**Submission to the**
**Long-Term Care Task Force on Resident Care and Safety**

Concerning:

# CONSULTATION TO ADDRESS ABUSE AND NEGLECT IN LONG-TERM CARE HOMES

Submitted By:

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## Advocacy Centre for the Elderly

The Advocacy Centre for the Elderly (ACE) is a specialty community legal clinic funded by Legal Aid Ontario under the *Legal Aid Services Act* to provide services to low-income older adults living in Ontario. ACE is the first elder-law legal clinic in Canada and is the only community legal clinic with specific expertise in legal issues that affect older adults. ACE is a non-profit, charitable corporation governed by a fifteen (15) member volunteer community-based Board of Directors. At least seven of ACE's directors must be persons fifty-five (55) years of age or older.

ACE's Mission Statement sets out our commitment and mandate to representing the interests of low-income older adults in Ontario:

> The Advocacy Centre for the Elderly is committed to upholding the rights of low-income seniors. Its purpose is to improve the quality of life of seniors by providing legal services which include direct client assistance, public legal education, law reform, community development and community organizing.

ACE receives, on average, over 2,500 client intake inquiries a year. These calls are primarily from the Greater Toronto Area. Older adults contact our office with inquiries relating to the following areas of law: capacity; health care consent; retirement home tenancies; resident rights in long-term care homes; patient rights in hospital; and elder abuse.

ACE would like to take this opportunity to summarize some of the work that we are currently involved in and highlight the issues that are relevance and of importance to our clients and stakeholders (i.e. older adults living in Ontario):

- ACE assists older adults and their family members in navigating the long-term care and home care systems in Ontario. ACE's Institutional Advocate, Ms Jane Meadus, regularly receives telephone calls from older adults in hospital asking for assistance in communicating with hospital administrators and the Community Care Access Centre (CCAC) staff around discharge planning and applications to long-term care;
- ACE is a member of the Long-Term Care Quality Inspection Program Advisory Committee to the Ministry of Health and Long-Term Care (MOHLTC) which meets regularly to advise the Ministry on issues regarding the inspection and enforcement of the *Long-Term Care Homes Act*, 2007 (*LTCHA*) and its regulations;
- Providing written submissions and recommendations to various government ministries and departments, including but not limited to, the MOHLTC with respect to the proposed draft regulations (Initial Phase and Phase Two) to the *Retirement Homes Act*, 2010;

- Ongoing consultations with the Government of Ontario on the *Retirement Homes Act*, 2010, as the regulations are released and the implementation of the legislation and its regulations continues;
- ACE's Executive Director, Ms Judith Wahl, was recently appointed for a two-year term as a Member of the Retirement Home Regulatory Authority's Stakeholder Advisory Committee;
- Consulting with the MOHLTC on developments that will impact older adults living in Ontario such as the development and implementation of a Personal Support Worker (PSW) Registry;
- Submitting recommendations to the Ministry of Community Safety and Correctional Services with respect to their Consultation on Fire Safety for Vulnerable Residents of Ontario;
- Working with the Community Legal Education Ontario (CLEO) to publish the most recent edition (December 2011) of the *Every Resident: Bill of Rights for people who live in Ontario long-term care homes* publication; and
- Delivering public legal education workshops on a variety of different issues including but not limited to: the *LTCHA*, 2007; *Retirement Homes Act*, 2010; Powers of Attorney; Consent and Capacity; Elder Abuse; sexuality and older adults; to audiences that include older adults and their families; service providers; health care providers; students; law enforcement; and lawyers.

Given ACE's expertise working on legal, policy, and practice issues as they relate to older adults, we take this opportunity to provide this submission to the Long-Term Care Task Force on Resident Care and Safety. Where appropriate, we have provided our response to the Consultation Questions.

