

**Submission to the Ministry of Community Safety
and Correctional Services:**

**A Consultation on Fire Safety for Vulnerable
Residents of Ontario**

March 28, 2011

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INTRODUCTION TO ACE

The Advocacy Centre for the Elderly (ACE) is a speciality community legal clinic funded by Legal Aid Ontario to provide services to low income seniors located in Toronto, Ontario. ACE is the first and oldest legal clinic in Canada with expertise in legal issues pertaining to older adults. The mandate of ACE is to provide a broad range of legal services to low income seniors living in Ontario. Since ACE first opened in 1984, we have provided legal services such as individual and group client advice and representation; public legal education; community development; and law reform activities on issues that impact older adults.

On average, ACE receives over 2,500 client intake inquiries annually. Most of the telephone inquiries come from the Greater Toronto Area with approximately twenty percent originating from outside of this region from other areas of the province. From time to time, ACE receives inquiries from outside of Ontario.

The individual client services we provide are in areas of law that affect older adults and include but are not limited to: capacity; substitute decision-making and health care consent; supportive housing and retirement home tenancies; long-term care homes; patients' rights in hospitals; consumer protection law; elder abuse; home care; and income support.

ACE staff is frequently asked to participate in government consultations as stakeholder representatives for the seniors' community. This has involved submitting written briefs to policy makers and making oral submissions before legislative committees when new legislation or amendments to existing legislation impacting our clients is being contemplated by various levels of government. Most recently, ACE provided submissions to the Standing Committee on Social Policy with respect to Bill 21, *The Retirement Homes Act, 2010*.

In addition to our work in the above noted areas, ACE has also been involved in a number of high profile coroner's inquests relating to issues of importance to seniors. On March 21 1995, a fire broke out at Meadowcroft Retirement Home located in Mississauga, Ontario resulting in the deaths of eight residents. ACE represented one of the interveners, the Alzheimer's Society, at the inquest into the deaths. Following the inquest, the jury made recommendations that were intended to improve fire prevention and safety in retirement homes.

ACE supports the McGuinty Government's effort to improve fire safety in residences for seniors, people with disabilities and other vulnerable Ontarians. However, we have some concerns regarding the process by which the Ministry of Community Safety and Correctional Services (the Ministry) is consulting with its stakeholders and partners. Specifically, ACE submits that the process itself is not

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fully accessible for a number of reasons including but not limited to: the nature and complexity of the issue of fire safety; the multiple and complex laws that set the standards for safety in Ontario; and the lack of outreach undertaken on the part of Ministry to advise interested stakeholders of the consultation. As a result, ACE submits that those Ontarians who are most vulnerable may encounter barriers to participating in the consultation in a meaningful manner.

ACE submits that when it comes to fire prevention and safety, lives are literally at stake. Given our extensive experience working in the aforementioned areas of law affecting older adults and our previous involvement with respect to issue of fire prevention and safety for vulnerable residents, specifically seniors, ACE is hopeful that the information that we provide to the Ministry as part of the *Consultation on Fire Safety for Vulnerable Residents in Ontario* will be of assistance. We encourage the Ministry and the Government to consider and implement the recommendations included in our response to the Consultation document.

We look forward to any future opportunities to continue the dialogue with the government regarding this very important issue.

BACKGROUND

To assist us in preparing our submission to the Ministry, ACE reviewed the existing statutes that regulate and determine fire prevention and safety standards in the province of Ontario in addition to considering the Appendix to the Consultation document provided by the Ministry. The following information is ACE's interpretation of the laws currently in effect in the province dealing with fire prevention and safety.

The legislation that sets out the minimum standards for safety and prevention is complex and by reason of that complexity, is largely inaccessible to the lay person.

The *Building Code Act, 1992* and the *Building Code, Ontario Regulation 350/06* set minimum standards for the new construction of buildings, and renovations to, or change-of-use in, existing buildings.

The *Fire Protection and Prevention Act, 1997* and the *Fire Code, Ontario Regulation 213/07* sets out uniform, minimum, mandatory safety requirements for all existing buildings and premises; including emergency planning and fire safety plans. The Ontario *Fire Code* also defines Retrofit as "the minimum performance requirements for life safety for existing buildings". The Fire Marshal and the Deputy Fire Marshal, both appointed by the Lieutenant Governor in Council are responsible ensuring the *Fire Protection and Prevention Act*, is enforced.

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A building constructed in accordance to the *Building Code* must be maintained in accordance with the *Fire Code*. This, of course, is a broad generalization.

To further complicate matters, all the above mentioned legislation sets out definitions for different types of occupancies.

Under the *Fire Code*, the following definitions are relevant to occupancies housing vulnerable Ontarians:

Care and treatment occupancy means an occupancy in which persons receive special care and treatment.

Care occupancy means an **occupancy** in which persons receive special or supervisory care because of cognitive or physical limitations, but does not include a **dwelling unit**.

Care or detention means the **occupancy** or use of a **building** or part thereof by persons who

- (a) are dependent on others to release security devices to permit egress,
- (b) receive special care and treatment, or
- (c) receive supervisory care.

Dwelling unit means a **suite** operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities.

Suite means a single room or series of rooms of complementary use, operated under a single tenancy, and includes **dwelling units**, individual guest rooms in motels, hotels, boarding houses, rooming houses and dormitories, as well as individual stores and individual or complementary rooms for **business and personal services occupancies**.

