



ONPHA

Ontario
Non-Profit Housing
Association

**ONPHA's
Proposed Amendments to
Bill 140 – The Housing Services Act, 2010**



Introduction:

For over 20 years, the Ontario Non-Profit Housing Association (ONPHA) has been the voice of non-profit housing in Ontario. Our 760 member organizations operate more than 160,000 non-profit housing units and provide housing for approximately 400,000 people such as seniors, low-income families with children, Aboriginal people, the working poor, victims of violence and abuse, people living with developmental disabilities, mental illness, HIV/AIDS or addictions and the formerly homeless/hard-to-house.

ONPHA is pleased for having been given the opportunity to provide its comments on amendments to Bill 140, the new Housing Services Act (2010).

Part I: Purpose and Interpretation

Issue: Section 1 – Purpose of the Act and housing provider flexibility

One of the intended purposes of the new Act is to provide housing providers with flexibility while retaining requirements with respect to housing programs and projects that are subject to the new Act. However, the policy areas of the Act over which a housing provider may exercise flexibility, other than a housing provider now being able to appeal Service Manager decisions as may be prescribed, are not self evident. To ensure a housing provider is fully aware of its level of authority and to avoid possible conflict with a Service Manager, greater clarity is required.

Recommendation:

A new subsection be created possibly under Part VI of the new Act (following Section 71- General duty of housing provider) detailing the applicable sections of the Act where a housing provider is able to exercise discretion.

Issue: Applicability of new Act to other programs

It is unclear the extent to which the new Act applies to other programs, although 4 (1) (d), (e), and (i) state the general provincial interest that could include other program initiatives in addition to social housing.

To clarify:

- Is any new housing developed under the approved housing and homelessness plans subject to the Act?



- Does Part V: Rent-Geared-To-Income Assistance and Special Needs Housing apply to the Strong Communities Rent Supplement Program and the AHP?

ONPHA supports the extension of the new Act to all programs including existing and future AHP (Affordable Housing Program) projects developed and owned or leased by community based non-profit housing corporations (this includes local housing corporations (LHCs) but excludes private sector program participants).

Recommendation:

The proposed Act must clearly state the extent to which the Act in whole or in part applies to other program initiatives beyond social housing.

Part II: Provincial Policies and Local Plans

Issue: Housing first principle

Principle 4 (1) (b) addresses the need to first house individuals and families in order to address other challenges they face. Taken literally this could mean first housing individuals that require supports to live independently (e.g., homeless with substance abuse problems, individuals with developmental or mental health issues, those involved in the criminal justice system, etc.) and then seeking out those supports services that individual and families may require. We do not believe that this was the intention. If it is, then it would create an untenable situation for all concerned giving rise to health and safety issues and legal repercussions. Experience has shown a successful tenancy requires **both** housing and services be simultaneously provided for certain vulnerable segments of the population.

A Housing First principle could lead to most vacancies being filled by individuals and families who are homeless which would compromise established provider targeting plans and require Service Managers to increase the number of RGI units to meet the obligation to house the homeless. ONPHA does not deny that the needs of the homeless must be addressed. However, the legislation needs to clarify how this principle/priority is balanced against all of the other priorities and whether it imposes an absolute obligation on Service Managers to increase the supply of social housing so that all the homeless can be housed.

**Recommendation:**

Principle 4 (1) (b) be amended to clarify the intent as it relates to housing for homeless individuals or families requiring support services to live independently.

Issue: Additional principles must be linked to fundamental government interests

The principles articulated in subsection 4 (1) appear in isolation of broader government interests focused on health, education and the economy. The principles underpinning the new Act need to link housing with other provincial policy areas integrating the common principles of strong communities, a clean and healthy environment, and economic growth. Additionally, principles need to address the growth in the permanent supply of affordable and subsidized housing under the ownership of non-profit housing corporations, and address the need to break down policy silos at the provincial level. While policy statements, particularly joint policy statements, can be issued to clarify the provincial interest, this should be supported by espousing additional principles.

