ACE
Advocacy Centre for the Elderly

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BY E-MAIL: rhconsultations@ontario.ca

Retirement Homes Act Review
Ontario Seniors' Secretariat
777 Bay Street, Suite 601C
Toronto, ON M7A 2J4

Dear Sir/Madam:

Re: Retirement Homes Act Five-Year Review

We are writing this letter as a response to the *Retirement Homes Act, 2010*[1] *(RHA)* Five-Year Review conducted by the Ontario Seniors' Secretariat. We thank you for the opportunity to provide our submissions in this regard.

About the Advocacy Centre for the Elderly

The Advocacy Centre for the Elderly (ACE) is a specialty community legal clinic, funded by Legal Aid Ontario, which was established to provide a range of legal services to low income older adults in Ontario. The legal services include individual and group client advice and representation, public legal education, community development, and law reform activities. ACE has been operating since 1984 in Toronto, and is the first and oldest legal clinic in Canada with expertise in legal issues of the older population.

On average, ACE receives over 3,000 client intake inquiries a year. Most of the telephone inquiries come from the Greater Toronto Area with approximately 20% originating from other areas of the province. From time to time, ACE also receives inquiries from outside of Ontario. The individual client services are in areas of law that have a particular impact on older adults. These include, but are not limited to: supportive housing and retirement home tenancies; capacity, substitute decision-making and health care consent; end-of-life care; long-term care homes; patients' rights in hospitals; and elder abuse.

Clients regularly seek our advice on issues relating to accommodation and care in retirement homes. Specifically, ACE has received numerous calls regarding:

[1] S.O. 2010, c. 11

- Callers being sent to unlicensed retirement homes on recommendations by health professionals on a discharge from hospital;
- Callers feeling coerced into seeking accommodation or, at times, accepting offers of 'transitional beds' in retirement homes while they wait for a placement in long-term care;
- Callers having care services withdrawn when the retirement homes wishes for the caller to leave the home;
- Callers being detained in retirement homes;
- Callers having the costs of licensing under the *RHA* added to their monthly costs by the retirement home; and,
- Callers not receiving responses from the Retirement Home Regulatory Authority (RHRA).

ACE also receives many requests for assistance from community legal clinics, lawyers, advocates and others across Ontario for recommendations on legal approaches to "care homes" under the *Residential Tenancies Act, 2006* (*RTA*).[2]

ACE has also been involved in several high profile inquests. For example, following the deaths of eight people by fire at the Meadowcroft Retirement Home in 1995, ACE represented one of the interveners, the Alzheimer Society. The coroner's jury made a total of 53 recommendations, including changes to the Ontario *Fire Code* to require sprinkler retrofits of all residential care buildings with more than eight tenants.

ACE is also involved in significant law reform activities. In 2010, ACE made submissions to the Standing Committee on Social Policy regarding then Bill 21, the *RHA*. ACE is also a member of the Stakeholder Advisory Council which provides advice to the Board of Directors of the RHRA on matters relating to the RHRA's mandate.

Given ACE's experience over the years of working on patient advocacy and on health law and policy issues that impact older adults in Ontario and across Canada, we trust that our submissions concerning the *RHA* will be of assistance.

Overview of the Issues

The *RHA* has been in place for five years and most of its provisions have now entered into force. While the goal of regulating the retirement home industry is a laudable one, ACE has seen some trends which give cause for concern. The legislation and the regulations must be tightened to ensure that vulnerable tenants do not slip through the cracks.

At present, the *RHA* promotes two-tier medicine by creating two seemingly parallel systems of care – long-term care homes and retirement homes. While retirement homes

[2] S.O. 2006, c. 17

are permitted to afford the same level of care as long-term care homes, these homes are not subject to the same level of scrutiny as long-term care homes. While older adults may choose to obtain their care in retirement homes; where they receive the same level of care – and are correspondingly as vulnerable – they should be given the same level of protection as residents of long-term care homes.

ACE has documented instances of homes that despite meeting most, if not all, of the definition of a retirement home under the *RHA* continue to operate outside the legislation. These are often small homes with approximately ten tenants, operating without a license. These vulnerable individuals are left with no protection. ACE is concerned that many older adults who cannot afford to live in licensed retirement homes have been forced to live in homes which operate in the shadow of the law.

ACE finds that retirement homes costs have increased as they provide a higher level of care to those able to pay top dollar for extra health care service. According to the Canada Mortgage and Housing Corporation's 2015 Senior's report, the average cost of accommodation and care services in Ontario in seniors' housing residences for bachelor units and private rooms, where at least one meal is included in the cost, is $2,815.00, with Ontario leading the Canadian average of $2,107.00.[3] For heavy care (defined as 1.5 hours or more of care per day), the average cost of accommodation and care services was reported to be $4,454.00 in Ontario.[4]

ACE also finds that some of these residences are being suggested by hospitals or CCACs as an alternate to long-term care. These referrals are problematic as they leave those residing the homes without protection or recourse if care services or meals are inadequate.

ACE is further concerned that persons awaiting long-term care are being forced by coercive hospital discharge policies to seek accommodation in retirement homes. These coercive polices are propelled by a lack of long-term care beds and lengthy wait lists. ACE has had many experiences where these persons were incorrectly informed that they could not stay in hospital when they no longer required acute care and they could not return home owing to increased care needs. They were not informed that they could be designated by the physician as "Alternate Level of Care." [5] The Ministry of Health and Long-Term Care (MHLTC) has set a maximum daily fee that can be charged while the person is waiting for placement from hospital (not including associated rate reductions).[6] At times, these persons are even incorrectly informed that they cannot apply to long-term care from the hospital.

Many of ACE's calls regarding retirement homes relate to eviction owing to an increased need for care. In these cases, the home does not tend to go before the Landlord and Tenant Board, as legally required, however, the tenant is encouraged to leave by a

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[3] "Seniors' Housing Report: Canada Highlights" *Canada Mortgage and Housing Corporation,* 2015, pg. 1. available at: http://www.cmhc-schl.gc.ca/odpub/esub/65991/65991_2015_A01.pdf?fr=1442326839775. The report addresses housing of which over 50% of its occupants are seniors.
[4] *Ibid.* pg. 6 and 11
[5] Please see the MHLTC's definition of Alternate Level of Care, available at: http://www.health.gov.on.ca/en/pro/programs/waittimes/edrs/alc_definition.aspx
[6] *Health Insurance Act*, RRO Reg. 552, s. 10

removal of care services or demands that increased care services must be provided at the cost of the tenant themselves. This issue will be further discussed in ACE's submissions below.

ACE has also noted that when callers are referred to the RHRA complaints line, they often report having been unsuccessful in obtaining resolution to their complaints. These complainants have at times been referred again to other entities even though the issues come within the ambit of the *RHA,* such as the administration of anti-psychotic medication or revocation of care services. Even in instances where complaints are taken further, callers to ACE have indicated that, as complainants, they have received little to no feedback from the RHRA.