Supervisory staff means those occupants of a **building** who have some delegated responsibility for the fire safety of other occupants under the fire safety plan and may include the **fire department** where the **fire department** agrees to accept these responsibilities.

PREVENTION / PUBLIC EDUCATION

Question 1:

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What types of fire prevention initiatives or measures should be implemented to improve fire safety in occupancies housing vulnerable Ontarians?

Please indicate which initiative(s) or measure(s) you identified should be considered the highest priority for improving fire safety in these occupancies.

ACE submits that one key fire prevention initiative that must be implemented immediately is the installation of automatic sprinklers in all occupancies housing vulnerable Ontarians, including the retrofitting of buildings that were constructed prior to 1997. ACE submits that an initiative that calls for the retrofitting of automatic sprinklers in all occupancies housing vulnerable Ontarians should be mandatory and made a priority.

The issue of installing automatic sprinklers is not a new one. Installation of automatic sprinklers in retirement homes and long-term care homes was one of the recommendations made by the jury following the Coroner's inquest into the deaths of eight residents at the Meadowcroft Retirement Home on March 21, 1995. Juries that have been part of inquests into fire related deaths of residents at retirement and long-term care facilities other than Meadowcroft have made similar recommendations calling for the installation of automatic sprinklers. According to the Ontario Association of Fire Chiefs (O AFC):

Three coroner inquests into fire deaths in Ontario care occupancies recommended that automatic fire sprinklers be installed. These inquests recommended to successive governments to change the Ontario Building Code to make the installation of automatic fire sprinklers in residents' rooms mandatory and retroactive in older facilities. Since 1997 automatic sprinklers have been required in all newly built care occupancies.¹

In May of 2008, a fire broke out at Cavendish Manor in Niagara Falls and eleven seniors were sent to hospital. Fortunately, no died as a result of that blaze, one reason being that the fire broke out at approximately 11:00 a.m. when the facility was fully staffed. The incident prompted the Niagara Falls Fire Services to take action and use its authority under the *Fire Protection and Prevention Act*.

According to Niagara Falls assistant fire chief Jim Jessop: "If we'd had that fire [Cavendish Manor] in the middle of the night, when they usually happen, with only skeleton staff on, not in the morning when it was fully staffed..." he

¹ Ontario Association of Fire Chiefs, *Advisory Note: A Guide to Evaluate a Fire Safety Plan for a Care Occupancy*, (December 13, 2010) online: <<http://www.oafc.on.ca/lib/db2file.asp?fileid=3248>> at 2

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[assistant Chief Jessop] said with a shudder, adding that the time of the fire is “the only reason we didn’t have fatalities.”²

Most recently, on January 19, 2009, four seniors died following a fire at the Muskoka Heights retirement home. The fire left six other residents critically injured due to smoke inhalation and other related issues. Muskoka Heights, a two-storey building, did not have a sprinkler system. On December 1, 2010, the Chief Coroner for Ontario, Dr. Andrew McCallum announced that there would be an inquest into the fire at Muskoka Heights. A date for the inquest has not been set.

The O AFC, as well as several fire services across the province, have been strong proponents of the installation of automatic sprinklers in all newly built retirement and long-term care facilities but also, support the retrofitting older retirement and long-term care homes built before 1997 with automatic sprinklers. According to the O AFC:

Over the years, increased use of combustible furnishings in homes has reduced the period of time between the start of a free-burning fire and the flashover to between 2.2 and 4.3 minutes. This means that flashover can easily occur in a home fire prior to the arrival of Fire Services. Residential sprinklers suppress the fire before flashover occurs.

Fatal residential fires most often occur between the hours of midnight and 6:00 am, when victims are asleep. Victims are disproportionately children and the elderly because they are physically less capable of escaping. When a fire occurs, occupants of a house may not be able to respond to smoke alarms and escape in the few minutes before flashover occurs.³

Mr. Sean Tracey, Canadian Regional Manager for the National Fire Protection Association (NFPA) was cited as part of the dissenting opinion of the Fire Safety Commission in the matter of *City of Niagara Falls v. Maryban Holdings Ltd.* Specifically, the Commission stated in their decision:

Mr. Sean Tracey, Canadian Regional Manager for the National Fire Protection Association reminded us that fires today are hotter, burn faster and more toxic than in the 1950’s when many of the current Code provisions were introduced. NFPA writes codes and standards adopted worldwide. One key for seniors occupancies is recognizing the abilities of

² Blatchford, Christie, “Lack of sprinklers puts vulnerable seniors at risk”, *Globe and Mail*, January 23, 2009.

³ Ontario Association of Fire Chiefs, *Position Paper: Residential Fire Sprinklers*, (December 11, 2007) online: <<http://www.oafc.on.ca/lib/db2file.asp?fileid=1307>> at 1-2

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the occupants to self evacuate, if they cannot provide evidence of such capability they are considered by the NFPA standard to be Nursing Homes and therefore retroactive fire sprinklering is required.⁴

In addition to automatic sprinklers, other fire initiatives and prevention measures that in ACE's opinion that should be implemented are set out in our responses to subsequent questions below.

Recommendation 1: Amend the legislation to require the installation of automatic sprinklers in all care occupancies housing vulnerable Ontarians immediately.

Question 2:

The *Fire Protection and Prevention Act, 1997*, requires municipalities to establish public education and fire prevention programs within their communities.

Municipalities are currently meeting this obligation.

Strongly Disagree	<input checked="" type="checkbox"/> Disagree	Neither agree or disagree	Agree	Strongly Agree
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Please explain how municipalities are or are not currently meeting this obligation.

