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Backgrounder

Discussion Paper on Assisted Living: Past, Present and Future Legal Trends in Canada

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Today, the Canadian Centre for Elder Law has published a *Discussion Paper on Assisted Living: Past, Present and Future Legal Trends in Canada*. The Discussion Paper provides a starting point to engage in a national conversation about a critical “middle option” of health / housing in Canada. This middle option, called “supportive housing / assisted living” (SH / AL) in this project, lies at the centre of a seniors’ housing continuum. This continuum is bookended by independent living at one end, and high care long-term residential facilities at the other. While SH / AL varies in lexicon and substance across Canada, it is often broadly described as independent living that includes some form of personal and health care services.

SH / AL is already of significant concern to Canadians, and with the impending “age wave” will only be more so in the immediate future. It is clear that Canadians will need to find legislative and regulatory systems that make sense to users and providers of SH / AL. Such systems will need to address the entire “field” of issues, while at the same time staying true to the chosen philosophical underpinnings of SH / AL. This is not the case in Canada, today.

In order to achieve this, a more focussed discussion on the needs of residents and operators must begin. This Discussion Paper brings some past, current, and future trends in SH / AL together, in order to prompt discussion and to assist in creating a common understanding of challenges faced in regulating this area.

Currently, the laws and policies governing SH / AL in Canada are fragmented, jurisdictionally bound, and difficult to grasp for layperson and professional alike. A snapshot and analysis of key provincial and national legislative issues are provided in this paper.

This Discussion Paper starts by briefly reviewing some of the political and social evolution of seniors’ housing in Canada. While modern SH / AL is still a relatively novel concept, it has been evolving over the course of the last century. The paper maps social housing’s evo-

lution through the depression, the disability rights movements of the 1970s and 80s, and up to the present day.

Second, it reviews some key elements of a comprehensive legislative scheme for SH / AL. This includes the discussion of a scenario that highlights some typical legal issues and concerns that may arise.

Third, this Discussion Paper reviews key legislative governance across Canada. This highly detailed analysis makes up the bulk of the paper. The legislative scheme in all 13 jurisdictions in Canada are examined with reference to the following criteria:

1. Main Legislation
2. Ancillary Legislation
3. Lexicon / Parameters of Care (Lesser Care / More Care / Most Care)
4. Residential Tenancy Legislation Applicability
5. Consumer Protection
6. Funding
7. Complaints / Dispute Resolution
8. Staffing Indicators
9. Entry / Exit Criteria

Fourth, an analysis of common themes across jurisdictions will be considered. These themes are identified and discussed by asking three important questions:

- A. Whose responsibility is it and who is providing services?
- B. Can old and new models exist harmoniously in the same jurisdiction?
- C. How does regulation and philosophy co-exist?

Fifth, some emergent future legal issues in SH / AL are suggested. Issues of growing importance such as smoking, gay, lesbian and bisexual issues, transgendered issues, physical or mental challenges, and alcohol and drug use are all discussed. The Discussion Paper will suggest a series of questions to prompt further consideration of these issues.

This Discussion Paper concludes by asking a series of questions, and inviting input and consultation on these questions. Consultation is also sought on the broad issue of SH / AL and legal issues in Canada. Participants are free to broadly provide input.

Some key discussion questions open for consultation include:

- 1) Should SH / AL have national definitions which are standardized?

- 2) Should the “field” of SH / AL be regulated by a single statute in each jurisdiction or should SH / AL be regulated by a variety of legislation (e.g. Residential Tenancy, health and food safety standards etc)?
- 3) How can consumer protection issues be best addressed by legislation or regulation (e.g. food quality, services not up to standards, but not a risk to health and safety)?
- 4) What complaint systems are preferable? (e.g. reports based by resident, inspection-based required by legislation, hotline?)?
- 5) How can that information on complaints or standards best be made public or used by the public (e.g. online reports, independent body’s publications etc?)?
- 6) What should be the best entry and exit criteria for SH / AL in Canada?
- 7) What do you think some of the “hidden issues” not raised in this Discussion Paper are?
- 8) What are the biggest challenges for SH / AL residents now? In future?
- 9) What are the biggest challenges for SH / AL operators now? In future?

While the scope of this project is to identify issues and engage in comparative research, it does not extend to creating draft legislation. However, a next step in a broader project which might include considering draft legislation and law reform issues may be possible in future.

Copies of the Discussion Paper may be downloaded from the Centre’s website <<http://www.bcli.org/ccel>>.