## General Comments

ACE supports the work of the Long-Term Care Task Force ("Task Force") on Resident Care and Safety. We have concerns, however, with respect to the very short timeframe in which the Task Force is conducting its public consultations. While the development of an Action Plan to address the very concerning incidents of abuse and neglect in long-term care homes that have been reporting in the media is important, in order for the Action Plan to have any impact or result in any meaningful change, this work must continue following this consultation. The successful implementation of the Action Plan developed by the Task Force will require ongoing review, assessment and monitoring.

## Consultation Questions

**1. Based on what you have seen, heard or experienced, please tell us the key things that make a long-term care home a place where residents feel safe, respected and well cared for. Please be specific and give examples.**

ACE frequently receives telephone calls from residents of long-term care homes and their families concerning issues they are experiencing with staff and administrators of the home. Based on the information we receive, ACE submits that the following are practices

and policies that negatively impact residents of long-term care homes and make them feel like they are not safe, not respected and not being treated with dignity:

- **Communication** – residents of long-term care homes who contact ACE report that they have difficulty obtaining information concerning their health records or that requests made for access to their own health records are often denied. These problems with communication are not only with respect to health care but also in terms of other policies and practices with respect to the home including: vacation/leave entitlements; calculations of accommodation rates; changes in services or costs of services; etc. Further, residents advise ACE that staff and administrators at long-term care homes often refuse to speak directly to the older adult but instead, choose to communicate issues of relevance and importance to the substitute decision-maker or power of attorney often despite the fact that the older adult is capable.
- **Staff training** – ACE submits that in this current context of limited resources, ongoing training for long-term care home staff is not made available to the extent necessary. ACE has concerns that some long-term care homes are choosing to provide only the bare minimum with respect to staff training as arranging for in-house training not only involves the cost for the training itself, but requires that time be allocated to allow staff to participate in such sessions.
- **Lack of resources** - Residents and family members have contacted ACE to advise us that lack of incontinence products is a common occurrence in long-term care homes. ACE has heard of staff having to ration incontinence supplies or not having appropriate supplies available (i.e. different sizes and types). ACE submits that inadequate provision of incontinence products results not only in hardship on residents but impacts negatively on their quality of life and dignity.
- **Complaints process and policies** - ACE submits that simply developing policies and processes for complaints as required under the *LTCHA*, 2007 and its regulations is not enough to make residents feel that they are safe, respected and well cared for. The implementation of such policies and processes must be done in a manner that is fair and transparent.
- **Ministry of Health and Long-Term Care (MOHLTC) – ACTION LINE -** ACE has heard from staff at hospitals and long-term care homes that they have tried to contact the telephone number posted on materials published by the MOHLTC and also on the ltchomes.net website accessible to staff at long-term care homes to report abuse and neglect to the Director as required of them under the relevant provisions of the *LTCHA*, 2007, only to be advised by the staff answering those telephone calls that they are contacting the incorrect number. ACE submits that there should be no confusion as to how the reporting process works when it concerns reports of resident abuse and neglect to the MOHLTC.

  We have also received numerous reports of those staffing the Action Line giving incorrect information to the public when they contact the line with questions and concerns about long-term care homes. ACE submits that dedicated, fully-trained staff be utilized in responding to questions and answering telephone inquiries from the public regarding long-term care.

**2. From your experience and knowledge, what kinds of things lead to abuse and neglect in long-term care homes? (Abuse includes emotional, financial, sexual, verbal as well as physical abuse.) Please be specific and give examples.**

According to the Law Commission of Ontario:

> Risk must also be understood in a broader social context. An older adult's family and other relationships, living arrangements, income sources and levels, access to supports and the law itself may either increase or decrease levels of risk and inequality, depending on their quality and extent. Therefore, while laws, programs and policies must recognize the capacities and individuality of older adults, this recognition must be balanced by the provision of additional supports for those older adults who are particularly disadvantaged or at risk in order that the law promotes dignity, autonomy, participation and security for all older adults.[1]

ACE submits that the factors that contribute to abuse and neglect in long-term care homes include but are not limited to: social isolation; lack of training; lack of resources; under-staffing; increasingly complex care needs of clients; and ageism.

