

Retirement Homes Regulatory Authority Risk Officer Annual Report 2020 / 2021

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Introduction

The Retirement Homes Regulatory Authority, (“RHRA” or “Authority”) was established under the *Retirement Homes Act, 2010* (“Act”) and, while it is considered an independent body from the provincial government, it is subject to government oversight through a written Memorandum of Understanding (“MOU”) with the Ministry for Seniors and Accessibility (“Ministry”). The Authority administers the Act and regulations and oversees the enforcement of provisions contained within.

The Act requires that an independent, statutory officer (i.e. Risk Officer) be appointed by the Authority. The duties 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 Risk Officer is appointed by the Board of Directors of the RHRA (“Board”), in accordance with provisions set out in the Act, the MOU between the RHRA and the Minister responsible for Seniors and Accessibility, and RHRA’s by-law Number 1. They are accountable to perform such duties and issue reports to the RHRA Board through its Governance, Regulatory Affairs, and Nominations Committee. Notwithstanding these reporting requirements, the Risk Officer role is established as both a statutory but also an independent position, with clear expectations that the Risk Officer carries out their duties in an independent manner.

Overview, Scope and Approach

This report was developed during a period of time when the Auditor General of Ontario was completing a review of RHRA, in addition to the COVID-19 pandemic, which created unique challenges given the issues and workload the RHRA was managing. However, RHRA management and the Board remained committed to the independent work of the Risk Officer. During the scoping exercise for this year's report, time was spent reviewing formal reports (e.g. annual report, strategic plan etc.), speaking with the Board and speaking with RHRA staff. Through this process, a scope was formulated independently and is the subject of this report.

The focus of this report has two distinct topics:

A. Review the program for how previous Risk Officer suggestions (and related RHRA management responses) are implemented.

Section 24 of the Act outlines the annual responsibilities of the Risk Officer, which includes the requirement to "review, and assess the effectiveness of, the Authority's administration of this Act and the regulations, including the Authority's activities and proposed activities". In this context, it is important that any recommendations noted by the Risk Officer are either implemented, or a rationale is provided as to why the recommendations were not implemented.

Prior to beginning fieldwork, a few fundamental questions were developed which helped guide and focus the review process. Specifically, the questions guiding the review were:

- What is done currently to ensure previous Risk Officer recommendations are implemented?
- What elements should be part of a formal program?
- Does anything need to be addressed to ensure that previous Risk Officer recommendations are implemented or that a rationale is provided as to why the recommendations were not implemented?

B. Review and assess RHRA management's unlicensed homes initiative.

Section 16 of the Act outlines the RHRA's role, which, in part, includes "ensuring that retirement homes are operated in accordance with the Act and the regulations". However, the term "Retirement Home" is not protected and so there are some congregate living settings, despite their name, which may or may not meet the definition of a retirement home as defined in Section 2 of the Act. As an example, the definition includes providing two or more care services such as meals and medication administration. As the care services offered can change over time, this can impact whether a home is subject to RHRA oversight. This requires constant

monitoring and a reliance on potential licensees, the public and others to know when a setting should be subject to the regulatory oversight of the RHRA. Some unlicensed retirement homes do meet the Act's definition but do not apply for a licence, either because the operator is not aware of the legislative requirement, or, in some cases, operators knowingly operate unlicensed. Given the various unique congregate living settings, it is important that the RHRA work with operators to license them or deem they do not meet the definition of retirement home.

Prior to beginning fieldwork, a few fundamental questions were developed which helped guide and focus the review process. Specifically, the questions guiding the review were:

- What is the unlicensed home initiative aiming to accomplish?
- Has the initiative been developed to allow for efficient execution? Is there room for improvement?
- Does the RHRA have the appropriate resources required to commit to this initiative?
- Has the initiative been developed to allow for a holistic view of homes with various congregate living settings, some of whom may not meet the definition of a retirement home as noted within the Act?

