The Long-Term Care Homes Public Inquiry

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Public hearings for the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System [the “Long-Term Care Homes Public Inquiry”] began on June 4, 2018, at St. Thomas, Ontario. The Inquiry was established by Order-in-Council on July 26, 2017, following the guilty plea and sentencing of a former registered nurse, Elizabeth Wettlaufer, to eight counts of first-degree murder, four counts of attempted murder, and two counts of aggravated assault against residents of three Ontario long-term care homes, and one community-dwelling home-care client.

The Honourable Justice Eileen E. Gillese was named Commissioner. Her role is to inquire about the events, circumstances, contributing factors and any other relevant matters which led to the events, and to make recommendations to avoid similar tragedies in the future.

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Phase I commenced on June 4, 2018, with public hearings held at the Elgin County Courthouse at St. Thomas, Ontario. The hearings are scheduled to be held through September 2018, and will take approximately nine weeks (see Inquiry schedule for exact dates). The Inquiry is open to the public, with space in the hearing room as well as an overflow room. The hearings are also being broadcast in real time on the Internet, with video-replays available as well as transcripts.

The hearings are the first part of the Inquiry. The first four weeks of evidence reviewed the role of the facilities, and the second four weeks starting on July 16, 2018, will review the roles of the Coroner, the College of Nurses of Ontario and the Ministry of Health and Long-Term Care. Expert testimony will be heard in September in Toronto, with final submissions in St. Thomas later that month.

The Inquiry will then move to Phase II, where there will be consultations, information gathering and further research conducted, all with the goal of preventing similar events from occurring in the future. A final report will be delivered in both official languages by July 31st, 2019.

Lawyers Jane Meadus, of the Advocacy Centre for the Elderly, and Suzan Fraser, of Fraser Advocacy, are attending the hearing as co-counsel on behalf of the Ontario Association of Residents’ Councils. Their role is to represent the interest of the 72,000+ residents of long-term care homes across Ontario and ensure that their voices are heard in this process.

There are 17 different groups representing approximately 30 different participants (see Inquiry website for list of participants). Participants range from the Government of Ontario, to long-term care homes, the College of Nurses of Ontario, representative organizations, family members and one victim. Evidence is being presented in both documentary form and oral evidence. Participants have the opportunity to review the documents as well as ask questions at the hearing.

For more information about the scope of the hearing, parties, schedules and access to broadcasts, please go to the Inquiry website at www.longtermcareinquiry.ca
Money and the Home: Can Who Pays Down the Mortgage Affect Ownership or Entitlement to Proceeds of Sale?

Resulting Trusts
Where one person (Person A) provides money to another person (Person B) without receiving anything in exchange, the law presumes that Person B is holding Person A’s money in trust for him or her. Put differently, the law presumes that Person A did not intend to simply give money to Person B – rather, the law presumes that Person B is temporarily holding onto the money on Person A’s behalf. This presumption is called the “presumption of a resulting trust.” This presumption can be rebutted if Person B can show that Person A meant to gift him or her the money.¹

The presumption of a resulting trust also applies in situations where Person A provides money to Person B to purchase real estate. In this type of situation, Person A will be presumed the beneficial owner of the property, even if Person B is the registered title holder. This is known as a “purchase money resulting trust.” The presumption of a purchase money resulting trust can be rebutted with evidence that the money provided by Person A to Person B and used in the property’s purchase was intended to be a gift to Person B.²

Expansion of Resulting Trust Principle
A recent Court of Appeal decision, Chechui v. Neiman (“Chechui”),³ has expanded the purchase money resulting trust principle. In Chechui, the Court of Appeal held that a presumption of resulting trust can arise not only with respect to the purchase or transfer of property, but also with respect to a post-purchase reduction of liabilities associated with the purchase or transfer of a property (i.e. paying down a mortgage or line-of-credit). This decision signals a departure

¹ See e.g. Pecore v. Pecore, 2007 SCC 17.
² See e.g. Andrade v. Andrade, 2016 ONCA 368.
³ 2017 ONCA 669 [Chechui 2].
from earlier cases in which the courts had held that contributions towards mortgages and other liabilities associated with the purchase of a property did not give rise to the presumption of a resulting trust.\textsuperscript{4}

\textbf{Facts}

Ian and Victoria, the parties to the litigation in \textit{Chechui}, purchased a home, the Brookdale Property, with a $1.7 million down-payment gifted to them by Ian's mother, Dianne, and a $1 million purchase-money mortgage held jointly in Ian and Victoria's names. At the time, they were in a common-law relationship. The mortgage was later converted to a $1 million line-of-credit. Both Ian and Victoria were on title as joint tenants.

