

# ACE NEWSLETTER

Advocacy Centre  
for the Elderly

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## RETIREMENT HOME LICENSING FEES: CAN RETIREMENT HOME LANDLORDS PASS THROUGH THE HOME'S LICENSING FEES TO TENANTS?

By: Judith Wahl, Executive Director

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Since the beginning of July, 2012, ACE has received many calls from retirement home tenants, asking whether the retirement home landlord can make them pay an additional rent or service charge to cover the cost of the licensing fees that retirement home operators are now required to pay to the Retirement Homes Regulatory Authority (RHRA). Homes in Ontario that meet the definition of “retirement home” under the *Retirement Homes Act*<sup>1</sup> (RHA) are required as of July 1, 2012, to have applied for a licence. According to the RHRA's *Applicant Guide: Retirement Home Licence Application*, retirement home landlords will be charged an application fee as well as an annual licence fee.<sup>2</sup>

ACE lawyers are of the opinion that in most cases, retirement home landlords cannot simply add on these licensing fees to a tenant's monthly bills as either an increase in rent or as an additional care service charge. Retirement home landlords have been passing on these charges to tenants in a manner that, in our opinion, breaches the *Residential Tenancies Act (RTA)*.<sup>3</sup> Retirement home tenants should be aware that if they wish

to challenge these charges they must file an application at the Landlord and Tenant Board for a refund under section 135(1) of the *RTA*<sup>4</sup> within one year.

Specifically, sections 135(1) and (4) state:

135.(1) A tenant or former tenant of a rental unit may apply to the Board for an order that the landlord, superintendent or agent of the landlord pay to the tenant any money the person collected or retained in contravention of this Act or the *Tenant Protection Act*, 1997.

(4) No order shall be made under this section with respect to an application filed more than one year after the person collected or retained money in contravention of this Act or the *Tenant Protection Act*, 1997.

This article will explain what these licensing charges are, and what retirement home tenants can do if they receive such a charge on their monthly rent and services bills.

...continues on page 2

<sup>1</sup> SO 2010, c 11.

<sup>2</sup> Retirement Home Regulatory Authority, *Applicant Guide: Retirement Home Licence Application*, online: <<http://www.rhra.ca/assets/en/pdf/RHRA-Applicant-Guide-Apr2012.pdf>>.

<sup>3</sup> SO 2006, c 17.

<sup>4</sup> *Ibid*, s 135.

# LICENSING FEES

...continued from page 1

## LEGISLATION THAT APPLIES TO RETIREMENT HOMES

Retirement Homes are governed by two pieces of legislation - the *Retirement Homes Act* and the *Residential Tenancies Act*.

The *Retirement Homes Act (RHA)* establishes a regulatory system and structure, requires that retirement homes be licensed, and sets standards that the retirement home landlords must comply with on a variety of matters including: care services; abuse prevention and response; and operations. The *RHA* also requires the RHRA to maintain a public register that contains information about retirement home landlords.

The term “retirement home” is defined in the *RHA* as:

- a residential complex or the part of a residential complex,
- (a) that is occupied primarily by persons who are 65 years of age or older,
- (b) that is occupied or intended to be occupied by at least the prescribed number of persons who are not related to the operator of the home, and
- (c) where the operator of the home makes at least two care services available, directly or indirectly to the residents,<sup>5</sup>

Care services include but are not limited to: health services, nursing services, continence care, assistance with dressing, bathing and feeding, and provision of meals.

Retirement homes are also, however, residential tenancies and therefore must also comply with the provisions of *Residential Tenancies Act (RTA)*. Within the *RTA*, retirement homes would fall under the category of housing referred to as “care homes”. The *RTA* sets out the rights and obligations of both tenants and retirement home operators/licensees who are also landlords. The *RTA* sets out that the landlord must provide tenants with a written tenancy agreement; a care home information package (CHIP) that details the various services available from the

landlord at that home, costs of those services, staffing at the home; and other types of consumer information.

The fact that the landlord of a retirement home cannot pass through the licensing fees payable under the *RHA* to tenants is because the retirement home is also subject to the *RTA* which prohibits landlords from charging “illegal fees” to tenants. We will discuss this in greater detail below.

## RETIREMENT HOME LICENSING

As mentioned previously in this article, all retirement homes operating in Ontario are required to be licensed as of July 1, 2012. Under the *RHA*, homes that applied for the licence before July 1, 2012 were deemed to have a licence until the RHRA determines that a licensee has met all the requirements and either issues a licence, or refuses to issue a licence because the requirements have not been met. Since July 1, 2012, the RHRA has been assessing the applications that it has received to determine whether to issue licences to each deemed licence holder. It will take many months before this process is completed by the RHRA.

After July 1, 2012, any new retirement home operators/landlords seeking to start a new retirement home business will not be able to open for business until they are granted a licence. Applications received by the RHRA subsequent to July 1, 2012, will no longer result in “deemed” licences.

If a home was operating prior to July 1, 2012, and has not applied for a licence, it would be considered to be operating without a licence and would be in breach of the legislation. Should you find yourself in this situation, please contact the RHRA for further information.

The RHRA charges retirement home landlords two different fees. These are a **licence application fee** and an **annual licence fee**. For more information, consult the *Fact Sheet: Fees*, that is available from the RHRA on its website.<sup>6</sup>

The licence application fee is \$800 for homes with twenty or fewer living quarters/suites, and \$1200 for all other homes. This fee is not subject to HST.

The second fee is an annual licence fee which is assessed based upon the total number of living quarters/suites in the home. The current fee is \$9 per suite, per month, plus 13% HST (\$10.17 total).

<sup>5</sup> *Supra*, note 1, s 2(1).

<sup>6</sup> Retirement Homes Regulatory Authority, *Fact Sheet: Fees*, online: <<http://www.rhra.ca/assets/en/pdf/Factsheet-Fees-May2012.pdf>>.



