

# **Five-Year Review of The *Retirement Homes Act, 2010***

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**Consultation Report**

**December 2015**

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# Five-Year Review of the *Retirement Homes Act, 2010*

## Summary of Consultations

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### Introduction

On August 14, 2015, the Ontario government launched a review of the [\*Retirement Homes Act, 2010\*](#) (RHA).

Section 120 of the legislation requires the Minister to undertake a review of the Act within five years, and present a report of the findings to the Speaker of the Legislative Assembly. The [Ontario Seniors' Secretariat](#) is undertaking the required review.

The purpose of the review is to identify opportunities to fine-tune and improve the Act's effectiveness, while maintaining the fundamental principles and policy framework underlying the legislation.

The review focuses on:

- Identifying potential means of clarifying the language and intent of the Act and regulations
- Addressing technical matters
- Enhancing administration and effectiveness of the Act

To support the objectives of the review, the government sought feedback from stakeholders and the general public on three questions:

1. Given the experience and data available to date, what amendments to the Act and its regulations, if any, should be considered by the government at this time to fine-tune the Act (e.g. clarify language or intent, or address technical matters), while maintaining the fundamental principles and policy framework underlying the legislation?
2. Given the experience and data available to date, what amendments to the Act and its regulations, if any, should be considered by the government at this time to improve the effectiveness of the Act (e.g. enhance compliance and administration of the Act)?

3. What process do you think should be in place to ensure the legislation stays relevant, given an evolving sector and new trends that may arise (e.g. timing of future reviews)?

A public consultation paper was posted on the [Ontario Regulatory Registry](#) and the [Ontario Seniors' Secretariat website](#) on August 14, 2015 for a 45-day period (until September 30, 2015), and notice of the review was sent to stakeholders. The Ontario Seniors' Secretariat also engaged a number of experts and key stakeholders groups in focused discussions, and a Minister's roundtable session was held on September 28, 2015.

More than 20 participants attended the roundtable session, representing a broad spectrum of stakeholders that included retirement home residents, owners and operators as well as representatives from seniors' organizations, key retirement home sector organizations, Community Care Access Centres, Local Health Integration Networks, municipalities, and fire/emergency planning.

A total of 49 written submissions were received from a wide range of individuals and organizations.

This report summarizes the feedback received during the consultation period.

### **Note on Scope of the Review**

The RHA received Royal Assent on June 8, 2010 and was phased into force with corresponding regulations (O. Reg. 166/11) over a period of time up to January 1, 2014, allowing retirement home operators time to adapt to a new licensing regime and standards for care in a sector that was previously unregulated (see [Appendix 1](#) for details of implementation phasing). Requiring all retirement homes to immediately comply with all regulations could have disrupted the sector and the seniors who depend on retirement homes for care and accommodation.

Because of this phasing, most aspects of the Act have only been in force for a relatively short period of time. Some sections of the Act remain unproclaimed.

As a result, in some respects, the experience and data with which to assess the effectiveness of the RHA is limited.

The government is committed to continuous improvement of the Act, and to meeting the legislative requirement to undertake a review of the Act within five years (by May 2016, as Section 120 was brought into force in May 2011). However, the government also

recognizes the reality that there is limited experience and data yet available to support a broad review of the Act.

In light of these considerations, this review is focused on identifying opportunities to fine-tune and improve the Act's effectiveness. Although the Act does not require additional or recurring reviews, as more data on the outcomes of the Act become available, there will be future opportunities for consideration of broader changes to the Act.

## **Background**

### **Purpose of the Act**

The Government of Ontario introduced the *Retirement Homes Act* in 2010, marking the first time in Ontario's history that seniors living in retirement homes have strong protections under provincial law.

The **fundamental principle of the 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;
- live in security, safety and comfort; and
- can make informed choices about their care options.

The [RHA and its associated regulations](#) are available on the Ontario government's e-Laws website.

### **Context**

Currently, over 55,000 Ontario seniors reside in more than 700 licensed retirement homes across the province. This number is expected to grow as Ontario's population ages.

The retirement homes sector is diverse. Homes cater to seniors with varying care needs, ranging from independent seniors needing little more than some community support and homemaking services, to more dependent seniors who may require more extensive personal support and care (e.g. assistance with activities of daily living and medication management). Some homes cater to specific cultural and linguistic communities.

Retirement homes also vary in size, from small homes in rural communities with a handful of residents, to large facilities, mostly in urban areas, that offer a large range of services and amenities. Homes also vary in terms of age and physical construction.

Most retirement homes are for-profit; a small number are not-for-profit.

