

Inadequate Protections for Tenants of Retirement Homes: ACE's Concerns about Bill 21, The *Retirement Homes Act*

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The Ontario government introduced Bill 21, the *Retirement Homes Act* (the *RHA*), into the Legislature on March 30, 2010 and it quickly received Royal Assent on June 8, 2010 despite opposition from individuals and organizations across the province. As there is currently little or no government oversight of retirement homes, the Advocacy Centre for the Elderly (ACE) supports the purpose of the bill – to regulate retirement homes. However, we strongly oppose the *RHA* and the speed with which the government has passed this legislation.

The legislative process, from the introduction of Bill 21 to the limited debate and Royal Assent, has been very short. For instance, there was only one afternoon of public hearings before the Standing Committee on Social Policy. The Minister Responsible for Seniors, Gerry Phillips, would likely argue that there was sufficient time and discussion with stakeholders because the Ontario Seniors' Secretariat held consultations on retirement home regulation in 2007, which included meetings in five locations around the province with over 800 people in attendance, as well as the receiving written submissions.

However some advocacy and seniors organizations, including ACE, argued that the scope of the original consultation was the general regulation of retirement homes, not the specific regulatory scheme contained in the *RHA*. Even where the consultation dealt with issues similar to those in the *RHA*, several stakeholders noted that the public did not want self-regulation by the retirement home industry but rather by government.

ACE has several concerns about the *RHA*. A detailed brief analyzing the *RHA* is available on the ACE website but the following is a summary of what we perceive to be the main problems.

- 1. Two-tiered health care:** Retirement homes will be able to offer any level of care but without the same level of oversight as long-term care homes. ACE, as well as several other organizations, believes this will result in the privatization of health care for seniors and create a parallel system to long-term care homes. Tenants will be paying for health care services that would otherwise be covered by the government. It is expected that some long-term care home operators will change their homes to retirement homes as they will not only be able to operate the same business with a lower level of regulation but also charge more for the same services.

As the *RHA* permits retirement homes to provide any level of care and services, more vulnerable seniors will utilize these services without fully understanding the implications. This opens the door for potential abuse due to the lack of protections against abuse, such as those provided in the *Long-Term Care Homes Act*, which requires reporting and intervention by the Ministry of Health and Long-Term Care.

A recent case at Cumberland Lodge in Ottawa, where the operator of a domiciliary hostel¹ and her daughter allegedly stole over \$300,000 from vulnerable tenants illustrates this point.² This is only the most recent example of those in authority stealing money from those who are under their care. While the *RHA* does not regulate this type of accommodation, even if it did apply, the legislation does little to prevent this from occurring. Moreover, the regulatory authority responsible for retirement homes would not have authority to deal with this type of situation.

2. **Enhanced self-regulation and domination by the retirement home industry:** The *RHA* creates an arms-length regulatory body, called the Retirement Homes Regulatory Authority (the Authority), to educate, license and inspect retirement homes. The affairs of the Authority will be supervised and managed by a Board of Directors. Despite assurances from the Minister, ACE is concerned that the Authority will be dominated by the industry or friends of retirement homes. After the initial two years of operation, a majority of the members of the Authority will be appointed by the Board of Directors, resulting in a “closed shop”. This is a flawed model that will be difficult, if not impossible, to dislodge or amend. Power will be concentrated with minimal government accountability.³
3. **Tenant rights and complaints – limited enforcement mechanisms:** The *RHA* creates a Bill of Rights for tenants and deems the operator of the home and each tenant to have entered into a contract. While tenants may enforce their rights by pursuing a civil action, there are no special enforcement mechanisms available to tenants. While the ability to go to court is important, the reality is that civil actions are often expensive and take a long time to be resolved. Tenants need quick action to ensure that their rights are enforced and they are receiving appropriate care.

