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ORMR
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August 20, 2015

The Honourable Mario Sergio
Minister Responsible for Seniors Affairs
Ferguson Block, 12th Floor
Toronto, ON M7A 1N3

Dear Minister:

Re: RHRA Risk Officer Annual Report 2014-15

I am pleased to provide you with my first annual report as Risk Officer for the Retirement Homes Regulatory Authority (RHRA). The cooperation of the RHRA Board over the past year is acknowledged and appreciated, as is the ongoing support and assistance provided by the Authority's CEO/Registrar and her staff.

My review in the first year focused primarily on the risk-based licensing (RBL) criteria and processes applied by the Authority in its initial licensing of retirement homes in Ontario. The scope of my review for the first year was in accordance with my Workplan for 2014-15, which was approved by the RHRA Board in June, 2014.

The Report sets out my findings and includes a number of recommendations and I would be pleased to meet at your convenience, to provide a briefing if desired.

In keeping with the terms of the Memorandum of Understanding respecting my appointment and role, a copy of my Report is being sent concurrently to the Board, through its Chair, Mary Catherine Lindberg.

Yours sincerely,



Deanna L. Williams
Risk Officer, RHRA

cc. Helen Angus, Deputy Minister, Citizenship, Immigration and International Trade
Mary Catherine Lindberg, Chair of the Board, RHRA
Mary Beth Valentine, CEO/Registrar, RHRA

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August 20, 2015

Ms. Mary Catherine Lindberg, Chair
Board of Directors
Retirement Homes Regulatory Authority (RHRA)
160 Eglinton Ave East, Suite 500
Toronto, ON M4P3B5

Dear Mary Catherine:

I am pleased to provide you and the Board with my first annual Report as Risk Officer of the RHRA.

As the Board knows, my review in the first year focused primarily on the risk-based licensing criteria and processes applied by the Authority in its initial licensing of retirement homes in Ontario. The scope of the review was aligned with my Workplan for 2014-15, which was approved by the Board in June 2014

The Report sets out my findings and includes a number of recommendations. Further to discussion with the Board in June, I have included reference to changes made to the Fire and Building Code regulations subsequent to the period reviewed in my Report.

In keeping with the terms set out in the MOU, a copy of my Report is being sent concurrently to the Hon. Mario Sergio, Minister Responsible for Seniors Affairs.

Mary Catherine, I would like to take this opportunity to thank you, and the Board members for your support and cooperation over the past year. I also acknowledge, and appreciate the ongoing support and assistance provided throughout the year by Mary Beth Valentine, CEO /Registrar and her staff-all of which greatly facilitated my work.

Yours sincerely,



Deanna L Williams
Risk Officer

cc. Mary Beth Valentine, CEO/Registrar, RHRA

Risk Officer

Annual Report 2014/2015

Reporting Period: June 2014- April 2015

Submitted by Deanna L Williams, Risk Officer

August 2015

Table of Contents

Introduction	3
The Retirement Homes Regulatory Authority	3
The Risk Officer	4
Scope of Review and Methodology	5
Executive Summary and Risk Analysis	6
A. Executive Summary	6
B. Risk Analysis	6
• The Risk Based Licensing Process:	7
• Regulatory Oversight by Others and Associated Risk	7
• Regulatory Authority and Identified Risk	9
Findings and Recommendations.....	10
Concluding Remarks	11

Introduction

The Retirement Homes Regulatory Authority

The Retirement Homes Regulatory Authority, RHRA ("the Authority") is established under the Retirement Homes Act, 2010 ("the Act"). While operating independent of government, the Authority is accountable to government through a written agreement and administers the Act and its regulations and oversees the enforcement of provisions contained within. A key duty of the Authority is to ensure that the Fundamental Principle of the Act is upheld as follows:

"The fundamental principle to be applied in the interpretation of this Act and any regulation, order or other document made under this Act, is that a retirement home is to be operated so that it is a place where residents live with dignity, respect, privacy, and autonomy, in security, safety and comfort and can make informed choices about their care options."