Submissions

Our submissions in relation to the *RHA* Review will primarily address the following:

1. Unlicensed retirement homes;
2. Detention in retirement homes;
3. Care services provided in retirement homes;
4. Transitional bed programs in retirement homes;
5. Integration between the *Residential Tenancies Act* (RTA) and the RHA;
6. The composition of the RHRA Board of Directors; and,
7. The complaints mechanism under the RHRA.

1. Unlicensed Retirement Homes

Under the *RHA,* a retirement home is defined 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,
>
> but does not include,

(d) premises or parts of premises that are governed by or funded under,

…
(iii) *the Homes for Special Care Act*,

…

(v) the *Long-Term Care Homes Act*, 2007,

(vi) the *Ministry of Community and Social Services Act*,

…

(viii) the *Private Hospitals Act*,

(ix) the *Public Hospitals Act*, or

(x) the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act*, 2008,

(e) premises at which emergency hostel services are provided under the *Ontario Works Act*, 1997, or

(f) the other premises that are prescribed; ("maison de retraite")[7]

Further, the regulations indicate that the following are excluded from the definition of a retirement home:

1. Premises, or parts of premises, at which a supportive housing program or a residential treatment program is provided and funded under the *Home Care and Community Services Act*, 1994, the *Local Health System Integration Act*, 2006 or the *Ministry of Health and Long-Term Care Act*.

2. Premises or parts of premises funded under the Community Homelessness Prevention Initiative of the Ministry of Municipal Affairs and Housing. O. Reg. 416/12, s. 1.[8]

This definition has led to unlicensed homes operating to serve older adults. The submission will parse the concerns with various elements of the definition.

Age of Tenants

One component of the definition of retirement home is a requirement that its tenants are primarily by persons who are 65 years of age or older. ACE has concerns regarding the age restriction because it does not recognize that there are vulnerable adults who are

[7] *RHA, supra,* note 1, s. 2(1); definition of retirement home
[8] O. Reg. 166/11, s. 3(2)

younger than 65 years of age living in other settings defined as care homes under the *RTA*. This ignores the diversity of those residing in retirement homes.

ACE has also found that some homes have elected to "get around" the licensing requirements under the *RHA* by carefully managing the number of tenants above 65 who reside in the home. However, these tenants remain vulnerable and require the same form of oversight (inspections and complaints) afforded to those who live primarily with other tenants over 65. In this sense, the definition is arbitrary.

Alternatively, ACE proposes a definition which eliminates the age requirement of a retirement home, but mirrors the definition of a care home under the *RTA*: defined as "a residential complex that is occupied or intended to be occupied by persons for the purpose of receiving care services, whether or not receiving the services is the primary purpose of the occupancy."[9] The definition could still exclude homes created under the *Long Term Care Homes Act, Homes for Special Care Act, Ministry of Community and Social Services Act, Public Hospitals Act, Private Hospitals Act,* and the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act* and would ensure that homes that do not have the oversight of other acts do not escape regulated.

Recommendation:

- Amend the definition of retirement home to remove the age restriction and to read "a residential complex that is occupied or intended to be occupied by persons for the purpose of receiving care services, whether or not receiving the services is the primary purpose of the occupancy."

Excluding homes that are funded by other sources

The *RHA* regulations exclude premises or parts of premises funded under the *Home Care and Community Services Act, 1994*, the *Local Health System Integration Act, 2006*, the *Ministry of Health and Long-Term Care Act* or the Community Homelessness Prevention Initiative of the Ministry of Municipal Affairs and Housing.[10] However, in most cases, where these programs do not have robust investigations or complaints mechanisms, they leave the residents without any protection. It is unwise to continue to exclude them from the oversight of the RHRA.

Recommendation:

- Amend the regulation to exclude only premises or parts of premises which are governed by other systems of oversight.

[9] *RTA, supra,* note 2, s. 2(1); definition of care homes
[10] *Supra,* note 8

Number of Tenants in a Retirement Home

The definition of retirement home in the regulations indicates that the legislation only governs homes with six or more persons.[11] It is unclear why homes with fewer than six tenants should not receive the same attention or protection. Several of the court cases concerning assault and neglect of seniors (some of which have resulted in death) have involved operators of small homes. Many of the smaller homes with fewer than six tenants are located in rural or small urban areas or serve Ontario's lower income population. Support for a lower number can also be found by looking at other jurisdictions. For instance, the number of residents required to qualify as a retirement home is five in Newfoundland and Labrador,[12] four in Alberta[13] and just one in Saskatchewan.[14] Thus, ACE believes that any reference to the number of tenants should be removed as it is those individuals living in the smallest retirement homes that are potentially the most vulnerable and shielded from public scrutiny. It should go without saying that people deserve to be safe and properly cared for no matter the size of the retirement home in which they live.

Recommendation:

- Amend the definition of retirement home to remove the restriction of the number of tenants and to read "a residential complex that is occupied or intended to be occupied by persons for the purpose of receiving care services, whether or not receiving the services is the primary purpose of the occupancy."

Ensuring Retirement Homes are Licensed

As noted above, a significant concern for ACE is the lack of affordable, licensed retirement residences for low-income persons. The government must strive to protect affordable accommodation and services for older adults residing in retirement homes. These homes should be encouraged to come within the ambit of the *RHA* and costs should not be a bar to licensing.

The RHRA fee setting policy was established on May 24, 2012.[15] The policy itself does not include any consideration for lower cost retirement homes. The fee schedule effective January 1, 2015, indicates that retirement homes are charged $9.22 per suite per month as well as an administrative charge amounting to five percent of annual license fees.[16] The charge for application fees is $5,000.00 and $25.00 per suite to a maximum of $10,000.00. This is prohibitively expensive where a retirement home charges a low rate for accommodation. As the RHRA's individual resident cost of enforcement will not differ

[11] *Ibid.* s. 3(1)
[12] *Personal Care Home Regulations*, N.L.R. 15/01, (*Health and Community Services Act*), s.2(h).
[13] *Supportive Living Accommodation Licensing Act,* S.A. 2009, c.S-23.5, s.2(1)(a).
[14] *Personal Care Homes Act.* S.S. 1989-90, c. P-6.01, 2(e)
[15] Fee Setting Policy, *Retirement Home Regulatory Authority,* available at: http://www.rhra.ca/assets/en/pdf/RHRA-Fee-Setting-Policy.pdf
[16] Fee Schedule – Effective January 1, 2015, *Retirement Home Regulatory Authority*, available at: http://www.rhra.ca/assets/en/pdf/2015-RHRA-Fee-Schedule.pdf

between high cost and low cost retirement homes, a flat rate is disproportionate and unfair to low-income tenants.

Further, in order to prevent hospitals or CCACs from referring potential tenants to homes that are unlicensed, the *RHA* should be amended to include a prohibition on health care professionals or hospital or CCAC staff knowingly referring a person to an unlicensed retirement home. A violation of this section would be an offence under the *RHA*. This measure will be both an incentive to homes to become licensed and a deterrent to hospitals and CCACs from referring tenants to homes that do not afford them any protection.