Ageism is particularly problematic and a big contributing factor to abuse and neglect. Ageism results in the propagation of stereotypes about older adults that are not based in fact. The Canadian Centre for Elderly Law's publication, *A Practical Guide to Elder Abuse and Neglect in Law in Canada*, describes ageism as follows:

> Ageism is a negative social attitude towards older adults. Ageism is based on negative beliefs about aging and assumption that older adults are weak, frail or incapable. People who make ageist assumptions view older adults in demeaning, discriminatory or dismiss ways….
>
> A lack of respect for an older adult's personal values and beliefs can lead to elder abuse. Ageist assumptions can result in lack of respect for an older adult's personal values, priorities, goals, lifestyle choices, and inherent dignity as a human being. [2]

ACE submits that in order to combat ageism, abuse and neglect in long-term care homes it is necessary to reduce the social isolation that many residents experience. Further, staff at long-term care homes providing care to residents must receive comprehensive training on how to identify and prevent abuse and neglect as well as clear communications as to

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[1] Law Commission of Ontario, *The Law as it Affects Older Adults: Developing an Anti-Ageist Approach, Interim Report*, June 2011, online: < http://www.lco-cdo.org/older-adults-interim-report.pdf> at 3. [*Interim Report*]

[2] Canadian Centre for Elder Law, *A Practical Guide to Elder Abuse and Neglect Law in Canada*, July 2011, online: <http://www.bcli.org/sites/default/files/Practical_Guide_English_Rev_JULY_2011.pdf> at 10. [*A Practical Guide to Elder Abuse and Neglect Law*]

when it is mandatory for them to report such incidents to the MOHLTC and/or the authorities.

One area that is of particular importance is that regarding medical treatment. Under the *Health Care Consent Act*, informed consent is required for all treatments in Ontario, including that provided in a long-term care home. It is ACE's experience that in the bulk of long-term care homes, informed consent is not being obtained from the resident or their substitute decision-maker.[3] This has lead to a high percentage of residents being given controversial medications, such as antipsychotics, without consent. These medications may be contraindicated for many of the residents and, in fact, have "black box" warnings and cautions by both the US[4] and Canadian[5] governments regarding the risks of these medications for seniors; such information is generally not provided prior to prescribing. This "accepted practice" is both negligent and illegal, and impacts highly on the senior population in long-term care.

**3. In your view, how can incidents of emotional, financial, sexual, verbal and physical abuse and neglect be prevented?**

**Training**

Long-term care home staff must be fully trained on the prevention of abuse and neglect but beyond such training, they must also be trained on how to work with residents with responsive behaviours (i.e. residents that have Alzheimer's and/or dementia) and mental health issues. Based on the information received by ACE from the family members of seniors who suffer from Alzheimer's and/or dementia, they report having to deal with staff members providing direct care who are not well-trained in caring for residents with these health conditions.

Further, as long-term care homes are increasingly expected to deal with a broader range of conditions and illnesses, training must be provided to staff at the home so that they are able to provide the necessary care to all residents who are eligible. At the present time, applicants to long-term care home are often made "eligible" yet homes will either not accept the person based on their care needs or alternatively, the home which accepts the applicant may be unable to meet the applicant's care needs due to inadequately trained staff. This is often the case for applicants with behavioural issues or health conditions and/or illnesses that are uncommon.