Please provide suggestions on how municipalities can more effectively meet this obligation (if applicable).

There is no consistency amongst municipalities with respect to how they meet the requirement set out in the legislation to establish programs for fire prevention and education. Such programs for fire prevention and education vary greatly from one municipality to the next. Understandably, these variations are often due to the resources available to each municipal fire service as well as the particular needs of the community.

Section 2 of the *Fire Protection and Prevention Act, 1997*,⁵ states:

⁴ *City of Niagara Falls v. Maryban Holdings Ltd.*, Fire Safety Commission, Decision No.: 2009A003-163, Oct. 27, 2009; Jan. 15, 2010 & March 15, 2010, online: <<http://www.oafc.on.ca/lib/db2file.asp?fileid=2833>> at 4

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2. (1) Every municipality shall,
- (a) establish a program in the municipality which must include public education with respect to fire safety and certain components of fire prevention; and
 - (b) provide such other fire protection services as it determines may be necessary in accordance with its needs and circumstances.
- (2) In discharging its responsibilities under subsection (1), a municipality shall,
- (a) appoint a community fire safety officer or community fire safety team; or
 - (b) establish a fire department.

Each municipal fire department makes its own determination regarding emergency response and fire suppression activities, but also with respect to fire protection services including fire prevention activities; public education on fire safety and specialized emergency services. In the Appendix to the Consultation document prepared by the Ministry, it states:

There are a total of 469 fire departments across the province with 269 of these operating exclusively with volunteer personnel. Full time fire prevention personnel are provided in 102 of the 469 fire departments. Although many of the remaining fire departments have part-time or volunteer fire prevention personnel, there are over 200 fire departments without designated fire prevention staff.⁶

ACE recognizes the need for a certain degree of flexibility in terms of how municipalities structure fire prevention and education programmes based upon the needs of the communities they serve. However, in terms of fire safety and prevention in retirement, long-term care and other occupancies housing vulnerable residents, it is our submission that there should be specialized fire safety and emergency response training required for all staff of these occupancies. This training would have to specifically address any issues that might arise if evacuation of clients who have cognitive and/or mobility issues was required due to fire. Of particular concern to ACE are those care occupancies housing clients who suffer from conditions such as Alzheimer's and/or dementia as in most circumstances these are the clients who are most at risk in the event of a fire.

⁵ *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4 online: <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_97f04_e.htm>

⁶ Appendix to *A Consultation on Fire Safety for Vulnerable Residents in Ontario*, Ministry of Community Safety and Correctional Services (November 2010) at 21

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ACE submits that there should be training programs for owners/operators and staff of retirement and long-term care homes, that specifically address the disparate needs of the residents who live in these occupancies in the event of fire. There should be a requirement that all staff at these facilities be trained by the municipal fire department at least annually, if resources permit.

ACE supports a move towards municipalities and owner/operators of occupancies working closely together to provide the necessary training to staff at these facilities with respect to what their obligations are in the event of a fire or emergency. The development of fire safety plans for occupancies that are located in more remote regions of the province need to take into consideration factors such as location of a facility, number of staff at the municipal fire department and other issues which impact response times. ACE submits that municipalities across Ontario regardless of their size should ensure that fire services have sufficient funding to implement their public education and fire prevention programs.

Recommendation 2: Municipalities should ensure adequate funding to fire services in their respective communities in order for the latter to implement their duties under the *Fire Protection and Prevention Act* and the *Ontario Fire Code*.

Recommendation 2.1: Municipalities could more effectively meet their obligation to establish public education and fire prevention programs by providing funding to fire services to develop specialized training programs for owners/operators and staff of care occupancies specifically around emergency response, evacuation, fire safety and prevention in settings housing vulnerable residents who suffer from cognitive and/or physical disabilities.

Question 3:

Residents have a role to play in terms of fire safety and prevention.

Strongly Disagree	Disagree	Neither agree or disagree	<input checked="" type="checkbox"/> Agree	Strongly Agree
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What role do residents play in terms of fire safety and prevention? Please explain your response.

ACE submits that residents have a role to play in terms of fire safety and prevention. With respect to residents who suffer from disabilities such as Alzheimer's and/or dementia, however, such participation in fire safety and prevention may be minimal. In these circumstances, we submit that family members of these residents should be involved in any fire safety and prevention initiatives where possible.

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Residents have a role to play in terms of fire safety and prevention to the extent that they are able to do so. Residents should be involved in fire safety prevention and planning; including participating in any information sessions, trainings, and fire drills taking into account how best to involve those residents who have physical and/or mental health conditions which may impede their participation. Residents and family members should be informed of what to do in the event of an emergency, including fires. Information should be provided to all residents and family members about what to do in the event that there is a fire and the building needs to be evacuated.

Residents who are particularly vulnerable as a result of cognitive or physical disabilities will of course require greater assistance in the event of an emergency such as a fire. In the case of these residents, their family members may have a greater role to play in terms of fire safety and prevention. Owners/operators of occupancies housing vulnerable residents such as seniors should advise and also, where possible, include family members in the development of fire safety and prevention plans.

Recommendation 3: Include residents in initiatives concerning fire safety and prevention as well as involving them in the development of such initiatives. Particular care should be paid to how to ensure meaningful participation of residents who may have physical and/or mental health conditions that may affect their ability to participate.