Upon his mother's death, Ian sold a home he had owned with her as tenants-in-common. Ian used some of the proceeds of sale to repay the $1 million line-of-credit associated with the purchase of the Brookdale Property. He also invested another $800,000 from the proceeds of sale in an investment fund he opened following the sale. He opened the investment fund in the joint names of himself and Victoria.

Ian and Victoria's relationship broke down after Dianne's death, and Victoria brought an application for the partition and sale of the Brookdale Property and for 50% of the money held in the investment fund. Ian resisted the application and sought declarations that he was the sole beneficial owner of the Brookdale Property and the investment fund, amongst other relief.

\textbf{The Courts' Analyses}

The application court found that Ian was the sole beneficial owner of the $800,000 investment fund, and that Victoria was not legally entitled to any portion of it. It also found that Ian and Victoria were joint owners of the Brookdale Property, and that the $1.7 million down-payment that Ian's late mother, Dianne, had contributed was made as a gift jointly to Ian and Dianne. Finally, it held that the $1 million debt repayment that Ian made against the Brookdale Property was for the joint benefit of himself and Dianne, as joint property owners, and that Ian was not entitled to any reimbursement for that debt repayment.

Ian appealed the application court’s decisions regarding Victoria’s interest in the Brookdale Property and whether his repayment of the line-of-credit gave rise to a resulting trust. Victoria did not appeal the application court’s decision regarding ownership of the investment fund.

\textbf{A Resulting Trust over the $800,000 Investment Fund}

The application court dismissed Victoria’s claim for 50% of the $800,000 deposited by Ian into an investment fund held jointly by himself and Victoria. It heard evidence that Ian had only added Victoria to the account so that she would have the funds if he were to die. It held that Ian had only intended that Victoria would have a right of survivorship to the funds, and not that she would be entitled to 50% of the funds during his lifetime. Furthermore, Victoria had not rebutted the presumption that Ian remained the beneficial owner of the entirety of the funds.

\textbf{Joint Ownership of the Brookdale Property}

Ian argued at trial that he was the sole beneficial owner of the Brookdale Property because his mother had intended to gift the $1.7 million down-payment on the Property to him alone, not to him and Victoria jointly. He also argued that he had not understood or intended that he and Victoria would be named as joint tenants of the Property.

The application court rejected Ian’s legal arguments, noting that, “if anyone could have challenged the gift [from Dianne] and Victoria’s entitlement to it, it would have been [Dianne’s] estate. It has not done so.”\textsuperscript{5} The application court nevertheless considered evidence as to whether or not the gift of $1.7 million was intended to go to Ian alone, or to Ian and Victoria jointly, and


\textsuperscript{5} \textit{Chechui I}, supra note 4 at para. 9.
concluded that there was clear evidence, including from two lawyers consulted by Dianne, that Dianne had intended to gift the funds to Ian and Victoria together.

The application court also concluded based on the evidence before it that Ian had understood and intended that he and Victoria would be joint tenants at the Brookdale Property.

Based on these findings, the application court held that the Ian and Victoria had an equal interest in the Brookdale Property.

The Court of Appeal affirmed the application court’s finding that Ian and Victoria had an equal interest in the Brookdale Property. The court based this finding on three factors: first, title to the Brookdale Property was taken in both Victoria and Ian’s names; second, the gift of $1.7 million down-payment paid by Dianne towards the Property was a gift to Ian and Victoria together; finally, Ian’s argument that Victoria had been unjustly enriched by receiving an interest in the Property failed because of the court’s finding that Dianne’s gift was to Ian and Victoria together (thus providing a juristic reason for Victoria’s enrichment).

**A Resulting Trust over the $1 Million Debt Repayment**

Ian also argued at trial that his repayment of the $1 million line-of-credit gave rise to the presumption of a resulting trust to his benefit. The application court dismissed this claim. In so finding, the application court canvassed previous case law that limited claims for resulting trusts to the purchase or transfer of property and did not recognize payments towards mortgages as giving rise to a presumption of resulting trust. The application court further held that even if Ian’s repayment of the debt did lead to the presumption of a resulting trust, the presumption was rebutted by the evidence that Ian and Victoria intended to own jointly the Brookdale Property to which the debt related.

