Written Submission
to the
Ontario Seniors' Secretariat

concerning

Ontario's Consultation on
Regulating the Retirement Home Industry

Respectfully Submitted By:

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1. Introduction to ACE

The Advocacy Centre for the Elderly (ACE) is a specialty community legal clinic that was established to provide a range of legal services to low-income seniors in the Province of Ontario. The legal services include individual and group client advice and representation, public legal education, community development, and law reform activities. ACE has been operating since 1984 and is the only legal clinic in Canada with a specific mandate and expertise in legal issues of the older population.

Clients regularly seek our advice on issues relating to accommodation and care in retirement homes. We also receive many requests for assistance from community legal aid clinics and others across Ontario for assistance in how to approach "care home" cases under the *Tenant Protection Act/ Residential Tenancies Act* at what is now known as the Landlord Tenant Board.

We have also produced a 600+ page publication called *Long-Term Care Facilities in Ontario: The Advocate's Manual*. The manual is an effort to assist other advocates (both lay advocates and lawyers), as well as seniors and their families engaging in advocacy on seniors' issues, primarily in the long-term care system. Now in its third edition, this manual also includes chapters on retirement homes, home care, and other issues such as substitute decision-making, powers of attorney, and advocacy.

ACE lawyers are in high demand as speakers on seniors' issues and residents' rights. Numerous presentations on these issues have been made by ACE at the local, provincial national and international levels. We are pleased to contribute our views on retirement home regulation based on our extensive experience advocating for seniors in Ontario.

2. ACE's Experience with "Retirement Homes"

ACE has long encouraged greater regulation of what are known by most people as "retirement homes".[1] Further, ACE believes that this type of housing plays a critical role in the spectrum of accommodation options that should be available to seniors (and, in some cases, others). Most importantly, ACE supports housing options that help keep seniors in their communities and promote their independence for as long as possible and to the greatest degree possible.

[1] In this submission, we will refer to the form of accommodation as a "retirement home", although we emphasize that such accommodation is defined and governed by Part IX of the *Residential Tenancies Act, 2006*, and that such accommodation is properly referred to as a "care home" pursuant to the legislation.

It is true that some retirement homes are run in a way that respects both the legal character of the accommodation and the rights of the tenants. Others, however, do not come close to achieving this. Some of the problems are more obvious than others. For example:

- ACE's clients report concerns about the way medications are stored and distributed. Some of our clients have even reported that volunteers at the retirement home have access to medication cupboards and are responsible for distributing prescription medication despite the fact that they have no training or expertise.

- We have had clients who experience a health crisis and are taken to hospital, only to find that upon their discharge from hospital the retirement home refuses to take them back, in effect evicting them with no legal cause under the governing landlord-tenant legislation.

- We have been told that what some retirement homes refer to as "quarterly nursing assessments" are, in fact, opportunities for the retirement home to sell additional services to the tenants – services which they may or may not actually need.

- We have had clients who have been assaulted by other tenants in their retirement home, and the home's administration does not respond appropriately or at all. One of our clients was sexually assaulted by another tenant in her retirement home, and the home's administration did not call the police or otherwise follow up on protecting our client or the other tenants, because staff took the position that there is no "corporate policy" on reporting such assaults.

- We have had clients with mobility impairments who tell us that they are "not allowed" to use the common dining room with the other tenants if they are using their wheelchair or walker, since these devices make other people feel "old" or "disabled". Instead, tenants using wheelchairs or walkers are required to take their meals in their own unit, with an extra charge for "tray service". One of our clients, who used an electric wheelchair due to a severe mobility impairment, was told that she was not allowed to use her wheelchair in the hallways of the retirement home, and could only use it within her own unit. Aside from being a clear violation of human rights legislation, these reactions from retirement homes seem illogical given the clientele they purport to serve.

The Ontario Seniors' Secretariat is no doubt aware of these kinds of problems, and many others encountered by seniors in various forms of accommodation.

