmark. The rate would be set once a year based on the benchmark rate at January 1. The rate on January 1, 2004 was 1.18%. The interest should be calculated and credited annually, but not compounded, to make calculation simple.*

Do you agree the interest rate on deposits should be set as recommended?

Interest Penalty - Late Payment of Rent

The interest rate the landlord may charge the tenant on late rent payments is also set at 2.71% per annum. The rate should not be so high as to penalise a tenant unfairly, but high enough to encourage prompt payment, and to compensate the landlord for the delay and the administrative costs of collection. It is assumed that landlords generally pass on to all tenants their costs, with the result that those tenants who pay on time indirectly pay a share of the expenses incurred by a landlord when a tenant or tenants are delinquent.

The interest rates assessed on by Visa and MasterCard, for example, are 1.5% per month or more. The current mortgage rate paid by a landlord would likely be in the range of 4% to 8.5%. When considering the cost of borrowing and the additional costs which result when payments are late, a reasonable rate would be 1% per month. This could be set by regulation, and increased or decreased as interest rates generally rise or fall, or tied to a specific Bank of Canada rate.

> *The interest penalty for late payment of rent should be set initially at 1% per month, and adjusted as interest rates rise and fall.*

Do you agree that the interest rate chargeable by landlords on late payment of rent be set at 1 % per month?

Definition of "subsidized public housing"

As defined by the Act "subsidized public housing"

> means rental premises rented to an individual or family of low or modest income at a reduced rent determined by the income of the tenant and funded by the Government of Canada, the Government of the Northwest Territories or a municipality or an agency of the Government of Canada, the Government of the Northwest Territories or a municipality pursuant to the *National Housing Act* (Canada) or the *Northwest Territories Housing Corporation Act*;

It may be this definition no longer reflects the realities of social housing in the NWT. Important provisions regarding security of tenure, subletting and assignment, eligibility for continued occupancy, rent increases and security deposits are dependent on this definition.

A new definition, perhaps of "social housing" rather than "subsidized public housing", should be considered, and agencies involved in the provision of social housing consulted. Why, for example, should the sources of funding be limited to funding through the *National Housing Act* or *Northwest Territories Housing Corporation Act?* The requirement that rents be based on income may also have to be reconsidered

There is also the issue of who determines, for the purposes of the Act, whether rental premises are "subsidized public housing" or "social housing", with the result that many provisions of the Act do not apply? The Act could provide that a landlord or tenant may apply to the Rental Officer for an order determining whether a rental premise or residential complex is social housing.

> *The Department believes discussion and consultation regarding the definition of social housing, and how the Act should apply to it, is both desirable and warranted.*

What are your views regarding the definition of "subsidized public housing"? What parts of the Act should apply to "subsidized public housing"?

Service of Documents

Presently all notices or documents relating to a residential tenancy may be served in person or by registered mail. The *Northwest Territories Rules of Court* permit service by fax. If either the landlord or tenant provides a fax number in an application to the Rental Officer, then service of further documents by fax should be permitted. This would recognise the geographical reality of the NWT, and reduce the time to serve documents.

> *The Department has concluded that the service of documents by fax should be permitted in the circumstances outlined above.*

Do you agree with amendments permitting service by fax in certain circumstances?

Termination of Tenancy Agreement for failure to pay Security Deposit

The Act authorises the Rental Officer to make an order requiring a tenant to pay the required security deposit to the landlord, but does not permit the Rental Officer to make an order terminating the tenancy agreement. Logic suggests that if someone signs a tenancy agreement, but fails to pay the security deposit, then the landlord should have the option of considering the tenant in breach of contract, and therefore should be allowed to ask the Rental Officer to terminate the tenancy agreement.

> *The Department proposes that a landlord may ask the Rental Officer to terminate a tenancy agreement for failure by the tenant to pay the agreed security deposit.*

Do you agree?

Assignment of Tenancy Agreement

The Act requires a tenant to get written consent from the landlord to sublet the rented premises or to assign the tenancy agreement, but consent may not be unreasonably withheld by the landlord. Currently the tenant may apply to the Rental Officer for an order permitting the sublet, but there is no similar remedy when the landlord refuses a request for an assignment.

