

**Submission to the  
Minister Responsible for Seniors  
(Ontario Seniors' Secretariat)  
Concerning Phase 2a of the  
Proposed Initial Draft Regulations made  
under the  
*Retirement Homes Act, 2010***

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**ADVOCACY CENTRE FOR THE ELDERLY**

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## THE ADVOCACY CENTRE FOR THE ELDERLY

The Advocacy Centre for the Elderly (ACE) is a speciality legal clinic funded by Legal Aid Ontario located in Toronto. ACE provided extensive written submissions and recommendations to the Minister Responsible for Seniors ("Minister") and the Ontario Seniors' Secretariat (OSS) concerning Phase One and Phase Two of the Proposed Initial Draft Regulations made under the *Retirement Homes Act, 2010 (RHA)*. In our previous submissions, we included detailed information about ACE and our mandate. Therefore we will not be providing the same information within our submission concerning Phase 2a.

The regulation of retirement homes continues to be an important issue for seniors living in Ontario. ACE is pleased to offer the following brief comments and recommendations concerning Phase 2a of the Proposed Initial Draft Regulations made under the *RHA*.

Our submission is divided into two parts. The first part relates to those provisions of the *RHA* which we have identified as not having accompanying regulations. We then provide our comments and recommendations with respect to Phase 2a of the Proposed Initial Draft Regulations.

### 1. General Comments and Recommendations

#### a. Public Consultation on Regulations to the *Retirement Homes Act, 2010*

According to the Notice that was released by the Minister with Phase 2a of the Proposed Initial Draft Regulations:

The Act [*RHA*] sets out public consultation requirements related to the proposed initial draft regulations. It requires that the Minister post draft provisions for at least 30 days and consider the comments and submissions from the public before the regulations can be made, except under specified circumstances.

ACE submits that the above mentioned public consultation requirements are pursuant to section 122 of the *RHA*.

While the Minister, on behalf of the Government of Ontario, to date has released Phases 1, 2 and, presently 2a of the Proposed Initial Draft Regulations for public comment, based on ACE's review there remain outstanding regulations required for the implementation of certain provisions of the *RHA*. ACE submits that the Minister must consult with the public on any regulations that have not yet been drafted and released for public comment. The public must be given an opportunity to provide their comments to any proposed regulations to the *RHA* as this will increase public confidence in the new regulatory scheme.

Based on our analysis of Phases 1, 2 and 2a of the Proposed Initial Draft Regulations and of the *RHA*, ACE submits that the following sections of the *RHA* do not yet have accompanying draft regulations. We provide our comments concerning these sections of the *RHA* and the importance of regulations implementing these sections at this time.

**Recommendation a:** ACE recommends that any future draft regulations made under the *RHA* be released for full public comment and consultation prior to being approved and finalized.

**b. Section 2(2) – Interpretation, related person**

Section 2(2) of the *RHA* states:

A person is related to another person for the purposes of clause (b) of the definition of “retirement home” in subsection (1) if one person is related to the other person by blood, adoption, marriage, conjugal relationship outside marriage, **other culturally traditional form of kinship as described in the regulations**, if any, or through another prescribed form [**emphasis added**].

ACE submits that there has been no definition or description provided as to what constitutes an “other culturally traditional form of kinship”. Given the broad range of relationships that could fall under this category, this could potentially have an unanticipated impact on different cultural and racialized groups. ACE submits that any regulations that describe or define “culturally traditional form of kinship” should be released widely for further public consultation and comment.

**c. Section 44(2) – Care services authorized for class of licence**  
**Section 121(3) – Classes**  
**Section 121(4) – Classes of retirement homes**

ACE’s submissions to Phase 1 of the Proposed Initial Draft Regulations included recommendations that the Retirement Homes Regulatory Authority (“Authority”) issue different classes of licences to licensees, depending on the nature and extent of the care services those licensees propose to offer to their residents. ACE has concerns that some retirement homes will be offering complex health care support and services to residents. Where this is the case, it is imperative that these homes be required to meet a higher standard of care set by the Authority.

In our Submission to the Minister and the OSS with respect to Phase One of the Proposed Initial Draft Regulations, we stated that retirement homes are tenancies and will continue to be governed by the *Residential Tenancies Act* subsequent to the proclamation of the *RHA* and its regulations. Further, ACE’s position remains that while some retirement homes will offer care services to their residents, they are not long-term care homes. In our opinion, retirement homes should not be providing the same level of care and/or services as long-term care homes.

We are concerned that if all homes are included in the same class, issued the same licence and required to pay the same fee, those homes offering less care to marginalized communities and/or those that have fewer residents may be unable to afford the licensing scheme, resulting in a loss of stock. We submit that these retirement homes should fall under a different class of licence as a result. ACE refers the Minister to our Submissions to Phase 1 of the Proposed Initial Draft Regulations made under the *RHA* on this topic.