In our view, the largest problem is that some retirement homes are operating, in effect, as "bootleg" long-term care homes: they are offering the same high levels of care as long-term care homes but without any of the rules or accountability that the Ministry of Health and Long-Term Care enforces in the long-term care system through detailed legislation, regulation, policies, and enforcement mechanisms. Some retirement homes have locked units and use restraints on tenants, without providing any of the rights protection or other safeguards provided to residents of long-term care homes. This is a double standard, and it fails to ensure the safety and protection of retirement home tenants.

In short, there is clearly a need for a comprehensive regulatory scheme for retirement homes so that all seniors can live in environments that that promote their independence to the extent possible, while also ensuring their safety and protecting their rights.

3. Consultation Concerns: Process and Background Documentation

Although ACE is encouraged to see retirement home regulation on the Ontario government's agenda, we have significant concerns about the approach taken by the Ontario Seniors' Secretariat, in terms of both the process and the substance of the consultation. It will be apparent by this point in our submission that we have not structured our submission as a response to the fourteen specific questions posed in the consultation document.

First, in our view, no consultation can be meaningful until the broad public has greater awareness of the differences between retirement homes and the long-term care home system. Members of the public cannot be expected to contribute to a discussion about options for retirement home regulation until they fully understand what a retirement home is. Even during the consultation meeting in Toronto on February 12, 2007, participants in at least one roundtable discussion thought they were providing input into "nursing homes". They did not appreciate the differences between long-term care and retirement homes, and did not understand what they were being asked to consult on. The Ontario Seniors' Secretariat must engage in a broad-scale education campaign to raise awareness of the different types of accommodation for seniors in Ontario before consultations can be meaningful.

Second, in ACE's respectful view, some of the confusion may have been due to problems with the consultation document itself. At best, the document glossed over the current legal regimes that govern aspects of retirement homes. In particular, the legal significance of Part IX of the *Residential Tenancies Act* was underplayed, with the consequence that readers may have been left with the impression that the legal relationship between retirement home operators and tenants is entirely unregulated. This is clearly not the case.

Further, the document seemed to suggest that there were no uniform standards or laws governing fire and food safety, criminal acts, privacy and health information, substitute decision-making, and standards of health care delivery by regulated health professionals. This is clearly not the case, as all of the above-named areas are governed by provincial legislation, municipal by-laws, and indeed the common law.

This is not to say that the current regime governing retirement homes is coherent. It is far from coherent. However, the consultation document seemed to give the impression that standards could be created out of whole cloth, as if there were no *Building Code Act, 1992; Fire Protection and Prevention Act, 1997*; *Health Protection and Promotion Act*; *Regulated Health Professions Act, 1991*; *Substitute Decisions Act, 1992*; *Health Care Consent Act, 1996*; *Personal Health Information Protection Act*, *2004*; *Accessibility for Ontarians with Disabilities Act*, *2005*; *Human Rights Code*; *Criminal Code*, etc.[2]

In sum, the province-wide consultation process undertaken in early 2007, while absolutely necessary in this context, may not assist greatly in helping to develop public policy in this very difficult area.

4. Proposed Definition: Critique

According to the *Residential Tenancies Act*, a **"care home"** is a residential complex that is occupied or intended to be occupied by persons for the purpose of receiving care services, whether or not receiving the services is the primary purpose of the occupancy. **"Care services"**, in turn, mean health care services, rehabilitative or therapeutic services or services that provide assistance with the activities of daily living.[3] Care home tenants have all the rights of other tenants and some additional rights, including the right to receive a Care Home Information Package, or "CHIP", setting out the services and other items that are

[2] For example, the Consultation Document asked for respondents' views on whether there should be provincial standards governing "maintenance of health records", "outbreak control", and other matters that are already the subject of provincial legislation.

[3] "Care services" are further defined by regulation. Subsection 2(1) of O. Reg. 516/06 provides: "As part of health care services, rehabilitative services, therapeutic services and services that provide assistance with the activities of daily living, the following are included in the definition of "care services" in subsection 2(1) of the Act:

1. Nursing care.
2. Administration and supervision of medication prescribed by a medical doctor.
3. Assistance with feeding.
4. Bathing assistance.
5. Incontinence care.
6. Dressing assistance.
7. Assistance with personal hygiene.
8. Ambulatory assistance.
9. Personal emergency response services."

included in their monthly fees. Other laws also apply to care homes, including laws governing fire and food safety, criminal acts, privacy and health information, substitute decision-making, and standards of health care delivery by regulated health professionals.