## **RESIDENTIAL TENANCIES ACT – RENT AND CARE SERVICES CHARGES**

Under the *RTA*, landlords of care homes can enter into tenancy agreements that set out the fees to be paid for accommodation and the charge for care services. The tenancy agreement must list separately what the rent amount is and what the cost is for the care services portion.

In Ontario, for those homes to which rent control applies, rent can only be increased by the landlord once a year in accordance with the Provincial Rent Increase Guideline set out by the government. The Rent Increase Guideline was 3.1% for 2012. The provincial government announces the annual guideline increase around the end of August. A landlord is also required to give a tenant 90 days written notice, on forms from the Landlord and Tenant Board, of an increase in rent.

Care services charges can be increased only after the landlord gives a tenant 90 days written notice. Care services charges can be increased more than

once a year, as long as the required notice is given before the increase comes into effect. There is a specific definition in the legislation and regulations as to what care services are. These include such things as health care services, nursing services and services that provide assistance with the activities of daily living.

### **LICENSING FEES – ARE THESE RENT OR CARE SERVICES?**

Licensing fees that a retirement home landlord is required to pay to the RHRA are not care services and cannot be charged to tenants as care services. The *RTA* and its regulations specifically define what constitutes a care service and licensing fees are not listed. It is for this reason that ACE takes the position that retirement home landlords cannot pass on these RHRA fees to tenants in the form of an increase in the charge for care services that a tenant has contracted to receive. ACE is also of the opinion that the licensing fees that retirement home landlords are now required to pay to the RHRA are not “rent” as defined in the *RTA*.

According to section 123(1) of the *RTA*, a landlord may increase the rent charged to a tenant for a rental unit as prescribed at any time if the landlord and the tenant agree that the landlord will add any of the following with respect to the tenant's occupancy of the rental unit:

1. A parking space
2. A prescribed service, facility, privilege, accommodation or thing.<sup>7</sup>

Section 16 of the regulations to the *RTA*<sup>8</sup> provides a list of prescribed services and facilities, which includes, but is not limited to: cable television; satellite television; air conditioner; extra electricity for an air conditioner or washer/dryer in the rental unit; heat; electricity. Licensing fees are not included in the list of prescribed services and facilities as something that can result in an agreement between a landlord and tenant to increase rent.

Section 134 of the *RTA* also prohibits a landlord, either directly or indirectly, from requiring a tenant to pay any additional charges to the landlord as part of rent.<sup>9</sup> Listed in section 134 are things such as a fee, commission, bonus, penalty, key deposit that may or may not be refundable; any fee to be paid by a prospective tenant as a condition of granting tenancy or continuing occupancy; rent for any portion of the rental unit in excess of what the landlord may legally charge for that rental unit.

Therefore it is argued that retirement home landlords who add licensing fees to rent are imposing an illegal charge on the tenant. A retirement home tenant who finds him or herself in a situation where their landlord has collected money illegally from them can file a T1 Application for a Rent Rebate with the Landlord and Tenant Board on the basis that the landlord has charged an illegal rent or collected an illegal charge. This application must be made within one year after the charge was collected otherwise, the amounts may be deemed lawful.

ACE is of the opinion that fees owed by a retirement home landlord to the RHRA cannot be passed through to tenants by adding these fees as either a care service or as an additional rent charge as a line on the monthly billing of a tenant's account.



### **SEEK ADVICE FROM YOUR OWN LEGAL COUNSEL**

If you are a tenant in a retirement home and you have received notice from your landlord that your rent or care services have been increased to pay for the licensing fee that the retirement home landlord must now pay to the RHRA, you should consider seeking legal advice. ACE will be posting any updated information or further developments on this issue on our website at [www.ancelaw.ca](http://www.ancelaw.ca) and also in future newsletters.

ACE encourages retirement home tenants to contact the Landlord and Tenant Board <<http://www.ltb.gov.on.ca/en/index.htm>>, their local community legal clinic, or ACE for further information.

### **FOR MORE INFORMATION:**

#### **Ontario Landlord and Tenant Board**

**Website:** <http://www.ltb.gov.on.ca/en/index.htm>

**Telephone:** 416-645-8080 from within the Toronto calling area, or toll-free at 1-888-332-3234 from outside Toronto

#### **Retirement Homes Regulatory Authority**

**Website:** <http://www.rhra.ca/en/>

**Telephone:** 1-855-275-7472

**Email:** [info@rhra.ca](mailto:info@rhra.ca)

<sup>7</sup> *Supra*, note 3, s 123.

<sup>8</sup> O Reg 516/06, s 16.

<sup>9</sup> *Supra*, note 3, s 134.

# ACCOMMODATION RATES IN LONG-TERM CARE

By: Jane E. Meadus, Institutional Advocate & Staff Lawyer

When a resident is admitted to a long-term care home, the issue of the rate for accommodation can be confusing. ACE receives a lot of inquiries concerning rates for long-term care accommodation. This article will discuss some of the general issues related to accommodation rates and rate reductions. It is, however, not a complete guide and you should always discuss any questions you have about the accommodation rate with either the long-term care home; the Community Care Access Centre (CCAC); the Ministry of Health and Long-Term Care (MOHLTC); or seek legal advice if your case is complex. Always keep notes about what you are told and who you spoke with in case there are any issues later.

*The Long-Term Care Homes Act*<sup>1</sup> (*LTHCA*) was proclaimed on July 1, 2010, but the new rules regarding rate reductions were not put into place until January 1, 2011. While for many residents, these changes were not noticeable, for others, especially new admissions, the changes marked a departure from previous processes. On July 1, 2012, there were further amendments to the regulations to the *LTHCA*<sup>2</sup> which affect new residents in long-term care homes residing in preferred accommodation.

## TYPES OF ACCOMMODATION

The three different levels of accommodation that a long-term care home may offer are: basic, semi-private or private. Semi-private and private are often also referred to as “preferred” accommodation. The government determines the maximum rates for each type of accommodation. While the legislation sets out the maximum rate, the home is not required to charge that rate for the room. Some homes, for example, may not be able to fill all of their private rooms, and will instead offer the room at a basic rate in order to have it occupied.

