

Notes for a Presentation

by the

National Automobile, Aerospace, Transportation
and General Workers Union of Canada
(CAW-Canada)



to the Standing Committee on Social Policy

Regarding Bill 21:

Retirement Homes Act, 2010

Presenting on behalf of CAW-Canada

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National Executive Board

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Introduction to Speaker – Tim Carrie

Local 27 in London is a composite Local representing some 8,000 members; including almost 2,500 health care workers employed by London Health Science and St Joseph's Health Care. Sister Local 302 President in London and NEB member Nancy McMurphy regrettably was unable to attend today; but her Local represents another 6,000 members in the London areas including Chelsey Park Oxford and Central Park Lodges London retirement homes among others.

As many will no doubt know, CAW-Canada represents over 155,000 members employed in various key sectors of the provincial economy, including some 21,000 members in health care and 1,500 members employed by retirement homes that would be subject to this proposed legislation.

We speak today as tireless advocates for residents on behalf of the many thousands of CAW members and retirees and their family members residing in retirement homes. But we speak equally as determined advocates for our retirement home members working to provide quality and compassionate care to these residents.

All too often the invaluable contributions; dedication and compassion of retirement home workers are ignored. These workers continually struggle – often without adequate support or training and with inadequate equipment and supplies to provide quality care with a sincere human connection and loving touch. And they themselves are subject to verbal and physical abuse, or racial or sexist harassment by residents or others.

As their workplace representative, we are heartened that regulation and public oversight is being brought to the largely privately-owned and operated retirement home sector. It has been a 'long time coming' and many decades overdue. It has been a task that all parties in turn as Government have at various times failed to initiate in recent decades – such as lack of support for Lyn McLeod's private members' Bill 53.

The present proposed legislation and debate echoes both the initial effort to provide a legislative framework for the emerging nursing homes sectors in the early 1970s; as well as the reform of the Nursing Home Act in 1987. Not surprisingly given the broad downloading from acute and chronic care hospitals to long-term care; and the ever-increasing waiting lists to long-term care - the residents of nursing homes in those days are far more similar in acuity and health condition to current day retirement home residents.

So as we strongly commend Government for this initiative, we nonetheless strongly express our disappointment and dismay that seniors in retirement homes were for so long afforded such low priority; and after such prolonged delay that the resulting regulation is so limited in substance.

Even Bill 56 a decade ago provided that a 'care home' should have 'sufficient staff'. Today, this sector is caring for ALS patients discharged from hospital; and otherwise by stealth morphing into unregulated nursing homes

The clear challenge of any statutory regulation of care homes is to be respectful of the continuum of care and assistance in activities of daily living provided to seniors; ranging from independent congregate living arrangements to supportive and assisted living arrangements, and concluding with retirement homes that in many meaningful respects operate virtually as unlicensed long-term care facilities.

We have found it ironic that retirement homes would have remained unregulated, privately funded care homes but nonetheless designated as a 'hospital' for labour relations purposes under the *Hospital Labour Disputes Arbitration Act* (HLDAA).

We welcome this opportunity therefore to provide our views on Bill 21, the *Retirement Homes Act, 2010* and, more generally, on the statutory and regulatory scheme governing both the retirement and long-term care homes sector in Ontario. We hope our participation will support strengthening and enhancing the draft legislation in the best interest of seniors.

The most fundamental matter in our view is either the Long Term Care or retirement home sector is the critical role **of the principle of a minimum staffing standard**, a position we have consistently set out in our previous submissions concerning long-term care reform surrounding Bill 140 and the accompanying regulations.

We remain highly critical that neither the statute nor regulations accompanying Bill 140 provided a statutory or regulatory minimum care standard for staffing. However, we also acknowledged and commended the other significant elements proposed to strengthening the rights of residents; protecting 'whistleblowers'; enhancing the continuity of care and training and orientation for direct care staff.

