



**Advocacy Centre
for the Elderly**

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September 4, 2012

SENT BY EMAIL

Mr. Charles Beer
PSW Registry Chair
Counsel Public Affairs Inc.
95 St. Clair Ave. West, Suite 1606
Toronto, ON M4V 1N6

Dear Mr. Beer:

Re: Ongoing concerns and outstanding issues regarding the Personal Support Worker (PSW) Registry

As you are aware, in September 2011, the Advocacy Centre for the Elderly (ACE) was invited by the Ontario Community Support Association (OCSA) to join the PSW Registry Steering Committee. The last PSW Registry Steering Committee meeting took place on August 21, 2012. A draft of the Final Report was sent by the Secretariat staff to members of the Steering Committee on August 30, 2012, for review and comment.

We appreciate the opportunity to participate in the first phase of this very important project. Due to issues that remain unresolved following the first phase of the project, however, ACE cannot support nor do we endorse the Registry in its current form for the reasons set out below.

We provide our comments at this time in response to the draft Final Report. We expect this correspondence to be attached to the Final Public Report to Stakeholders concerning The Ontario Personal Support Worker Registry that will be posted on the PSW Registry website. Further, we will be publishing the final versions of both documents on our website at www.ancelaw.ca. We will continue to monitor the development of the Registry and ensure that our clients and stakeholders are made aware of what in our opinion are the Registry's limitations.

Timeframe for the Development of the Registry

ACE, along with several Steering Committee members, commented throughout course of the nine meetings that took place from November 2011 to August 2012, that the schedule for the development of the Registry was unrealistic given all the tasks required of the

Steering Committee and the Secretariat. ACE submits that there was not enough time to meaningfully consider all the implications of developing a Registry that was meant to fulfil a number of complex and potentially competing objectives.

At page 9 of the Final Report of the Secretariat, it states that: "Compared to the registries reviewed, the Ontario PSW Registry is unique in many ways. First, Ontario has the most complex and multi-faceted purpose." Given the complex nature of the Registry, ACE submits that more time should have been provided to complete the first phase of this project. For the reasons we set out below, however, while more time may have been of assistance it still would not have resolved many of the issues that remain outstanding. While the Secretariat's Report attempts to capture all the deliberations that occurred at each Steering Committee meeting, the fact is that for many of the issues that remain unresolved, there was simply no consensus reached amongst Steering Committee members.

Timing was but one factor in what made this first phase in the development of the Registry challenging. ACE submits that given that some of the new regulatory health colleges being formed that will govern certain health professions in Ontario (i.e. Transitional Council of the College of Kinesiologists) have had the benefit of years of planning and development, the creation of a PSW Registry should have been afforded similar time and consideration. ACE has concerns that the rushed development of the Registry will have a potential negative impact not only on clients and families, but also on PSWs.

Educational and Scope of Practice Standards

In its September 2006 Final Report to the Minister of Health and Long-Term Care, the Health Professions Regulatory Advisory Council (HPRAC) stated: ". . . A prerequisite to launching a certification registry would be to establish uniform minimum entry-to-practise standards for PSWs. This would need to address the treatment of equivalent credentials and competencies in order to avoid the exclusion of a significant part of the current workforce."¹

ACE submits that it would have been prudent for the MOHLTC to, rather than moving forward and developing a PSW Registry in less than a year, adopt the recommendation of the 2006 Final Report of HPRAC that minimum entry-to-practise standards be developed first. ACE is concerned that the success and effectiveness of the Registry will be impeded due to the fact that no educational and scope of practice standards have been developed.

To date, there has been no decision by the MOHLTC or any of its counter-parts concerning the establishment of educational and scope of practice standards across the province. It is our opinion that the development of the PSW Registry should not have proceeded without this key issue being first determined. Several members of the Steering Committee have made similar comments. When the Steering Committee inquired as to what the MOHLTC intended to do with respect to the creation of educational and scope of

¹ *The Regulation of Personal Support Workers*. September 2006. Health Professions Regulatory Advisory Council (HPRAC).

practice standards, the Chair and the Secretariat were not able to provide any definitive answers on the subject.