Whether a room can be offered as basic, semi-private or private accommodation is set by regulation.<sup>3</sup>

In general, these relate to different designs depending on when the home was built. Unfortunately, it can be very confusing when trying to determine whether a room meets newer or older standards of accommodation. Regardless of the home’s configuration, the long-term care home must offer at least 40% of the available accommodation at the basic rate.<sup>4</sup> For example, even where a home only has “private” rooms (i.e. one resident per room) it would still be required to offer a minimum of 40% of its rooms at the basic rate.

When a resident is applying for long-term care, information about the cost of rooms and rate reductions must be provided. Service providers may advise the resident and their family or substitute decision-maker that preferred accommodation may have a shorter wait-list, and encourage the person to apply for that level of accommodation. In some instances, we have heard of service providers, including CCAC placement coordinators, advising prospective residents that they need to be able to pay for preferred accommodation for one year, at which time they will transfer to basic accommodation. **This is simply not true.** There is no guarantee that a bed at the basic accommodation level will be available after one year has passed.

If a resident or their substitute decision-maker agrees to accept preferred accommodation, they will be required to pay until a basic accommodation room is available. While a resident may apply to transfer to basic accommodation on the **day of admission**, it may take several years or more for the transfer to that level of accommodation to actually happen as admission to those beds is on an alternating basis with persons being admitted from the community.<sup>5</sup> It is therefore recommended that when applying for preferred accommodation, the resident or their family be able to pay for that bed indefinitely, unless the home agrees in writing to a defined term prior to admission.

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<sup>1</sup> SO 2007, c 8.

<sup>4</sup> O Reg 79/10, s 260.

<sup>2</sup> O Reg 79/10.

<sup>5</sup> O Reg 79/10 s 207.

<sup>3</sup> O Reg 79/10, s 1, “private room”, “semi-private room”, “standard room”.

## ANNUAL ACCOMMODATION RATES

The government sets accommodation rates by regulation on an annual basis. In general, rates will change annually on July 1. A home must provide 30 days notice to residents when the rate is being increased.<sup>6</sup> (This does not include a change that is due solely to a recalculation of the resident's rate reduction.)

The accommodation rate is a fee for the room only. The resident does not pay for the care portion of their stay at a long-term care home. Accommodation fees have no relation to the level of care that the person is receiving.

Residents cannot be discharged or evicted for non-payment of fees. It must be remembered that the person is entitled to the care provided in long-term care: money can never be a barrier to that access.

## REGULATED DOCUMENTS

When being admitted to a long-term care home, a resident or someone on their behalf may be asked to sign an "admission agreement". These documents are called "regulated documents" and must meet the strict requirements set out in the *LTCHA* and its regulations.<sup>7</sup> An agreement for basic or preferred accommodation may include only information about the amount and resident's requirement to pay, the licensee's obligation to provide goods and services, the licensee's obligation to provide 30 days notice of fee increases, any interest to be charged for missing or incomplete payments, and the licensee's obligation to provide a monthly statement of the resident's account.<sup>8</sup> There is no provision allowing a home to include a "guarantor" or third party to be responsible for these fees. Like any document to be signed in long-term care, the home must have the document certified by a lawyer and the resident is entitled to seek advice before signing it.

## APPLYING FOR A RATE REDUCTION

Residents who are in a room designated as basic accommodation may apply for a rate reduction. As well, spouses who resided in a semi-private room

and received a rate reduction prior to July 1, 2010 may also continue to apply for a rate reduction.<sup>9</sup> Rate reductions are generally applied for when a person is admitted to a home and at least annually thereafter or as required by regulation.<sup>10</sup>

In order to be considered for a rate reduction, the resident or someone on their behalf must apply. There are two types of reductions: one which reduces the rate because the resident is low-income; the second type of rate reduction takes into account the resident's need to support his/her dependants.

## RATE REDUCTION FOR LOW-INCOME RESIDENTS

Where residents reside in a room which has been designated as "standard" or "basic" accommodation, the resident is entitled to apply for a rate reduction based upon their income. The income of other family members (such as a spouse), is not included when determining the regular reduction, nor are assets included in the determination. This is important, as many people believe that they will have to sell their house or rid themselves of other assets in order to qualify for a rate reduction, which is not the case. However, any income that is generated by an asset, for example rent on property owned, interest on savings, and dividends on stocks, which are included as income on a tax return, would be considered in any rate reduction calculation.<sup>11</sup>

The regulations to the *LTHCA* require that if they wish to apply for a rate reduction, the person provide a copy of their "Notice of Assessment" from the previous year's income tax return, unless they are in receipt of Ontario Disability Support Program (ODSP) benefits, or the Public Guardian and Trustee is their guardian of property.<sup>12</sup> It is recognized, however, that on the initial application, such documentation may not be readily available to the resident, and in that year, other supporting documentation can be provided for the purpose of calculating the resident's annual income.<sup>13</sup>

The home has a positive duty to assist the resident in applying for the rate reduction upon request.<sup>14</sup>

<sup>6</sup> O Reg 79/10 s 259.

<sup>7</sup> *LTCHA* ss 80-83; O Reg 79/10 s 227.

<sup>8</sup> O Reg 79/10, s 227(3).

<sup>9</sup> O Reg 79/10, s 1 "standard room".

<sup>10</sup> O Reg 79/10, s 248(1).

<sup>11</sup> See O Reg, 79/10, s 249 for the definition of "annual income".

<sup>12</sup> O Reg 79/10, s 253(2)(c).

<sup>13</sup> O Reg 79/10, s 249(5).

<sup>14</sup> O Reg 79/10, s 253(3).