Recommendations:

- Protect both operators of, and tenants living in, lower cost homes by developing mechanisms that reduce the costs of regulation, such as sliding scale fees for licenses and incentives for good performance.
- Amend the *RHA* to include an offence for a health professional or staff of a hospital or CCAC to "knowingly refer a patient/client to an unlicensed retirement home."

Process for Closing Unlicensed Homes

The sad tale of "In Touch", a home with approximately 18 adult tenants operating without a license, is evidence that the process for closing unlicensed retirement homes is fraught with problems. Elaine Lindo, the principal of In Touch was first denied a license in 2013 by the RHRA, which denial was upheld by the License Appeal Tribunal in 2013.[17] She was fined $10,000.00 when she refused to shut down.[18] However, Ms. Lindo continued to operate the home as Rosemount Place Seniors Affordable Housing for over a year, and was charged by the RHRA for operating a retirement home without a license. Ms. Lindo was eventually jailed for 15 days by the Provincial Offences Court and fined an additional $2,500.00.[19] It is unclear what happened to the tenants for whom she was responsible.

As noted by Vice-Chair, Laurie Sandford of the License Appeal Tribunal, while there is a process to be followed where a licensee voluntarily ceases operation, the *RHA* is silent on situations in which a licensee involuntarily ceases operation or even refuses to cease operation.[20] The RHRA does not have the authority under the legislation to simply close or take over an unlicensed home. In fact, it is difficult to simply shut down a home providing care to tenants as it penalizes the tenants even more by rendering them homeless – finding alternate accommodation can be impossible. The ability to impose a transition plan must be available , which may involve the RHRA managing the home for a

[17] *8241 v. Registrar of the Retirement Homes Regulatory Authority*, 2013 CanLII 78366 (ONLAT)
[18] Dale Brazao, "Rogue retirement home operator fined $10,000 for operating unlicensed," *Toronto Star,* December 16, 2014, available at: http://www.thestar.com/news/gta/2014/12/16/rogue_retirement_home_operator_fined_10000_for_operating_unlicensed.html
[19] Dale Brazao, "In Touch Retirement operator jailed," *Toronto Star,* March 11, 2015, available at: http://www.thestar.com/news/crime/2015/03/11/in-touch-retirement-operator-jailed.html
[20] *Supra,* note 17

short period of time, written notice to the tenant or substitute decision maker, and involvement of the local CCAC to ensure that alternate accommodation is found as soon as possible. Further, the *RHA* should mandate that the RHRA follow up to ensure that the retirement home remains closed.

Further, these tenants of In Touch are protected under the *RTA.* As will be discussed below, tenants are not aware of their rights under the *RTA* and should be made aware of these rights.

Recommendation:

- Amend the *RHA* to include provisions addressing the process the RHRA should follow when the license of a home is revoked or refused and requiring the RHRA the RHRA follow up to ensure that the retirement home remains closed.

2. Detention in Retirement Homes

Some retirement homes have secure units, but the authority under which the tenants in these units are being detained is suspect.

ACE is unequivocal in its opinion that retirement homes should never be allowed to restrain or detain tenants, accept in accordance with the common law, as indicated in section 71 of the *RHA*.[21] The common law provides a narrow ability to restrain or detain persons in emergency circumstances, where the restraint or detention is necessary to prevent serious bodily harm to the person or others.[22] However, this right, by its nature is very time-limited. While many homes have them, secure units in retirement homes are not presently authorized under the common law or the *RHA*. The *Mental Health Act* provides for involuntary detention in certain circumstances,[23] but this does not apply to retirement homes.

Retirement homes are tenancies; to allow them to restrain or detain is analogous to allowing a superintendent to lock tenants in their apartments if they deem it to be appropriate. Section 70 of the *RHA* which details 'permitted confinement' has not yet entered into force.[24] ACE remains of the opinion that this section would be subject to legal challenges if it enters into force and should be removed from the legislation.[25]

Despite the lack of legislative authority, ACE has received information that tenants continue to be placed in secure units, without their consent. At times, consent is obtained from their substitute decision-makers. However, this consent may not be valid. Under Ontario law, a substitute decision-maker does not have the authority to consent to on-going detention unless:

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[21] *RHA, supra,* note 1, s. 71
[22] See *Conway v Fleming*, [1996] 1242 ACWS (3d) 62, para 282-285; W (Re), 2006 CarswellOnt 9390 (ON CCB) at para 28 and 30.
[23] *Mental Health Act*, R.S.O. 1990, c.M.7 , s. 20
[24] *RHA, supra,* note 1, s. 70
[25] There are similar provisions under the *Long-term Care Homes Act, 2007* which have not yet entered into force. *Long-term Care Homes Act, 2007*, S.O. 2008, c.8, s. 32

- The tenant has a "Ulysses clause" in their power of attorney for personal care: A Ulysses Clause essentially binds the grantor of the power of attorney into the future, ensuring that the grantor cannot refuse specific measures, like detention, at a later date. These clauses give the attorney for personal care significant power and are uncommon.
- The tenant is under court-appointed guardianship with a provision for detention. Under the *Substitute Decisions Act, 1992,* the court can appoint a guardian of the person.[26] However the order should specify that detention authority is being granted.

Where consent has not been granted by substitute decision makers with legal authority, ongoing detention in these secure units are in contravention of the *RHA,* and the RHRA should be reporting these on inspection.

In the event that the government chooses to retain the current provisions respecting detention and confinement on secure units, ACE believes strict safeguards must be added for the protection of tenants. For instance, section 70(3)(d) currently allows a legally qualified medical practitioner, a registered nurse in the extended class or another prescribed person to make recommendations about confining tenants to a secure unit.[27] Given the deprivation of liberty resulting from this detention, ACE believes that only a legally qualified medical practitioner or a registered nurse in the extended class can make such a decision.

Although the legislation gives tenants a right pursuant to sections 70(6) and (7) to challenge decisions made by their substitute decision-makers consenting to detention on secure units,[28] there are very few details about this important safeguard; these sections merely say tenants are entitled to a review conducted by a prescribed person or entity in accordance with the regulations. In the recent case of *P.S. v. Ontario,*[29] the Court of Appeal found that a patient detained under the *Mental Health Act* for 19 years lacked the necessary procedural safeguards to have the conditions of his detention periodically reviewed. The Court found that the patient's rights under section 7 of the *Canadian Charter of Rights and Freedoms* (*Charter*) were violated as a result.

Without periodic review of the fact and conditions of detention, the detention provisions of the *RHA,* are vulnerable to *Charter* challenges. These reviews should be conducted by the Consent and Capacity Board, as the Board conducts reviews of involuntary detention under the *Mental Health Act.* These reviews should also be conducted periodically, every 6 months, and on request.