The work undertaken to arrive at the recommendations within this report included a number of discussions with RHRA management and staff, in addition to independent research and analysis. The purpose of the discussions and related examination was to ensure that any recommendations noted within this report were developed based on a robust understanding and feedback from various stakeholders.

Broadly, the goal of this report is to provide pragmatic and value-added recommendations to assist the Authority to more effectively administer the Act and continue focusing their efforts to help ensure retirement home residents can live "with dignity, respect, privacy and autonomy, in security, safety and comfort and can make informed choices about their care options".

Although there are a number of findings and recommendations below, the RHRA regulates in a thoughtful manner, with a keen focus on keeping retirement home residents top-of-mind. The recommendations noted below will help RHRA refine its programs to ensure continued success.

Findings and Recommendations

A. Review the program for how previous Risk Officer suggestions (and related RHRA management responses) are implemented.

Background / Findings:

The current practice in relation to Risk Officer report recommendations is:

- Report is reviewed by each relevant department and RHRA senior management
- Draft response is reviewed and approved by the Board to address each of the Risk Officer recommendations
 - These responses are posted publicly on the RHRA website
- Accordingly, the spirit of each recommendation (and related RHRA response) is integrated within the annual RHRA business plan, however each Risk Officer recommendation is not explicitly identified
- Other notes:
 - There are no explicit target timeframes to implement each of the Risk Officer recommendations
 - There is not an official process of reporting on the status of implementation for each recommendation to the Board of Directors or to the Ministry for Seniors and Accessibility

Recommendations:

- 1) Formalize a program specific to ensuring Risk Officer recommendations are either implemented or a rationale is provided to why the recommendations were not implemented. This rationale should be documented and shared with the stakeholders noted below in recommendation #3. It should be noted that, as time passes or events occur, there may be a valid rationale for why a Risk Officer recommendation no longer makes sense or is no longer valid.
- 2) Develop an approach to directly identify Risk Officer recommendations, that are planned to be implemented, in the RHRA annual business plan.
- 3) Identify timelines for the implementation of each Risk Officer recommendation and share with the public, Board and Ministry.
- 4) Develop a process by which the status of each Risk Officer recommendation is shared with the public, Board and Ministry at appropriate regular intervals.

- 5) Complete a full review of all previous Risk Officer recommendations to ensure they have been implemented or a rationale has been provided as to why the recommendations were not implemented. Subsequently share the results with the public, Board and Ministry.

Other Observations/Comments:

- The recommendations noted above will help ensure a more transparent and formal approach, however it should be noted that RHRA management has already been tracking previous Risk Officer recommendations.

B. Review and assess RHRA management's unlicensed homes initiative.

Background:

Prior to early 2020, the RHRA relied upon tips, in addition to monitoring and assessing congregate living settings that were not already licensed by the RHRA. Based on the assessment against the definition of a retirement home, as noted within the Act, the operator of the location would be advised to either apply for a licence, cease to operate or were notified that they were not required to apply for a licence (i.e. did not meet the definition within the Act).

In February 2020, the RHRA began to develop a more targeted initiative in relation to unlicensed homes that are potentially unregulated. Since that time, the RHRA has invested a considerable amount of time developing, refining and beginning to deploy a more robust unlicensed homes strategy. The initiative has formalized different scenarios in relation to unlicensed homes into seven categories. RHRA management has assessed risk with each category and developed procedural steps on how to tackle each category. The categorization effort has helped to prioritize RHRA's response based on risk. RHRA management has also developed supporting tools (e.g. communication templates) to support front-line staff.

Findings / Recommendations:

Although RHRA management has developed, and continues to refine, the unlicensed homes strategy, there is some room for improvement. Noted below are suggestions grouped in broader themes, each with recommendations and context noted within.