> *The residential tenancies legislation in most other jurisdictions does not make such any distinction between subletting and assignment. The Department is of the view that a tenant should be able to apply to the Rental Officer for a ruling if he or she feels the landlord is unreasonably withholding consent, whether for an assignment or a sublet.*

Do you agree that the Act should treat requests to assign and sublet in a similar fashion?

Notice by tenant to terminate a periodic tenancy agreement

Often there is no written tenancy agreement between a landlord and tenant, or it has expired and simply continues until notice is given. The Act currently requires different notice periods depending on length and nature of the tenancy, i.e. weekly, monthly but for less than one year, or monthly but for more than one year. There is no clear rationale for the difference in notice periods and most landlords and tenants fail to see why the duration of the agreement should be a factor. No other jurisdiction in Canada requires different notice periods to terminate a periodic agreement based on duration of the tenancy. All jurisdictions require a 30-day notice except Ontario, which requires a 60-day notice.

> *It is recommended that the notice required for a tenant to terminate a monthly periodic agreement be at least 30 days and must always be effective on the last day of a month.*

Do you agree that notice to terminate by a tenant should be changed to 30 days?

Illegal Activities

The Act prohibits tenants from carrying on any criminal act in the rental premises or in the residential complex. "Criminal act" is a fairly narrow term and suggests that it would have to be a breach of the *Criminal Code*. Illegal activity is a more appropriate term as it covers many of the offences disturbing to other tenants and the community, such as the illegal sale of alcohol, which is an offence under the *Liquor Act*. The landlord would still be required to apply to the Rental Officer for an order, and an order could only be made when the illegal activity is proven to have occurred, and that either the landlord or another tenant has been adversely affected.

> *The Department believes that carrying on illegal activities in rented premises is unacceptable.*

Do you agree that socially unacceptable activities, such as the illegal sale of alcohol, should not be permitted to occur in rented premises?

Service on Former tenants

The Act permits service of a tenant by registered mail sent to the rental premises. If the tenant has moved, the documents may never be received. If the tenant's new address is known, it makes sense to send them there rather than to the former address.

A former tenant has the right to dispute an application made by the landlord, or to appeal an order of the Rental Officer. To protect the tenant's rights, he or she should receive documents whenever possible.

Do you agree that if the correct address of the tenant is known, documents should be sent to that address?

Reason for Termination by Tenants

The Act requires both tenants and landlords to state the reason for termination in a notice to terminate.

The Department believes there is no policy basis for a tenant having to give a reason in a notice of termination.

Do you agree?

Sale of Subsidized Public Housing Premises

Subsidized public housing, as defined by the Act, is provided in the NWT by the Northwest Territories Housing Corporation and non-governmental organizations (NGOs). The tenants of subsidized public housing do not pay market rent for their premises. If the Housing Corporation or an NGO wishes to sell such premises, the purchaser is legally required to honour the existing terms of the lease, and can only increase the rent, as permitted by the Act, to reflect the market price. This severely restricts the ability of the owner to obtain full value for the property. The Rental Officer could be given the authority to terminate the tenancy agreement in those circumstances. However, the interests of tenants must also be protected. The Act should require the vendor/landlord to make available similar units to its tenants when it sells the premises.

It make sense for the provider of subsidized social housing to be permitted to evict tenants when it sells the premises to a purchaser intending to charge market rents, so long as reasonable alternative units are made available to the tenants. This would allow the Housing Corporation or NGO more flexibility in the management of its assets.

Do you agree or disagree with the suggested changes, or see any difficulties with them?

Retention by Landlord of Security Deposit

The Act is somewhat cumbersome with respect to a landlord's ability to apply all or part of the security deposit of a tenant to the damages caused by that tenant, or to the tenant's arrears in rent. In many cases the tenant has abandoned the premises, leaving damages and rental arrears behind. Requiring the landlord to apply to the Rental Office to justify its intentions seems lacking in fairness.

> *The Department believes a simpler process would be to require the landlord to give notice to the tenant of its intentions respecting the security deposit, and the onus would be on the tenant to file an objection with the Rental Officer if not in agreement.*

Do you have any comments on the recommended changes?