However, the OSS Consultation Document proposes a definition of a retirement home that skips over this legal framework, and considers retirement homes as "a home where eight or more unrelated adults purchase accommodation and care, where such care is not funded or regulated by any level of government." The implications of this are unclear, but the immediate problems with this proposed definition are obvious:

- There is no minimum age requirement in this definition. This may indicate that the proposed regulatory scheme is not solely focused on accommodation for seniors.

- There is no rationale given for why homes with seven or fewer people should receive no government attention or protection under this regulatory proposal. Several of the court cases concerning assault and neglect of seniors – in some case leading to the death of the senior – have involved operators of small homes. Many homes in rural or small urban areas provide care and accommodation to fewer than eight tenants. It should go without saying that people deserve to be safe and protected whatever the size of their home.

- The Ontario government's proposed long-term care legislation, Bill 140, requires a licence for anyone providing nursing care to two or more unrelated persons (see section 93(1) of Bill 140, *An Act respecting long-term care homes*). The government has therefore set the threshold for regulation at two people for long-term care, and given that in many cases the same types or levels of care are being provided in retirement homes, there is no justification for setting the threshold at 8 persons for retirement home regulation.

- The notional relationship between the proposed definition and the legislated definition of "care home" in the *Residential Tenancies Act* is entirely unclear. Does the OSS propose to amend the *Residential Tenancies Act* and remove the definition of "care home", or otherwise restrict its application? When asked this question at the consultation meeting in Toronto on February 12, 2007, OSS staff said that amending the *Residential Tenancies Act* is not an option under consideration. However, the proposed definition could create considerable confusion,

and even jurisdictional uncertainty, particularly before the Landlord Tenant Board.[4]

- There is no rationale given for why the adults in a regulated retirement home must be unrelated. This could potentially violate the Ontario *Human Rights Code*. If two siblings, cousins, or a married couple enter the retirement home, this could mean it no longer meets the definition of what the government is proposing to regulate. It is possible that the intent of the definition was to exclude homes where a senior is purchasing accommodation and care from a family member. However, if this is the intent, there is no rationale given for why such a situation should be excluded. If the family member is receiving compensation to provide accommodation and care, then the regulatory system should apply to that situation just as it would to any other. As the OSS no doubt is aware, all forms of elder abuse can take place in family situations just as easily as in relationships with strangers.

- It is entirely unclear to what degree this definition is intended to capture group homes, boarding houses, or other types of housing for persons with disabilities other than those operated by local Associations for Community Living. Disability consumer and advocacy groups should have been directly consulted from the outset of this process, since the definition appears to cover some of the types of housing in which people with disabilities may live.

5. Proposed Third-Party Regulatory Model: Critique

The Consultation Document notes that one possible regulatory system for retirement homes is a third-party regulatory model, stating that Ontario has used third-party regulatory agencies to protect consumers in industries not funded by the government. These industries include (among others) travel agencies, real estate agencies, motor vehicle dealers, funeral boards, and technical safety standards monitors. Each agency is set up as a non-profit corporation, and the board of directors of the agency sets policies and standards for the respective industries. Board members are from the regulated industry and/or are government appointments.

ACE does not believe that this type of regulation is appropriate for retirement homes, for several reasons. First, consumer contact with the types of industries

[4] It should be noted that in the 2005 Ministry of Municipal Affairs and Housing consultations on the reform of the now-repealed *Tenant Protection Act*, no changes were proposed to the care home sections of the legislation. Therefore, ACE chose not to make submissions on care home issues to that consultation. In fact, the *Residential Tenancies Act, 2006* includes some provisions that improve on the *Tenant Protection Act* and increase protections for care home tenants.

already regulated in this manner is typically in the nature of a single one-off transaction: purchasing a car, purchasing a vacation, purchasing a house or other property, etc.