This includes an obligation on the home to apply for the rate reduction where the resident's money is being managed by the home.<sup>15</sup>

In order to qualify for a rate reduction, the resident must first maximize their income.<sup>16</sup> This includes applying for all government benefits, private insurance, benefits from a foreign government, support payments, and financial support from a sponsor where the resident is a sponsored immigrant.<sup>17</sup>

If a resident is a sponsored immigrant, the sponsor has agreed to support the person financially for the duration of the sponsorship agreement which, in the case of elderly parents, is presently ten years. This support includes payment of the accommodation rate in a long-term care home. In many cases, however, the sponsor will be unable or unwilling to pay this amount. Any income support that a sponsor does provide will be included in the resident's income.<sup>18</sup> If the contribution does not cover the accommodation rate, the expectation is that the resident will apply for ODSP benefits, which will cover these costs. While the home and the MOHLTC cannot enforce the sponsorship agreement, ODSP is able to sue the sponsor for repayment of any benefits given to the sponsored family member.<sup>19</sup>

To determine the rate reduction, a staff member of the home will input the information into a computer program which will calculate the person's rate at the home. In most cases, the resident will be entitled to keep \$134 from their income for incidentals, unless they have an income that is less than \$134.<sup>20</sup>

## **RATE REDUCTION FOR RESIDENTS WITH ELIGIBLE DEPENDANTS**

Residents with eligible dependants can apply for a rate reduction based upon their combined incomes. However, dependants must meet specific criteria which are set out in the legislation.

Dependants can be either a spouse or a child. A spouse must have been living with the person prior to their hospitalization/admission to an institution. A spouse living in a long-term care home, hospital

or other institution; or who is in receipt of an Old Age Security Pension, ODSP benefits or Ontario Works benefits, is not considered a dependant for the purpose of calculating a rate reduction. A child must be either under the age of 18 or under the age of 25 and enrolled in full-time secondary or post-secondary educational institution, financially dependant on the resident, and not in receipt of any of the income supports listed above.<sup>21</sup>

The income of the spouse and/or child would be included in the application for a rate reduction, and an amount subtracted for the purpose of their support. At the date of writing, \$1,295.05 is deducted for support of the first dependant, and \$558.36 for each dependant thereafter. While this is not a large amount, it is an improvement on the previous legislation which was silent with respect to dependant deductions.

Residents who had a reduction for dependants/spouses under the previous legislation may continue to have the reduction that was available under that scheme as determined by the Director.<sup>22</sup> Under the previous legislation, a resident in a long-term care home could have an amount up to \$152.08 reduced for a spouse in the community.

## **PREFERRED ACCOMMODATION**

Residents who choose preferred accommodation cannot receive a rate reduction. As previously mentioned, a home may designate a bed as being offered at a reduced rate, even if it is entitled to charge a preferred rate.<sup>23</sup> If the bed is designated as being basic accommodation, the person can apply for a rate reduction.

Long-term care homes are entitled to charge a premium for preferred beds, the maximum amount of which is set out in the legislation. The home may only charge the preferred rate if it is agreed to in writing by the resident or a person authorized to enter into an agreement on their behalf.<sup>24</sup>

As of July 1, 2012, differential rates for preferred accommodation beds were introduced. In general,

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<sup>15</sup> Given the inherent conflict of homes regarding their role as a creditor and the fiduciary duty that they would have to the resident if managing the money, we highly discourage this practice.

<sup>16</sup> O Reg 79/10, s 253(1).

<sup>17</sup> O Reg 79/10, s 253(2).

<sup>18</sup> O Reg 79/10, s 249(2)4.

<sup>19</sup> A more detailed discussion of this issue will be published on the ACE website in the near future.

<sup>20</sup> As of November 1, 2012. O.Reg.79/10 s. 253(7)1.

<sup>21</sup> O Reg 79/10, s 251. The terms "spouse" and "child" are not defined for the purpose of this section.

<sup>22</sup> O Reg 79/10, s 253(11) & (12).

<sup>23</sup> O Reg 79/10, s 247, (4) to (7).

<sup>24</sup> *LTCHA* s 91(2).

this meant that homes which met certain standards were entitled to charge a higher rate for new residents in preferred accommodation than other older homes.<sup>25</sup> Unfortunately, it is unclear from the *LTCHA* as to which homes can charge the higher rate. We have made requests to the MOHLTC for further clarification as to which homes are entitled to charge these rates and how this is determined. To date, we have not received a response to our inquiries. Some CCAC's have published the rates relating to the homes in their area: it is not known how they determined which homes were so entitled. We recommend that if you are being charged the higher rate for preferred accommodation, that you seek confirmation that the home is, in fact, legally entitled to do so.

In the past, married residents who applied for long-term care could be admitted to semi-private accommodation in older homes at the basic rate. This has since been eliminated, although those in such accommodation have been grandfathered in. It would appear that the reason for this is the expectation that all homes will eventually be rebuilt to have a maximum of two residents per room in basic accommodation; eliminating the need to offer semi-private accommodation to married residents. Unfortunately, the rate at which long-term care homes are being rebuilt is slow and many older homes continue to offer only three or four bed basic accommodation rooms. New residents who wish to reside with a spouse at the basic rate must therefore apply only to newer homes, which usually have much longer waiting lists.

Another interesting development is homes which do not offer any rooms in the basic accommodation configuration. These newer homes may only offer private rooms. Unfortunately, the result is that residents who wish to reside with a spouse are prohibited by law from doing so, as the room is prohibited from allowing more than one bed in the room.

## **OTHER CHARGES**

The home may only charge other fees if they are agreed to in writing<sup>26</sup> and are not for items for which they are prohibited from charging.<sup>27</sup>

Agreements regarding those fees are governed by the regulated document sections of the legislation and the regulations.<sup>28</sup>

Residents often choose to purchase additional items, such as cable television, telephone service, or hairdressing, which are not included in their accommodation rate. Residents and their families should be wary of charges for items such as "valet service" (often described as ironing and mending), which may not provide value for service. Residents should also be aware that the home cannot require them to purchase any services. While residents may wish to purchase specialized services such as chiropody, declining to purchase such services does not mean that the home does not have an obligation to provide appropriate nail and foot care.