¹ Domiciliary hostels are privately owned or non-profit residences that assist vulnerable adults to live in a supportive community environment. Residents are typically living with psychiatric or developmental impairments and/or are elderly. Basic services include 24-hour staffing with support; meals and snacks; medication management; furnished rooms (most are shared accommodation); assistance with daily living activities; housekeeping and laundry services. They also provide access to other on-site and community based services.

² Maria Cook, “Regulations may not have helped in Cumberland Lodge case: experts” *Ottawa Citizen* (29 May 2010).

³ For a critique of this model, please go to <http://www.web.net/ohc/> and see the legal opinion prepared by Sack Goldblatt Mitchell LLP for the Ontario Health Coalition.

Tenants may complain about contraventions of the legislation to the Registrar of the Authority and, in certain circumstances, the response of the Registrar may be reviewed by a Complaints Review Officer. Both the Registrar and Complaints Review Officer are solely accountable to the Authority. The decision of the Complaints Review Officer is final – the *RHA* indicates that there is no right of appeal or review outside the Authority.⁴ In contrast, operators who are denied a licence to operate a retirement home have a right to have a review by the License Appeal Tribunal and a further right of appeal to the Divisional Court.

4. **Sanctioning of restraint and detention in secure units:** The *RHA* permits the restraint and confinement of tenants in secure units. Tenants of retirement homes, unfortunately, do not have the same level of protections provided to residents of long-term care homes under the *Long-Term Care Homes Act*. While confinement in a secure unit in a long-term care home is considered a restraint, the *RHA* specifically states that *confinement* in a retirement home is not a restraint. We disagree with this section and do not believe it to be legally correct. If a person is prevented from leaving, he or she is restrained no matter what the legislation states.
5. **Fees:** The Authority has the ability to set, collect and use fees collected from retirement homes to carry out the objects of the Authority. The government has stated that it will fund the Authority for the first two years but it has not publicly pledged a specific amount. It is inevitable that the cost of regulation will be passed onto tenants in the form of higher prices. ACE is concerned that this will be detrimental to small and not-for-profit homes, which may be forced to provide fewer services or close.
6. **Limited definition of a retirement home:** This legislation only regulates homes occupied primarily by persons who are 65 years of age or older. However, there are many other similar types of accommodation, (such as domiciliary hostels, group homes and attendant care accommodation) which provide similar services but are not regulated by the *RHA* or elsewhere. This leaves an entire vulnerable population living in accommodation where their care is not regulated.

Is There Anything that Can Be Done To Address the Concerns Raised by ACE and Others?

Before the *RHA* is proclaimed into force, the government must draft regulations. The *RHA* requires that there be at least 30 days for the public to submit written comments regarding these proposed regulations.⁵

ACE will definitely be participating in any public consultations. Once the Minister posts its draft regulations, ACE will be seeking input from interested seniors' organizations

⁴ *RHA*, S.O. 2010, c. 11, s. 88(11).

⁵ *RHA*, s. 121.

and individuals on the proposed regulations. If you are interested in participating in discussions with ACE, please contact us. After hearing from individuals and organizations, ACE will draft and post our submission on our website. This information may assist you in the preparation of your own comments.

You may also wish to contact your local Member of Parliament about the draft regulations or the *RHA*. Since there is no proclamation date yet, the government could still amend the legislation or choose not to implement it. While this is unlikely, the government may be persuaded to do so if there is a large public backlash against the legislation.

We encourage anyone with concerns about the *Retirement Homes Act* to speak to their Member of Parliament or participate in these important public consultations as the contents of the regulations will be fundamental as to how this act will be interpreted and implemented.

UPDATE: Parts 1 and 2 of the *Retirement Homes Act* were proclaimed on June 8, 2010. These sections allow for the establishment and implementation of the Retirement Home Regulatory Authority.

It is our understanding that the draft regulations will be released to the public in either December 2010 or January 2011 and the rest of the legislation will be proclaimed in the spring of 2011.