Recommendation 3.1: Develop plain language information which should be available and provided to residents and their family members informing them of what to do in case of an emergency, such as a fire, and what to do in the event the building has to be evacuated.

Question 4:

Municipalities establish the level of fire protection services, including fire safety inspections, based on the needs and circumstances within the community. Fire safety inspections are not prescribed in the *Fire Safety and Prevention Act, 1997*.

The current framework/practice for fire safety inspections by municipal fire departments is sufficient.

<input checked="" type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Neither agree or disagree	<input type="checkbox"/> Agree	<input type="checkbox"/> Strongly Agree
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Please explain your response and provide suggestions for improvement (if applicable).

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There is no current framework/practice for fire safety inspections. In each municipality, the fire department or the community fire safety team makes its own determination with respect to the nature, extent and frequency of safety inspections of occupancies that house vulnerable residents.

There is no requirement under the *Fire Safety and Prevention Act, 1997* or the *Fire Code* that there be regularly scheduled or unscheduled inspections by municipal fire departments. Recent events in Niagara Falls and other municipalities across Ontario (i.e. Orillia) indicate that regularly scheduled or unscheduled inspections should be done by municipal fire departments to ascertain whether care occupancies are, in fact, in compliance with the legislation.

Following a fire at The Cavendish Manor in Niagara Falls on May 14, 2008, which broke out at 11:00 a.m., the Niagara Falls Fire Department decided to take the lead by re-evaluating fire prevention strategies for all care occupancies within its jurisdiction. According to the Niagara Falls Fire Department, the fire at Cavendish Manor reached flashover conditions in one room in four minutes.⁷

As a result, the Niagara Falls Fire Department decided to conduct unannounced night-time fire drills and inspections of older facilities like Cavendish that were not equipped with automatic sprinklers. In doing so they discovered the following:

Cavendish Manor had an approved fire safety plan. However, the daytime fire clearly indicated some of the inadequacies of the plan if a similar fire had occurred at night. In particular, the fire reached flashover conditions in one room in four minutes. Taking this lesson into consideration, Niagara Fire has now undertaken a review and audit of all residential care facilities in Niagara Falls. This includes unannounced fire drills and inspections of unsprinklered occupancies in the evenings when the facilities have the lowest staff complement. Not one facility could complete the RSET (real safe escape time) in single family homes equipped with smoke alarms as referenced and studies by the National Institute of Standards and Technology (NIST). This study concluded that buildings contents (i.e. upholstery furniture) and other factors lead them to argue that the RSET in a single family home with smoke alarms may be less than four minutes.⁸

The Niagara Falls Fire Department subsequently issued orders against a number of retirement residences in the vicinity in accordance with the *Fire Protection and Prevention Act, 1997*, for failing to have the necessary staffing ratio to carry out

⁷ "Lessons learned from fires in vulnerable occupancies", *The Ontario Fire Service Messenger*, Volume 18, Issue 2, February/March 2009 at 10

⁸ *Supra*, note 7 at page 11

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the fire safety plans and also, orders to install automatic sprinklers. The orders that were issued by the Niagara Falls Fire Department were ultimately rescinded by the Ontario Fire Marshall, which decision was upheld by the Fire Safety Commission. Despite rescinding the appeal, however, the Fire Safety Commission issued a strong dissenting opinion in support of automatic fire sprinkler systems in care occupancies such as retirement homes.

Recommendation 4: Amend the *Fire Protection and Prevention Act* to require safety inspections of care occupancies in all municipalities across Ontario at a frequency to be determined by the local fire service.

Recommendation 4.1: Municipalities should ensure that adequate funding is being provided to local fire services to allow them to carry out fire protection services, including regular fire safety inspections.

Question 5:

Establishing a prescribed frequency of fire safety inspections for occupancies housing vulnerable residents is an important tool for fire safety and prevention.

Strongly Disagree	Disagree	Neither agree or disagree	Agree	X Strongly Agree
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How often should occupancies housing vulnerable residents be inspected? Please explain your response.

ACE submits that occupancies housing vulnerable residents should be inspected at least annually if not more frequently. Frequency might be determined by reviewing the number of residents; the varying degrees of cognitive and physical abilities of the residents; and the location of the occupancy in the community (i.e. how far is it from the nearest fire station). Inspections should be conducted on both a scheduled and unscheduled basis, with an emphasis placed on night-time inspections as it is known that most occupancies, in particular those that house seniors (retirement homes and long-term care home) have fewer staff working during those times, and the residents are therefore more vulnerable.

Those occupancies that are found to have violated by-law or legislative requirements following a fire safety inspection by the local fire services should remain under closer scrutiny for a period of time and be subject to more frequent inspections (i.e. twice a year or more) subsequent to the discovery of the violation. Frequency of inspections could be reduced provided that no further infractions are discovered. ACE submits that local fire services should work together with those care occupancies who do not pass inspections to ensure that owners/operators and staff of those occupancies understand why they did not

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pass and what needs to be changed to ensure that they meet the required standards.

Recommendation 5: ACE recommends that occupancies housing vulnerable residents should be inspected at least annually. Those occupancies that fail to pass fire safety inspections should be subject to more frequent inspections pending passing of subsequent inspections when the frequency could be reduced.

Recommendation 5.1: ACE supports a change in policy to establish a prescribed frequency of fire safety inspections of occupancies housing vulnerable residents. ACE submits that establishing a prescribed frequency of fire safety inspections of care occupancies is an important fire safety and prevention initiative that will save lives.