Additional Remedies

There are a number of changes being proposed by the Department to reflect the realities of a tenancy agreement concerning residential premises, which is a legal contract and should be treated as such.

Landlord's Only Residence

The Act currently permits a landlord who has rented his or her only residence in the Northwest Territories to terminate a tenancy agreement by giving notice to the tenant in the same manner a tenant would be required to give notice to the landlord. In the case of a term agreement this would be notice of at least 30 days to terminate at the end of the term. A month-to-month agreement could be terminated on 30 or 60 days notice depending on the duration of the tenancy agreement.

The Act also permits any landlord who intends to use the rental premises as his or her own residence (or for immediate family) to make an application to the Rental Officer requesting an order terminating the tenancy agreement. The Rental Officer may order the termination of the tenancy agreement either 90 days after the application is made, or at the end of the term, whichever is sooner.

Landlords who have rented their only residence in the NWT are also exempt from the security of tenure provisions of the Act which automatically renew term agreements on a month-to-month basis.

> *The Department sees no reason why a landlord should be able to terminate a* ***periodic tenancy agreement*** *by notice alone simply because they have rented their only residence in the NWT. This is particularly so given their exemption from the security of tenure provisions of the Act, which permits them to enter into term agreements which do not automatically renew. The Act also enables a landlord to apply to the Rental Officer for an order terminating a tenancy agreement if the landlord intends to use the rental premises as a personal residence (or as a residence for his or her immediate family) The current provisions permit termination by notice for virtually any reason, or no reason at all.*
>
> *The Department also believes that a landlord should not be able to terminate a term tenancy agreement before it ends solely on the basis that the landlord intends to use the premises as a personal residence.*
>
> *The Department believes that if a landlord has rented his or her only residence need only to be exempted from the automatic renewal provision. In that case a landlord can regain possession either at the end of the term or, in the case of a periodic agreement, apply to the Rental Officer for termination on the grounds the premises are required for a personal residence.*

Do you think landlords who have rented their only residence in the NWT should only be allowed to terminate a tenancy agreement at the end of the term or, in the case of a periodic agreement, by making an application to the Rental Officer on the grounds they intend to use the premises as their own residence?

Landlord's Only Residence

The Act permits a landlord to terminate a tenancy agreement by 30 days notice on the basis that the premises were the only residence of the landlord in the NWT, or that the landlord requires possession for his own residence or that of his or her spouse, child or parent. Furthermore, the landlord may sell the premises and if the purchaser requires vacant possession, the Rental Officer may terminate the tenancy in 90 days, or at then end of the tenancy agreement, whichever is earlier. These provisions deny security of tenure to tenants in such circumstances.

There may be good policy reasons for allowing the landlord to apply to the Rental Officer to terminate a tenancy in 90 days, or at the end of the tenancy agreement, when the landlord requires possession for his own residence or for that of his or her spouse, child or parent, or if the premises have been sold, for the purchaser. But the tenant who has entered into a lease in good faith in effect cannot rely on it, and is inconvenienced when required to move.

Given that a landlord may regain possession within 90 days, or at the end of the tenancy agreement, by applying to the Rental Officer, there is really no logical reason why the landlord should be entitled to give 30 days notice to vacate simply because the premises were formerly that of the landlord. A period of 90 days at least affords the tenant a sufficient period of time to find other premises, and to make arrangements to move.

Persons who wish to rent their only residence for a non-renewable term may do so and the automatic renewal provisions do not apply. Even if the premises are rented for a term and the landlord wishes to terminate the agreement prior to expiry and move back into the premises, the landlord may make application to terminate the tenancy agreement and a rental officer may consider a termination order 90 days after the application is made. Similarly, landlords who rent their only residence may enter into a periodic tenancy agreement and make application to terminate it because they wish to use the premises as their personal residence or that of their immediate family.

> *The Department sees no reason why a landlord should be able to terminate a tenancy agreement by 30 days notice on the basis that the premises were the only residence of the landlord in the NWT, and possession is required for his own residence or that of his or her spouse, child or parent. It is less certain about the current scheme which permits the landlord to terminate within 90 days, or at the end of the agreement, when possession is required for similar purposes.*

Do you think a landlord should be permitted to terminate a tenancy agreement when possession is required for personal or family member occupancy, or by the purchaser if the premises have been sold? If so, should it be within 30 days? Or is 90 days satisfactory?