1) Collaboration with stakeholders

Recommendation: An unlicensed homes outcome focused working group should be developed. The RHRA should work with the Ministry and other partner stakeholders to define accountability and responsibility for the working group. External stakeholders should include, but are not limited to: health agencies, religious / cultural organizations, community housing, other regulatory bodies, police, fire, long-term care, municipalities,

etc. Note: Consideration should be given to whether established structures/groups can be leveraged in this regard.

Context: Although there are currently a number of interactions with various external stakeholders, there is no focused and collaborative effort in relation to unlicensed homes. Partner agencies and other external stakeholders all interact and play an important role in relation to congregate living settings, however a formal setting to address unlicensed homes does not currently exist.

The RHRA, in conjunction with the Ministry, should be an active participant in this working group, however as noted above, consideration should be given as to which agency should lead the initiative. The RHRA is not in a position to have solutions for all concerns in relation to congregate living settings, but it is in a position to be an important part of the solution.

This working group could also be leveraged to identify gaps and overlap amongst stakeholders, which would be an input to recommendation #5 noted within this report.

2) Resources

Recommendation: Given the continued growth in the aging population¹, continued growth in new and complex congregate living settings, and various other priorities of the RHRA, consideration should be given to whether there are enough resources available to adequately operationalize and maintain the unlicensed homes initiative.

RHRA management, in collaboration with RHRA's Board of Directors, should assess whether current financial and staffing resources are adequate to meet the Authority's mandate which has been further expanded with an enhanced focus on unlicensed homes. Note: Continuing to align with RHRA's risk-based approach, consideration should be given for whether current resources need to be re-positioned or whether additional net new resources are required.

Context: Unlicensed homes are a risk to the safety of residents and without the appropriate resources, the RHRA will not be able to adequately meet their requirements as noted within the Act. A continued proactive approach to identify, assess, inspect, and licence is required to ensure homes that meet the definition of a retirement home are licensed by the Authority.

Furthermore, additional resources may be required to adequately implement recommendations noted within this report. This further strengthens the need for the RHRA, in conjunction with the Board, to review the RHRA's current resources.

¹ <https://www.ontario.ca/document/ontarios-long-term-report-economy/chapter-1-demographic-trends-and-projections#section-4>

3) **Public focused education**

Recommendation: Working in conjunction with the Ministry, the RHRA should further bolster information and tools available to the broader public, government agencies (e.g. public health agencies), and other stakeholder partners (e.g. fire departments). This effort should include general awareness of the unlicensed homes initiative, in addition to an easy-to-understand definition of a retirement home.

Context: The RHRA relies heavily on the broader public for notification of potentially unlicensed retirement homes. A continued focus on expanding awareness of the RHRA's role and what is considered a retirement home will support increased tips from the public, other agencies and partner stakeholders. The RHRA should consider, amongst other methods, developing a dynamic online question-based tool that allows users to assess whether a congregate living setting is considered a retirement home. The definition is fairly complex to comprehend for the public. This approach may also provide efficiencies for the RHRA (e.g. some calls would be avoided for those congregate living settings that are easily identified not to be within the definition of a retirement home).

The RHRA should consider launching a targeted campaign focused on obtaining tips from the public (i.e. residents/prospective residents of congregate settings and their families, in addition to others working in related senior home sectors) on potentially unlicensed retirement homes. In this regard, the RHRA can benefit from leveraging various traditional advertising mediums, but it should also leverage partner agencies and stakeholders as a means to communicate with the public. It is recommended that any campaign should not be launched until other recommendations noted within this report are executed (e.g. user-friendly definition, enhanced self-help website tools, information packages, etc.).

4) **Operator focused education**

Recommendation: The RHRA should continue developing materials and tools to support operators. Consideration should be given for items such as: development of material in multiple languages, creation of material to leave behind for those congregate living settings that are being inspected, and, as noted above, a user-friendly definition of a retirement home.