The recent past in Ontario concerning seniors' accommodation and care services is ample proof that relying on self-regulation; 'invisible' market forces or private litigation can never effectively substitute for appropriate public regulation and oversight to ensure minimum standards of quality and care.

Specific Issues and Concerns

Defining a 'retirement home'

We recognize that the seniors' housing 'market' is a diverse and varied sector. So defining a 'retirement home' under this statute to reflect that diversity should rely on a purposeful functional approach.

We need more than simply age or a prescribed number of residents as parameters for our definition and classification of retirement homes. Section 2(1) should be revised to include at the very least a positive definition similar to that under HLDAA. We need more than the default definition; anything not otherwise governed and/or funded under the other statutes listed at section 2(1).

The definition or purposes must reflect the nature and extent of care services actually provided to residents to define and classify retirement homes for the various purposes under this statute.

Ensuring advocacy and autonomy

We applaud recognizing the need for 'autonomy'; in the same form as 'dignity, respect [and] privacy' in the fundamental principle at section 1. Consistent with our views in respect of Bill 140, we urge the Committee to provide for an Ombudsperson for residents under this proposed Bill. Whether extending the mandate of the Ombudsman's office or creating a separate Seniors' Ombudsperson, there ought to be an independent body charged with investigating and advocating on behalf of seniors.

Such advocacy and autonomy should also inform the composition of the Retirement Home Regulatory Agency. Order-In-Council (OIC) appointments under section 12(5) should have more explicit criteria to ensure senior's advocates are provided a strong voice and not merely a token presence on the Board of the Authority.

We are opposed to this industry 'self-management' model – borrowed from the motor vehicle dealers; real estate agents/brokers; travel agency and tour operators and cemetery operators sectors. The approach as so clearly discredited by the Advocacy Centre for the Elderly (ACE) ignores the obvious vital distinctions between ensuring consumer protection in the act of purchasing cars, homes or vacations – and requiring all but 24 hour nursing care otherwise provided in a nursing home or home for the aged.

Similarly, there should be explicit criteria to limit the number of director members on the Board representing the interests of provider homes or their associations. Indeed, if the OIC appointments may include representation of business more generally; there can be no argument to exclude representation of labour more generally as well and section 12(5) should be so amended.

In this vein, we applaud the provision at section 19 for the Minister to provide 'policy directions' and recommend that only the Minister be capable on behalf of Government of providing policy direction to the Authority relating to the Act and its regulations. In other words, the Authority ought to have no autonomy in respect of policy direction part from that reviewed, debated and approved by the Legislature. This must remain a matter of public regulation, rather than self-regulation by the dominant sector interests reflected on the Board of the Authority.

Whistle-blower protection

We welcome the whistle-blower protection; another procedural innovation in this sector much like the Resident's Bill of Rights; care planning and needs assessment, or mandatory reporting obligations similar to the long term care sector. The form and substance of this important protection ought not to be any less than provided under the Long Term Care Homes Act.

Staff training and background checks

We accept the retirement homes workers are critical to the provision of quality care, and ought to have access to the appropriate skills development and training provisions necessary to maintain and enhance their skill and qualification as set out in section 65(1). That should require every licensee of a retirement home to expressly plan for and ensure provision of the 'prescribed' qualifications.

The task of developing those 'prescribed' qualifications and the related training under section 65(2) must ensure consistency and be standardized across the province. The legislation should reflect a tripartite structure involving the operators, labour representatives and the public (including both government and seniors' advocates) that develops and provides the prescription in terms of the content of such training and qualifications. The approach must at all times be acutely sensitive to the reality of a low-wage, often transient workforce with more promising career opportunities in long term care and acute care settings.

And in the interest of consistency, we recommend that any person (and not merely the newly hired staff or volunteers) who prospectively will acquire regular access to and a position of trust in these homes be required to provide a police background check as set out at section 64(2). There are anecdotally as many reported instances of home owners/managers or administrators subjecting residents to abuse and neglect as staff and volunteers; and no demonstrable basis for distinguishing between these categories.