Section 70(9) does not provide comprehensive rights advice to incapable tenants whose substitute decision-makers have consented to their confinement to a secure unit.[30]

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[26] *Substitute Decisions Act, 1992*, S.O. 1992, c. 30, s. 55
[27] *RHA, supra,* note 1, s. 70(3)(d)
[28] *RHA, supra,* note 1, s. 70(6)-(7)
[29] *P.S. v. Ontario*, 2014 ONCA 900 (CanLII), available at: <http://canlii.ca/t/gfr85>
[30] *RHA, supra,* note 1, s. 70(9)

Instead, it merely requires licensees to inform the tenant of a right to "consult" with a rights adviser in accordance with the process set out in the regulations.

Rights advice is a legal process whereby an individual is informed of their rights by a rights adviser shortly following their change in legal status. There are currently eight mandatory rights advice situations, most of which only affect patients in psychiatric facilities.[31] The rights adviser has the responsibility to discuss the significance of the legal situation to the individual. At the request of the person, the rights adviser will assist the person to: apply for a hearing to challenge the finding before the Consent and Capacity Board; retain a lawyer; and apply for financial assistance to pay for the lawyer through Legal Aid Ontario. In contrast, under the *RHA*, the burden is shifted to the tenant to make a request to "consult" a rights adviser and it is unclear what form this consultation would take. ACE believes tenants should be afforded full rights advice. In other words, once a substitute decision-maker consents to confinement, prior to detention, the legislation should oblige licensees to notify a rights adviser forthwith to physically meet with the tenant at the retirement home to explain their rights and options. The rights adviser must be independent of the retirement homes in order to maintain credibility.

Recommendations:

- Amend the *RHA* to remove sections 68 and 70.
- Amend section 71(1) to read: "Nothing in this Act authorizes a retirement home to detain or restrain a mentally capable tenant, except in accordance with the common law."
- Amend the sixth right in the Bill of Rights to read: "Every tenant has the right not to be restrained or detained, accept in accordance with the common law."
- Urge the RHRA to conduct inspections following complaints regarding illegal detentions and make compliance orders in respect of this issue.
- Urge the RHRA to include information regarding the legality of detention in its educational materials.
- In the alternative, if the government does not amend the *RHA* to remove the sections authorizing detention:
    - Amend section 70(3)(d) to read "a legally qualified medical practitioner or a registered nurse in the extended class has recommended confining the resident" so that only these persons can make recommendations about confinement to a secure unit.
    - Amend section 70(6) to read "If a substitute decision-maker of a resident of a retirement home has, on the resident's behalf, consented to the resident's confinement to a secure unit of the home, the resident has a right, which is exercisable in accordance with the regulations, to a review by applying to the Consent and Capacity Board."
    - Amend section 70 (7) to read that "A person may not make an application under this section if he or she made an application under this section in the previous six months and that the initial application under this section must

[31] *Supra,* note 23 and R.R.O. 1990, Reg. 741, s. 14-16. The *Long-Term Care Homes Act* also contains requirements for rights advice when a person is admitted or transferred to a secure unit. Although there is a proclamation date of July 1, 2010 for the majority of the Act, there is no proclamation date for the sections pertaining to secure units and rights advice and no regulations have yet been drafted for this section.

be made within six months after the consent to confinement was made under sections (4) and (5)."

- Replace section 70(9) with the requirement that "the licensee shall contact a rights adviser independent of the retirement home forthwith if a substitute decision-maker consents to a tenant's detention on a secure unit and that the rights adviser meet with the tenant to explain their rights."

3. Care Services Provided in Retirement Homes

The issues with two-tiered health care

ACE continues to be critical of the *RHA's* promotion of two-tiered, privatized health care. Although retirement homes represent a private relationship between the licensee-as-landlord and the tenant, retirement homes are permitted to provide health care, typically a public service in Canada. The *RHA* does not stipulate any cap or limitations on the care that retirement homes can offer, which means that they can provide the same services available in long-term care homes. Essentially, the *RHA* creates a parallel private health care system primarily catering to those who can pay.

ACE believes it is illogical to have the government stringently regulate long-term care homes if retirement homes which are providing essentially the same level of care and services are subject to different rules and regulations. Instead of viewing retirement homes as part of the continuum of accommodation options available to older adults, the government is encouraging a parallel, unfunded system. Most importantly, the government is allowing that parallel, unfunded system to be subject to a lower level of regulation.

This contradicts the recommendations of the Nineteenth Annual Report of the Geriatric and Long-Term Care Review Committee to the Chief Coroner for the Province of Ontario.[32] The report discussed a case where a 92 year old frail elderly person was transferred to a private care home from hospital pending final placement in long-term care. The lack of staff time was indicated as possibly contributing to her developing hypernatremia and dehydration. The report indicated that:

> The circumstances surrounding this woman's death should alert health care professionals that, despite pressures to move the frail elderly out of hospitals to other settings, such as private care homes to await placement in a long term care home, it is important to remember that these elderly clients are awaiting long term care home placement precisely because their care needs are so heavy that they are difficult, if not impossible, to provide in a community, private care setting.[33]

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[32] *Nineteenth Annual Report of the Geriatric and Long-Term Care Review Committee to the Chief Coroner for the Province of Ontario*, September 2009, Case 5, available at: http://www.mcscs.jus.gov.on.ca/stellent/groups/public/@mcscs/@www/@com/documents/webasset/ec080177.pdf

[33] *Ibid.* pg. 40

The recommendation was that hospitals and health care professionals should be reminded that "While awaiting placement in a Ministry of Health and Long-Term Care licensed long term care home, these frail elderly patients should remain in a setting that is as resource-intensive as a licensed long term care home," and further that "Programs in private care or retirement homes in the Province of Ontario providing care to the frail elderly residents awaiting placement in a licensed long term care home should be held to the same standards for care and services as a licensed long term care home. Implicit in this recommendation is the need to ensure the same regulations and inspections with regular public reporting of findings that exists for licensed long term care homes."[34]

Where a retirement home offers the same level of care as a long-term care home, the retirement home should be subject to the same regulations as long-term care homes under the *Long-Term Care Homes Act* and to scrutiny from the Ministry of Health and Long-Term Care. ACE proposes that there be a separate class of license for these retirement homes,[35] to differentiate them from retirement homes offering light care. Having "graded licences", would allow that the regulatory burden only fall to the homes that are offering significant care services. The fees for the licensing of these homes can be passed on to the Ministry of Health and Long-Term Care to offset the costs of regulating these additional homes.

As noted above, many older adults cannot afford to live in retirement homes on fixed incomes. However, these retirement homes may be more affordable if the Ontario government were to provide subsidies for those living in retirement homes requiring only moderate levels of care. If this tenant required heavy care, admission to a long-term care home may be appropriate.

<u>Recommendation</u>

- Create regulations to the *RHA* which offer a different class of licence to heavy care retirement homes. This class of homes should be subject to the same regulations as long-term care homes under the *Long-Term Care Homes Act.* The fees for the licensing of these homes must be passed on the Ministry of Health and Long-Term Care to offset the costs of regulation.
- Review a system of subsidies for older adults who require light to moderate care in retirement homes.

Plans of Care

According to sections 62(1) and (2) of the *RHA*, the licensee shall ensure that a plan of care is developed for every resident but only with the consent of the tenant.[36] While ACE agrees that consent is essential to developing the plan of care, the *RHA* does not specify what happens if a tenant refuses to give consent or to complete a plan of care.