In contrast, the receipt and provision of accommodation and care in a care home is necessarily an ongoing relationship with many points of contact between the tenant and the operator or the operator's employees and/or contractors. Further, these points of contact will involve some of the most personal and important aspects of a tenant's daily life: health information; personal information such as names of family or friends; regular financial transactions; food and nutrition; and social activities, to name but a few. Retirement home tenants may be in a position of vulnerability in relation to the operators since tenants may need to depend on the operators, to some degree, for the necessities of life and for assistance with activities of daily living. Potential tenants may also be quite vulnerable in that they may be leaving their "own home" for the first time and may feel emotional at the thought that they are giving up some of their independence. In short, the relationship is ongoing and multifaceted.

Second, the transactions in the industries that are regulated by such a third-party regulatory agency tend to be bilateral and straightforward. As such, disputes and disagreements between the consumer and a provider in such an industry will also tend to be bilateral and straightforward to investigate. For example, "if you pay for a trip and end up not going because the registered travel agency you bought the package from goes out of business, you are entitled to a refund," and the Travel Industry Council of Ontario may investigate and ensure that you get compensation.[5] Given the multifaceted relationship between the tenant and the operator of a retirement home, on the other hand, disputes or disagreements will likely be multifaceted. Disputes could involve care providers who are members of regulated health professionals, or could relate to the provision of service over time, such as in the context of meals or activities.

Third, if there is a dispute between a consumer and a provider in one of the industries in the examples above, the consumer can decide to take her business elsewhere: she can book her next trip through a different travel agent (or on her own through the Internet); she can find a new real estate agent; or she can purchase a motor vehicle through a different dealer. In contrast, a retirement home tenant who is in a dispute with the operator of his home will likely not want, nor be able, to simply move to a new home pending the outcome of any dispute resolution mechanism.

Fourth, the consequences of inadequate or incompetent service provision in the industries cited above can indeed be serious (such as an ill-advised home purchase based on the negligent recommendation of a real estate agent), but the

[5] Ontario Ministry of Government Services, "Travel Services Online", online: http://www.cbs.gov.on.ca/mcbs/english/4ZMN7Z.htm

damages in these types of situations can be remedied by compensation or restitution, and the regulatory body can censure the service provider in some fashion – including by removing their licence. In the care home context, however, the potential consequences of poor or inadequate care can be very serious, and even deadly.[6] Remedies for such inadequate care would not be purely monetary.

Fifth, the third-party regulatory bodies described above are governed by Boards of Directors, and in most situations these Boards are dominated by industry representatives. Representatives of the retirement home industry have stated that they desire regulation so that the reputation of the industry as a whole will improve (and therefore competition will increase). However, when Boards are dominated by industry representatives, there is a risk that decisions and policies will reflect the interests of the industry rather than those of consumers. Consumer representation typically forms a minority of such Board composition and can therefore be outvoted on standard-setting or other policy issues impacting on retirement home consumers. Moreover, consumer representatives on these Boards are invariably Ministerial appointees and may not be chosen by retirement home tenants to represent their interests.

Sixth, as mentioned above, certain aspects of the retirement home context are already governed by legal rules on tenancies. The "tenancy" aspects of retirement homes are subject to the jurisdiction of the Landlord Tenant Board, pursuant to the *Residential Tenancies Act, 2006*. For example, section 91 requires that tenancy agreements in care homes must be in writing, and must set what has been agreed to with respect to care services and meals, and the charges for them. The Act also requires landlords to provide an information package that contains specific information as set out in regulation.[7] The tenant

[6] Consider, for example, the unreported case involving Janet Longford, who was a "private nursing home owner" of a 16-bed home in Orillia. She pleaded guilty to failing to provide the necessaries of life for the severe neglect of one of her tenants. A Superior Court judge sentenced her to six months' house arrest and three years' probation. Source: Roberta Avery, "Woman gets house arrest for elder abuse", Toronto Star, September 6, 2006. Indeed, the Commission of Inquiry into Unregulated Residential Accommodation (the "Lightman Commission") "was created following the death of Joseph Kendall, a resident [sic] of Cedar Glen, an unregulated boarding home near Orillia, Ontario." Ernie S. Lightman, *A Community of Interests: The Report of the Commission of Inquiry into Unregulated Residential Accommodation* (Toronto: Publications Ontario, 1992) at xi.