Retirement homes differ from the long-term care homes licensed or approved under the [Long-Term Care Homes Act, 2007](#) and funded by the Ministry of Health and Long-Term Care. Seniors access long-term care homes through Community Care Access Centres (CCACs). CCACs determine whether individuals who wish to seek admission to a long-term care home or homes are eligible for admission, and manage the application process. In contrast, seniors who wish to reside in a retirement home enter into a tenancy relationship with the home of their choice, and decide which care services to contract for. Retirement homes in Ontario, which were unregulated prior to the introduction of the RHA, are now subject to specific provincial care and safety standards and licensing requirements under the Act.

Under the RHA and its regulations, a retirement home is defined as a residential complex (or part of a residential complex) containing rental units:

- that is occupied primarily by persons 65 years of age or older;
- that is occupied, or intended to be occupied, by at least six people who are not related to the operator of the home; and
- where the operator makes at least two of the 13 care services set out in the Act and regulations available, directly or indirectly, to residents.

A retirement home does not include premises or parts of premises that are governed by or funded under certain other laws, such as the [Private Hospitals Act, 1990](#); [Homes for Special Care Act, 1990](#); or [Long-Term Care Homes Act, 2007](#).

## **Overview/Framework of the Act**

The framework of the Act is informed by feedback received from stakeholders during the development phase. Key elements of the framework include:

- Strong protections for seniors, particularly in areas of high risk
- Informed choice about consumer care and accommodation (consumer protection)
- Education and training for staff on requirements and standards
- Regulatory enforcement through an arm's-length administrative authority

- Flexibility to accommodate for the wide range of care provided to seniors in retirement homes and other aspects of sector diversity (for example, variety among homes in size, location, cultural and linguistic resident population, and physical structure)
- Alignment with, rather than duplication of, other relevant Acts and regulations (for example, the RHA aligns with but does not duplicate provisions under the [Building Code](#), [Ontario Fire Code](#), and the [Residential Tenancies Act, 2006](#))
- Balance between appropriate care and safety standards with the need for innovation, efficiency, and ability of the sector to respond to an aging demographic
- Cognizant of administrative and financial burden, recognizing the importance of maintaining access to retirement homes across the province

The RHA:

- **Establishes mandatory care and safety standards**, including requirements for protecting residents from abuse and neglect, police background checks and training for staff, assessment of care needs and care planning, emergency plans, and infection control and prevention programs.
- **Creates a Residents' Bill of Rights**, including the rights to participate fully in making any decision concerning any aspect of his or her care, to know the cost of care services provided and be informed in advance of any increases in charges for those services, to receive information about and apply for services from external care providers (including publicly funded providers), and to live in a safe and clean environment and be treated with courtesy and respect.
- **Creates the [Retirement Homes Regulatory Authority \(RHRA\)](#)**, an arm's-length regulatory authority that licenses operators, inspects retirement homes to ensure they meet prescribed standards, investigates consumer complaints, enforces the Act (including issuing financial penalties or revoking licenses if necessary), and educates licensees, consumers and the public. The RHRA was constituted in January 2011 and began enforcing select provisions of the Act in May 2011. It began licensing retirement homes in July 2012.

The RHRA, as part of its mandate to educate licensees, consumers and the public on matters related to the Act and regulations, has developed and published resources to help residents, families and operators understand the legislation. These include:

- A [plain-language guide providing an overview of the RHA](#).

- [Resources for residents and their families](#), including a [resident information brochure](#).
- [Educational materials for operators](#).

The RHRA administers the RHA and regulations on behalf of the Minister Responsible for Seniors Affairs (Minister). The RHRA's accountability to the government is provided for in the RHA and detailed in the [Memorandum of Understanding](#) between the Minister and the RHRA.

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### ***Current Status: Highlights***

- Across Ontario, 717 retirement homes (as of September 30, 2015) are now licensed and required to meet care and safety standards set out in the RHA.
- The RHRA has completed at least one routine inspection in all licensed retirement homes.
- The RHRA has established a [public register](#), as required by the Act, containing mandatory information relating to licence applicants and licensees to help seniors and their families make informed decisions about retirement home residences. The public register includes information about whether there is an automatic sprinkler in the room of each resident or elsewhere in the home, and inspection reports, orders and convictions.
- Persons who suspect harm or risk of harm to residents from abuse or neglect must report it to the RHRA at 1-855-ASK-RHRA (1-855-275-7472). A report triggers an inspection of the home by the RHRA.
- All retirement homes must have a complaints process in place. In addition, if a person believes a retirement home is not following the RHA, he or she can file a complaint with the RHRA. In some cases, if the person is not satisfied with the outcome, he or she can ask the RHRA's Complaints Review Officer to review the decision.