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[34] *Ibid.* pg. 40 -41
[35] *RHA, supra,* note 1, s.44(2)
[36] ,*Ibid.* s. 62(1)-(2)

Some tenants of retirement homes are extremely healthy, high-functioning individuals who do not want or need plans of care and may not even purchase any of the available care services. Clients of ACE have complained in the past that retirement home staff have used plan of care meetings as a platform to promote and sell other services available at the home. Especially where these services may be high cost, tenants should not be required to accept extra services that they do not want.

The *RHA* should also clarify who is intended to complete the plan of care. It should not merely be approved by "a person with the requisite expertise in assessing the suitability of care services", as indicated in section 62(9).[37] Due to the nature of a plan of care, ACE asserts it must be completed in the first instance by a health care practitioner.

Section 62(5) provides that tenants or their substitute decision-maker, if any, shall be given an "opportunity" to participate in the development and implementation of the plan of care.[38] This indicates a misunderstanding of the law of health care consent in Ontario, where there can be no treatment without consent. Tenants or their substitute decision-maker, where the tenant is incapable of providing consent, are integral to creating the plan of care, pursuant to the requirements of consent under the *Health Care Consent Act, 1996*.[39] Informed consent requires that a person receive adequate information to make a decision about the treatment and has received responses to questions about the treatment.[40] This entails a discussion with a health care provider. The current wording of the *RHA* implies that the role of the tenant or substitute decision maker is minimal and optional. Returning to the language of section 62(9), using the word "approved" erroneously implies that the plan of care need not be consented to by the tenant or their substitute decision-maker.

<u>Recommendations</u>:

- Amend section 62(1) to read "When a resident commences his or her residency in a retirement home and purchases care services, the licensee shall, within the prescribed times, ensure that the resident is assessed and that a plan of care is developed by regulated health professionals with the requisite experience in assessing the suitability of care services in accordance with this section and the regulations."
- Delete the words "are given an opportunity" in section 62(5).
- Improve compliance with the *Health Care Consent Act, 1996* by amending section 62(9) to read "The licensee shall ensure that the resident or the resident's substitute decision-maker have consented to the plan of care, including any revisions to it, and that a copy is provided to them."
- Ensure that the RHRA is reviewing the plans of care to ensure that the plans are being consented to by tenants or their substitute decision makers in accordance with the *Health Care Consent Act, 1996.*

[37] *Ibid,* s. 62(9)
[38] *Ibid.* s. 62(5)
[39] *Health Care Consent Act, 1996,* S.O. 1996, c. 2, Sched. A, s. 10 -11
[40] *Ibid.*

Eviction from Retirement Homes owing to Issues regarding Care Services

ACE has received many calls about retirement homes requiring tenants to leave because they require too high a level of service. These include clients with some degree of dementia. This may occur where the person's cognitive condition results in falls risks, for example. This issue may be caused in part by pressure from hospital discharge planners or CCACs to wait in retirement homes until long-term care homes become available, leading to people going to retirement homes when in fact, they require a much higher level of care.

It is important to recognize that the expectation is that retirement homes will offer older persons with disabilities the ability to age in place within reason. ACE is not advocating that persons who have heavy care needs continue to be maintained in retirement homes where their safety can be compromised. However, ACE has had experiences where some retirement homes do not allow a person to return from hospital even where their care needs can be easily accommodated. For example, ACE has received calls where a person is not accommodated because he/she requires oxygen, although this person is experienced in the use of oxygen and his/her specialist has indicated that there would be no cause for concern.

As indicated in the Ontario *Human Rights Code,* the retirement home has a duty to accommodate tenants.[41] Of course, the retirement home should not be held to an impossible standard when seeking to accommodate older adults with mental or physical disabilities or in a manner that compromises their safety. However, where possible, homes should be encouraged to accommodate a person in a manner that most respects their dignity, if to do so does not create undue hardship. Retirement homes must accept requests for accommodation in good faith, take an active role in developing solutions in the short and long term, and respect the dignity of the person seeking accommodation.

If such requests cannot be safely accommodated, retirement homes must use the processes outlined in the *RTA* to evict or, in the words of the *RTA,* "transfer" tenants if their care needs are too high. The RTA permits the landlord to apply to the Landlord and Tenant Board to transfer a tenant if "the tenant requires a level of care that the landlord is not able to provide."[42] However, the Board must be satisfied that "appropriate alternate accommodation is available for the tenant; and the level of care that the landlord is able to provide when combined with the community based services provided to the tenant in the care home cannot meet the tenant's care needs."[43] Under the *RHA* regulations, the retirement home staff must also provide information about alternatives to living in the home.[44] This is a lesser requirement than that under the *RTA,* where the Landlord and Tenant Board must be satisfied that "appropriate alternate accommodation is available for the tenant; and the level of care that the landlord is able to provide when combined with the community based services provided to the tenant in the care home cannot meet the tenant's care needs."[45]

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[41] *Human Rights Code*, R.S.O. 1990, c. H.19, s. 11(2)
[42] *RTA, supra,* note 2, s. 148 (1)(b)
[43] *Ibid.* s. 148(2)
[44] *Supra,* note 8, s. 49(1)(b)
[45] *RTA, supra,* note 2, s. 148 (2)

It is ACE's experience that retirement homes rarely follow the *RTA*-mandated process. Rather, the licensee may act to reduce care services and force the tenant leave because these care services are not provided. The licensee is merely required to provide 90 days notice to the tenant or the substitute decision maker before the reduction in care services takes effect[46] and to facilitate access to outside services.[47] If the tenant wishes to move as a result, the retirement home is expected to take "reasonable steps to find appropriate alternate accommodation for the resident."[48] The *RHA* does not require a review of why the care services are being reduced. Where the care services are only being reduced for one tenant, rather the home no longer wishing to provide this service, it is tantamount to a transfer. The tenant may not be able to live in the retirement home without these services and may not be able to obtain those services externally without incurring significant cost. This section, without review, also serves to circumvent the process for eviction under the *RTA*.

Recommendations:

- Include a reference to the duty to accommodate and the Ontario Human Rights Code in the *RHA.*
- Encourage the RHRA to provide education about the duty to accommodate and the Ontario Human Rights Code.
- Include a reference to the *RTA* in the *RHA* which discusses eviction/transfer where the tenant requires a level of care that the landlord is not able to provide.
- Amend the *RHA* or the *RTA* to include a process of review if care services offered are no longer being provided.

4. Transitional Bed Programs in Retirement Homes

Recently, there has been a move to designate retirement homes for persons awaiting placement into long-term care to receive care. ACE is concerned that these persons are being pressured into accepting placements, promised a high level of care and being given a "crisis" or priority designation. ACE understands that these "transitional beds" are being administered in some areas in Ontario, purporting to have temporary licenses from the Local Health Integration Networks (LHINs). However, under the *Long-Term Care Homes Act*, only the Ministry of Health and Long-Term Care can provide such a license.[49] There is a separate category of interim bed under the Act, where residents can wait until they can be admitted to a long-term care home of their choice.[50] It is ACE's position that these beds are illegal. Further, these beds contradict the recommendations of the Nineteenth Annual Report of the Geriatric and Long-Term Care Review Committee to the Chief Coroner for the Province of Ontario,[51] cited above.