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[3] Failure to obtain informed consent was noted in the *2007 Annual Report of the Office of the Auditor General of Ontario,* Chapter 3, VFM Section 3.10, page 232, online: <http://www.auditor.on.ca/en/reports_en/en07/310en07.pdf>

[4] *FDA, US Food & Drug Administration, Public Health Advisory: Deaths with Antipsychotics in Elderly Patients with Behavioural Disturbances*, 4/11/2005, online: <http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/DrugSafetyInformationforHeathcareProfessionals/PublicHealthAdvisories/ucm053171.htm>

[5] Health Canada, *Atypical Antipsychotic Drugs and Dementia – Advisories, Warnings and Recalls for Health Professionals,* June 22, 2005, online: <http://www.hc-sc.gc.ca/dhp-mps/medeff/advisories-avis/prof/_2005/atyp-antipsycho_hpc-cps-eng.php>

Section 76 of the *LTCHA*, 2007, sets out the training requirements for all staff working in long-term care homes. According to this provision, licensees are required to ensure that all staff have received training in the areas stated in the legislation and regulations. Further, licensees are also responsible for ensuring that further staff training needs are identified and assessed at regular intervals set out in the regulations. Subsection 76(7) sets out the requirements for training for staff who provide direct care to residents:

> 76(7) Every licensee shall ensure that all staff who provide direct care to residents receive, as a condition of continuing to have contact with residents, training in the areas set out in the following paragraphs, at times or intervals provided for in the regulations:
>
> 1. Abuse recognition and prevention.
> 2. Mental health issues, including caring for persons with dementia.
> 3. Behaviour management.
> 4. How to minimize restraining of residents and, where restraining is necessary, how to do so in accordance with this Act and the regulations.
> 5. Palliative care.
> 6. Any other areas provided for in the regulations.

Subsections 221(2) and (3) of O. Reg. 79/10 to the *LTCHA* states as follows:

> 221(2) The licensee shall ensure that all staff who provide direct care to residents receive the training provided for in subsection 76(7) of the Act based on the following:
>
> 1. Subject to paragraph 2, the staff must receive annual training in all the areas required under subsection 76(7) of the Act.
> 2. If the licensee assesses the individual training needs of a staff member, the staff member is only required to receive training based on his or her assessed needs.
>
> (3) The licensee shall ensure that the training required under paragraph 2 of subsection 76(7) of the Act includes training in techniques and approaches related to responsive behaviours.

ACE submits that given the increasing number of residents in long-term care homes with complex medical conditions and behaviours, all staff working in long-term homes should receive training on how to manage responsive behaviour, aggression and other mental health issues and that this training needs to take place annually.

Many of the telephone calls we receive at ACE from older adults or their family members concern problems with respect to long-term care home staff not having the resources or training to support residents who exhibit aggression or responsive behaviours as a result of their health conditions. It is our submission that in order to reduce incidents of abuse

and neglect, staff need to be properly trained and training needs for staff providing direct care to residents must be assessed regularly.

In addition to the training requirements in the *LTHCA*, 2007 and regulations, ACE submits that long-term care home staff and licensees should be trained on other legislation such as the Ontario *Human Rights Code*. ACE submits that it is imperative for long-term care home licensees and staff to understand their obligations to residents under the *Human Rights Code* and that such understanding will serve to prevent incidents of abuse and neglect.

**Transparency**

The Ontario Ombudsman, in his Annual Report 2010-2011, made the following statement with respect to the MOHLTC monitoring of long-term care homes:

> A similar case where the promise of openness was shamefully unfulfilled was revealed in my investigation into the province's monitoring of long-term care homes, which house more than 75,000 Ontarians. As I noted in the findings I released in December, although a great deal of information about long-term care inspections was posted publicly online – paying lip service to transparency – it proved to be grossly outdated, incomplete and at times inaccurate. There was an appalling lack of communication about the Ministry's complaint investigation process, and the homes themselves complained that the compliance standards were so complex as to be a disservice – equating minor issues with those directly affecting residents' quality of life.[6]

ACE submits effective and transparent oversight by the Ontario Ombudsman would serve to prevent the incidents of abuse and report in long-term care homes. The Ontario Ombudsman has identified, and ACE agrees, that oversight of hospitals and long-term care homes in Ontario is not only lagging behind that of other jurisdictions, but is inadequate. Specifically, the Ontario Ombudsman states:

> However, without proper oversight – including effective investigative powers and public reporting – openness, transparency, accountability and the opportunities for citizen participation are all compromised. This, of course, is why my Office has, throughout its 35-year history, implored successive governments of Ontario to extend the jurisdiction of the Ombudsman. As this report again highlights, Ontario lags behind all other Canadian jurisdictions in ombudsman oversight of the "MUSH sector" – Universities, School boards, and Hospitals, as well as children's aid societies, long-term care homes and police. What oversight there is of these institutions is, frankly, inadequate.