LEGISLATIVE AND REGULATORY TOOLS

Question 6:

Owners/operators are currently complying with the regulatory requirements of the Ontario Fire Code.

<input checked="" type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Neither agree or disagree	<input type="checkbox"/> Agree	<input type="checkbox"/> Strongly Agree
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Please explain your response.

ACE submits that owners/operators are not currently complying with the regulatory requirements. Following the fire at Cavendish Manor in and around May of 2008, the Niagara Falls Fire Department conducted unannounced night time inspections at seniors' residences in and around the area. As a result of these inspections, the Niagara Falls Fire Department found that many of the facilities did not have sufficient staff in the evening hours to comply with their fire safety plans.

Similarly, following the fire at the Muskoka Heights retirement home in January 2009, the City of Orillia Fire Department charged the retirement home corporation and the administrator with a number of offences pursuant to the *Fire Protection and Prevention Act*, of which they were subsequently convicted. In a statement from Chief Ralph Dominelli with the Orillia Fire Department, he states:

On behalf of the City of Orillia Fire Department, we are pleased that the retirement home corporation and the retirement home administrator have been convicted of violating the *Fire Protection and Prevention Act*.

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This is the first time in Ontario that the administrator of a care occupancy has been convicted under the *Fire Protection and Prevention Act*.

The retirement home corporation and the retirement home administrator have pleaded guilty to “fail to ensure supervisory staff be instructed in the fire emergency procedures” and “fail to implement the fire safety plan provisions for conducting fire drills for supervisory staff”. The total fines for the corporation are \$62,500 including the Victim Fine Surcharge and the total fines for the administrator are \$18,750 including the Victim Fine Surcharge.⁹

The recent fires at Cavendish Manor and Muskoka Heights retirement home are merely a reminder of tragedies that have occurred in Ontario with respect to fires at retirement homes. According to Fire Chief Tim Beckett with the City of Kitchener and first vice-president of the Ontario Association of Fire Chiefs:

Ontario witnessed two of the largest retirement home fires in the history of North America. In 1980, 25 seniors died at Extendicare Mississauga and in 1995, eight died in the Meadowcroft Place, also in Mississauga. In a separate fire, three seniors died in the veterans’ wing of Toronto’s Sunnybrook Hospital. These three fires, which resulted in the deaths of 36 seniors, led to three separate, independent coroner’s inquests, all calling for the retroactive installation of sprinklers in retirement homes and long-term care homes.¹⁰

Conclusion: Based on ACE’s participation in previous coroner’s inquests examining fire deaths at retirement homes in Ontario; reports in the media concerning the issue of fire safety; and advocacy undertaken by groups such as the OAFCA and fire services in the province, ACE submits that there is evidence to indicate that owners/operators of care occupancies such as retirement homes are not complying with the regulatory requirements of the Ontario *Fire Code*. ACE submits that more needs to be done to ensure compliance and prevent any further unnecessary deaths of vulnerable Ontarians.

⁹ Chief Ralph Dominelli, Fire Chief/CEMC, City of Orillia Fire Department, “Statement from Chief Ralph Dominelli, Orillia Fire Department”, *CNW Group*, (October 1, 2010) online: <<http://www.newswire.ca/en/releases/archive/October2010/01/c7283.html>>

¹⁰ Chief Tim Beckett, City of Kitchener, “Where’s the logic in the lack of sprinklers?”, *Straight Talk: Fire Fighting in Canada*, (August 2010) online: <<http://firefightingincanada.com/content/view/6598/213>>

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Question 7:

What types of responsibilities should owners/operators have with respect to fire safety in their buildings, which are not current requirements in the Ontario Fire Code?

ACE is of the opinion that owners/operators should ensure that all staff is trained in emergency procedures as described in the approved fire safety plan and not just supervisory staff as per the requirements of the *Fire Code*. Further, owners/operators should ensure that their all of their staff receive regular “refresher” trainings on emergency procedures as the needs of the residents may change with time. ACE submits that the trainings need to be tailored to address the specifics and vulnerabilities of the residents; for example, highlighting how to appropriately evacuate those residents who may suffer from cognitive or physical impairments in the event of a fire or other emergency.

It should also be a responsibility of owners/operators to ensure that they have enough staff to carry out the emergency procedures in the fire safety plan at all times. This is of particular concern during the evening and nights shifts when it is common for care occupancies such as long-term care homes or retirement homes to have fewer staff on duty.

Fire safety plans for care occupancies should be developed in consultation with the municipal fire service but must also take into consideration the differing abilities of the residents living in the occupancies. Provisions should be made for those residents who are unable to evacuate themselves and also, for residents who may be mentally incapable (i.e. seniors who suffering from Alzheimer’s or dementia) to follow directions. This part of the fire safety plan should also account for what the needs of these residents may be following an emergency evacuation. For example, staff should be trained on how to respond should residents suffering from Alzheimer’s or dementia refuse to evacuate in the event of a fire or attempt to return to the building once evacuated. It is important that staff of care and care and treatment occupancies are properly trained to deal with such situations.