Notice of non-renewal

The Act exempts subsidized public housing landlords, employer landlords and landlords who have rented their only residence in the NWT, from the security of tenure provisions. In other words, tenancy agreements made for a term are not automatically renewed, but expire on the day stated in the tenancy agreement. It has been suggested that such landlords should be required to provide 30 days notice to the tenant.

> *The Department agrees the requirement to give notice in these circumstances might provide more certainty to the tenant. However, it places an added burden on the landlord who would not be entitled to rely on the terms of the agreement. This would be different than any other contractual arrangement.*

Do you agree notice should be given even though it is specified in the tenancy agreement that the tenant must vacate on an agreed upon date?

Disbursement of rent held by the Rental Officer

The Act authorizes the Rental Officer to order a tenant to pay rent to the Rental Officer when repairs are not made, or vital services are not being provided, by the landlord. However, the Act does not provide any guidance to the Rental Officer as to how the rent held can be disbursed, or under what circumstances it can be paid to the landlord. Ordering a landlord to make certain repairs or to restore vital services and ordering the tenant to pay rent to the Rental Officer until the landlord's breach is remedied, is an effective way to encourage a landlord to comply with statutory obligations. In some cases, however, a landlord may be unwilling to do repairs, even if he is ordered to do so. In the mean time there is no rental income.

Provisions to permit a rental officer to disburse rent monies remitted by a tenant to a rental officer in accordance with an order should include:

a) the return of the rent paid to a rental officer on the confirmation that the breach has been remedied by the landlord less any amounts ordered paid to the tenant for losses which were a direct result of the landlord's breach;
b) payment to a third party contracted by the landlord and approved by a Rental Officer to remedy the breach;
c) the payment of all or part of the rent held to the tenant for costs incurred by the tenant to remedy the landlord's breach, and to return the balance, if any, to the landlord.

Several other jurisdictions have similar provisions.

The Department believes the Rental Officer should be able to enforce the terms of the tenancy agreement and the statutory obligations placed on the landlord to effect repairs and provide vital services.

Do you agree the Rental Officer should be able to make orders regarding the disbursement of rent monies held to ensure the repairs are done, and the vital services provided, by the landlord?

Order to refund excess rent

The Act places some limits on rent increases. It follows that on occasion the Rental Officer determines that a rent increase does not conform to the Act. However, there is no provision that allows the Rental Officer to order the landlord to refund the excess rent paid in such situations.

The Department wants to amend the Act to authorize the Rental Officer to order the payment of any amount not legally due and owing to the landlord.

Do you agree that any amount paid in excess of the legal rent should be repaid to the tenant.

Major Changes

Default Judgment for unpaid rent

One of the most frequent complaints about the *Residential Tenancies Act* is the complex process required to obtain a judgment for unpaid rent. Applications of this nature comprise the majority of matters handled by the Rental Officer. A large number of these applications are uncontested and result in an order terminating the tenancy agreement on a particular date unless the arrears are paid in full. A lesser but still significant number of applications are filed and then withdrawn when a tenant pays the rent.

The landlord may give notice to the tenant when the rent is not paid. If the tenant does not vacate the premises, the landlord must make an application to the Rental Officer, serve the tenant and attend a hearing to obtain an order. If an order is issued requiring the tenant to pay the rent by a particular date, and the order is not satisfied, the landlord must then make application to a judge of the Supreme Court of the NWT for an eviction order. The entire process can take 2 months or more, involves a lot of documents which must be filed, and the attendance at 2 or more hearings. This is particularly frustrating for the landlord when the tenant is not disputing the allegation of non-payment.

The Department proposes the landlord be required to serve a notice of termination when the rent is not paid on time. If the rent is paid within the time period specified by the Act, then the notice is void. But if the tenant fails to pay the rent within the time specified, and fails to appeal, the landlord may apply to the Rental Officer for a default order. Once the landlord files proof of service on the tenant, and swears to the continuing failure to pay rent, an order would issue, and no hearing would be necessary.