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[46] *Supra,* note 8, s. 6.
[47] *Ibid.* 44(1)(c)
[48] *RHA, supra,* note 1, s. 44(1)(d)
[49] *Long Term Care Homes Act, supra,* note 25, s. 95 - 99
[50] O. Reg. 79/10, s. 189 - 197
[51] *Supra,* note 32

An example is the Hamilton Niagara Haldimand Brant (HNHB) LHIN's "Transitional Wellness Capacity Project".[52] This program has designated certain spaces in retirement homes in the LHIN catchment area to act as transitional placements for patients awaiting long-term care. ACE is concerned that these rooms are not set up appropriately, and would not meet long-term care home standards. These tenants may not have privacy and share the space with their caregiver. Although it depends on the home, some of these "tenants" do not have access to rest of the retirement home facility, such as the congregate living or dining spaces, and are essentially confined to that room, despite paying high accommodation rates. These "tenants" are expected to wait in these facilities until a bed is available in the long-term care home of their choosing.

However, if the Ministry of Health and Long-Term Care will not intervene to designate these beds as long-term care beds, these spaces should be subject to some form of oversight. The protections under the *Long-Term Care Homes Act* should apply to these rooms such that these "tenants" could make complaints if they so wished. If it does not, the *RHA* should apply so that these vulnerable residents can receive some protection and have the rights that any tenant of a retirement home would have. These residents should be entitled to access all the amenities that the retirement home has to offer.

Recommendation:

- Tenancies, like those in transitional bed programs, should be governed by the *Long-Term Care Homes Act* where they are in retirement homes.
- In the alternative, the *RHA* should apply.

5. Integration between the *RTA* and the *RHA*

As indicated in the above comments, certain aspects of retirement homes are governed by the "care home" provisions of the *RTA*. However, the *RHA* does not adequately address the interplay between its protections and those under the *RTA*.

Section 52 provides that if a retirement home is also a care home, the provisions of the *RTA* continue to be applicable.[53] ACE is of the opinion that all retirement homes satisfy the criteria to be a care home as the retirement home licensee must provide at least two care services to tenants. Therefore, not only should this provision be amended to clarify that all retirement homes are care homes, but the interpretation section should include a definition for care home (unless the definition of a retirement home is amended to reflect the definition of a care home).

The *RHA* and the *RTA* require landlords to provide a package of information (commonly known as the "care home information package" or CHIP) to tenants before entering into a tenancy agreement.[54] The *RHA*, however, does not make reference to the *RTA* CHIP

[52] Vickie Baird, "Transitional Wellness Capacity Project", *Presentation to the Hamilton Niagara Haldimand Brant (HNHB) Local Health Integration Network (LHIN) Board of Directors,* May 28, 2014, available at: http://www.hnhblhin.on.ca/boardandgovernance/boardmeetings/boardmeetingsarchive/2014-2015/~/media/sites/hnhb/uploadedfiles/Public_Community/Board_of_Directors/Board_Meeting/B.2_Transitional%20Wellness%20Capacity%20Project%20Presentation%20HNHB%20Board%20May%202014.pdf

[53] *RHA, supra,* note 1, s. 52

[54] *RTA, supra,* note 2, s. 139(1)-(2) and s. 140

requirement. Thus, it is not evident whether the information to be provided in the CHIP in the *RHA* differs from the CHIP in the *RTA*. To guarantee that tenants understand exactly the information to which they are entitled, section 54(1) should be amended to state that every tenant must be provided with a CHIP pursuant to the *RTA,* in addition to the content listed in section 54(2).[55]

The CHIP includes a statement about the application of the *RTA* if the retirement home is also a care home. Further to our above comments about section 52, we feel this section must be changed to reflect that all retirement homes are also care homes.

Additionally, ACE has received calls from tenants who allege that their retirement home is passing licensing fees on to them. In many cases, tenants are paying the fees either because they "didn't want to cause a fuss" or from fear of repercussions from the landlord. Others had been informed that these charges were mandated by the Ontario Government and therefore paid without question.

Under the *RTA*, landlords of care homes must enter into tenancy agreements that set out separately the fees to be paid for accommodation and the charge for care services. Rent can only be increased by the landlord once a year, in accordance with the Provincial Rent Increase Guideline set out by the government.[56] Buildings not rented since July 1975, not previously occupied for residential purposes before 1991 or not occupied for any purpose before 1998, are exempt from these Guidelines.[57] Care services charges require notice of an increase. It is ACE's opinion that since licensing fees do not meet the *RTA*'s definition of rent or care services,[58] these fees cannot be passed on to the tenants. Further, section 134 of the *RTA* prohibits a landlord, either directly or indirectly, from requiring a tenant to pay any additional charges to the landlord as part of rent.[59]

ACE raised this issue with the RHRA and, to date, they have not treated these fees as "misuse or misappropriation of a resident's money" as described in section 75 of the *RHA*[60] and have advocated that tenants themselves take these issues to the Landlord and Tenant Board. However, ACE finds that tenants are not very well informed about their rights under the *RTA.* If self-help is to be advocated, the RHRA must take steps to educate tenants about their fights under the RTA.

<u>Recommendations</u>:

- Revise section 52 and 54(2)(b) to read: "All retirement homes are care homes pursuant to the *Residential Tenancies Act.* Nothing in this Act overrides or affects the provisions of the *Residential Tenancies Act*."
- Amend the *RHA* to include the definition of care home from the *RTA* to section 2(1) for purposes of clarity.

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[55] *RHA, supra,* note 1, s. 54(2)
[56] *RTA, supra,* note 2, s.120
[57] *Ibid.* s. 6(2)
[58] *Ibid.* s. 2(1), "care home" and "rent"
[59] *Ibid.* s. 134
[60] *RHA, supra,* note 1, s. 75

- Amend section 54 to read: "Every licensee of a retirement home shall ensure that each tenant is provided a package of information pursuant to the *Residential Tenancies Act.*"
- Urge the *RHRA* to issue compliance orders to ensure that retirement homes do not charge their licensing fees to tenants.
- Urge the *RHRA* to educate tenants about licensing fees and other rights under the *RTA*.

6. The Composition of the Retirement Homes Regulatory Authority Board of Directors;

The *RHA* created the RHRA. Its objects are:

> (a) to administer this Act and the regulations, including overseeing their enforcement, for the purpose of ensuring that retirement homes are operated in accordance with this Act and the regulations;
>
> (b) to educate licensees, consumers and the public about matters relating to this Act and the regulations, including the requirements applicable to licensees, the prescribed care and safety standards for retirement homes, the rights of residents and best practices for the operation of retirement homes;
>
> (c) to provide information about retirement homes;
>
> (d) to advise the Minister on policy matters relating to retirement homes; and
>
> (e) to carry out any other duties or powers assigned to it under any Act or by the Minister.[61]

The RHRA has immense responsibility to ensure that "a retirement home is to be operated so that it is a place where residents live with dignity, respect, privacy and autonomy, in security, safety and comfort and can make informed choices about their care options."[62] The Board of Directors has a crucial role to play in supervising the management and managing the affairs of the RHRA.[63] Therefore, the independence, competence and ethics of the Board must be paramount. However, the *RHA* has structured the Board in such a way as to limit the independence of the board.