An exception to this rule is with respect to copayments for medication covered by the Ontario Drug Benefit program. By law, the recipient must pay the \$2 copayment when he/she is a resident of a home.<sup>29</sup>

Issues arise, however, if medications have not been consented to, or are not covered by the Ontario Drug Benefit program. In either case, we believe that the resident or a person with authority could challenge such fees as being contrary to either the drug benefit legislation or the *LTCHA*. As well, one should review these bills carefully for signs that medication is being ordered more often than required, for example weekly prescriptions instead of monthly, which cause an increase in fees. A resident on 8 medications, at \$2 per prescription, could be charged \$64 when charged weekly instead of \$16, which is a lot when they may only have \$134 spending money.

## **TRUST ACCOUNTS AND ACCOUNTING**

Residents are entitled to have money held in a trust account by the home.<sup>30</sup> The *LTCHA* sets out the parameters for the trust account, including that a home cannot hold more than \$5,000 for a resident at any given time; the home must have written authorizations for all withdrawals or payments, including paying the accommodation rate; transaction fees cannot be charged, and the

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<sup>25</sup> O Reg 79/10, s 247, 247.1.

<sup>26</sup> *LTCHA*, s 91(2)

<sup>27</sup> O Reg 79/10, s 245.

<sup>28</sup> *LTCHA*, s 80-83; O Reg 79/10, s 227.

<sup>29</sup> O Reg 201/96, s 20.1-20.3.

<sup>30</sup> O Reg 79/10, s 241.

home must provide a copy of their written policy and procedures to every person or person acting on their behalf who is using trust account services.

The home must provide a monthly itemized statement of the account for the charges to the resident.<sup>31</sup> The home must provide each resident or the person with authority with a quarterly statement of all trust accounts, including deposits, withdrawals and balance as of the date of the statement.<sup>32</sup>

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<sup>31</sup> O Reg 79/10, s 261.

<sup>32</sup> O Reg 79/10, s 241(7)(f).

## CONCLUSION

This is a general overview of fees in long-term care homes. In many cases, this will be sufficient information for a person being admitted to or living in a long-term care home. We recommend that when in doubt, you should obtain more information from a knowledgeable source before making any decisions or entering into any agreements with a long-term care home.

# REMEMBERING ETHEL MEADE

The Board and staff of ACE were saddened to learn of the passing of Ethel Meade on October 10, 2012.

Ethel was a long-standing and respected community activist on health care issues. She was also a long-time resident of the Older Women's Network (OWN) Co-op in Toronto. Widowed at the age of 45, with three children to support, Ethel went back to school and obtained her Ph.D. in English Literature and subsequently taught at Ryerson University.<sup>1</sup>

Ethel's community involvement was extensive and she was passionate about improving the health care system for all older adults living in Ontario. She was a Board Member and Steering Committee Co-Chair of the Ontario Coalition of Senior Citizens' Organizations (OCSCO); Vice-Chair of Care Watch Toronto; Past Chair and founding member of the Ontario Health Coalition (OHC); member of

the Ontario Seniors' Secretariat Seniors Liaison Committee; member of the Ontario Association of Social Workers' Committee on Issues of Aging.

The OHC's Ethel Meade Award was created in her honour upon her retirement from the OHC Board. The Award is to be granted to ". . . the person whose research and/or policy work has made a crucial contribution to the public health care system and the fight to protect it."<sup>2</sup>

We would like to offer our most sincere condolences and best wishes during this difficult time to Ethel's family. Ethel is survived by her three daughters: Dolores, Miriam, Judi; her seven grandchildren: Rebecca, Aviva, Tammy, Daniel, Bill, Russell, Kyle; and two great-grandchildren: Isaac and Benjamin. A gathering to honour Ethel took place on October 20, 2012, at 3:00 PM at the OWN Housing Cooperative located at 115 The Esplanade.

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<sup>1</sup> "A unique co-op", The Toronto Star (08 November 2008) online: The Toronto Star < <http://www.thestar.com/atkinsonseries/article/532232-a-unique-co-op>>.

<sup>2</sup> Ontario Health Coalition, Ethel Meade Award, information sheet.



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# SPRINKLERS AND OTHER OUTCOMES OF THE MUSKOKA HEIGHTS RETIREMENT RESIDENCE FIRE

*By: Graham Webb, Staff Litigation Lawyer*



## **THE MUSKOKA HEIGHTS RETIREMENT RESIDENCE FIRE**

On January 19, 2009, at around 6 a.m., fire broke out at the Muskoka Heights Retirement Residence in Orillia, Ontario. Despite the heroic efforts of the one staff member on duty, firefighters and police, two elderly retirement-home tenants perished in the fire and two others later died in hospital. Several other tenants were injured and hospitalized from the fire.

The Muskoka Heights blaze is only one of many tragic fires in Ontario retirement homes and long-term care homes that have led to 44 deaths since 1980. On May 26, 2012, two more retirement-home tenants died following a fire at the Mont-Roc Retirement Home in Hawkesbury, Ontario. Coincidentally, the Mont-Roc fire happened on the

very day that a coroner's jury delivered its verdict and recommendations following an inquest into the 2009 Muskoka Heights fire.

Since 1980, the rate of death by fire in congregate retirement-living situations in Ontario has been about three times that in other residential occupancies. Recently, Ontario fire fighters have also responded to non-fatal retirement-home fires in unsprinklered facilities that are best described as a "near-misses". The cumulative effect of these incidents is to create a heightened sense of urgency and awareness of the need for increased fire-safety in Ontario retirement homes.

The recommendations following the Muskoka Heights inquest might lead to changes to the

Ontario *Fire Code*<sup>1</sup> that would increase the fire safety of Ontarians living in retirement homes and in other vulnerable occupancies.

## **FIRE CODE PROSECUTIONS**

Following police and fire investigations, the City of Orillia laid charges under the *Fire Code* and the *Fire Protection and Prevention Act, 1997*<sup>2</sup> against the owner and administrator of the former Muskoka Heights Retirement Residence in relation to the January 2009 fire. In 2010, the corporate owner and the retirement home administrator each pleaded guilty to two charges: (i) failing to ensure supervisory staff were instructed in the fire emergency procedures; and, (ii) failing to conduct fire drills for supervisory staff. Fines of \$62,500 and \$18,750 were imposed on the corporation and the administrator respectively. In 2012, the owner and the administrator each testified at the Muskoka Heights inquest that no part of the 2009 fines imposed on them had yet been paid.