[6] Ombudsman Ontario, 2010-2011 Annual *Report*, June 2011, online: < http://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Reports/Annual/2011OmbudsmanAR_E.pdf > at 8. [2010-2011 *Annual Report*]

ACE submits that the jurisdiction of the Ontario Ombudsman should be expanded to include that of hospitals and long-term care homes. Such oversight, in our respectful opinion, would be a positive step in ensuring that licensees of long-term care homes and the MOHLTC are effectively and respectfully responding to incident reports of all forms of abuse and neglect in long-term care homes.

**4. By law, a long-term care home must post the government's Long-Term Care ACTION LINE phone number for anyone to call if they want to report the abuse or neglect of a resident or even the suspicion of abuse or neglect. When a call is made, a government inspector must investigate and the report of the investigation must be clearly posted in the home.**

**a. When a resident is abused or neglected, why do you think it might not be reported?**

ACE submits that the main reason why resident abuse or neglect is not reported by residents is fear of reprisal by staff or administration. Another common reason that these issues are not reported is a fear of jeopardizing "housing" or placement in the long-term care home.

ACE hears from residents, their substitute decision-makers and family members who advise that they have reported concerns with respect to the care provided, abuse, or neglect to the long-term care home and that staff at the home are, at times, not responsive to such reports. Even in situations where abuse and neglect are reported to the MOHLTC, ACE submits that the consequences of such reports on long-term care homes are such that: (a) it does not deter such incidents from reoccurring and; (b) the response and outcome is such that residents and their families do not have confidence in the reporting and inspection system.

ACE is aware of many instances where homes have failed to notify the MOHLTC or police as required under the legislation. There appears to be a great deal of confusion among long-term care home staff as to when they have a mandatory reporting obligation to the police as set out in the *LTCHA*, 2007. ACE has spoken with a number of police officers from different police services who have advised that they are receiving reports from long-term care home staff who have difficulty managing the behaviour of residents who are incapable. ACE has been advised by police that it is not their role to intervene where the issue is one of care and the managing of responsive behaviour of residents. ACE submits that it is crucial to ensure that all long-term care home staff are trained on their reporting obligations under the legislation so as to avoid situations of reports being made where it may not be appropriate or required.

When neglect and abuse are reported, it may take the Ministry of Health and Long-Term Care months to have an inspector attend at the home. By the time the inspection does occur, physical evidence has disappeared and events/details may not be as easily recalled. Inspectors may not interview all of the persons involved in the incident, which leads to a lack of trust in the system. It is not unusual for ACE to speak with substitute

decision-makers or family members who have made a complaint to indicate that the inspection has been completed only to discover that the inspector has never talked to them.

Finally, while there is a stated no tolerance of neglect and abuse in the legislation, this is not reflected in the results of inspections. Often, the inspection results are inconclusive and nothing is done. Even when issues are found, they tend to be the lesser issues, such as failure to report suspected abuse, and written notices are simply made. This leads to a total lack of confidence in the system. Further, when neglect or abuse are substantiated, residents and their substitute decision-makers or family members often report no change in the home: the abuser continues to be employed; there is no change in procedures; and the home faces no fines or other substantial penalties, all leading to a loss of confidence in the system.