The OAFSC takes the position that responsibility for approval of the Fire Safety Plan of any occupancy rests with the chief fire official. The recommendation of the OAFSC in their *Advisory Note: Fire Safety Plans for Care Occupancies*, is that the decision of whether to approve a Fire Safety Plan in a care occupancy should be made as follows:

The decision to approve a Fire Safety Plan in a care occupancy should be based on an analysis of all circumstances concerning the building and current available knowledge and information available

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to fire officials with regards to fire safety in these specific occupancies, including but not limited to;

- construction of the building (combustible vs. non-combustible, number of storeys, travel distance within a fire compartment, etc.)
- number of residents in the building and their ability for self-evacuation.
- Existing fire protection features (detection and suppression devices, number of fire compartments, integrity of fire separations, presence of closures, etc.)
- The performance history of the owner/operator with respect to non compliance.
- Emergency response capability of the fire department¹¹

Owners/operators should also be required to keep the records of fire drills for longer than twelve (12) months after the fire drill as this information may be helpful in determining how the fire safety plan should be amended to meet the changing needs of the residents.

There is currently no requirement under the legislation that owners/operators examine any new or existing furniture, carpets, or curtains in common areas to determine whether they are non-toxic and non-flammable and in the event that they are not, that they be treated with a flame retardant agent. For older occupancies, in particular those without automatic sprinklers, ACE submits as part of fire safety and preventative measures, it should be the responsibility of owner/operators to take an inventory of the flammability and toxicity of furniture, drapery, and linens within the common areas of the occupancy to ensure that they are up to the meet *Fire Code* requirements and to replace anything that does not.

Recommendation 7: ACE recommends that owners/operators of care occupancies ensure that all staff receive training in fire safety and prevention measures; including training on what to do in the event of an evacuation. ACE submits that all staff, including contract staff, short-term staff, volunteers, and any agency staff (i.e. staff not directly employed by the owner/operator but contracted to work at the care occupancy), receive training in fire safety and prevention and evacuation procedures as soon as possible after they commence working. Further, information concerning the fire safety plan and evacuation procedures should be made readily available to all staff and volunteers.

¹¹ *Supra*, Note 1, at page 4

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Recommendation 7.1: ACE submits that fire safety plans and evacuation procedures developed by owner/operators must take into account the disparate needs of residents with respect to their health conditions and concerns. ACE submits that where possible, residents and their family members should be informed about fire safety plans and evacuation procedures.

Recommendation 7.2: Owners/operators of care occupancies should examine and new or existing furniture, drapery, and linens used within the common areas of the occupancy to determine the flammability and toxicity of these materials and replace anything that does not meet the standards set by the *Fire Code*.

Question 8:

Existing Ontario Fire Code requirements for care and care and treatment occupancies are sufficient.

<input checked="" type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Neither agree or disagree	<input type="checkbox"/> Agree	<input type="checkbox"/> Strongly Agree
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Please explain how the existing Ontario Fire Code requirements for vulnerable occupancies are or are not sufficient.

ACE submits that the existing *Fire Code* requirements for care and care and treatment occupancies are not sufficient. Efforts to bring about legislative change have resulted in the introduction of numerous Private Members' Bills attempting to address gaps in the *Fire Code*. Most recently, *Bill 93, An Act to amend the Fire Protection and Prevention Act, 1997*, with respect to fire sprinkler retrofitting passed through the first reading on June 2, 2010.¹²

As well, *Bill 92, An Act to require automatic sprinklers in all retirement homes*¹³ which had its second reading on October 21, 2010, was referred to the Standing Committee on Regulations and Private Bills. None of the Bills in question concerning the issue of fire safety and the retrofitting of care occupancies with automatic sprinklers have been passed into law.

¹² *Bill 93, An Act to amend the Fire Protection and Prevention Act, 1997 with respect to fire sprinkler retrofitting*, Mr. Kim Craitor, MPP online: <http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session2/b093.pdf>

¹³ *Bill 92, An Act to require automatic sprinklers in all retirement homes*, Mr. P. Miller, MPP online: <http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session2/b092.pdf>

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As part of the dissenting opinion of the Fire Safety Commission in the decision of *City of Niagara Falls v. Maryban Holdings Ltd.*, the Commission stated at page 4:

There is a sense of regret that in 2010 with so much knowledge and understanding about the reliability and effectiveness of automatic sprinkler systems that our Codes are tolerant and accepting of the fact that “although flashover is likely to occur within the suite of origin” we will concentrate on the adjacent areas and do our best to evacuate those occupants, while the suite of origin and its occupant(s) are placed in total jeopardy.

With an automatic fire sprinkler system in place to protect the suite of origin and its occupant(s), there would not be a flashover or advancement of the fire. Such a situation is not only totally unnecessary but also totally unacceptable in 2010.¹⁴

Recommendation 8: Existing Ontario *Fire Code* requirements for care and care and treatment occupancies, as defined under the *Fire Code* are not sufficient and as a start, ACE recommends that all care and care and treatment occupancies be required to install automatic sprinklers immediately.

Recommendation 8.1: ACE recommends that training be required in fire safety and prevention for all staff including a requirement for regular refresher trainings.

ENFORCEMENT AND PENALTIES

Question 9:

Enforcement of the Ontario Fire Code is done by municipal fire departments.

The enforcement for existing Fire Code requirements, including Retrofit, is adequate.

Strongly Disagree	<input checked="" type="checkbox"/> Disagree	<input type="checkbox"/> Neither agree or disagree	<input type="checkbox"/> Agree	<input type="checkbox"/> Strongly Agree
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Please explain your response.

The enforcement of existing Ontario *Fire Code* requirements is not adequate. Some fire services in Ontario are more active than others with respect to how they enforce the *Fire Code* which often has to do with the funding received from

¹⁴ *Supra*, note 4 at page 4

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municipalities, combined with the needs of the particular community. There is presently no consistency with respect to how municipal fire departments enforce the legislation or use the authority granted to them.