In 2014-15, the RHRA:

- Received 26 new complaints, and completed inspections on 11 complaints.
- Conducted 460 mandatory report inspections, in response to reports of harm or risk of harm to residents (913 conducted since July 1, 2012).
- Issued 26 enforcement orders.
- Received more than 4,150 inquiries.
- Concluded one prosecution for operating without a licence, resulting in conviction, imprisonment, a fine and probation order.

[RHRA's Annual Reports and Business Plans](#) are available on the RHRA's website.

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## Measuring Progress

Although most aspects of the Act have only been in force for a relatively short period of time, progress has been made in gathering critical baseline data, and further efforts are underway. For example:

- The first round of routine inspections, which will inform the development of baseline performance measures for longer-term assessment of the effectiveness of the Act in improving resident safety and consumer choice, was completed by the RHRA in March 2015.
- The [first report of the Risk Officer](#), which outlines the officer's review and assessment of the RHRA's effectiveness in administering the Act and its regulations, was released in November 2015.
- The RHRA is just concluding its first effectiveness survey of stakeholders, as required by the Memorandum of Understanding with the Minister. This will provide important data on awareness and understanding of the RHRA by residents, operators and others that the RHRA interacts with in administering the Act.

## What We Heard

The Ontario Seniors' Secretariat appreciates and values the input received from individuals and organizations during the consultation period.

Submissions and comments covered a broad range of topics. Most of the submissions were supportive of the fundamental principles and general framework of the Act. Many noted the importance of the Act in establishing a strong legislative framework that sets standards for the care, safety and security of seniors who live in retirement homes.

A number of submission included general comments on the importance of the government being mindful of the diversity of the sector, and the potential impact of administrative and financial burdens on retirement homes and residents.

Participants also provided a range of specific comments and suggestions for enhancing the Act and its regulations, including enhancing implementation. The following summarizes the areas of recommendations, organized under each of the three review questions. Note that this summary is not meant to be an exhaustive list of all issues raised in the submissions, but to highlight some of the key themes.

In light of the Act having been phased into force over a period of time up to January 1, 2014, and the resulting limitations in the experience and data yet available to support a broad review of the Act, the scope of the current review is focused on identifying potential means of fine-tuning and improving the Act's effectiveness while maintaining the fundamental principles and framework underlying the legislation. This summary focuses on comments and recommendations received that fall within the scope of the review. However, recommendations that extend beyond the scope have been noted by the Ontario Seniors' Secretariat and will be shared with other ministries or agencies responsible, or considered as part of future initiatives or reviews, as appropriate. The government remains committed to continuous improvement to the Act, and there will be future opportunities for consideration of broader changes to the Act as more data on the outcomes of the Act become available.

## **1. Clarifying language or intent, and addressing technical matters**

A number of recommendations pointed to the need for clarification of how RHA aligns with other legislation. One example is the alignment of requirements related to tenants under the [Residential Tenancies Act, 2006](#) and retirement home residents under the RHA, given that seniors living in retirement homes are subject to the rights and responsibilities of both pieces of legislation. Another example is the alignment of regulations related to fire safety under the [Fire Code](#) and emergency planning under the RHA (such as requirements for planned evacuations).

Organizations also pointed to the need for increased clarity or direction for provisions related to resident assessments and plans of care, including the content of plans of care as well as issues related to consent.

Certain RHA provisions were highlighted where respondents felt there was need to clarify the intent of the legislation. One example is clarifying that a resident's substitute decision-maker may be a member of the Residents' Council. Another example is amending provisions that exempt homes receiving supportive housing funding from a Local Health Integration Network or the Ministry of Health and Long-Term Care from RHA requirements, to make it clear that only the residents or parts of a home that are subject to the funding would be exempt.

Some organizations made recommendations for reducing administrative burden while maintaining the purpose and intent of the Act. One example is a recommendation to amend the requirement for a retirement home's documentation of the action it takes to provide information to a resident about alternatives to living in a retirement home, such that homes would document the information and make it available to the RHRA upon request, rather than requiring homes to send the information to the RHRA on a regular basis.

## **2. Enhancing compliance and administration**

Many organizations agree that the RHRA needs broader powers to deal with unlicensed homes (including homes operating without a licence and formerly licenced homes), such as powers to issue an order to cease operations as a retirement home, and inspection powers to monitor for compliance with such an order and to ensure resident safety during the process.

Respondents also raised the issue of circumstances under which a retirement home may confine a resident to a secure unit of the home, with the general consensus that RHA provisions in this area should be proclaimed and implemented.

The issue of education and training was raised in a number of submissions. There was support for current training requirements under the RHA (such as requirements for all retirement home staff to be trained on the Residents' Bill of Rights, the home's policy to promote zero tolerance of abuse and neglect of residents, whistleblowing protections, fire prevention and safety, and a number of other topics), there were different views on training requirements for different types of retirement home workers, as well as the timing of training requirements. Recommendations included allowing tiered or phased training, as well as establishing or amending training requirements for specific care standards (such as enhanced training requirements for dementia care staff). Some also suggested an increased role for the RHRA in providing education and resources to assist homes in meeting RHA requirements.