Section 12(5) of the *RHA* provides that the majority of directors will be appointed by the board itself, rather than the Ministry.[64] As a result, there is nothing in the *RHA* which prevents the regulatory body from being dominated by the major stakeholders in the retirement home industry. The board of directors is composed of nine members. At present, four of nine of the directors have been involved as management of a retirement

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[61] *Ibid.* s.16
[62] *Ibid.* s. 1
[63] *Ibid.* s. 12(1)
[64] *Ibid.* s. 12(5)

home or care home.[65] This is a significant proportion of the Board of Directors and leads to questions about the RHRA's independence.

Further, there is no requirement that there be tenant representatives on the Board. While there is a stakeholder advisory council which reports the Board of Directors, this body only has an advisory role.[66] There is no requirement that the stakeholder advisory council's recommendations be heeded. To be truly reflective of diverse interests, the board should be appointed by the government with equal representation from the community, tenants and the retirement home industry. In the alternative, a majority of the directors should be appointed by the government. Persons would become members on the basis of their relevant experience and recruitment would be an open and transparent process. A body of competent and skilled members would only serve to enhance the efficiency, quality and expertise of the work of the board.

The RHRA also does not specify term limits on directors. This is problematic as it may lead to the board stagnating and propagating existing ideas.

Recommendations:

- Delete sections 12(5) and (7) and amend section 12(4) to read: "The Lieutenant Governor in Council shall appoint the directors to the board."
  - Alternatively, amend section 12(5) to read: "The Lieutenant Governor in Council shall appoint a majority of the directors to the board."
- Strengthen the representation and qualification sections found in sections 12(6) and 12(8) by requiring equal numbers of directors from the community, tenants and the retirement home industry.
- Impose term limits on directors by amending section 12(12) to read "A director is eligible to be reappointed or re-elected for a maximum of two terms."

7. The Complaints Mechanism under the Retirement Homes Regulatory Authority

ACE has received calls regarding the RHRA complaints system. Callers to ACE have asserted that the RHRA is not responsive to complaints.

Each retirement home is required to have its own complaints process under the *RHA.* The legislation requires immediate reporting to the Registrar (a senior official at the Retirement Homes Regulatory Authority) by any person (except a resident) where there are reasonable grounds to suspect any of the following which result in either harm or a risk of harm to a resident:

- Improper or incompetent treatment or care;
- Abuse of a tenant by anyone;

[65] "Meet the Board" *Retirement Home Regulatory Authority,* available at: http://www.rhra.ca/en/about/board/
[66] "Stakeholder Advisory Council", " *Retirement Home Regulatory Authority,* available at: http://www.rhra.ca/en/about/stakeholder-advisory-council/

- Neglect of a tenant by a landlord or retirement home staff;
- Unlawful conduct; and
- Misuse or misappropriation of a tenant's money (whether there is harm or a risk of harm).[67]

An inspection must be conducted by the RHRA in the above-noted circumstances.

In January 2014, the RHRA's formal complaints requirements became effective. Inspections are only one of the options available to the Registrar in handling complaints. The RHRA addresses complaints that relate to "the Act and its regulations, which provide protections against abuse or neglect of residents, and standards relating to:

- the care services provided to residents (for example, administration of drugs, dementia care);
- the safety of residents in the retirement home (for example, emergency plans, building maintenance, infection prevention and control); and
- consumer protection (for example, administration of trust accounts, information packages for residents)."[68]

ACE looks forward to the RHRA providing the public with data (with complainants' personal information removed) regarding the nature of these complaints and their resolution, in order to glean relevant trends.

The RHRA indicates that the receipt of a complaint will be acknowledged and that staff *may* contact the person for more information. The complainant will receive a letter from the Registrar about any actions the RHRA has taken or any decisions made.[69] It appears that often the only contact that the complainant will have with the RHRA is this final letter.

If the Registrar determines that no further action should be taken on the complaint, the complainant has a right to request a review by the RHRA's Complaints Review Officer (the CRO), who will review the reasonableness of the Registrar's consideration of the complaint. The outcome of the review will be passed on to the complainant.[70] This limited interaction with the complainant to resolve their complaint is a likely reason for the dissatisfaction expressed to ACE. The legislation itself does not mandate further contact. It does not even include a requirement for the Registrar or the Complaints Review Officer to provide a copy of any inspection report to a complainant. Sections 87 and 88(9) simply say that the Registrar will notify the complainant in writing of its decision and any action taken.[71]

It is important that persons who make complaints be provided with a copy of any report created as a result of the investigation. Without a copy of the report, complainants cannot

[67] *RHA, supra,* note 1, s. 75
[68] "Complaints" *Retirement Home Regulatory Authority*, available at: http://www.rhra.ca/en/complaints
[69] *Ibid.*
[70] *Ibid.*
[71] *RHA, supra,* note 1, s. 87 and 88(9)

be assured that their complaint was properly reviewed. Absent this essential communication with complainants, the compliance process will not be transparent.

A decision of the Complaints Review Officer is final and not subject to appeal.[72] Although the CRO is meant to be independent of the RHRA, this person is appointed by the RHRA. Therefore, tenants cannot have their complaints assessed by anyone outside of the RHRA. This process should be contrasted with certain appeals brought by operators of retirement homes against the Registrar. Operators can appeal to the License Appeal Tribunal (an independent quasi-judicial administrative tribunal) as well as the Divisional Court. ACE believes tenants of retirement homes should also have recourse to a fair and impartial adjudicator who is not affiliated with the body governing retirement homes.

The complaints mechanism under the RHRA must be robust. The receipt and provision of accommodation and care in a retirement home affects almost every personal aspect of a tenant's daily life, including information about the person's family; medical information; food and nutrition; financial dealings and social activities. As such, tenants of retirement homes find themselves in a position of vulnerability as they depend on operators for assistance with the activities of daily living. This relationship is by its nature ongoing and disagreements could arise in many areas: from the provision of care by regulated health professionals, to meals or activities or in respect of fees.

The RHRA has indicated that it is inspecting retirement homes using a risk-based approach.[73] While it is not clear how this approach is used in routine inspections or inspections following mandatory reports or whether it is being applied to complaints, ACE is concerned that this approach may lead to a weighing of costs and benefits when determining whether to pursue a complaint or conduct an inspection.[74] Annual inspections should be conducted at all homes, irrespective of their performance on a previous inspection. A meritorious complaint should be pursued even though the risk of reoccurrence is not high. As there is no data yet on complaints received by the RHRA, ACE is unable to determine which complaints are being pursued. The potential vulnerability of the tenants in the retirement home context mandates an elevated level of scrutiny.