**b. Why do you think the outcome might not be communicated properly, as required by law?**

ACE submits that the following are some of the reasons why the outcome of an investigation are not communicated properly as required by law: lack of transparency and oversight; concern about "bad press"; lack of accountability; complex reporting and inspection procedures; delay in reporting of incidents resulting in a delay in investigation.

ACE finds when complaints are made and inspections completed, the reports are often not provided to the complainant without specific requests being made to the MOHLTC. Many complainants are not aware that they are entitled to such information and therefore do not request the documents. Further, it is generally only the public report that is provided which does not contain enough information to inform the complainant as to what has transpired since the complaint was filed.

While we understand in some cases there may be privacy concerns with respect to the information contained within an inspection report, it is our position that the standard be that the licensee report be provided to complainants – with the requisite redacting of information in accordance with the relevant privacy legislation. In certain circumstances, it may be entirely inappropriate to provide the licensee inspection report, as may be the case with third-party reporting.

**5. Please add any other comments that you may have that will help the Task Force develop its action plan on resident care and safety.**

ACE submits that the incidents of abuse and neglect of residents of long-term care homes is often underreported for many of the above noted reasons. Therefore, ongoing research into abuse and neglect in long-term care homes is necessary to determine why this is the case and what can be done to change the system.

**6. Please tell us if you are speaking as a (check all that apply).**

ACE makes the following recommendations and provides the above information as an organizational long-term care advocate with expertise in elder law.

**Recommendations**

1. ACE recommends more funding for nursing staff on each shift at all long-term care homes, particularly during the evening and night shifts, to allow for oversight of unregulated health care staff by those staff who are regulated.

2. ACE recommends that more training provided to all long-term care home staff (nursing, personal support workers, health care aides) on working and supporting residents who have responsive behaviours. The Action Plan should ensure that all long-term care homes in Ontario are meeting the training requirements as set out in the *LTHCA*, 2007 and its regulations – including the ongoing assessment of training needs and ongoing provision of training to staff responsible for providing direct care to residents.

3. In addition, ACE submits that more training for staff and administrators of long-term care homes on prevention and zero-tolerance of resident abuse and neglect must be made available. Again, training needs have to be assessed on an ongoing basis and training must be provided at the frequency stated within the *LTHCA*, 2007 and its regulations.

4. In addition to the training mentioned above, ACE recommends that training be provided to all staff and licensees of long-term care homes on their legal obligations under the Ontario *Human Rights Code*. As well, training on the obligation of health care providers to obtain informed consent from residents and/or their substitute decision-makers as per the *Health Care Consent Act*, should also be provided to all staff at long-term care homes.

5. ACE submits that there needs to be more funding to ensure that all long-term care homes have adequate and appropriate resources to purchase incontinence products for residents. ACE submits that under no circumstances should the rationing of incontinence products occur nor should residents be required to use products that are not suitable for them.

6. ACE recommends that information concerning mandatory reporting of abuse and neglect in long-term care homes as required under the legislation be made available to all health care providers regardless of whether they work in hospitals, long-term care homes or other settings. Further, ACE submits that the confusion with respect to how health care providers can make a report of resident abuse and neglect to the MOHLTC and the Director be resolved immediately.

7. ACE recommends that the staff answering the Long-Term Care Homes ACTION Line must be fully trained and the information that they provide to the public through this telephone line must be accurate and up-to-date.

8. ACE recommends that the Ontario Ombudsman's jurisdiction be expanded to include long-term care homes and hospitals. In the alternative, ACE recommends that the Ontario Ombudsman reopen his investigation into the Ministry of Health and Long-Term Care's monitoring of long-term care homes.

9. ACE recommends that in order to make the inspection process more transparent, the MOHLTC should publish information in plain language for residents and licensees on the Long-Term Care Home Quality Inspection Program (LQIP) and Resident Quality Inspections (RQI).

10. ACE submits that where an inspection by the MOHLTC is a result of a complaint, the MOHLTC should provide the licensee report to the complainant with the necessary information redacted where necessary and in accordance with the requirements of privacy legislation.