This change will reduce the number of applications to the Rental Officer, and reduce the number of hearings. This means less administrative work for the both rental office and landlords, while at the same time guaranteeing the tenant the right to dispute the allegations.

> *The Department is in favour of administrative efficiency whenever possible provided no one's rights are compromised. Further, landlords generally pass costs on to tenants, therefore reducing their costs in any way also benefits tenants.*

Do you agree that landlords should be able to obtain default orders from the Rental Officer when a tenant fails to pay rent?

Early termination for damage to premises

The Act authorizes the Rental Officer to terminate a tenancy because of tenant damages to the rented premises. However, it does not give the authority to order early termination when the tenant causes damage, but requires the landlord to obtain first an order prohibiting the tenant from causing further damage.

> *The Department believes it is in the interests of landlords and the great majority of tenants that effective and timely action is taken against tenants causing, or allowing to be caused, damage to the premises. As mentioned before in this paper, costs incurred by landlords from tenants who fail to comply with the tenancy agreement, are in the end passed on to the tenants who do.*

Do you agree the Act should allow for timely and effective action against tenants causing damage to the rental premises?

Eviction orders

The Act requires a landlord to apply to the Supreme Court of the Northwest Territories to obtain an order to evict a tenant. More than half of the jurisdictions in Canada authorize an administrative body to order the eviction of a tenant. This reduces by approximately one month the time required to obtain such an order, and means landlords outside Yellowknife need not send a lawyer or agent to a hearing. No eviction can take place until 14 days have elapsed from the Rental Officer's order, during which time the tenant would still have the right to appeal to the Supreme Court, which would have the effect of staying the eviction.

> *The Department believes that by eliminating the application to the Supreme Court, tenants as well as landlords, benefit. As discussed above, landlords must recover costs incurred with difficult tenants from somewhere – the tenants who do pay. Reducing red tape and costs for the landlords should also benefit the vast majority of tenants in the end.*

Do you agree that the Rental Officer, instead of a judge, should be authorized to order the eviction of a tenant?

Pre-hearing mediation

When an application is made to the Rental Officer, he or she must inquire into the matter and assist in attempting to settle the matter by agreement. If those efforts fail, then a hearing is held.

Most applications involve unpaid rent and most are uncontested. The landlord in such cases wants an enforceable order if the rent remains unpaid, and an agreement by the tenant to pay, if obtained, may mean little or nothing in the circumstances. The mediated agreement is not an order, as an order can only be made by the Rental Officer after a hearing has been held.

Inquiring into a matter, and attempting to mediate, does not make sense in every case. Furthermore, if there is a mediated agreement, the Rental Officer should be able to confirm it by issuing an order without the need to hold a formal hearing.

> *Giving the Rental Officer the discretion to decide when a pre-hearing inquiry is necessary, and the authority to make an order confirming an agreement reached by the parties, streamlines the process while protecting the rights of both landlords and tenants.*

Do you agree the Rental Officer should be given more discretion, and the power to confirm agreements reached between the landlord and the tenant?

Extend the time for service

The Act requires the landlord or tenant to serve an application within 14 days of filing it with the rental office. Given our geographical area and postal system this provision has been proved to be unrealistic in many cases. The Act permits a rental officer to extend the time limit within which a landlord or tenant is required to file an application provided the rental officer is of the opinion that it would not be unfair to either party. Giving the Rental Officer the discretion to extend the 14-day period for service of an application would be consistent.

> *The Rental Officer should be given discretion to extend the 14 day limit for the service of an application when it is reasonable and fair to do so.*

Do you agree the Rental Officer should have the discretion to extend the time for service of an application?

How to Provide Your Input and Comments ...

The Department of Justice is keen to hear your views on the proposed changes to the *Residential Tenancies Act*, and would also encourage comments you might like to make on any other aspect of the legislation, all in the interest of making the legislation more effective and responsive to the interests of northerners.

You should address your views to:

Senior Policy Advisor
Department of Justice
Government of the NWT
4903 49th Street
PO BOX 1320
YELLOWKNIFE NT X1A 2L9

Email: communications_advisor@gov.nt.ca