At present, the process being used for determining which homes should be inspected annually or which complaints should be pursued is opaque. More information must be provided to the public so that they understand the process being used by the regulator.

<u>Recommendations</u>:

- Amend sections 87 and 88(9) to provide that reports regarding complaints be released to the complainant.
- Add a new section to allow tenants of retirement homes to appeal decisions of the Complaints Review Officer to an entity that is separate and distinct from the governing body

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[72] *Ibid.* s. 88(11)
[73] "Business Plan 2014 – 2015", *Retirement Homes Regulatory Authority,* p. 1, available at: http://www.rhra.ca/assets/en/pdf/RHRA-2014-2015-Business-Plan.pdf
[74] *Ibid.,* pg. 8

- Provide more information to the public on the nature of the complaints received and their resolution and on the risk-based approach that is being used in inspections.

Summary of Recommendations:

Retirement homes have become an important part of the continuum of housing and supports available to adults as they age. Under the *RHA*, these homes are now able to offer an unprecedented level of care. This increased responsibility must be accompanied by an equal degree of accountability. While the RHRA has made several positive steps, ACE believes that the proposed amendments and policy changes below will provide the necessary protection to potentially vulnerable tenants in retirement homes.

Recommended Amendments to the RHA or its regulations:

- Amend the definition of retirement home to remove the restrictions on the ages of the tenants and the number of tenants. It should mirror the definition of care homes under the *RTA:* "a residential complex that is occupied or intended to be occupied by persons for the purpose of receiving care services, whether or not receiving the services is the primary purpose of the occupancy."
- Amend the regulation to exclude only premises or parts of premises which are governed by other systems of oversight.
- Protect both operators of, and tenants living in, lower cost retirement homes by developing mechanisms that reduce the costs of regulation, such as sliding scale fees for licenses and incentives for good performance.
- Amend the RHA to include an offence for a health professional or staff of a hospital or CCAC to "knowingly refer a patient/client to an unlicensed retirement home."
- Amend the *RHA* to include provisions addressing the process the RHRA should follow when the license of a home is revoked or refused.
- Amend the *RHA* to remove sections 68 and 70.
- Amend section 71(1) to read: "Nothing in this Act authorizes a retirement home to detain or restrain a mentally capable tenant, except in accordance with the common law."
- Amend the sixth right in the Bill of Rights to read: "Every tenant has the right not to be restrained or detained, accept in accordance with the common law."
- In the alternative, if the government does not amend the *RHA* to remove the sections authorizing detention:
    - Amend section 70(3)(d) to read "a legally qualified medical practitioner or a registered nurse in the extended class has recommended confining the resident" so that only these persons can make recommendations about confinement to a secure unit.

  - Amend section 70(6) to read “If a substitute decision-maker of a resident of a retirement home has, on the resident’s behalf, consented to the resident’s confinement to a secure unit of the home, the resident has a right, which is exercisable in accordance with the regulations, to a review by applying to the Consent and Capacity Board.”
  - Amend section 70 (7) to read that “A person may not make an application under this section if he or she made an application under this section in the previous six months and that the initial application under this section must be made within six months after the consent to confinement was made under sections (4) and (5).”
  - Replace section 70(9) with the requirement that “the licensee shall contact a rights adviser independent of the retirement home forthwith if a substitute decision-maker consents to a tenant’s detention on a secure unit and that the rights adviser meet with the tenant to explain their rights.”
- Create regulations to the *RHA* which offer a different class of licence to heavy care retirement homes. This class of homes should be subject to the same regulations as long-term care homes under the *Long-Term Care Homes Act.* The fees for the licensing of these homes must be passed on the Ministry of Health and Long-Term Care to offset the costs of regulation.
- Amend section 62(1) to read “When a resident commences his or her residency in a retirement home and purchases care services, the licensee shall, within the prescribed times, ensure that the resident is assessed and that a plan of care is developed by regulated health professionals with the requisite experience in assessing the suitability of care services in accordance with this section and the regulations.”
- Delete the words “are given an opportunity” in section 62(5).
- Improve compliance with the *Health Care Consent Act, 1996* by amending section 62(9) to read “The licensee shall ensure that the resident or the resident’s substitute decision-maker have consented to the plan of care, including any revisions to it, and that a copy is provided to them.”
- Include a reference to the duty to accommodate and the Ontario Human Rights Code in the *RHA*
- Include a reference to the *RTA* in the *RHA* which discusses eviction/transfer where the tenant requires a level of care that the landlord is not able to provide.
- Amend the *RHA* or the *RTA* to include a process of review if care services offered are no longer being provided.
- Revise section 52 and 54(2)(b) to read: “All retirement homes are care homes pursuant to the *Residential Tenancies Act.* Nothing in this Act overrides or affects the provisions of the *Residential Tenancies Act*.”
- Amend the *RHA* to include the definition of care home from the *RTA* to section 2(1) for purposes of clarity.

- Amend section 54 to read: “Every licensee of a retirement home shall ensure that each tenant is provided a package of information pursuant to the *Residential Tenancies Act.*”
- Delete sections 12(5) and (7) and amend section 12(4) to read: “The Lieutenant Governor in Council shall appoint the directors to the board.”
    - Alternatively, amend section 12(5) to read: “The Lieutenant Governor in Council shall appoint a majority of the directors to the board.”
- Strengthen the representation and qualification sections found in sections 12(6) and 12(8) by requiring equal numbers of directors from the community, tenants and the retirement home industry.
- Impose term limits on directors by amending section 12(12) to read “A director is eligible to be reappointed or re-elected for a maximum of two terms.”
- Amend Sections 87 and 88(9) to provide that reports regarding complaints be released to the complainant.
- Add a new section to allow tenants of retirement homes to appeal decisions of the Complaints Review Officer to an entity that is separate and distinct from the governing body

Recommendations to the RHRA

- Conduct inspections following complaints regarding illegal detentions and make compliance orders in respect of this issue.
- Include information regarding the legality of detention in its educational materials.
- Review the plans of care to ensure that the plans are being consented to by tenants or their substitute decision makers in accordance with the *Health Care Consent Act, 1996.*
- Provide education about the duty to accommodate and the Ontario Human Rights Code.
- Issue compliance orders to ensure that retirement homes do not charge their licensing fees to the tenants.
- Educate tenants about licensing fees and other rights under the *RTA*.
- Provide more information to the public on the nature of the complaints received and their resolution as well as the risk-based approach that is being used in inspections.

Recommendations to the Ontario Seniors’ Secretariat for further review:

- Review a system of subsidies for older adults who require light to moderate care in retirement homes.
- Tenancies, like those in transitional bed programs, should be governed by the LTCH where they are in retirement homes. In the alternative, the *RHA* should apply.

We thank you for the opportunity to respond to the consultation and are available to discuss this letter if requested.

Yours very truly,

ADVOCACY CENTRE FOR THE ELDERLY

Per:

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