The Authority carries out its legislative and regulatory obligations by ensuring that only retirement homes who meet the standards in the Act receive and maintain a licence. Initial licences were granted by the Authority to approximately 700 homes on the basis of three established criteria:

- past conduct of those who own or control the operation of the home
- the ability of the home to provide care services and
- competency to operate the home in a responsible manner in accordance with the Act.

The Authority applies a risk-based licensing framework, approved by its Board, to ensure consistency in its assessment of potential risk factors in the initial licensing process.

With some exceptions, the Act defines *a retirement home* as a building, group of buildings or part of a building, with one or more rental units:

- occupied primarily by persons 65 yrs of age or older
- occupied or intended to be occupied by at least 6 persons who are not related to the operator of the home
- where the operator of the homes makes at least two care services available (directly or indirectly) to residents

A retirement home does not include homes/buildings that receive government funding or are governed by certain other laws, for example the Homes for Special Care Act, and the Long-Term Care Act, 2007)

The Risk Officer

The Act requires that an independent, statutory officer, a Risk Officer, be appointed by the Authority in 2014 and that the appointment be approved by the Minister. The duties and powers of the Risk Officer, are set out in section 24(3) of the Act as follows:

The Risk Officer:

- (a) shall review and assess the effectiveness of the Authority's administration of this Act and the regulations, including the Authority's activities and proposed activities related to ensuring that licensees meet the care standards and safety standards set out in this Act and the regulations and respect the rights of residents set out in the Act and regulations, and;
 - (b) shall perform the other duties and exercise the other powers that are prescribed.
- 2010, c11, s.24(3)

The Authority made its recommendation respecting the Risk Officer in mid February, and Ministerial approval of my appointment was received by the Chair of the Board on February 28, 2014. The Risk Officer is appointed by the Board of Directors of the RHRA in accordance with the Retirement Homes Act, 2010, the Memorandum of Understanding (MOU) between the RHRA and the Minister Responsible for Seniors and RHRA by-law Number 1.

The Risk Officer reports to and is accountable to the Board of the Authority. Notwithstanding this reporting requirement, it is important to note that the Risk Officer role is established to be statutory but also *independent*. Accordingly, the expectation that the Risk Officer's work, review and reporting is carried out in a manner that assures independence and that is unfettered, is clear. The Board's Governance and Regulatory Advisory Committee (GRAC) oversees the work of the Risk Officer on behalf of the Board.

Beginning in April of 2014, I was introduced to staff and the Authority took considerable efforts to provide comprehensive orientation and training opportunities, which were much appreciated. These opportunities, along with preliminary meetings with staff, members of the Governance and Regulatory Advisory Committee and the RHRA Board helped to inform my work plan for the first year. The Board of Directors approved the plan in mid June and my work as Risk Officer officially began in late June, 2014.

Accordingly, this report includes the time period beginning in June 2014 and ending April 2015.

There was considerable interest at the staff, Committee and the Board levels as to what the scope of work for the Risk Officer would be. It was clear that the Risk Officer is not appointed to address operational or enterprise risk, which involve risks to RHRA *as an organization*. It was however, accepted that the Risk Officer's role is to review and assess risk from the *public's perspective*- in other words, to review and assess how effective the Authority, as a regulator, is at protecting the residents of licensed retirement homes through its work.

Scope of Review and Methodology

The focus of the first year's review was on the licensing program and processes employed by the Authority in licensing retirement homes. At the time of my appointment, licensing was the one statutory program with processes that had been in full operation for at least a year.

Although over 800 applications had initially been received by the Authority, approximately 700 retirement homes were licensed during the first full licensing cycle. At the time of reporting, there are 716 licensed retirement homes.

With respect to methodology, much foundational information was gathered through a comprehensive review of licensing files for homes that had been granted licences in the Authority's first licensing cycle. In addition to these files, I reviewed files of homes that had applied for licensure but been refused. Files were reviewed with a view to assess the criteria applied when deciding to license a home; how these aligned with the standards and requirements for licensure set out in the Act, and whether the criteria were applied consistently. Particular attention was given to the risk-based licensing framework that was developed by the Authority- looking at consistency in application of the approved criteria, but also assessing whether factors posing potential risk to residents were considered and addressed in the initial licensing process. My particular interest was to determine how the risk-based framework (license; license with conditions; refuse to license) links directly to resident safety and protection, and whether the set standards were applied with consistency