However, the Court of Appeal held that Ian’s repayment of the $1 million line-of-credit led to the presumption of a resulting trust relating to the retirement of Victoria’s 50% share of the debt, and that Victoria had failed to rebut this presumption. As a result, on the sale of the house, Ian was entitled to be credited with the amount of $500,000 on division of the proceeds of sale. That Ian and Victoria held the Brookdale Property as joint tenants did not affect the Court’s analysis.

Interestingly, in its decision the Court of Appeal did not canvass the cases cited in the lower court, which held that the presumption of a resulting trust is limited to purchases or transfers of property. Instead, the Court of Appeal focused on Ian’s intention at the time he paid down the line-of-credit. The Court held that Ian’s repayment of the $1 million line-of-credit was gratuitous and directly linked to the acquisition of the Property, and that as such, Victoria bore the onus to establish that Ian intended to gift her $500,000, being her share of the parties’ joint indebtedness. Because she failed to present evidence that the money was intended as a gift, Ian was entitled to a $500,000 credit upon sale of the Property.

**Conclusion**

The *Chechui* case suggests that where a person pays down a mortgage or line-of-credit associated with the purchase of property, the presumption of a resulting trust may apply. It remains to be seen how this presumption will be applied in cases with different facts from the *Chechui* case, for example in cases where a parent assists an adult child in paying off the mortgage on a property where the parent does not reside. Nevertheless, the *Chechui* case marks an interesting development in the law surrounding purchase money resulting trusts.

It should be noted that Ian sought leave to appeal the Court of Appeal’s decision to the Supreme Court of Canada. Leave to appeal was denied, with costs.

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6 *Chechui 2*, supra note 3 at para. 30.
7 *Chechui 1*, supra note 4 at para. 70.
8 *Chechui 2*, supra note 3 at para. 67.
9 *Ibid.*, at para. 64.
Reunification Priority Access Beds

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As of January 1, 2018, the Government amended the regulations to the Long-Term Care Homes Act (“the Act”), adding sections 206.1-206.3 to give priority to crisis applicants requiring immediate admission to the same long-term care home as their spouse or partner.

Until this time, while the Act already provided for spouses and partners to have an elevated status for admission into a long-term care home to be reunited, there were still barriers to reunification in crisis situations.

Up until December 31, 2017, spouses and partners were given this special status under the Act in the following two ways:

(1) If a person has a spouse or partner in a long-term care home, they are eligible for admission if they are at least 18 years of age, have an OHIP card, and their care needs (if any), can be met in the long-term care home. They do not have to have any care needs themselves; however, if this is the case, they are on the placed in the lowest waiting list category.

(2) If a person meets all of the criteria for admission to a long-term care home themselves and their spouse or partner is already a resident of a long-term care home, they are placed in “Category 2” on the waiting list for the home in which their spouse or partner is already residing.

However, there was no priority for a spouse who also met the “crisis” category (“Category 1”). Due to lengthy waiting lists for many long-term care homes, the crisis categories were becoming longer and, for some homes, the bulk of admissions were from that list.

The result was that even if the waiting spouse or partner met the criteria for Category 1, there was still no guarantee that the person would be offered quick admission to the home in which their spouses was.
residing, as the crisis list was placed as of “need”, then
as of date on the list, which could still be very lengthy.
This created serious hardships for spouses who were
facing lengthy separations.

For this reason, the Ministry has created “Reunification
Priority Access Beds” which are referred to by their
acronym “RPABs”. As of February 20, 2018, each
long-term care home with long-stay beds has been
designated as having two long-stay RPABs. These beds
will not be designated by class of accommodation or
gender, so that they can be offered to a qualified crisis
applicant waiting for an RPAB.

Initially, every long-term care home with long-stay
beds had two available RPAB spots. The Local Health
Integration Network (“LHIN”) is responsible for
keeping an RPAB waiting list for each home. Eligibility
for the RPAB list will be that:

(1) the applicant has been assessed by their LHIN
placement co-ordinator and placed on the
Category 1 waiting list; and

(2) the applicant has a spouse or partner who is
already residing in the home to which they are
applying.