The Muskoka Heights Retirement Residence burned to the ground on the day of the fire and never re-opened for business. Despite the non-payment of fines, the owner testified at the inquest that he now operates two other retirement homes at Cornwall, Ontario.

## **THE CORONER'S INQUEST**

The Muskoka Heights inquest is one of four major coroner's inquests that have led to recommendations for improved fire-safety, including the mandatory retrofit of automatic sprinklers in retirement homes, long-term care homes and other vulnerable occupancies. Similar recommendations were made at inquests into the 1980 Extendicare Nursing Home fire; the 1995 Meadowcroft Place Retirement Home fire; and, the 1997 Sunnybrook "K" Wing fire.

In 1995-96, the Advocacy Centre for the Elderly (ACE) represented the Alzheimer Society of Peel and the Alzheimer Association of Ontario (now the Alzheimer Society of Ontario) at the 72-day long Meadowcroft Place inquest. In the spring of 2012, ACE also represented the Alzheimer Society of Ontario, and the families of the late Robert

McLean and the late Vera Blain at the six-week long Muskoka Heights inquest. Following each of those inquests, in 1998 and 2012, ACE also participated on "Technical Advisory Committees" designed to give expert technical advice to the Office of the Fire Marshall (OFM) on changes to the *Fire Code* that would be needed to implement the inquests' fire-safety recommendations.

The 1995 and 2012 inquests both recommended the implementation of mandatory automatic sprinklers in retirement homes and other care occupancies. In 1998, automatic sprinklers were mandated in the Ontario *Building Code*<sup>3</sup> for newly constructed "care occupancies". However, despite the inquest recommendations, the *Fire Code* was not changed to require the retrofitting of sprinklers in existing facilities.

In 2012, the Muskoka Heights inquest again recommended the retrofitting of sprinklers in all existing care occupancies, including all retirement homes, and other life-safety enhancements. It also recommended improved resources for fire-safety training for retirement-home owners and supervisory staff, development of a municipal registry of vulnerable occupancies, and increased *Fire Code* enforcement.

## **RESPONSE TO THE INQUEST**

In response to the Muskoka Heights inquest, the OFM organized a Technical Advisory Committee ["TAC"] that very quickly completed its work between June and September 2012. The recommendations of the TAC, if implemented by the government of Ontario, could lead to the following changes in the *Fire Code*:

### **a. Mandatory Retrofitting of Sprinklers**

With the consensus of major stakeholders, including ACE, the Ontario Association of Fire Chiefs [O AFC] and the Ontario Retirement Communities Association [ORCA], it is expected that all retirement homes licensed under the *Retirement Homes Act, 2010*<sup>4</sup> and all other care occupancies must be retrofitted with automatic sprinklers within five years of the next revision of the *Fire Code*.

This consensus required significant co-operation

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<sup>1</sup> O Reg 213/07 made under the *Fire Protection and Prevention Act, 1997*.

<sup>2</sup> SO 1997, c 4.

<sup>3</sup> O Reg 350/06.

<sup>4</sup> SO 2010, ch 11.



among all stakeholders to balance the interests of life-safety and feasibility of implementation, particularly with respect to costs. The retirement-home industry was forthcoming by accepting the need for the increased level of life-safety that automatic sprinklers provide. The O AFC and other stakeholders actively worked to find ways to keep the cost of installing sprinklers affordable, particularly for smaller homes.

#### **b. Other Life-Safety Enhancements**

In addition to mandatory automatic sprinklers, the Muskoka Heights inquest recommended other life-safety enhancements that are likely to be implemented along the following timelines:

- Within two months of amendment of the *Fire Code*, the installation of interconnected smoke alarms, and smoke alarms in each suite or sleeping room, in small retirement homes and other care occupancies that are not already so equipped;
- Within one year of amendment of the *Fire Code*, the installation of fire-alarm monitoring systems and emergency lighting of 30-minutes duration in all retirement homes and other care occupancies that are not already so equipped (except for homes with up to four residents and up to three stories in height);
- Within two years of amendment of the *Fire Code*, the installation of self-closing devices on bedroom doors (except in small floor-

plans where zone separations are provided) in all retirement homes and other care occupancies; and,

- Within two years of amendment of the *Fire Code*, the installation of a voice communication system or paging system available for use in a fire emergency in all retirement homes and other care occupancies seven or more stories in height.

#### **c. Improved Resources for Fire-Safety Training**

It is often difficult to know whether owners and supervisory staff in retirement homes and other care occupancies are trained in fire safety. Usually this information does not come to light until after a fire occurs. Evidence was presented at both the Meadowcroft Place and Muskoka Heights inquests that front-line staff had little or no fire-safety training. For example, the Muskoka Heights inquest heard from the lone personal support worker (PSW) on duty the night of the fire that she had little or no fire-safety training before the blaze. Despite this, she single-handedly evacuated nine of the twenty-one (21) residents before the fire department arrived.

At the Muskoka Heights inquest the jury also heard evidence that the owner knew very little about operating a retirement home before he purchased a building and opened the Muskoka Heights facility. He stated that it would be helpful to be able to access from the OFM on-line fire-safety materials that could

assist owners and managers in understanding their duties and responsibilities.

In response to this type of evidence, the Muskoka Heights inquest recommended that more courses and materials on fire-safety be developed and made available to retirement homes and other care occupancies. The OFM is now likely to develop fire-safety training courses for owners/operators and a basic fire-safety orientation program specifically for supervisory staff in retirement homes and other care occupancies. It is also expected that the *Fire Code* will be amended to require owners not just to conduct training, as is presently required, but also to document the fire-safety training provided to staff.