In addition to my file review, I participated in structured interviews with members of the senior management team at the Authority; members of the Governance and Regulatory Advisory Committee; and members of the Board of Directors, three of whom represent the retirement home industry. My appreciation goes to all who took the time to meet with me and assist in my orientation. The three industry representatives on the Board arranged for me to personally visit and tour six of their retirement homes in various locations throughout central and south western Ontario. Some of the homes visited were smaller scale and some were larger; some were located in rural settings and other in urban cities. The opportunity to visit a diverse sampling of retirement homes provided valuable information and insight about retirement homes and in particular, what life within a retirement home is like. On a few visits, I welcomed the opportunity to speak with the executive directors of the homes and even a few residents- I especially thank them for their willingness to meet with me.

Finally, much perspective was gained through my discussions with David Scrivens and Srikanth Mangalam, senior staff of the Technical Standards Safety Authority (TSSA) and through my telephone discussion with Dan Hoornweg, TSSA's Chief Safety and Risk Officer. I thank them for their willingness to share their experiences and expertise.

Executive Summary and Risk Analysis

A. Executive Summary

In my opinion, the Authority has demonstrated – and continues to demonstrate, a strong commitment to ensuring that residents of licensed retirement homes in Ontario are safe, and that their rights and interests are protected. The Authority's attention during the initial risk-based licensing process was, in my view, appropriately focused on those factors deemed important in assessing whether an applicant would be able to operate a retirement home in a manner that provided for resident safety and protection. Initial decisions focused on anticipated risk to residents and were largely based on self-declared information provided by applicants. This process was supplemented by more than two hundred site visits conducted by the Authority to gather further information and confirm anticipated risk prior to a licensing decision being made. The accuracy of the information provided was later confirmed by the Authority through the follow up inspections, which began in late 2014. In the next year, my proposed work will primarily focus on the inspection process. A review of the inspection process and in particular the factors assessed during inspections, will help determine alignment between the required standards for operation of retirement homes, the criteria used in licensing and my identified areas of potential risk to residents.

Some areas of potential risk have been identified and recommendations as to how these may be mitigated or managed are included in this report. Suggestions as to where the RHRA's regulatory authority could be strengthened have been also noted and included in this report.

B. Risk Analysis

As I considered the various standards, requirements and other criteria applied by the Authority in licensing homes- resident safety, and in particular, risks to residents were top of mind. Some potential risks to residents of retirement homes include risks associated with physical harm or abuse; falls; illness/epidemics; infection control, food contamination, medication errors, hazardous substances; neglect etc. Other risks include emotional or psychological harm or abuse; financial abuse or fraud; fire and other hazards (elevator issues). Risk factors were considered according to probability (how likely is it that a risk-related incident would occur?) and impact (if this risk-related incident were to occur, how significant would the impact be?). Once identification of risk factors were considered on the basis of probability and impact, the various standards and criteria that are required in the legislation, and applied by the Authority in the risk-based licensing process were assessed to determine where areas of alignment and potential areas for attention exist.

The two primary risk areas I addressed are regulatory and reputational risk. 'Regulatory risk' is about resident protection and assessing the Authority's overall effectiveness in protecting the residents of the retirement homes that it licenses. The potential for 'regulatory risk' increases if the Authority's activities fail to address potential sources of harm to residents and other members of the public or fail to do so effectively. My impression is that the initial standards and criteria for licensing of retirement homes were developed by the Authority with a clear view to ensure

protection of residents and their interests. My review suggests that the Authority took all reasonable steps in its initial licensing process to assess all applicants for licensure in a manner that embraced principles of consistency, objectivity and fairness- all of which helped mitigate the potential for regulatory risk.

The second area of interest is the potential for reputational risk, to the Authority. In general terms, 'reputational risk' increases where a regulator's perceived ability to credibly regulate a profession or industry in a manner that solely serves and protects the public interest is called into question. Reputation may be at risk when a regulator's protection of licensee/member interests are perceived to be more important than protection of public interest; when public expectations of a regulator are not seen to be met; and where necessary and appropriate relationships and boundaries are not maintained. Several areas where I believe a potential for reputational risk to the Authority may exist are identified further on in my report. Even though 'reputational risk' is to the Authority, where such risk materializes, it may impact the Authority's effectiveness in regulating licensees.