Based on our review of all of the proposed initial draft regulations released to date, there are no regulations providing for the issuing of different classes of licences as dependent on characteristics listed under the *RHA*. The *RHA* states at subsection 121(3) that the Lieutenant Government may make regulations that create different classes of retirement homes based on the characteristics listed in subsection 121(4). ACE submits that should regulations be released in the future providing for the issuing of different classes of licences, such regulations should be posted for public comment and consultation.

**d. Section 70 – Permitted Confinement**

ACE submits that section 70 of the *RHA*, relating to Permitted Confinement should not be proclaimed until regulations relating to all aspects of this section have been released for full public consultation. To date no regulations relating to section 70 of the *RHA* have been released.

Given the nature and seriousness of the application of section 70 of the *RHA*, ACE submits that this provision in the legislation should not be proclaimed without the necessary regulations required to implement it and to ensure that the rights of residents are fully protected. ACE has concerns that section 70 allows retirement home operators to confine residents within a home to a secure unit, thereby restricting the residents' mobility and impacting their rights under the *Canadian Charter of Rights and Freedoms*. Section 70 of the *RHA* has the potential to impact residents of retirement homes and their families in profound ways.

Without the necessary safeguards in place to guarantee procedural fairness and ensure that the rights of residents are protected, ACE submits that the proclamation of section 70 will not only have *Charter* implications but it will also be contrary to the fundamental principle as stated in section 1 of the *RHA* which reads as follows:

**Fundamental Principle**

1. The fundamental principle to be applied in the interpretation of this Act and any regulation, order or other document made under this Act is 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. [emphasis added]**

**Recommendation d:** ACE recommends that section 70 of the *RHA* not be proclaimed without first releasing draft regulations implementing this section for full public consultation.

## **2. Comments on Content of Phase 2a of Proposed Initial Draft Regulations**

### **a. Amending Regulation #3: Section 58.1 – Frequency of inspections**

58.1 For the purposes of subsection 77(3) of the Act, the Registrar shall ensure that every retirement home in respect of which a licence has been issued is inspected under the Act at least once every three years.

ACE submits that to ensure public confidence in the Authority and in the *RHA* and its regulations, it is important that the every retirement home in Ontario be inspected either before it is issued a licence or shortly thereafter. If the intent of section 58.1 of the Phase 2a of the Proposed Initial Draft Regulations is to promote safety, ACE submits that it is necessary that the Authority require all potential licensees to undergo an inspection at the initial application stage.

Further, section 58.1 as it is currently drafted provides for a minimum frequency of compliance inspections of at least once every three years. Given the vulnerability of many retirement home residents and the potential complex health care services some of these retirement homes offer their residents, ACE submits that compliance inspections of retirement homes should occur **at least once every year**.

Section 77(3) of the *RHA* provides as follows:

The Registrar shall ensure that every retirement home in respect of which a licence has been issued is inspected under this Act with the frequency that is prescribed or, if no frequency is prescribed, at least once a year.

The *RHA* provides for a frequency of inspections of at least once a year where no frequency is prescribed in the regulations. ACE submits that reducing compliance inspections to only once every three years sends the wrong message to the public with respect to the role of the Authority. Resident safety is improved where retirement homes are held to a high standard and annual full compliance inspections support this objective.

Further, ACE submits that a complete compliance inspection should occur annually regardless of whether there has been an inspection on a specific issue following a complaint or report concerning a retirement home. In particular, where a complaint or report has been made concerning an allegation of abuse or neglect, ACE submits that it is imperative that the Authority undertake a full annual compliance inspection of the retirement home in question.

SUBMISSION TO THE MINISTER RESPONSIBLE FOR SENIORS (ONTARIO SENIORS' SECRETARIAT)  
CONCERNING PHASE 2A OF THE PROPOSED INITIAL DRAFT REGULATIONS MADE UNDER  
THE *RETIREMENT HOMES ACT*, 2010

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In terms of how compliance inspections are to be conducted, the draft regulations released thus far do not provide any details with respect to this process. ACE submits that the Authority's compliance inspections should follow a similar approach to that of the Ministry of Health and Long-Term Care's Resident Quality Inspections (RQI) of long-term care homes under the *Long-Term Care Homes Act*, 2007.

**Recommendation 1:** Amend Section 58.1 to read as follows:

58.1 For the purposes of subsection 77(3) of the Act, the Registrar shall ensure that every retirement home in respect of which a licence has been issued is inspected under the Act **at least once every year.**

**Recommendation 2:** Full compliance inspections should take place annually regardless of whether there has been an inspection of a retirement home as a result of a report or complaint made about that home.

**Recommendation 3:** ACE recommends the Resident Quality Inspection (RQI) approach developed and implemented by the Ministry of Health and Long-Term Care be used as a guideline by the Authority in developing the process and protocol for annual compliance inspections of retirement homes.