When a long-term care home bed becomes vacant, if
there is someone on the RPAB list for that home that
matches the vacancy (i.e. type of accommodation
applied for, gender), then that person will be offered
that bed. If the RPAB applicant accepts the bed, the
bed is deemed to be an RPAB bed.

If there is no one from the RPAB list waiting for that
bed, then the vacancy is offered to someone from the
regular waiting lists.

The home must record the name of the person
admitted to the RPAB, the date of admission, and the
date that he or she ceases to occupy that bed. If the
resident is admitted to an RPAB bed and later his or
her spouse or partner dies, the resident continues to
be in an RPAB bed. The home must also advise the
placement co-ordinator when one of the RPAB beds
become available. The home is not required to have
more than two RPAB beds at any time.

Ranking within the RPAB waiting list is according to
the date on which the applicant’s spouse or partner
was admitted to that home. For example:

May has been on the RPAB list for 2 months.
Her partner Jack was admitted to the home on

June was placed on the RPAB list 1 week ago.
Her wife, Jasmine, has been a resident of the
home since May 10, 2016.

An RPAB bed becomes available. June will
be offered the bed first because her wife was
admitted to the home earlier than May’s partner.

Because the RPABs are “virtual” beds, they are not tied
to a specific bed in the long-term care home. The RPAB
designation goes with the resident, not the physical
bed. Therefore, should a resident admitted under RPAB
move to a different room or level of accommodation,
the RPAB designation moves with the resident, and no
RPAB vacancy is created.

If all of the RPAB beds are filled, the applicant would
remain on both the RPAB waiting list for the home in
which his or her spouse or partner resides, as well as
the regular Category 1 waiting list for that home and
any other home to which he or she may have applied.

RPAB beds have been created so that those who have
a spouse or partner in a long-term care home and who
have also been designated as crisis can be reunited
more quickly. Hopefully, the creation of these beds will
be sufficient to meet these needs.
Challenging the Refusal of Admission to a Long-Term Care Home

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Long-term care homes are subject to the Long-Term Care Homes Act (LTCHA).\(^1\) Under the LTCHA, a long-term care home can refuse to admit an applicant for specific reasons and there are certain steps that the home must take to notify the applicant of the decision. This article sets out the legal grounds for refusal, the requirements of the written notice the home must provide to the applicant, and how to challenge the long-term care home’s decision.

Grounds for Withholding Approval of Admission

Under section 44(7) of the LTCHA, a long-term care home can withhold admission to an applicant for one of the following reasons:

1) The home lacks the physical facilities necessary to meet the applicant’s care requirements; or

2) The staff of the home lack the nursing expertise necessary to meet the applicant’s care requirements.

Written Notification

Written notification is required when a long-term care home withholds admission. Under section 44(10), the notice must be sent to the applicant, the Director of the Long-Term Care Inspections Branch at the Ministry of Health and Long-Term Care (“the Ministry”), and the applicant’s placement co-ordinator at the Local Health Integration Network (LHIN).

The lawyers at ACE will often review a denial of admission letter from a long-term care home to an applicant, which only provides one of the above noted grounds as the basis for the refusal to admit, without any explanation. A denial without any justification or explanation does not meet the legislative requirements.

Pursuant to section 44(9) of the LTCHA, the notice must include all of the following information:

1) The grounds for withholding approval;

2) A detailed explanation of the supporting facts, as they relate to both the home and the applicant’s condition and requirements for care;

3) An explanation of how the supporting facts justify the decision; and

4) Contact information for the Director of the Long-Term Care Inspections Branch at the Ministry.\(^2\)

In order to comply with the legislation, the justification provided in the written notice must be true and accurate. For example, a home cannot claim that it lacks the nursing expertise to meet the applicant’s care requirements, when the staff have been trained and are prepared to deal with that applicant’s condition.

Some long-term care homes have a practice of sending a denial of admission letter that is different from the one sent to the placement co-ordinator at the LHIN. The copy sent to the LHIN may include more detailed reasons for the refusal. If you are thinking about challenging a home’s refusal, you should request a copy of the letter that was sent to LHIN.

Challenging the long-term care home’s decision

If you believe that a long-term care home’s denial of admission does not comply with the legal requirements, you should discuss it with your placement co-ordinator at the LHIN. If you are unable to resolve the matter, you can make a complaint to the Ministry of Health Long-Term Care Action Line at 1-866-876-7658.