Recommendation 9: ACE submits that municipal fire departments must be sufficiently funded to allow them to enforce any breaches of the Ontario *Fire Code*.

Question 10:

How should enforcement of the Ontario Fire Code be improved to ensure increased compliance (if applicable)?

To improve enforcement and compliance Ontario *Fire Code*, it is recommended that the process by which members are chosen for the Ontario Fire Commission be made more transparent. Further, decisions of the Ontario Fire Commission should be made accessible to the public.

In the most recent appeals before the Ontario Fire Commission brought by the City of Niagara Falls, at least two of the appeals were before the same three members of the Fire Safety Commission: all three of whom are members had been appointed through recommendations by the industry side. None of the members that heard the appeal of the City of Niagara Falls of the overturned orders against Oakwood Park Lodge and Chippewa Place were members of the Commission who represented the fire services. At the very least, this does not leave the impression of a fair, impartial process.

Recommendation 10: Enforcement of the Ontario *Fire Code* could be improved by making the process by which members appointed to the Ontario Fire Safety Commission more transparent; limiting the number of terms members can serve on the Fire Safety Commission; and ensuring that at least one of the three members of the Fire Safety Commission convened as part of any panel hearing appeals should be from the fire services.

Question 11:

Increased penalties for convictions on Ontario Fire Code violations will increase compliance by owner/operators.

Strongly Disagree	Disagree	Neither agree or disagree	Agree	X Strongly Agree
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Please explain your response.

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ACE supports increased penalties for convictions on Ontario *Fire Code* violations but does have concerns that any monetary fines or penalties ordered would ultimately be passed on to the vulnerable residents of care occupancies.

ACE submits that there should be protection and safeguards for residents who may report any Ontario *Fire Code* violations so that they are not at risk of reprisal by owner/operators.

Recommendation 11: ACE recommends increased penalties for conviction to ensure deterrence but not necessarily restricted to monetary penalties. In the event that fines or monetary penalties are ordered, there should be monitoring to ensure that residents are not being charged more as a result.

Recommendation 11.1: Amend the *Fire Protection and Prevention Act, 1997* to include a reprisal provision that makes it an offence for any owner/operator to take action, either overt or covert, against a resident who reports *Fire Code* violations.

IMPLEMENTATION

Question 12:

The following features should be required on a Retrofit basis in existing buildings (housing vulnerable residents) constructed before 1998, through the Ontario Fire Code. Please check off all that apply:

- Zone fire separations
- Self-closing hardware for suite doors
- Remote connection for fire alarm system
- Emergency lighting upgrades
- Voice communication for buildings more than 3 storeys high
- Emergency power upgrades for buildings more than 3 storeys high
- Other (please describe) **Retrofit of sprinklers**

All the above mentioned features are important but ACE is of the opinion that the retrofit of automatic sprinklers is a priority. With respect to features such as self-closing hardware for suite doors, if such a feature were to be required on a Retrofit basis it would be important to provide residents with automatic openers to allow them to open such doors themselves.

Question 13:

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If the implementation of all or some of the fire safety features/retrofits listed in question 12 become mandatory for existing occupancies housing vulnerable residents, there are some occupancies that should be exempt from this requirement.

X Strongly Disagree Disagree Neither agree or disagree Agree Strongly Agree

Question 14:

If you believe there should be exemptions for some occupancies, please identify:

- a) **The type(s) of occupancies that should be exempt from this requirement? And,**
- b) **What these exemptions should be based on (i.e. building size, number of storeys, level/type of care provided, age of building, etc)?**

With respect to Questions 13 and 14, ACE understands that there are a wide variety of occupancies housing vulnerable residents across Ontario. ACE believes that these occupancies should all be subject to the same safety standards and that they should all be required to install the fire safety features and retrofits set out in question 12 above. The failure to require these features and retrofits could result in the loss of lives in the event of a fire.

Question 15:

There will be operational impacts on owners/operators and residents associated with the implementation of the fire safety features/retrofits described in question 12.

Strongly Disagree Disagree Neither agree or disagree Agree X Strongly Agree

Please described any anticipated impacts on both occupancies and residents.

Operational impacts for owners/operators would include the cost of some of the retrofits and upgrades. ACE is concerned that this cost will be passed on to residents in the form of increased fees or rent. Further, ACE is concerned that owner/operators of some occupancies, especially smaller residences, will close their homes when faced implementing these upgrades and improvements. Such closures would cause not only considerable disruption for the residents who live

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there but systemic pressures as many of these residents would ultimately have to be cared for in the publicly-funded long-term care system.

These are but some of the anticipated operational impacts on owners/operators and residents associated with the implementation of fire safety features/retrofits.

Recommendation 15: ACE recommends that a government program be available to allow owners/operators of homes that house low income residents or those on social assistance to apply for funding for Retrofits and renovations to increase fire safety.

Question 16:

Requirements for fire sprinklers were adopted through the Building Code for new construction in 1998.

The Ontario Fire Code should require installation of fire sprinklers in existing occupancies constructed before 1998 and housing vulnerable occupants.

Strongly Disagree	Disagree	Neither agree or disagree	Agree	<input checked="" type="checkbox"/> Strongly Agree
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Please explain your response.

Based on the Appendix to the Ministry's Consultation Document on Fire Safety, it is our understanding that: "...as of 1997 all care and care and treatment occupancies must be built with fire sprinklers and other fire safety features. As of April 1, 2010, all three story or higher residential buildings must be built with a sprinkler system."