The proposed Bill must recognize the increase in the extent and level of care that is required with an aging population and the limited equipment available to deal with this concern in these settings ... for example often residents are no longer ambulatory and yet there are no mechanical lifts to assist staff in transfers. In the past if residents were no longer ambulatory they were transferred to more appropriate care in long-term

care settings. However, with the increasing saturation of retirement residences in our communities and dearth of LTC beds, the competition has become so great that these residents are no longer transferred. The objective of the operators often with a foot in either segment seems to have become: "keep the beds filled at all costs".

Care planning and resident needs assessment

It is essential that there be provision in the proposed Bill enabling the audit of the resident assessment and care planning process to ensure the consistency and compliance of assessment, care plans and actual care services performed. We would recommend section 77(5) in terms of the powers of inspection include conducting such verification or audits to ensure compliance as required at section 62(10) [and section 98(2) list of offences including failure to conform or comply] in providing care services to the resident's assessed needs and care plan.

We would also recommend ensuring standardization for integration of assessment and care planning through presumably the Resident Assessment Instrument (RAI) and Minimum Data Set (MDS) and require independent third party assessment at the resident's (or Substitute Decision-Maker's) discretion in concert with section 62(9) and approval of care plans. Given the provision for external care providers (presumably home care service providers); we recommend that the assessment and care planning functions be expressly provided through existing community care access centres (CCACs) that otherwise are responsible for coordinating care providers.

The proposed Act must also include a prohibition against any licensee accepting, retaining or caring for a resident who requires continuous nursing care, as would otherwise be provided in a long-term care or hospital setting. This meagre effort at ensuring registration and licensing of retirement homes does not offer sufficient regulatory support to in any shape warrant extending the scope of care provided by these facilities.

We appreciate that in the view of operators; "*staffing ratios must be constantly monitored in order to maximize the bottom line*"¹ and that a typical retirement home "*offering a mid-range level of care will, between all departments, operate with around 1.6 hours of staff time per resident per day*"². Indeed, in earlier decades, a nursing home was generally accepted as any residential setting providing 1.5 hours of nursing and personal care per resident per day.

Surely at the very least, the lives lost in the tragic 1995 Meadowcroft fire in Mississauga will be honoured by the proposed legislation requiring not only regulatory building design elements such as automatic sprinklers but also regulatory staffing levels sufficient to ensure the emergency evacuation of the facility³ - which reflect the degree and nature of occupant physical and cognitive impairment.

Regulatory standards

The *Retirement Homes Act, 2010* as drafted relies on registration and licensing than on setting forth the statutory regulation necessary to ensure that some place operate as "*a place where residents live with dignity, respect, privacy and autonomy, in security, safety and comfort and can make informed choices*

¹ An Overview of the Retirement Assisted Living Industry in Canada, Graham Parker, Vice president of Operations, Kingsway Arms Group of Companies, Profimex, 2001, page 10

² Ibid.

³ Staffing Levels for the Emergency Evacuation of Care and Treatment Facilities, Office of the Fire Marshall, 1998

about their care options". The key element in effective regulation of such homes is to prescribe in sufficient manner and detail those health and personal care services that are required.

The importance of these services is critical to the definition and essential purposes of retirement homes. There must be statutory standards and criteria to assess compliance with the legislation. When the first regulation of nursing homes occurred in Ontario the statutory standards were far more rigorous and apparent than anything contemplated by Bill 21.

There was also considerable public debate in the 1960s and 1970s on the merits of relying on for-profit providers to deliver health care and personal assistance to nursing homes residents. That debate concerned the fundamental conflict between quarterly responsibility to shareholder investors and the social and moral obligations to residents in terms of quality care and quality of life.

The retirement home sector is virtually exclusively operated on a for-profit basis; and often through the same dominant corporate entities that operate in the long-term care sector in this province. We welcome the provisions at section 3(1) that seek to provide a broad interpretation of "controlling interest" and urge that any registration and license issued under the proposed Act expressly provide not only the common operational name of the home but also identify the controlling interest in the facility.