Context: There is currently no formal package of materials that the RHRA can provide unlicensed operators in various situations, which may lead to inconsistent information being provided to operators because it is on an informal basis. A robust and formal package of materials will help ensure consistent messaging for operators in various situations (e.g. homes that do not meet retirement home definition following inspection, homes that meet retirement home definition and want to be licensed, etc.).

As noted above in recommendation #3, the definition of a retirement home in the Act can be difficult to understand. It is important that RHRA develop a more user-friendly definition that operators can leverage to assess their situation. In this regard, the RHRA should consider a dynamic question-based online tool, which operators can use to assess their unique situation.

5) Legislative Review

Recommendation: The RHRA, in collaboration with the Ministry, should re-visit the *Retirement Homes Act*, including a review of the current definition of a 'Retirement Home'. It is important to occasionally review legislation to ensure that current realities are able to be appropriately addressed. It is strongly recommended that prior to any revision, a robust consultation process is undertaken with various agencies and stakeholders. This will help ensure any revisions address any current gaps, in addition to avoiding any excessive regulatory overlap.

Context: The unlicensed homes initiative has clearly articulated and documented many unique situations of congregate living settings. Some of these congregate living settings are within the oversight of other government agencies, while some operate without any oversight. With the broader public protection in mind, revisiting the current legislation and retirement home definition will lead to enhanced protection for seniors, whether under RHRA oversight or under the oversight of another agency. A legislative review would also allow the RHRA, in conjunction with the Ministry, to address any administrative or other concerns. A proactive review in this regard will help set the stage for a robust unlicensed homes initiative and will also help support recommendation #1 noted within this report.

Other Recommendations / Comments:

- The RHRA should consider augmenting and standardizing content that is communicated with stakeholders. A formalized functional role would support improving consumer and operator awareness through enhanced consistency, clarity and end-user friendly information. Furthermore, this strategic focus would support the success of several recommendations noted within this report.
- The unlicensed homes initiative was developed with the support of various internal departments, which included a central working group and others who were consulted. While the RHRA continues to refine the unlicensed homes initiative and implement the recommendations noted within this report, consideration should be given to expand the individuals and stakeholders that are consulted. For example, RHRA should consider consulting additional external agencies/stakeholders and internal front-line staff.

Concluding Remarks

A. Review the program for how previous Risk Officer suggestions (and related management responses) are implemented.

The Risk Officer is an important independent function that is outlined within the Act. As such, reports developed by the Risk Officer provide RHRA management, the Board, the public and broader stakeholders with an unbiased assessment and recommendations. During my review, it was evident that RHRA management and the Board value and have a keen interest in the annual report provided by the Risk Officer. The recommendations within this report will help better formalize the process by which Risk Officer recommendations are tracked and actioned upon. Implementing the suggested enhancements will further strengthen the RHRA's commitment to transparency.

B. Review and assess RHRA management's plan in relation to unlicensed homes.

The Authority, in part, was set up to help mitigate risks associated with residents living in congregate settings that did not have certain standards for care. Some homes continue to operate either knowingly or unknowingly without regulatory oversight. (Note: In fiscal year 2020/2021 RHRA issued 4 orders to cease, 1 order to apply/cease, and 1 amended order to cease). Unlicensed homes can pose a serious risk to residents, including safety and insufficient care amongst other concerns. RHRA has developed a thoughtful and robust initiative. The recommendations within this report will help refine the initiatives already underway by the RHRA. A continued focus on working collaboratively with other agencies will further help ensure that retirement home residents have the ability to live in a safe, secure, and comfortable setting.

In closing, I would like to thank Jay O'Neill, CEO and Registrar of the Authority, and his management team for their support throughout my review. Their willingness to support my work during this difficult COVID-19 pandemic is a testament to their dedication. Their support has helped ensure that my recommendations are practical, aligned with the Act and best positioned to further strengthen the RHRA as a modern and effective regulator.

Nav Sandhwalia, Risk Officer
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