It is ACE's position that the Ontario *Fire Code* should require installation of fire sprinklers in care and care and treatment occupancies constructed prior to 1997 and housing vulnerable occupants. Further, ACE submits any and all other existing occupancies constructed prior to 1998 and housing vulnerable occupants and not identified as care and care and treatment occupancies should be required to install sprinklers. ACE is among many organizations that have recommended this requirement. The OAFCA as well as individual fire services across the province have long been strong proponents for such a change.

Most recently, as part of the submissions to Bill 21, the *Retirement Homes Act*, Fire Chief Tim Beckett of the City of Kitchener and OAFCA President wrote a letter to all MPPs on behalf of the OAFCA expressing its disappointment over the passing of the bill without the inclusion of a corresponding amendment to the *Fire*

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Code, requiring mandatory automatic sprinkler retrofit for all retirement homes that presently do not have them installed.

In the O AFC's, *Advisory Note: A Guide to Evaluate a Fire Safety Plan for a Care Occupancy*, they provide the following compelling information was provided:

Since 1980, there have been 44 people who have died from the affects of fire in the facilities that are defined as care occupancies in the Ontario Fire Code. Research has shown that:

- Most fatal retirement home fires in Ontario happen in the evening or early morning hours, when there is minimal staff on duty in the home. There is no minimum supervisory staffing – resident ratio required in the Ontario Fire Code, which means that when a fire breaks out there may not be enough staff on hand to evacuate all of the residents quickly enough.
- Three coroner inquests into the fire deaths in Ontario care occupancies recommended that automatic sprinklers be installed. These inquests recommended making the installation of automatic fire sprinklers in residents' rooms mandatory and retroactive in older facilities. Since 1997 automatic sprinklers have been required in all newly built care occupancies.
- There are an estimated 4,300 “care and treatment” facilities in Ontario that don't have automatic fire sprinklers (Office of the Fire Marshal of Ontario).¹⁵

The factors highlighted in the O AFC's Advisory Note support the view that the *Ontario Fire Code* should be amended to require mandatory installation of automatic sprinklers in existing occupancies constructed before 1998 and housing vulnerable occupants.

Recommendation 16: Given the ample evidence available supporting the position that sprinklers save lives as well as the advocacy undertaken by fire services across Ontario and organizations like the O AFC. ACE believes that the *Ontario Fire Code* should be amended to require the installation of automatic sprinklers in existing care and care and treatment occupancies constructed before 1997 and occupancies constructed before 1998 and housing vulnerable occupants immediately.

Question 17:

¹⁵ *Supra*, note 1 at 2

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If the installation of fire sprinklers becomes mandatory for existing occupancies housing vulnerable residents, there are some occupancies that should be exempt from this requirement.

Strongly Disagree Disagree Neither agree or disagree Agree Strongly Agree

ACE submits that the creation of exemptions would be unacceptable as it would in effect create a two-tiered system, with some residents living in occupancies with better safety features than others. ACE does not support any exemptions for occupancies housing vulnerable residents from having to install fire sprinklers.

Question 18:

If you believe there should be exemptions for some occupancies, please identify:

- a) **The type(s) of occupancies that should be exempt from this requirement?; and,**
- b) **What these exemptions should be based on (i.e. building size, number of storeys, level/type of care provided, age of building, etc)?**

See our response to Question 17, above.

Question 19:

There will be operational impacts on owners/operators and residents associated with the installation of fire sprinklers.

Strongly Disagree Disagree Neither agree or disagree Agree Strongly Agree

Please describe any anticipated impacts on both occupancies and residents.

The anticipated impacts on both occupancies and residents include disruption of residents while sprinklers are being installed. As the installation of sprinklers is effectively taking place where residents are living, ACE supports an approach that would cause the least amount of disruption to residents.

Question 20:

There will be financial impacts on occupancies associated with the implementation of fire sprinklers and other fire safety features/retrofits.

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Strongly Disagree Disagree Neither agree or disagree **X** Agree Strongly Agree

Please describe anticipated impacts.

Another anticipated impact is the cost to both owners/operators and residents with respect to the installation of sprinklers. ACE is concerned that these costs will be downloaded onto those living in these occupancies in the form of increases in fees. In some instances, to avoid the cost of installing sprinklers, smaller, privately run retirement homes may decide to close completely thereby causing upheaval for residents.

Recommendation 20: Develop a program to allow those owners/operators of occupancies housing vulnerable low-income residents or those on social assistance to apply for funding to assist with the costs involved in the implementation of fire sprinklers and other safety features/retrofits.

Question 21:

Installation of fire sprinklers and other fire safety features/retrofits in existing occupancies is a significant undertaking with corresponding financial and operational impacts on both the operators and residents. How much time would reasonably be required for owners/operators of existing occupancies to install fire sprinklers and other fire safety features?

0-5 years 5-10 years 10-15 years Other (please specify)

Please explain your response.

There have been a number of deaths over the years as a result of fires in care and care and treatment occupancies over the years in Ontario that led to numerous coroner's inquests.

ACE submits that given the overwhelming evidence that fire sprinklers save lives, there should be no further delay in requiring that they be installed in existing occupancies housing vulnerable residents across Ontario immediately.

Question 22:

Do you have any other experience, comments or suggestions regarding fire safety and prevention for occupancies housing vulnerable Ontarians that you would like to provide?