The Ministry will triage the complaint and an inspector from the long-term care inspections branch may investigate the matter. If the inspector finds that the home’s denial of admission failed to comply with the LTCHA, the inspector may order the home to provide reasons for the refusal that comply with the law and if they cannot do so, to cease the withholding of admission.

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\(^1\) 2007, SO 2007, c 8.

\(^2\) Ibid at s 44(9).
Old Age Security and Canada Pension Plan Benefits and Certificates of Incapability

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  Staff Lawyer

Occasionally, seniors may become incapable of managing their pension benefits without having made previous arrangements to enable another person to manage their finances on their behalf, such as granting a continuing power of attorney for property. Where the pension benefits are benefits payable under the Old Age Security Act or the Canada Pension Plan Act, there is a procedure available that would enable individuals, agencies or institutions to manage the pension benefits on behalf of the incapable person.

Form SC-ISP-3505, a Certificate of Incapability, can be signed by a medical professional, social worker, lawyer or member of the clergy, providing an opinion of whether the senior has good general knowledge of what is happening with his/her money or investments; sufficient understanding of the concept of time in order to pay bills promptly; sufficient memory to keep track of financial transactions and decisions; ability to balance accounts and bills; and significant impairment of the senior’s judgment due to altered intellectual function.

A person or organization that wishes to administer pension benefits on behalf of an incapable individual must complete Form SC-ISP-3506, Agreement to Administer Benefits by a Private Trustee, or a Form SC-ISP-3507, Agreement to Administer Benefits by an Agency or Institution. In the Agreement, the person signing must agree to act on behalf of the beneficiary (the incapable benefit recipient) and to administer and expend the benefits in the incapable person’s best interest. The trustee must also agree to some other duties, such as acting in accordance with any directions from Employment and Social Development Canada; maintaining yearly records of money received and spent for the beneficiary; completing an accounting upon request from Employment and Social Development Canada; and supplying any other information that may be required.

Upon receipt of these forms, Service Canada may send the pension benefits to the trustee in trust for the incapable individual. It is illegal for the trustees to misuse these funds.

If the trustee does not manage the pension benefits appropriately, Service Canada may be notified of the particulars and the trust can be terminated.

It is important for seniors to fill out an income tax return each year if they wish to continue receiving benefits such as the Guaranteed Income Supplement or certain tax credits. If the senior is incapable of managing finances but is capable of consenting to someone else filing their income tax returns, the senior can provide a Form T1013 to the Canada Revenue Agency authorizing a representative to file his or her tax returns and to disclose and request changes to information provided to the Canada Revenue Agency. A person can also cancel their representative by filling out the same form.
The Availability of Old Age Security Benefits for Immigrants and Refugees

• Julia Brown
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If you are 65 years old or older and came to Canada as an immigrant or refugee, you may be eligible to receive Old Age Security (“OAS”) pension benefits. The Old Age Security (“OAS”) program provides a monthly pension to eligible residents of Canada.

Unlike the Canada Pension Plan, you do not need to have worked for a certain period of time in Canada in order to qualify for OAS. Instead, OAS is funded by the Government of Canada, and to qualify for it you must be 65 years old or older and meet certain residence criteria. Depending on how long you have resided in Canada, you may be eligible for the full OAS pension or for a partial amount of the OAS pension.

In order to qualify for a partial OAS pension, a person typically needs to have resided in Canada for at least ten years prior to when his or her application for OAS is made.¹ Such residence must be legal, which the Old Age Security Regulations define, in part, as being “lawfully in Canada pursuant to the immigration laws of Canada.”² A person in Canada on a valid visitor’s visa would be considered to be lawfully in Canada.

The Old Age Security Regulations define “residence” as follows:
(a) a person resides in Canada if he makes his home and ordinarily lives in any part of Canada . . .³

Residence in Canada therefore does not necessarily ‘start’ when a person’s application for permanent residence is approved, or even when it is submitted. Rather, residence in Canada begins when a person makes his or her home and ordinarily lives in Canada. A person might make his or her home and ordinarily live in Canada prior to becoming a permanent resident.⁴

For example, a person who comes to Canada and makes a successful refugee claim may be able to establish that he or she meets the definition for “residence” prior to the date on which his or her application for permanent residence was submitted, since he or she would likely be able to prove that he or she was making his or her home and ordinarily living in Canada from the date of his or her arrival in Canada.