#### **d. Municipal Registry of Vulnerable Occupancies**

The Muskoka Heights inquest heard that following the 2009 fire, the Orillia Fire Department made concerted efforts on improving fire-safety for all vulnerable occupancies within its catchment area. One of the steps it took was to complete an inventory of all vulnerable care occupancies, to assist in fire prevention, suppression and *Fire Code* enforcement activities.

The Muskoka Heights inquest recommended that all fire departments create and maintain a registry of all fire-safety plans for care occupancies, including the date of approval of the fire-safety plan; the last date of review; the last inspection date; and the method to trigger an annual review of the fire-safety plan.

It is expected that the *Fire Code* may be amended to require a municipal registry of vulnerable occupancies resembling the inquest recommendations.

#### **e. Increased *Fire Code* Enforcement**

Fire departments throughout Ontario have a long-established pattern of improving fire prevention and the enforcement of the *Fire Code* as preferred alternatives to fire suppression. The Muskoka

Heights inquest made several recommendations directed towards enhanced fire prevention, inspections and *Fire Code* enforcement.

It is expected that the *Fire Code* could now be amended to require, at minimum, that municipal fire departments validate the fire safety plan of all retirement homes and other care occupancies by annually participating in a fire drill at each facility. This type of amendment would also reflect the 1996 recommendations of the Meadowcroft Place inquest.

## **CONCLUSIONS**

Fire safety is a very complex subject that is simple in concept and highly technical in its details. It is impossible to capture the importance of all of the valuable work performed by the jury in the Muskoka Heights inquest as they deliberated and came up with their recommendations. The recommendations mentioned in this article represent a summary of some of the important themes that will hopefully lead to improved fire-safety for all retirement-home tenants in Ontario.

ACE has been privileged to represent other organizations such as the Alzheimer Society of Ontario, and the families of the late Robert McLean and the late Vera Blain, in the Muskoka Heights inquest. It also gratefully acknowledges the very capable work and leadership of the Coroner, Dr. Dirk Huyer, and coroner's counsel Ms Bhavna Bangu, in conducting the inquest. We are grateful to our clients, other parties to the inquests and TAC's in which we have participated, their counsel and the coroners and juries that have so assiduously worked to improve fire safety with practical, feasible recommendations.

Ontarians deserve the highest level of fire-safety for older adults living in retirement homes and other care occupancies. We hope and expect that mandatory sprinklers and other important recommendations might soon be implemented.

# ACE ANNUAL GENERAL MEETING

ACE will be holding its Annual General Meeting (AGM) on November 20, 2012, at 6:00 PM at Fraser Milner Casgrain LLP, 77 King Street West, Suite 400, Toronto-Dominion Centre, Toronto ON.

# NEWS AND ANNOUNCEMENTS

By: Clara Ho, Staff Lawyer

## HEALTHY HOMES RENOVATION TAX CREDIT

On October 2, 2012, the provincial government passed Bill 2, an Act to amend the *Taxation Act*, 2007, to implement a Healthy Homes Renovation Tax Credit. The Bill passed despite not receiving the support of the Progressive Conservatives. The Healthy Homes Renovation Tax Credit<sup>1</sup> (“HHRTC”) is only one part of the province’s Seniors Care Strategy. Dr. Samir Sinha, one of the speakers at the ACE Special Lecture this past June and Director of Geriatrics at Mount Sinai and the University Health Network Hospitals in Toronto, was appointed by the government to be the expert lead in the development and implementation of the Seniors Care Strategy.

The government hopes that the creation of the HHRTC and the increase in funding for home care will result in seniors being able to live at home longer; thus easing the burden on our already resource-stretched health care system. The McGuinty Government announced in the 2012 Budget that there would be an increase in funding for community and home care services.<sup>2</sup>

Under the HHRTC, seniors who are homeowners or tenants, and anyone who lives with a senior,

are eligible to claim a tax credit of up to \$1,500.00 per year for any modifications made to improve the accessibility of the home. To be eligible for the HHRTC, you must be a senior (65 years of age or older by the end of the taxation year that you are claiming the credit) who owns or rents your home or someone who is not a senior but living with a family member who is. Landlords renting a home or apartment to a senior are not eligible for the HHRTC.

Only certain expenses are eligible under the HHRTC. Some examples include:

- Grab bars and related reinforcements around the toilet, tub and shower
- Handrails in corridors
- Wheel-in showers
- Walk-in bathtubs
- Wheelchair ramps, stair/wheelchair lifts and elevators
- Touch-and-release drawers and cupboards
- Widening passage doors
- Lowering-existing counters/cupboards

It is important to make sure you keep all receipts and documents relating to any renovations or modifications you have completed on your home.

Expenses that are for renovations or modification primarily meant to increase the value of the home or that are annual, recurring, or routine repairs are ineligible. On the Ministry of Finance’s website concerning the HHRTC it clearly states that devices and services are not eligible. ACE recommends that if you are uncertain as to whether something is an eligible expense, you should contact the Ontario Ministry of Finance for more information.

For more information on the HHRTC contact 1 866 668 8297 or visit the following website <<http://www.fin.gov.on.ca/en/credit/hhrtc/index.html>>



<sup>1</sup> SO 2012, C 13

<sup>2</sup> The government announced in the 2012 Budget a four per cent increase over the next three years. Ministry of Health and Long-Term Care, “Ontario Helping More Seniors Live at Home Longer” *News Release* (24 May 2012), online: Government of Ontario <[http://www.health.gov.on.ca/en/news/release/2012/may/nr\\_20120524\\_1.aspx](http://www.health.gov.on.ca/en/news/release/2012/may/nr_20120524_1.aspx)>

## **B.C. ESTABLISHING AN OFFICE OF THE SENIORS' ADVOCATE**

The B.C. government is establishing an Office of the Seniors' Advocate which it hopes to be operational by spring of 2013. The Office was first announced by Health Minister, Michael de Jong, this past February and is a key component of the B.C. government's seniors action plan which is committed to ensuring "... a more accessible, transparent and accountable approach to seniors care."<sup>3</sup>

Ten public consultations were held across B.C. to gather input from seniors, their families, service providers and other organizations on the establishing of a Seniors' Advocate Office. In addition to the public consultations that have now concluded, the Ministry of Health was accepting written submissions in response to their Consultation Discussion Paper, "Creating a Seniors' Advocate for British Columbia: A Stronger Voice for BC Seniors".