- **The Risk Based Licensing Process:**

The Authority uses a risk-based approach when making licensing decisions and this approach was applied consistently in the initial licensing process in regard to all operating homes. The benefits of a risk-based approach are two fold: it allows the RHRA to assess, through consistent application of risk based criteria, the potential for less or greater risk associated with the operation of the home(s). It also enables the RHRA to direct time and resources most appropriately to those homes where concerns exist about whether a home will operate in accordance with the Act and its regulations. Risk ratings or designations were used internally within the Authority as a guide to staff in ensuring consistency in application of risk based criteria and to further ensure appropriate monitoring or follow up where higher areas of risk were considered to exist occurred in a timely fashion. Assessment would result in homes being assessed as lower risk, moderate risk or higher risk, the latter group prioritized for follow up by the Authority. The Authority, based on its initial assessment, would: license a home; license a home with conditions; or refuse to license a home.

- **Regulatory Oversight by Others and Associated Risk**

Under the Act, the Authority is directly responsible and accountable to government and to residents for the licensing of retirement homes in Ontario and for overseeing enforcement of operational requirements and standards. My review identified, however, a number of third parties who provide services to residents or regulate services provided in retirement homes but without any direct accountability to the RHRA. A potential concern exists where the Authority is held to account for an incident causing resident harm, injury or death in a retirement home it licenses and cannot adequately respond- either because the Authority was not aware of pre-existing issues that may have led to the incident or because these concerns fall under the auspices of another regulator who is not obliged to notify the RHRA. With its direct responsibility for licensed retirement homes in Ontario, the Authority

is most likely to be the first point of contact for the public and media, and the body held accountable for an incident that occurs in a home it licenses. But in instances where the RHRA does not have direct authority over a service provider or a piece of equipment, its ability to respond and react in such instances is significantly limited. Although the RHRA has been working with other regulators towards better communications going forward, there is currently no requirement that another regulatory authority notify the RHRA where issues of ongoing concerns exist related to a licensee or to the operation of a licensed home. In my view, to mitigate reputational risk, the Authority needs to be kept apprised of such concerns so that it is not “caught off guard” when serious incidents occur. This is especially important where concerns are identified that potentially impact the overall operation of a retirement home or safety of its residents. Some examples include:

1. Fire Plans

RHRA’s Licence Application Form in 2012-13 asked applicants to provide evidence of approval of most recent fire plan under the Ontario Fire Code and applicants for licensure self declarations included verification from a local Fire Department or Fire Chief that a Fire Plan is in place at the home (i.e. an approval letter, stamped and signed portion of an approved plan, or recent inspection report verifying an approved plan). If no approved fire safety plan was in place, the RHRA asked applicants to provide evidence showing compliance status with fire safety requirements under the Ontario Fire Code (ie. inspection report, a clearance letter or certificate from the Local Fire Official). In accepting these, the Authority relied on a third party- a Fire Chief or local Fire Department- to certify that the fire plan “approved” is comprehensive enough to assure residents are reasonably protected and can be safely evacuated in the event of a fire. The Authority did not require, in its initial licensing process, evidence that a home had tested a plan to determine the number of staff they would need to safely and quickly evacuate all residents safely if a fire were to occur- at all times of the day or night. No minimal staff requirements are currently required in the Act, and it was my impression from the homes I visited that it is common practice to reduce the number of staff at night. I also confirmed that fire drills were rarely, if at all, conducted at night so as not to disturb residents sleep.

While the probability of fire is considered relatively low, the impact of fire when it occurs can be significant and devastating. Were a fire to occur during the night, the challenges associated with mobilizing and evacuating sleeping residents could be expected to be very different than leading residents outside in an orderly fashion during regular daytime activities.

I note that, under the new amendments to the Fire Code and Building Code, filed by the Ontario government in May, 2013, approved fire drill scenarios must now be carried out in retirement homes at least once during a 12 month period with the lowest staff level complement to confirm that all residents can be safely protected or evacuated in a timely fashion and notification that such drills have been carried out in accordance with the new expectations must be filed with the Chief Fire Official.