OAS’ residence requirements may pose a barrier to accessing OAS for relative newcomers to Canada. However, if the person applying for OAS has previously lived in a country with which Canada has a Social Security Agreement, his or her residence in that other country may be counted towards the ten

¹ Old Age Security Act, RSC 1985, c O-9, s. 3(2).
² Old Age Security Regulations, CRC, c 1246, s. 22(1) [Regulation].
³ Regulation, s. 21(1). Section 21 also includes further, more specific provisions regarding residence of diplomats, members of foreign militaries, etc.
⁴ See e.g. A. D. v Minister of Employment and Social Development, 2015 SSTAD 1267 (Appeal Division) at para. 10.

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year minimum Canadian residence requirement.

Canada has Social Security Agreements with many countries, and each agreement is different. Information regarding Canada’s various Social Security Agreements can be accessed at: https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-international/apply.html.

The following scenario provides one example of how a Social Security Agreement might enable someone to access OAS:

A.B. is a 70 year old who came to Canada from India on January 1, 2012 on a visitor’s permit to stay with her daughter, C.D. Prior to her retirement and coming to Canada, A.B. worked in India as a teacher for twenty years. During that time, she contributed to the Indian Employees’ Pension Scheme, 1995, which is similar to the Canada Pension Plan in Canada.

C.D. is a Canadian citizen and intends to sponsor A.B.’s permanent residence application in Canada. Permanent residence and sponsorship applications are made in 2013. Prior to the applications being submitted, A.B. has visitor status in Canada.

A.B. has not worked since she arrived in Canada at the age of 65.

A.B. is wondering whether she might be eligible to receive OAS benefits in Canada, even though she has only been living in Canada for six years, since 2012.

A.B. looks on the Government of Canada’s website regarding public pensions, and finds that Canada does have a Social Security Agreement with India. A.B. sees on the website that:

“If you do not qualify for an OAS pension based on your years of residence in Canada, Canada may consider periods of contribution to the Indian EPS [Employees’ Pension Scheme, 1995] as periods of residence in Canada to help you meet the eligibility requirements.”

A.B. decides to apply for OAS, since she believes that she will be eligible thanks to her contributions to the Indian Employees’ Pension Scheme, 1995.

It is important to note that sponsored immigrants can receive OAS without their sponsor incurring a sponsorship debt. The Guaranteed Income Supplement (“GIS”), however, is considered to be social assistance, and immigrants who are still in their sponsorship period are therefore ineligible to receive GIS except in exceptional circumstances.


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Unlicensed Care Homes — A Legal Overview

- Clara McGregor
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In this article we discuss what we call “unlicensed care homes”. ACE is regularly contacted by or on behalf of older adults living in unlicensed care homes with complaints or concerns about their housing and/or care. Here, we explain in more detail how these homes are different from other types of supportive housing, common complaints about this type of housing, and how to identify an unlicensed care home.

For the purposes of this article, “unlicensed care homes” is a catch-all term used to describe a common type of private, for-profit housing in Ontario that is neither a licensed retirement home nor a long-term care home. It is not a term of art, but we use this term because operators of this type of housing are typically not required to obtain a license to operate their care home, unlike retirement home or long-term care home operators who must obtain licenses from the Retirement Home Regulatory Authority and the Ministry of Health and Long-term Care, respectively. We do note that operators of unlicensed care homes may hold various licenses from municipalities or elsewhere, but for the purposes of this article we call them unlicensed.

The differences between unlicensed care homes, retirement homes, and long-term care homes:

In Ontario, The Residential Tenancies Act (“the RTA”) and its regulations govern the rights and obligations of residential tenants and landlords. “Care homes” are defined under the RTA as a type of residential complex 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.1 Care services can include, among other things, nursing care, administration and supervision

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1 RTA s. 2(1)
UNLICENSED CARE HOMES  
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of medication, bathing assistance, and incontinence care. Residents of care homes are tenants and the owners/operators of care homes are landlords.

“Unlicensed care homes,” as we call them, are a type of care home under the RTA. “Retirement homes” are another type of care home under the RTA, however, retirement homes are further governed by the Retirement Homes Act (“the RHA”). In order for a care home to be considered a retirement home, most of the tenants must be at least 65 years old, there are at least six residents who are not related to the landlord, and there are at least two care services available to tenants.

