

Memorandum

To: Standing Committee on Justice Policy
From: Ontario Retirement Communities Association
Date: November 4, 2020
Re: Bill 218, *Supporting Ontario's Recovery and Municipal Elections Act, 2020*

The health and safety of residents, staff members and families has been retirement home sector's number one priority throughout the pandemic. Ensuring that staff can continue to provide the highest quality of care while addressing the impacts of COVID-19 and implementing the public health directives, protocols and procedures necessary to keep residents safe is top of mind of all retirement homes.

ORCA welcomes and supports the introduction of Bill 218 and applauds the government's initiative to provide protection to the hard-working men and women who have been making essential contributions to our communities. ORCA has prepared this submission on behalf of our membership and offers recommendations for consideration by the Standing Committee to strengthen the legislation.

Throughout the pandemic, the frontline staff in retirement homes have gone above and beyond to keep our residents and their family members safe, while augmenting their services to meet enhanced protocols while ensuring a sense of normalcy in these unprecedented times.

Ontario's retirement homes have followed all provincial directives from the Chief Medical Officer of Health, the Ministry of Health, the Retirement Homes Regulatory Authority and the Ministry for Seniors and Accessibility. Additionally, Ontario's retirement homes have followed all local directives from local Chief Medical Officers of Health.

It is the direct result of the courageous efforts of our staff that has kept the prevalence rate of COVID-19 in retirement homes low – below 2 per cent.

ORCA welcomes the proposed civil liability protections in Bill 218.

The frontline staff and volunteers who have continued to come to work each day through these challenging times deserve the support and personal safeguards that Bill 218 proposes. The proposed protections will ensure that staff and volunteers can continue to provide the highest quality of care to seniors.

Bill 218 is also a necessary measure to ensure that seniors can continue to have choices in where and by whom they receive their care. It will also allow retirement homes to continue to act as a backstop for Ontario's publicly funded health care system. Since becoming a regulated industry in 2010, the retirement home sector has added more than 13,000 new suites for seniors in need of accommodation and care; and we anticipate this growth to continue.

The protections that this legislation provides will ensure that retirement homes are able to access insurance at affordable rates and continue to operate and reinvest in more options for seniors.



Recommendations

While Bill 218 begins to address many of the concerns that retirement home operators and staff have been facing, there are additional areas that should be considered by the Standing Committee.

Employees: Bill 218 offers protections for causes of action primarily from residents and family members. However, the protection does not expand to causes of actions brought about by employees. The spirit of Bill 218 is that if a business operated in good faith that these civil liability protections should be afforded to the business. ORCA believes that this should be expanded potential causes of actions brought by employees. To ensure equitable protection under the legislation, Bill 218 should be amended to provide protection to employees who operated in good faith.

Severability: Bill 218 does not currently contemplate severability and the lack of clarity is cause for concern. Retirement homes have gone above and beyond to implement strict public health protocols. It is unclear if each “person” is granted immunity as long as they acted in good faith following public health guidance or if a corporation is still vicariously liable for the acts of their employees, even though the employee may not be following the corporation’s procedures which adhere to good faith in following public health guidance. Bill 218 should be amended to consider severability.

Future Pandemics: Bill 218 proposes protections specifically related to COVID-19 public health measures. However, it does not provide protections for any future pandemic or epidemic that may arise. Many insurers are including pandemic exclusions in new and re-negotiated insurance plans. While the proposed protections in Bill 218 will assist businesses under current circumstances, it is unlikely to bring insurers back to the market without broad pandemic and epidemic protections.

Conclusion

ORCA believes that those who have been grossly negligent and ignored public health measures and directives should continue to be held accountable for their actions. However, those frontline staff, volunteers and operators who made a good faith effort to enact all public health protocols and keep seniors safe should be afforded this protection.

Without these legal protections, significant challenges in the seniors housing industry will arise. This includes significant job losses as a result of a large class action award, inability to obtain insurance, or increased insurance premiums for retirement home operators that will ultimately be borne by residents, increased liability risk in the sector resulting in a slow down or halt of future developments, and a lack of viable options for seniors in their care and accommodation.

We welcome the current protections proposed in Bill 218 and the recommendations above will begin to address of the challenges faced by our sector as we continue to care for Ontario’s seniors.

Bill 218 will also ensure that seniors continue to have the choice they deserve in the care that they receive. It will support Ontario’s seniors by keeping them out of hospital, off the long-term care waitlist and in a home that they love.