2. Elevators and other Equipment

Equipment, such as elevators and boilers are frequently sources of misadventure through breakdown, and while the probability of risk is considered relatively low, the impact relating to such incidents ranges from low to high depending on the nature of the incident. Elevators in buildings in Ontario are regulated by the Technical Safety Standards Authority (TSSA) and as such, TSSA oversees enforcement of required standards for elevators and their operation in retirement homes. Several incidents have been reported in the media involving seniors and elevators. While not occurring in a retirement home, a recent and serious incident involving a faulty elevator door resulted in the amputation of a man's leg. While the TSSA inspects elevators in retirement homes, it is not obligated to let the RHRA know if a licensee is, or continues to be non-compliant with TSSA requirements relating to the maintenance or operation of the elevator(s) in a home. As the regulator accountable overall for the licensing and oversight of retirement homes in Ontario, the Authority needs to know if one of their licensees may be putting residents at risk through non-compliance with another regulators requirements- without this information, the potential for both regulatory and reputational risk to the RHRA would, in my view, increase.

3. Service Provision and Other Examples

Similar issues of concern may arise when provision of services or maintenance/other issues in retirement homes are not overseen by the Authority but by others. Examples include but are not limited to: medication errors/misadventures; boilers, furnaces, other equipment; food services issues of concern (cleanliness or contamination); public health issues (outbreaks, cleanliness, other); health and care services provided by health professionals regulated by professional bodies; and care provided by unregulated providers.

• Regulatory Authority and Identified Risk

Finally, my review identified at least two areas where a strengthening of the RHRA's regulatory authority could increase its effectiveness in administering the Act and regulations. These are raised with a consideration of potential risk to both residents and to the Authority. A recent highly publicized case involved the Authority's successful prosecution of a person who was, for several years, operating an unlicensed retirement home in the Toronto area. The home had been refused a license by the Authority, was unsuccessful in appealing the Authority's decision to refuse, but continued to operate as an unlicensed retirement home in violation of the Act. Although the Authority was diligent in its intention and efforts to prosecute, it appears that the Authority's ability to act more swiftly to enforce the provisions of the Act, and protect the residents within unlicensed homes going forward, could be enhanced.

In cases such as the one cited above, the RHRA does not have current authority to require and oversee a transition plan to ensure residents are being taken care of. When a home is refused a license by the Authority and appeals to the Tribunal (LAT) for a review, the RHRA does not have the same ability or authority to protect the residents as it would if the home voluntarily

closes or is revoked. In such instances, the Authority retains oversight through a transition plan to ensure residents are taken care of through the transitional or closure period. But residents of homes that are refused licensure by the RHRA do not have similar oversight protection, as a transitional plan and accompanying oversight provisions do not apply. In my view, potential risk to these residents would be mitigated if such a provision were in place.

A second observation is that the RHRA does not currently appear to have the ability to apply directly to the Superior Court of Justice for an order directing a person to comply with a provision of the Retirement Homes Act or regulations. Without this ability, the powers of the Authority to take quick and decisive action to enforce provisions of the Act that it is accountable for administering, appear limited. In a case where a home has never applied for a license, the Authority is able to send an inspector into the home to determine whether it meets the definition of a retirement home. If it does, the Registrar may issue an order under s.89 of the Act, ordering the home to either apply for a license by a given date, or to cease operating as a retirement home *by that date*. In my view, it is not reasonable to expect the RHRA to order a home it has already refused to license to apply for a license by a certain date, and where governability is a concern, an order to 'cease and desist' is unlikely to be followed. If a home continues to operate without a license, the Authority has the ability to lay charges under the Provincial Offences Act, which can give rise to a long process that typically results in a fine (assuming a finding is made) and not orders addressing future behaviour.