Among other things, the RHA establishes the Retirement Homes Regulatory Authority (“the RHRA”), codifies complaints and inspection procedures, requires operators of retirement homes to apply for and maintain a license, and creates a Bill of Rights for retirement homes residents. More information about retirement homes is available on the ACE website at http://www.advocacycentreelderly.org/ace_library.php.

All retirement homes are care homes, but not all care homes are retirement homes, i.e. care home is a broader category than retirement home. Care homes that do not meet the definition of retirement home fall into the category that we call unlicensed care homes. At ACE, we regularly speak with older adults who are living in care homes which do not meet the definition of retirement homes under the RHA because there are fewer than six residents, the majority of residents are not 65 or older, or the home has not sought or obtained a license from the RHRA.

The RTA affords all care home tenants, whether living in an unlicensed care home or a retirement home, the same rights and protections as tenants in ordinary rental units including security of tenure and rules regarding rent increases. Landlords of care homes must differentiate between the cost of rent and the cost of care services/meals and must provide all tenants with an information package detailing these costs, among other things.

Unlicensed care home landlords must give tenants a minimum of 90 days written notice for cost increases for meals and care services. More information about care homes can be found on the CLEO website at https://www.cleo.on.ca/en/publications/carehome/care-homes-3.

Unlike unlicensed care homes and retirement homes, long-term care homes are not regulated by the RTA or the RHA. Residents living in long-term care homes are not considered tenants. Instead, long-term care homes are regulated and funded by the Ministry of Health and Long-term Care (“the MHLTC”) and are subject to different legislation, including the Long-term Care Homes Act. Operators of long-term care homes must obtain licenses from the MHLTC and undergo regular inspections.

Challenges specific to unlicensed care homes:

In our experience, some unlicensed care homes fall short of the standards one would expect from supportive housing. Most tenants in unlicensed care homes require the assistance of a nurse, personal support worker, or other professional that may not be available in an ordinary rental unit. While tenants who live in unlicensed care homes are a diverse group, many are older and/or vulnerable adults.

We have heard from concerned tenants in unlicensed care homes about staff shortages, unhygienic living conditions, mismanagement of medication, bedrooms without windows, bedrooms in damp basements, unsafe food handling practices, tenants living in hallways, pest infestations, abusive treatment by staff, unlawful confinement of tenants, and overcrowding. In our experience, there is limited accountability for

2 O. Reg 516/06 General s. 2(1)
3 RTA s. 140; O. Reg 516/06 2.47

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the landlords who are responsible for the gruesome living conditions.

Unlike in retirement homes or long-term care homes, unlicensed care home tenants cannot complain to the RHRA or the MHLTC about care, staffing, or safety concerns. It can be difficult for tenants in unlicensed care homes to resolve their concerns because this type of housing does not fall under the jurisdiction of any one governing authority.

Unlicensed care home tenants can bring some types of applications to Landlord and Tenant Board, which has jurisdiction to hear disputes about rent increases, care service and meal cost increases, and some maintenance issues. Other authorities including municipal inspectors, the police, and health officials will only intervene in very limited circumstances such as criminal acts or breaches of the fire, health, or building codes. Unfortunately, these interventions are often narrow in scope and rarely address tenants’ complaints in a comprehensive way.

The public should be aware that it is not uncommon for hospital discharge planners to recommend that a patient who is ready for discharge but in need of continuing care move from the hospital to an unlicensed care home. The discharge planner will not necessarily advise (or even understand) that the recommended unlicensed care home is subject to far fewer rules and less oversight than a long-term care home or retirement home.

Though some of unlicensed care homes are problematic, they fill a gap in Ontario’s housing needs: affordable housing for people in need of daily care. Many unlicensed care homes have no or short wait times and are less expensive than other options in a community. As hospitals face pressure to discharge patients that no longer require acute care, long-term care home waitlists continue to grow, and the cost of retirement homes remain out of reach for many, some vulnerable people have no choice but to move into an unlicensed care home.

It is important that tenants or prospective tenants of unlicensed care homes understand that such homes are different than retirement homes and long-term care homes, and that as tenants, they may face additional challenges resolving complaints and concerns.

How to identify an unlicensed care home:

A significant problem with unlicensed care homes is that tenants sometimes do not realize that they are living in one until they want to try to resolve a problem. The MHLTC maintains a list of all currently licensed long-term care homes and any corresponding inspection reports, available here: http://publicreporting.ltchomes.net/en-ca/default.aspx. Similarly, all licensed retirement homes must be listed on the RHRA Public Register along with any inspection reports, available here: https://www.rhra.ca/en/search-the-public-register/. If a rental unit in Ontario offers care services and is not named in either of these databases, it is likely an unlicensed care home.