Recent Corporate Acquisition in the Ontario Seniors Housing Market

Purchaser	Acquisition	Details	Price	Date
Retirement Residences REIT	CPL Long Term Care REIT	73 LTC facilities with 9,500 beds & 20 facilities in the US with 2,200 beds	\$1.258 billion	April 1, 2002
Chartwell Seniors Housing REIT	Alert Care Corporation	23 ALC facilities and 5 management contracts	\$116.5 million	November 2003
Chartwell Seniors Housing REIT	various homes	6 LTC facilities with 611 LTC beds and 91 ALC beds	\$66.940 million plus closing costs	February 2004
Retirement Residences REIT & CPP Investment Board	Lifestyle Retirement Communities Ltd	15 retirement homes (9 in Ontario)		Sept. 2003
Chartwell Seniors Housing REIT	Extendicare Gibson	1 LTC facility with 202 bed and 1 ALC facility with 73 beds	\$19.6 million	February 2004
Macquarie Bank Limited	Leisureworld Caregiving Centres	21 facilities including 19 LTC facilities with 3,275 beds & home support agency	\$528 million	March 2005
Chartwell Seniors Housing REIT	Chateau Gardens	6 LTC facilities and 1 ALC facility with 510 LTC beds and 64 ALS beds	\$39.1 million	April 2006
Chartwell Seniors Housing REIT	Regency Care	8 LTC facilities with 1,384 beds and 6 managed LTC facilities with 814 beds	\$245 million	October 2006
Abacus Capital Corporation	OMNI	16 LTC facilities with 1,291 beds	Not disclosed	October 2006
Public Sector Pension Investment Board	Retirement Residences REIT	223 facilities with capacity in excess of 26,500 including 40 US facilities	\$2.8 billion	October 2006

This concentration in corporate ownership is further magnified when considering related parties, subsidiaries and dependent contractors.

We urge that Bill 21 be amended to expressly require that operators, and/or their controlling interests provide financial disclosure to the resident council on at least an annual basis; and otherwise at any time a change in the price or any reduction in care services is contemplated. At a minimum, that should require

that the Resident's Bill of Rights at section 51(1) include the right to disclosure as part of the section 51(1)(i) right to know the cost (rather than the price) of care services; including the unbundling of any rental or utility or related charge.

It is generally known that the retirement home industry is considerably more profitable than the nursing home sector - often by a magnitude of three-fold – a function of the imbalance between corporations and workers in respect of wages; and between the corporation and residents in respect of rent and service prices. A “look at the books” or disclosure to the resident council is simply essential to redress the information asymmetry in this market and offer the prospect of seniors negotiating price rather than merely accepting prevailing prices.

Appeals

We recommend including in Part VI Appeals the right of a resident, or any other party acting on behalf of a resident to similarly appeal any decision or lack of decision or action by the Registrar to the Tribunal. In other words, it should not be exclusively only the right of operators to appeal decisions or orders of the Registrar.

A complainant under section 81 alleging contravention of a requirement under the proposed Act or request for review to the Complaints Review Officer under section 88(1) should be entitled to the same right of appeal at Part VI Appeals, and specifically at section 100; to the Tribunal. The appeal process at section 100 should not be exclusively reserved for operators complaining of refusal to issue or conditions imposed on licenses (or unlicensed operators) and exclude others impacted by any order or decision of the Registrar or Complaints Officer under the proposed Act.

In closing, we greatly appreciate the opportunity to appear before the Standing Committee and commend the initiate to finally provide a regulatory framework for the retirement home sector in this province.

On behalf of the thousands of CAW members and their family members both residing and working in these retirement homes, this initiative is most certainly long overdue. Given the decades of delay, we need to make considerably more substantive progress; we need large strides and not hesitant steps to achieve the quality of care residents rightfully demand.

As is apparent from our presentation today, this initiative is but the tentative first step in making a real and lasting difference in ensuring retirement home residents live with dignity, respect and autonomy.