The Authority's effectiveness in administration of the Act, and protecting residents through its role would be strengthened, and potential regulatory risk mitigated if it were able to apply directly to the courts for an order, as other regulators are able to do. (Examples of such provisions existing for use by other Ontario regulators are: s.87 under the Regulated Health Professions Act(RHPA), Health Professions Procedural Code; s.39 of the Real Estate and Business Brokers Act; s. 19 of the Ontario New Home Warranties Plan Act and s.31 of the Motor Vehicles Dealers Act)

Findings and Recommendations

1. The Retirement Homes Regulatory Authority's strong commitment to effective regulation for resident protection is evident and considerable efforts were made in the development and implementation of its initial risk-based licensing framework. The initial criteria for licensing focused on anticipated risks to residents, and while applications were largely based on self-declared and corporate information, over 200 site visits were conducted by the Authority as a means to confirm initially anticipated risk levels. Routine inspections began in the fall of 2014 and as the inspection process continues to mature, it is recommended that, going forward, the emphasis be put on gathering evidence that a retirement home will and does operate safely, effectively and according to RHRA standards.

2. Criteria approved for risk-based licensing have been consistently applied in initial licensing applications; the Authority's risk-based ratings scale, described in this report and, based on the criteria in the framework, was also applied consistently.
3. Inspections were carried out in the first year following the initial licensure process, in a timely fashion. Corrective action/plans that may have been requested during the initial licensing process were reviewed and verified, giving rise to changes to initial ratings. Where changes were made respecting ratings, I found the rationale to be clear and appropriate.
4. It is recommended that the Authority continue to collect as much data and information as practical from its licensing, inspections and complaints areas to determine key trends- so that future policies, procedures, legislative or regulatory amendments are grounded in evidence that is supported by data collected and to provide a means to measure the effectiveness of regulatory activities.
5. All third parties who have a role respecting oversight or other involvement in retirement homes should be identified (TSSA, ESA, CHATS, Public Health, Fire Departments, Health Regulatory Colleges are examples) and it is recommended that the RHRA review these respective 'accountability chains' to identify 'gaps' and how these may be addressed to reduce potential for regulatory and reputational risk
6. It is also recommended that current provisions within the Act and regulation be reviewed to identify areas, such as the two examples identified above, where the RHRA's authority and its ability to most effectively protect the residents of licensed retirement homes could be strengthened to enhance its regulatory effectiveness and also mitigate potential for risk.

Concluding Remarks

My review this year focused on the Authority's effectiveness with respect to protection and safety of residents through its initial licensing process. In my view, the Retirement Homes Regulatory Authority demonstrates, through its administration of the Act and regulations, a strong commitment to ensure that licensed retirement homes in Ontario operate in a manner that protects residents and ensures their rights are respected. Considerable steps were taken to develop the Authority's risk-based licensing framework, with criteria appropriately focused on anticipated risks relating to the operation of respective homes. My review concludes that the Board's approved criteria for risk-based licensing were consistently applied in initial licensing applications and that the Authority's internal risk-based ratings scale, based on the criteria in the framework, was also applied consistently.

The recommendations in this report are based on identified areas of potential risk to residents and to the Authority.

Over the next year, my work will focus on assessing the effectiveness of the Authority in administering the provisions of the Act and regulation as they relate to the care and safety of residents through the inspection processes. My assessment of the Authority's effectiveness in this regard will include identification of potential risks to residents and to the RHRA, and will focus on three key questions: the Authority's effectiveness in resident protection through the inspection process; whether existing legislative or regulatory tools are adequate; and how other factors, such as communication tools, and resident choice, affect or impact resident safety or protection.

In concluding, I would like to acknowledge the support of Chair Mathilde Gravelle-Bazinet and the members of the Governance and Regulatory Advisory Committee, who oversee my work on behalf of the Board. The guidance provided over the past year is much appreciated. My thanks too, for the ongoing support of the Board Chair Mary Catherine Lindberg and all members of the RHRA Board of Directors- our discussions and proffered suggestions throughout the first year of my review have been most helpful and appreciated. And finally, my sincere thanks to CEO/Registrar Mary Beth Valentine and all of the staff at the RHRA for collective support and willingness in accommodating my endless requests for meetings, files and other information- often at short notice. Although my work as Risk Officer is carried out in a manner that assures independence from the Authority's Board, Committees and staff, my review and assessment relied a great deal on their collective support, which is acknowledged and appreciated.

Deanna L. Williams

Risk Officer

August 2015

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