We heard from the Secretariat at early Steering Committee meetings that there is no provincially standardized PSW curriculum and that there are multiple education streams by which students can obtain a certificate. ACE submits that the lack of educational and practice standards made it frustrating and difficult for the Steering Committee to carry out its work. In our opinion, the PSW Registry should not have been developed in the absence of and before educational and scope of practice standards were developed and fully implemented.

Given the important and increasing role of PSWs in our health care system, particularly with respect to home care, ACE submits that the MOHLTC and the Government needs to take the lead in setting province-wide standards to ensure that clients and their families are receiving the quality care they deserve. We remain concerned that the failure to resolve the issue of educational and scope of practice standards will negatively impact the ongoing work of the Registry and public expectations with respect to the Registry's objectives.

ACE attended one meeting organized by the MOHLTC on or about April 24, 2012, to discuss educational standards, but we have not been advised of any further developments in this regard. ACE urges the MOHLTC to continue consultations with stakeholders concerning the development of educational and scope of practice standards for PSWs. These consultations should include members of the Registry Steering Committee who have expertise on training and education of PSWs in Ontario for the sake of continuity. Many of the participants on the Registry Steering Committee have particular expertise that would be relevant to the development of educational and scope of practice standards for PSWs across Ontario.

Further, while the Final Report makes some reference to the issue of grandparenting PSWs who are currently working, it is our understanding that the Steering Committee members reached no consensus or decisions regarding how grandparenting would be implemented. This remains a key and contentious issue that will affect the success of the Registry.

Complaints and Reviewing, Suspending, Terminating PSW Registration

The aspect of the current Registry that remains of greatest concern to ACE relates to the Registry's procedures and processes with respect to complaints and also, reviewing, suspending and terminating the registration of a PSW.

ACE submits that while we do support a process for removing a PSW's name from the Registry should he/she pose a known threat or risk to the public, our opinion is that such processes cannot be meaningfully achieved without first creating the necessary legislative framework to support them. In attempting to do so without developing legislation, the result is a Registry that offers minimal protection to those individuals who are most vulnerable (i.e. low-income seniors) and at risk for abuse and neglect.

The current format of the Registry will have employers taking on the responsibility of investigating any allegations of abuse and neglect and taking action through labour and employment law avenues and also be responsible for informing the Registry. ACE submits, however, that there is no legislative requirement for employers to notify Registry staff in these circumstances thus making this mechanism ineffective. The proposed process will be similar to that used by the B.C. Care Aide and Community Health Worker Registry.

Subsequently, there was some discussion at Steering Committee meetings as to how the Registry would conduct its own investigations and how this would be funded. It is our understanding that no decision and consensus was ever reached amongst Steering Committee members on this key issue. Another unresolved issue is what the Registry will do when it receives notifications from members of the public who have terminated the employment of a privately employed PSW for reasons of abuse and/or neglect. It is our position that the current proposed approach for addressing complaints and reviewing, suspending, and terminating PSW Registration does not offer adequate protection to vulnerable seniors from abuse and neglect by PSWs nor does it offer procedural fairness protections to PSWs.

The PSW Registry, in its current form, will offer minimal protection to vulnerable seniors living in Ontario as it has been made clear to Steering Committee members that the Registry will not accept public complaints. Further, while the MOHLTC has not expressed any intention of regulating PSWs, ACE submits that suggesting that the Registry must do the following creates the “illusion” of public protection which has been a concern we have expressed all along (see our letter dated April 13, 2012):

- To provide peace of mind to clients and their families that a PSW listed on the Registry does not present a known risk to public safety by establishing a process for reviewing, suspending or terminating PSW Registration

ACE submits that the Registry will not be able to fulfil the above mentioned objective without the development of a proper legislative framework setting out how to handle complaints and reviewing, suspending and terminating of registrations. While HPRAC recommended to the Minister in 2006 that PSWs should not be regulated, ACE urges the MOHLTC and the Government to reconsider. With the MOHLTC move to increase funding for home care, we will see an increase in the role of PSWs across the healthcare system and a greater need to ensure that those clients who are most vulnerable, such as seniors, are protected.