[7] Section 47 of O. Reg 516/06, the General Regulation under the *Residential Tenancies Act, 2006*, sets out the required information as follows:

1. List of the different types of accommodation provided and the alternative packages of care services and meals available as part of the total charge.
2. Charges for the different types of accommodation and for the alternative packages of care services and meals.
3. Minimum staffing levels and qualifications of staff.
4. Details of the emergency response system, if any, or a statement that there is no emergency response system.
5. List and fee schedule of the additional services and meals available from the landlord on a user pay basis.

has the right to consult a third party with respect to the tenancy agreement, and the agreement may be cancelled within five days at the tenant's request. Under section 101 of the Act, charges for care services or meals cannot be increased unless the landlord gives the tenant at least 90 days written notice. In addition to these provisions, there are others that provide specific protections to care home tenants. These protections are enforceable at the Landlord Tenant Board. Third-party regulation of retirement homes could confuse the question of jurisdiction over disputes concerning the "tenancy" aspects of retirement homes.

For these key reasons, ACE does not believe that a third-party regulatory system is a suitable model to ensure public safety and consumer protection in the retirement home context.

6. Other Proposed Regulatory Models

In addition to the third-party regulatory model, two other models have been proposed at various points during the recent discussions about retirement home regulation. The other models that have been proposed are a self-regulation model and a municipal regulation model. ACE does not believe that either of these models is appropriate.

a. Self-Regulation

The retirement home industry should not be entirely self-regulated. ACE does support the role of this type of housing in the spectrum of accommodation options that should be available to seniors. ACE does not believe that the retirement home industry has demonstrated the credibility that would be necessary to vest the responsibility for regulation solely with the industry. Moreover, this would not achieve the important consumer protection goals of the Consultation Document.

While the industry is certainly knowledgeable about the business and operational aspects of running a retirement home, its representative body, ORCA, has not demonstrated compliance with areas of the law that are of critical importance to retirement home tenants. For example, even as of the date of this submission, ORCA's Accreditation Standards continue to refer to legislation that has not been in place for over a decade – the *Consent to Treatment Act*, which is significantly different from the current legal regime governing consent to treatment as found in the *Health Care Consent Act* and the *Substitute Decisions Act*.[8] The

6. Internal procedures, if any, for dealing with complaints, including a statement as to whether tenants have any right of appeal from an initial decision, or a statement that there is no internal procedure for dealing with complaints.

[8] Ontario Residential Communities Association, *ORCA Accreditation Standards*, http://www.orca-homes.com/documents/AccreditationStandardsFORPUBLICUSE.pdf. Accessed Friday March 16, 2007.

Accreditation Standards also stipulate that homes should have a "no restraint" policy, "AND/OR" [sic] that the use of physical restraints should be governed by certain procedures. Compounding the logical inconsistency of these statements, the Accreditation Standards make no mention of restrictions on environmental or chemical restraints being used on tenants.

Further, many homes that are accredited by ORCA do not comply with the requirements of landlord-tenant legislation. Our clients report that many tenants in ORCA homes are not provided with the legislatively mandated Care Home Information Package ("CHIP"). Our clients further report that in some ORCA homes, operators charge tenants not per rental unit, as provided for in the legislation, but per tenant. Further, as noted in our introduction, tenants in some cases have been evicted illegally when they have a health care crisis and are sent to hospital, even though this is not a ground for eviction under the governing landlord-tenant legislation. In short, therefore, industry self-regulation by a body such as ORCA would be inappropriate.

b. Municipal Regulation

Others have suggested that retirement homes be subject to regulation and inspections by municipal governments. It is true that a handful of municipalities in Ontario have by-laws on the books relating to retirement homes, although it is not clear that municipalities have jurisdiction to regulate in this area. Even assuming that there is jurisdiction to do so, ACE does not feel that municipal regulation is appropriate in this context.

Not all municipalities in Ontario have the means to create and enforce by-laws for retirement home operation, and this can lead to a patchwork of regulation across the province. This creates an inequality of regulation for retirement home tenants, who all deserve to be provided with equal protection and benefit of any regulatory system. Further, it appears that when municipalities do create by-laws, there is a tendency for retirement home operators to simply move their home outside the boundaries of the municipalities so they are no longer subject to the same regulatory regime. This type of *ad hoc* approach is not satisfactory as a regulatory model for retirement homes in Ontario.

