

ABUSE REPORTING REQUIREMENTS UNDER THE RETIREMENT HOMES ACT – GOOD IDEA BUT....

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*This article was originally published in ACE'S Fall/Winter 2011 Newsletter
which is available at www.ancelaw.ca*

On May 17, 2011, the Ontario government announced that they would take action to protect retirement home residents by implementing immediate protection measures. As a result, certain sections of the new *Retirement Homes Act*¹ (*RHA*) concerning the reporting of abuse of residents were to immediately come into effect as implemented in part by *Ontario Regulation 165/11*. According to the government's announcement, the immediate protection measures were implemented to protect seniors living in retirement homes from abuse and risk of abuse.

Although the government brought in these protection measures, the *RHA* and its regulations remain only proclaimed in part. The *RHA* establishes a Retirement Homes Regulatory Authority (the "Authority") that has been charged with the responsibility of licensing and inspecting retirement homes in Ontario. It will also be responsible for monitoring the care standards in retirement homes. This system is independent of government and is not part of any Ministry.

The structure of the Authority is defined in the *RHA*. At this time, the government has appointed the initial five members of the Authority's Board. It is anticipated, however, that the Authority will eventually become a self-governing body. While the initial funding to establish the Authority will come from the government, the expectation is that the Authority will be funded on an ongoing basis through licensing and other fees charged to retirement home operators.

Initially, only those sections of the *RHA* necessary to establish the Authority and to allow it to begin setting up were proclaimed. Within the *RHA*, there is a provision that requires that there must be public consultations on the draft regulations to the legislation. The first phase of the initial draft regulations were released earlier in 2011 and ACE provided written submissions and recommendations to the government on April 8, 2011. ACE provided further submissions to the government on the second phase of the draft regulations on June 20, 2011 (see our website at: www.ancelaw.ca for more information).

¹ S.O. 2010, Chapter 11

While the immediate protection measures have been implemented, the Authority has no powers to do anything about any reports of abuse it receives other than to send in an inspector to investigate the allegations and then refer the matter to other bodies, such as the police, fire officials, or public health officials, for follow-up. As the licensing and enforcement provisions in the *RHA* are not yet in effect, the Authority does not have the ability to issue orders against those homes where there have been substantiated reports of alleged abuse or neglect.

Once more, because the Authority does not have the staffing and technical supports to receive telephone calls about abuse directly, the public is being advised to make any reports to the Complaints Response and Information Service, commonly known as the CRIS line. The CRIS line is funded by the Ontario government but is operated by the Ontario Retirement Community Association (“ORCA”) – the trade association for retirement home operators.

The abuse reporting process under the immediate protection measures is intended to alert the Authority to any abuse suffered by a resident, including alleged abuse and neglect perpetrated by staff and/or an operator of a retirement home. If such reports are being made via the CRIS line which is presently operated by the association that represents many home operators, a conflict of interest is created which could impact public perception of the Authority as being an independent body.

PROBLEMS WITH PROCLAMATION OF SECTIONS ON ABUSE AND NEGLECT

Although it was with the best of intentions that the government proclaimed those sections of the *RHA* relating to the reporting of abuse, ACE has concerns about the effectiveness of the immediate protection measures given that only a portion of the *RHA* is in effect. Some of the problems we have identified include:

- In section 75 of the *RHA*, reports of abuse and neglect and the other matters referenced there are supposed to be made directly to the Registrar of the Authority BUT at the time of the government’s May 2011 announcement concerning the immediate protection measures, the reports were to go to the CRIS line which is operated by ORCA. ORCA represents the retirement home operators who will be the licensees under the *RHA*. ACE was told that the Authority has a Memorandum of Understanding with the CRIS line and it would continue to be operated by ORCA for now. The concern is that the CRIS line will continue to be operated by ORCA and will become a branch of the Authority. In our opinion, this would impact public confidence in the Authority in that it would not be independent of the retirement industry;

- ACE is also concerned that the CRIS line operators, who are employees of ORCA, will be triaging the calls and determining which calls will be redirected to the Authority. ACE has raised this concern with the Office of the Minister Responsible for Seniors given that what is considered abuse and neglect may be different from the perspective of the operators of the CRIS line, the tenants (residents) of the homes, the home operators, and the Authority;
- ACE has also requested information concerning the training, if any, delivered by the Authority to the CRIS line operators specifically around which calls they are to refer to the Authority. ACE has also asked questions about whether the CRIS line operators will be required to keep confidential from ORCA (their employer) and the retirement homes that are the subject of complaints, any reports received through the telephone lines concerning abuse and neglect, as disclosure of such information could jeopardize any potential investigation by the Authority.

ACE is concerned that by reporting through the CRIS line instead of the Regulatory Authority, the set-up of the reporting system already does not comply with the requirements of the *RHA*.

An independent telephone line operated by the Authority is required, which will provide information to the public about the licensing of retirement homes and the regulatory system; including the role of the Authority, the Registrar, and the Complaints Officer. Further, this independent telephone line should receive any reports of alleged abuse or neglect of residents directly.

It is imperative that the government release the remaining regulations to the *RHA* immediately so that the legislation can be proclaimed and the licensing system enacted. While ACE does not believe that the *RHA* is the optimal model for regulating this industry, licensing requirements and care standards enforceable by a body separate from the industry are important steps in the development of a comprehensive regulatory scheme to support and protect retirement home tenants.