In developing the Registry, Secretariat staff considered the B.C. Care Aide and Community Health Worker Registry and Nova Scotia’s Continuing Care Assistant Registry. However, B.C.’s Minister of Health announced in June 2012 that the B.C. Care Aide and Community Health Worker Registry will be reviewed as a result of reports of “gaps in the safety net”.² ACE recommends that the MOHLTC consider the experience of

² The Globe and Mail, “B.C.’s elder caregiver registry to face review”, June 20, 2012. Online: <http://www.theglobeandmail.com/news/british-columbia/bcs-elder-caregiver-registry-to-face-review/article4358946/>.

B.C. and strengthen the public protection functions of the Ontario PSW Registry now, while it is in its early incarnation, rather than waiting for gaps to arise before doing so.

ACE submits that the retroactive implementation of a self-declaration regime as stated at page 25 of the Final Report, whereby registrants would declare that they do not pose a known risk to public safety, provides little if any peace of mind to vulnerable clients such as our stakeholders (i.e. low-income seniors). It is our opinion that the Registry will have no way of ensuring that the self-declarations by PSWs are indeed accurate. Further, without the support of legislation, there will be no way of taking action where it is discovered that a PSW has made a misrepresentation or a false declaration. ACE recommends that should this information come to the attention of Registry staff, the PSW in question should be de-listed.

The provincial, regional, municipal and community safeguards listed in the Final Report of the Secretariat to the MOHLTC include the following:

- Long-Term Care ACTION Line (now investigates complaints in the home care sector)
- Retirement Homes Regulatory Authority (RHRA)
- Senior Crime Stopper (A Division of Crime Stoppers), and
- Seniors Safety Line (facilitated by the Ontario Network for the Prevention of Elder Abuse).

In our opinion, none of the aforementioned services offer any meaningful avenues for seniors and their family caregivers wishing to make a complaint about the care they are receiving from a PSW or who want to report abuse and neglect. While the Long-Term Care ACTION Line may be able to accept complaints concerning home care and the CCAC, it has neither the jurisdiction nor legal authority to take any action. Similarly, the *Retirement Homes Act* has not been fully proclaimed and as a result, the RHRA's jurisdiction and authority is limited. As well, the RHRA cannot pursue any complaints with respect to home care. We continue to have concerns that complaints received by the Registry will simply be referred to those bodies noted in the Final Report which, in our opinion, will not assist vulnerable clients and their family caregivers in resolving such complaints.

As we stated in our letter dated April 13, 2012, the Registry continues to create an "illusion" of public protection. As a result, the Registry is not fulfilling its objective of support self-directed care. Further, we have concerns that in some instances, vulnerable clients and their families will rely on the Registry to their detriment, being unaware that whatever assurances the Registry can provide will only be limited.

We urge the MOHLTC to consider developing a legislative framework to govern many of the functions of the PSW Registry that deal with complaints and reviewing, suspending and terminating registration. Without such a legislative framework, it is our opinion that the Registry will offer little peace of mind to clients and family caregivers. For the above stated reasons, ACE cannot support the Registry in its current form and unless these key issues are resolved.

Conclusion

While it may have been the recommendation of HPRAC in 2006 that PSWs should not be regulated, it was similarly their recommendation that the MOHLTC not develop a PSW Registry. In ACE's opinion, it is timely given the many changes to our health care system to revisit the topic of regulating PSWs in Ontario.

ACE submits that the Registry, in its current form, attempts to achieve many of the objectives of professional regulation without having the benefit of a legislative framework and provincial educational and scope of practice standards. As such, the Registry is limited in how it can achieve the six key elements as set out in the Minister of Health and Long-Term Care's letter of April 2012. Of greater concern to ACE's stakeholders is the fact that the Registry offers only limited peace of mind to vulnerable clients and the public that a PSW who is listed on the Registry does "not pose a known risk to public safety". In our submissions to the MOHLTC concerning the Registry, we stated that public protection should be one of the main objectives of the Registry. ACE submits that the Registry, in its current form, does not go far enough to protect vulnerable clients from potential abuse and neglect.

To truly achieve all of the objectives that the Registry is meant to, we urge the MOHLTC and the government to reconsider the issue of regulation of PSWs and also, to consider our aforementioned comments and recommendations.

Thank you.

Yours very truly,



Clara Ho
Staff Lawyer

cc. Hon. D. Matthews, Minister of Health and Long-Term Care
S. McGurn, ADM, {Acting}, HealthForceOntario
J. Amodeo, Director, Health Sector Labour Market Policy Branch,
HealthForceOntario