7. ACE's Proposal: Provincially Administered Tiered Licensing

a. Description

ACE proposes a provincially operated licensing system consisting of tiers, or classes, of license that a home would have to earn if it wished to provide certain classes of service.

Just as drivers have to meet certain standards in order to receive a licence from the provincial government to operate different classes of vehicles, different classes of licence should be required for retirement homes that wish to offer different types of services for different levels of care needs. Such licenses would have to be presented clearly in the home and would have to be advertised to potential tenants. Consumers would then be aware of what services they can expect in any particular home, and could be assured that such services meet agreed-upon standards for safety, care, and quality of service. It should be a condition of any class of licence that the operator must comply with all applicable laws. There should also be a Bill of Rights that applies to all retirement home tenants, and the Bill of Rights should be enforceable as a deemed contract between the tenant and the operator.

As a general outline, for example, the basic class of licence could be granted to homes demonstrating that they can meet agreed-upon standards concerning meals and nutrition, linen service, and programming for tenants. An intermediate class of license could be granted to homes that can demonstrate competence in all of the basic features, and also be able to meet agreed-upon standards concerning things like administering medications, assisting with activities of daily living, providing some nursing care and/or rehabilitation, and helping tenants transfer from bed to chair. A holder of the highest level of licence would have to prove competence in all the items mentioned above, and would also be able to demonstrate it can meet agreed-upon standards on caring for the physical and mental health needs of frail persons including those with mid- to late-stage dementia.

With this type of tiered licensing system, consumers would know in advance what levels of care or assistance they are entitled to expect, and what standards they can expect their licensed operator to meet. In tandem with a meaningful system of complaint resolution, this type of regulatory model would provide the required level of consumer protection in an industry where consumers can be very vulnerable. Further, retirement home operators would be able to decide what level of licence to seek, according to the needs they perceive in the market. This system would allow the market to respond to the needs of changing demographics, would help support seniors who wish to “age in place”, and would preserve freedom of choice for consumers.

By submitting that retirement homes could qualify for licences to provide health care services for persons with high health care needs, ACE should not be taken to support a two-tiered health care system. In such a system, those who can afford to purchase private care can do so, while those who cannot afford private care rely on the publicly-funded health care system. This appears to be the direction in which the Consultation Document is inevitably headed. If this is the case, ACE’s submission should be understood as proposing that ***if*** the same health care services are provided both in the retirement home setting and in long-term care homes, then persons contracting for high-level care services in the

retirement home context should be protected by the same standards and expectations of care providers in the long-term care home system.

For example, outcomes such as skin integrity (including avoiding and treating bedsores) and continence care are no less important for a person in a retirement home than they are for someone in long-term care. At these high care levels, it must be recognized that the services being provided are health care services, and they must be regulated as such. Retirement homes providing such care should be subject to the same inspection and compliance regime as the long-term care home system. The same Ministry of Health compliance advisors should be responsible for ensuring compliance by operators licensed to provide the high levels of care. For the lower tiers of licence, a system of inspections and administrative orders should be implemented. This administrative compliance system could be modeled on other legislated inspection models such as that found in the *Fire Protection and Prevention Act, 1997.*

Further, when the services being provided are health care services, it must be recognized that retirement homes are health facilities. It is at least arguable that certain high-level care services being provided within retirement homes fit within the definition of "home care services" as found in the Regulation to the *Health Insurance Act*.[9] ACE sees no principled reason why such services should not be funded as insured extended care services under the *Health Insurance Act*. The failure to fund such services leads to the clear creation of two-tiered health care in Ontario.

It has been said that it may not be reasonable to expect small and large homes to achieve the same regulatory standards. In this context, one possibility would be to consider a model such as that found in the *Accessibility for Ontarians with Disabilities Act* whereby standards may be slightly different, or rolled out along different timelines, for different sizes of organization when it is appropriate to do so.[10] This submission should not be taken to indicate that ACE would support a system where small homes are subject to less stringent standards than large homes, or vice versa. All care home tenants should receive equal benefit and protection of any regulatory structure. The suggestion is made in order to draw

[9] Section 12(1)(a) of R.R.O. 1990, R. 552 (as am.) includes "the services that are provided, on a visitation basis, by a nurse or a nursing assistant" as a "home care service".