Many referred to the need for increased communication and collaboration between RHRA and other authorities and entities (such as local public health agencies, fire departments, health regulatory colleges and other provincial regulatory authorities) during the licensing, inspection and enforcement processes, to improve efficiency as well as to enhance the care and safety of residents.

### **3. Process for ensuring the continued relevancy of the RHA**

Respondents pointed to the importance of ensuring that the RHA, and processes for reviewing the RHA, are able to respond to demographic trends, emerging issues, and new standards or changes in other relevant legislation.

Some suggested specific timeframes for a future review or regular future reviews of the RHA, such as a subsequent review in another five years, or a review every three to five years.

### **Comments outside the scope of the review**

Submissions also highlighted some issues and proposed changes that are beyond the scope of this review, such as amending the definition of “retirement homes” under the RHA, creating different classes of licenses based on the level of care services provided by homes, changing the process for setting licensing fees, or areas that fall under the jurisdiction of other ministries or agencies.

The Ontario Seniors’ Secretariat recognizes that these issues, although they fall outside the scope of this particular review, are of importance for stakeholders and the public. These comments have been noted and will be shared with other ministries or agencies responsible, or considered as part of future initiatives or reviews, as appropriate.

### **Findings of RHRA 2014-15 Risk Officer report**

The [first annual report of the RHRA Risk Officer](#) was released in November 2015, shortly after the consultation period for the five-year review of the RHA closed. The report outlines the Risk Officer’s assessment of the effectiveness of RHRA’s administration of the Act and regulations in 2014-15. Although the report is not a submission in response to the review, a number of findings in the report are relevant for consideration as part of the review.

In the report, the Risk Officer notes that RHRA has demonstrated a strong commitment to ensuring that residents of licensed retirement homes are safe and that their rights

and interests are protected. The Risk Officer also notes that the focus and application of RHRA's initial licensing and inspections processes were appropriate.

The report also provides some suggestions for improvement, including extending RHRA's authority to enhance its ability to deal with unlicensed homes, and increasing collaboration and communication between RHRA and other entities that regulate services provided in retirement homes (such as local fire departments, the Technical Safety Standards Authority, public health agencies, and regulated health professions) to address potential gaps in oversight and accountability. The Risk Officer's recommendations reinforce the comments in a number of review submissions that these particular aspects of the RHA and its implementation could be strengthened.

## **Next Steps**

This review is aimed at building on the strong protections in the Act to help ensure retirement homes residents can live safely, and with dignity and respect, and can make informed choices about their care options. All submissions and comments received will be considered as part of the review process, and will be used to inform recommendations for potential revisions to the Act and its regulations that would further strengthen the RHA and improve its effectiveness.

As a first step, the Minister Responsible for Seniors Affairs will be tabling this Report in the Legislature, as required by the RHA. The Ontario Seniors' Secretariat will be assessing the Report's findings and developing proposals for further consideration, including discussion with stakeholders.

The government is committed to continuing to consult with seniors, experts, stakeholders and the general public throughout the review process, including the implementation of findings and recommendations. Should any amendments to the Act and its regulations be proposed, further consultations will be conducted on the specific amendments.

This targeted review is a first step in supporting continuous improvement of the Act. As more data on the outcomes of the Act become available, there will be future opportunities for consideration of broader changes to the Act.

## Appendix 1: Phasing of RHA Implementation

PHASE	DATE
<b>Royal Assent</b> – Parts I and II proclaimed to allow creation of RHRA	June 8, 2010
<b>Immediate Protection Measures</b> – Key abuse provisions in force	May 16, 2011
<b>Phase 1</b> – RHRA begins accepting licence applications and fees	April 15, 2012
<b>Phase 2</b> – RHRA begins issuing licences, key resident protections such as Bill of Rights, zero tolerance of abuse and neglect policy, and staff training requirements (e.g., fire prevention and safety, zero tolerance policy) in effect	July 1, 2012
<b>Phase 3</b> – Requirements including care services standards, safety plans, assessment and care plans for new residents and staff training on other matters in force	January 1, 2013
<b>Phase 4</b> – Requirements related to obligations for trust of residents' money, assessment of care for existing residents with Personal Assistive Service Devices, other staff training in force	July 1, 2013
<b>Phase 5</b> – Further requirements, including mandatory insurance, emergency fund and complaints process for the RHRA, in force	January 1, 2014

**Note:** Some RHA sections, related to confinement, have not been proclaimed.