There are many stakeholders who have advised the government that they believe that the Seniors' Advocate should be appointed by the Legislature and report directly to the members of the legislative assembly. Whether the Office of the Seniors' Advocate will be independent similar to that of the Ombudsperson or the Representative for Children and Youth is not yet determined. According to Mr. Ron Cantelon, Parliamentary Secretary for Seniors, a Seniors' Advocate would have to speak for almost 600,000 seniors living in B.C. while the Representative for Children and Youth advocates for approximately 13,000 children.<sup>4</sup>

The mandate of the Seniors' Advocate has not yet been decided. Many experts and advocates who work with seniors in B.C. believe that mandate of the Seniors' Advocate should not only be limited to health but should be broad and include issues such as:

housing, income support, transportation, elder abuse, home care and support for activities of daily living.<sup>5</sup>

Other provinces, such as Alberta, are similarly moving forward to appoint a seniors' advocate. Here in Ontario, there has been no indication by the government that they intend to do the same.

## **WOMEN FILE AGE DISCRIMINATION COMPLAINT AGAINST METRO AND INSTORE FOCUS**

A group of seven older women who live in London, Ontario, ranging in age from sixty-two to seventy-eight, filed an application alleging age discrimination with the Human Rights Tribunal of Ontario. The story was reported by the *Toronto Star* and the *London Free Press*, in August of this year.<sup>6,7</sup>

The women all worked as "brand ambassadors" with the company InStore Focus – a job that required them to offer product samples to customers in stores. All of them depended on the income from this part-time position to help make ends meet. The women had been employees of InStore between ten to fifteen years working on average fourteen to twenty-eight hours a week.

One of the women involved in the case, Ms Lone Thompson, was contacted by her manager who advised that they no longer wished to employ her in the position citing a "change of direction".<sup>8</sup> At the same time the women discovered their hours were being cut, InStore Focus was hiring for new brand ambassadors.

Beth Walden, senior legal counsel at the Human Rights Legal Support Centre, is representing the women in their application to the Human Rights Tribunal. She states that ageism claims make up less the three per cent of complaints to the Human Rights Legal Support Centre.<sup>9</sup>

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<sup>3</sup> Government of British Columbia, "News Release: Consultations kick off on seniors advocate" (29 May 2012) online: Ministry of Health <[http://www2.news.gov.bc.ca/news\\_releases\\_2009-2013/2012HLTH0054-000756.htm](http://www2.news.gov.bc.ca/news_releases_2009-2013/2012HLTH0054-000756.htm)>.

<sup>4</sup> Chan, Cheryl. "B.C.'s seniors advocate will speak for nearly 600,000 seniors", *The Province* (3 July 2012) online: The Province <<http://www.calgaryherald.com/news/alberta/Critics+fear+Tories+will+muzzle+seniors+advocate/7346632/story.html>>.

<sup>5</sup> "Letters: Experts and advocates in the care of B.C.'s seniors explain their hopes for the new position of Seniors' Advocate", Letters, *The Province* (30 June 2012) online: <<http://www.theprovince.com/health/Letters+regarding+formation+first+Seniors+Advocate/6864955/story.html>>.

<sup>6</sup> Pigg, Susan. "Women file age discrimination complaint against Metro, sample company", *The Toronto Star* (20 August 2012) online: The Toronto Star <<http://www.thestar.com/business/article/1244229--women-file-age-discrimination-complaint-against-metro-sample-company>>.

<sup>7</sup> De Bono, Norman. "I may not be a soccer mom, but I still shop", *The London Free Press* (21 August 2012) online: The London Free Press <<http://www.lfpress.com/news/london/2012/08/20/20121866.html>>.

<sup>8</sup> *Supra*, note 6.

<sup>9</sup> *Ibid*.

## HOLIDAY HOURS

ACE will be closed on the following days during the holiday season:

- Tuesday, December 25, 2012
- Wednesday, December 26, 2012
- Tuesday, January 1, 2013

Season's greetings and best wishes for the new year from everyone at ACE!

## COMMENTS FOR THE EDITOR

Comments about this newsletter may be sent to the editor, Clara Ho, via regular mail or email (hoc@lao.on.ca).

## ELECTRONIC NEWSLETTERS

To receive a copy of this and future newsletters electronically, please send an email to gillardt@lao.on.ca.



# APPLICATION FOR MEMBERSHIP

Advocacy Centre for the Elderly\*

2 Carlton Street, Suite 701, Toronto, Ontario M5B 1J3 • Phone: 416-598-2656 • Fax: 416-598-7924

*Please feel free to photocopy this page and send it to ACE to become a member!*

Name (Individual/Corporate): \_\_\_\_\_

Corporate Contact (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_ Apt.: \_\_\_\_\_

City: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Telephone (Home): \_\_\_\_\_ Business: \_\_\_\_\_

Email: \_\_\_\_\_

MEMBERSHIP FEE (check one)  Individual (\$10.00 enclosed)  Corporate (\$25.00 enclosed)

In addition to my membership fee, a donation of \$ \_\_\_\_\_ is enclosed.\*\*

**Your membership is important.** If the fee presents financial difficulties, please feel free to join anyway.

Committee Membership:

I am interested in seniors' issues and would consider membership on an ACE Committee.

Yes  No

**Membership Expiry Date: Annual General Meeting, Fall 2013**

By-Law No.1, 14.9 states: No owner or management official of a long term care facility, or employee of any organization representing long term care facilities shall be eligible to be elected to the Board of Directors of the Advocacy Centre for the Elderly.

\* ACE is incorporated as a non-profit corporation under the name "Holly Street Advocacy Centre for the Elderly Inc."

\*\* A tax receipt will be issued for donations over \$10.00.