[10] Subsection 6(7) of the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11, provides that "accessibility standards may create different classes of persons or organizations or of buildings, structures or premises and, without limiting the generality of this power, may create classes with respect to any attribute, quality or characteristic or any combination of those items, including,

(a) the number of persons employed by persons or organizations or their annual revenue;
(b) the type of industry in which persons or organizations are engaged or the sector of the economy of which persons or organizations are a part;
(c) the size of buildings, structures or premises."

attention to other legislated approaches to standard-setting in organizations of vastly different sizes.

b. Justification

The Consultation Document suggested that a third-party regulatory model is appropriate for industries that the government does not fund. However, there are counter-examples where other types of models are used in areas the government does not fund. For example, the government is heavily involved by way of administering a tiered licensing system in the major area of driving, which it does not fund. It is our submission that retirement home regulation is of such critical importance in the lives of Ontarians that it should be carried out by way of a government-administered licensing scheme. This method of regulation will best achieve the goal of public safety within the context of an ongoing landlord-tenant relationship where care services are provided.

One of the reasons the public is so concerned about retirement home regulation is that some retirement homes have been running as "bootleg" or underground long-term care homes, in effect serving people with the same high health care needs as in long-term care but not subject to any of the oversight or rules associated with the Ministry of Health and Long Term Care. Although retirement homes are essentially a "private" relationship between the operator-as-landlord and the tenant, it is the *health care* aspect of the retirement home that gives it a "public" character to many observers.

In this context, it is important to acknowledge the Ontario government's recent legislative initiative in Bill 140, *An Act respecting long-term care homes*. As of the time of writing, Bill 140 has passed First and Second Reading and was the subject of scrutiny and amendment by the Standing Committee on Social Policy. That legislation, once passed, will regulate the long-term care home system in Ontario. It is to be noted that section 93 of that Bill sets out who can operate a long-term care home in Ontario as follows:

> **Licence required**
> **93.** (1) No person shall operate residential premises for persons requiring nursing care or in which nursing care is provided to two or more unrelated persons except under the authority of a licence under this Part or an approval under Part VIII.
>
> **Exclusions**
> (2) Subsection (1) does not apply to,
> (a) premises falling under the jurisdiction of,
> (i) the *Child and Family Services Act*,
> (ii) the *Mental Hospitals Act*,
> (iii) the *Private Hospitals Act*, or
> (iv) the *Public Hospitals Act*; or

(b) other premises provided for in the regulations.

Offence

(3) Every person who contravenes subsection (1) is guilty of an offence.

This section requires every person operating "residential premises for persons requiring nursing care or in which nursing care is provided to two or more unrelated persons" to have a licence, unless they are excluded under subsection (2). The Bill does not include a definition of "nursing care".

The Consultation Document's definition of a "retirement home" would meet the definition in section 93 of Bill 140. The *Residential Tenancies Act* definition of a "care home" would also meet the definition in section 93. For that matter, most people's understanding of a retirement home would likely meet the definition in section 93.

Therefore, according to Bill 140, every person who operates a home that meets the definition in section 93 will either have to have a licence to operate a long-term care home, or will have to be explicitly exempted by Regulation under section 93(2)(b). The Ministry of Health and Long Term Care, therefore, will have to name and define those persons who will be permitted to operate residential premises where nursing care is provided without having a licence to operate a long-term care home.

As noted above, it is the health care aspect of retirement home care that gives it a "public" character. Care services provided in retirement homes are essentially community-based care and assistance with activities of daily living. In ACE's view, in the absence of a newly created Ministry with authority to deal with retirement homes in a comprehensive way, it makes the most sense for the Landlord Tenant Board to retain jurisdiction over the "tenancy" aspect of retirement homes, and for the Ministry of Health and Long Term Care to take responsibility for the balance of the regulatory system, including inspections, complaint resolution, and administrative orders. This system would, of course, have to be developed in consultation with all stakeholders, including retirement home operators, municipalities, caregivers, health care professionals, disability and consumer advocacy groups, and seniors.

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