Confusingly, some unlicensed care homes use the words “retirement home” or “long-term care” in their names even if they are unlicensed and do not legally meet the definitions of these types of homes. For example, “The Wizard of Oz Retirement Home” is not necessarily a retirement home simply because of its name. If you are researching a new living arrangement, do not trust that a residence is a retirement home or a long-term care home based on its name alone. In addition to visiting any home you or a loved one is considering moving to, always check the Ministry database and the RHRA Public Register to confirm the legal status of the residence and review any inspection reports about that home.

Through our casefile and policy work, ACE continues to push for greater accountability and regulation for all care home operators in the province.
Highway Traffic Act Strengthens Medical Reporting Requirements

In Ontario, physicians are required by law to report patients who may be medically unfit to drive. The Ministry of Transportation has clarified the reporting obligation related to fitness to drive by specifying the medical and visual conditions and functional impairments that trigger a mandatory report. The medical reporting requirements in the Highway Traffic Act (HTA) have been strengthened to: enhance road safety; clarify which conditions health-care practitioners are required to report; and improve the ministry’s ability to identify potentially unsafe drivers.

Effective July 1, 2018, it will be mandatory for physicians, nurse practitioners and optometrists to report certain high risk medical conditions, functional impairments and visual impairments. Health-care practitioners are also permitted to make discretionary reports for any person who, in the opinion of the health-care practitioner, has or appears to have a medical condition, functional impairment or visual impairment that may make it dangerous for the person to drive.

As of July 1, the following are prescribed medical conditions, functional impairments and visual impairments that would trigger a mandatory report:

1. **Cognitive impairment**: a disorder resulting in cognitive impairment that,
   • affects attention, judgment and problem solving, planning and sequencing, memory, insight, reaction time or visuospatial perception, and
   • results in substantial limitation of the person’s ability to perform activities of daily living.

2. **Sudden incapacitation**: a disorder that has a moderate or high risk of sudden incapacitation, or that has resulted in sudden incapacitation and that has a moderate or high risk of recurrence.

3. **Motor or sensory impairment**: a condition or disorder resulting in severe motor impairment that affects co-ordination, muscle strength and control, flexibility, motor planning, touch or positional sense.

4. **Visual impairment**: where prescribed regulatory standards are not met.

5. **Substance use disorder**: a diagnosis of an uncontrolled substance use disorder, excluding caffeine and nicotine, and the person is non-compliant with treatment recommendations.

6. **Psychiatric illness**: a condition or disorder that currently involves acute psychosis or severe abnormalities of perception such as those present in schizophrenia or in other psychotic disorders, bipolar disorders, trauma or stressor-related disorders, dissociative disorders or neurocognitive disorders, or the person has a suicidal plan involving a vehicle or an intent to use a vehicle to harm others.

Physicians and other health-care practitioners are not required to report if it is their opinion that the impairment is of a distinctly transient or non-recurrent nature.

There is also an exception related to aging: reporting is not required where there are incremental changes in ability that, in the opinion of the health-care practitioner, are attributable to a process of natural aging, unless the cumulative effect of the changes constitutes a condition or impairment described above.

A new medical reporting form for use by physicians, nurse practitioners and occupational therapists will be used for both mandatory and discretionary reports. The form has been approved by the Ministry of Health and Long Term Care and the Ontario Medical Association, and will be available on the Ministry of Transportation’s website as of July 1, 2018.

The reporting obligation can be found in Ontario Regulation 340/94, s.14.1(3). In the event of questions, please obtain independent legal advice. MD

You Are Invited To The

34th Annual General Meeting of the
Advocacy Centre for the Elderly

Tuesday, October 23, 2018
6:00 p.m.

YMCA of Greater Toronto
Central YMCA
Auditorium
20 Grosvenor Street
Toronto

Please contact Molly Rotering at ACE (416) 598-2656 to register or for further details

Comments for the Editor
Comments about this newsletter may be sent to the editor, Christine Morano, via regular mail or email at moranoc@lao.on.ca.

Electronic Newsletters
To receive a copy of this and future newsletters electronically, please send an email to Molly Rotering roterim@lao.on.ca