There should also be an obligation for agencies funded by provincial ministries to jointly plan the extension of housing and support services to ensure that the expectations related to the homelessness component of a housing and homelessness plan can be met.

Recommendation:

The following principles be considered for inclusion in subsection 4 (1):

- *Promoting strong communities*
- *A clean and healthy environment*
- *Promoting economic growth and prosperity*
- *Strengthening community capacity to meet local needs*
- *Promoting cross-sector and cross-ministry planning to facilitate the provision of and access to housing and support services*
- *Expanding the permanent supply of permanent affordable and subsidized housing under the control of non-profit housing corporations.*

Issue: Subsection 6 (2) - What a housing and homelessness plan must include

Ideally a housing and homelessness plan should clearly articulate how the areas of provincial interest are being met. Since the Province has indicated that partnerships, a role for the non-profit and private sector and consultations are areas of provincial interest, then it should be obligatory that plans address these areas.



Recommendation:

Subsection 6 (2) be amended to include:

- *A description of the roles of the key partners, the non-profit and private sector, and*
- *A summary of the consultations - who was consulted on what aspects of the plan and what was said.*

Issue: Ministerial review of local housing and homelessness plans

Subsection 8 (1) states the Service Manager is required to “consult” with the Minister on the housing and homelessness plan prior to approval by the Service Manager. This raises a number of questions including:

- Does this consultation constitute approval of the plan by the Minister?
- Is there an obligation on the part of the Service Manager to incorporate the Minister’s comments?
- If there is a conflict between a Service Manager’s interests and those of the Minister, can the local plan still be approved by the Service Manager or will the Service Manager be in breach of the Act and subject to section 73 – Audit or investigation (i.e., is the Minister able apply remedies if the Service Manager fails to perform in this area)?
- As the housing and homelessness plan will include a supportive housing component for homeless, seniors, the developmentally disabled and individual with mental health and other issues, will plans be circulated to support service ministries for their review?

This section of the new Act needs to be strengthened to provide for the Minister’s duty to consult with the support service ministries regarding the interaction between housing programs and support service programs and to approve the plan similar to its role in other legislation. Approval of the plan by the Minister would constitute approval of the plan by the Province. Provisions should also be made to bind applicable Ministries to participate in the development of local plans and to provide funding for approved plans as budgets permit and/or funding becomes available. It is critical that the new Act establish the ground work for breaking down policy and funding silos across Ministries to create a truly integrated housing system at the community level. Housing providers need to have more certainty about the availability of supports before they commit to creating new supportive housing.



Recommendation:

Subsection 8 (1) be amended to provide for the Minister's review and approval of housing and homelessness plans, and

A new subsection be added requiring the Minister to solicit comments of other ministries, and

A new subsection be added requiring ministries to participate in the development of local housing and homelessness plans and to abide by the provisions of the plan as far as they affect local funded agencies, e.g., LHIN, etc.

Issue: Response or turnaround times to be quantified

There are references that relate to the concept of turnaround time. For example, subsection 10 (2) - Report to Minister requires the Service Manager to report to the Minister on the results of the review (housing and homelessness plan) without delay. To ensure timeliness, these references should specify a specific maximum number of days.

Recommendation:

References to turnaround times are to indicate a specific maximum number of business days.

Part III: Service Managers

Issue: Section 16 - Powers of DSSAB Service Manager

The powers of a Service Manager currently provided for under the SHRA have been replaced subject to certain other provisions with the "natural person powers". Clarification is required with regard to their applicability to DSSAB Service Managers. For example, can a DSSAB guarantee a loan, make a loan and charge interest?

Also, the borrowing powers of a DSSAB Service Manager are similar to what is currently provided for in the SHRA. This is of concern to ONPHA as it disadvantages housing providers located in service areas where a DSSAB is the Service Manager. DSSAB Service Managers do not have access to low cost borrowing to provide for the repair of social housing projects. The process that specifies how DSSAB Service Managers raise funds to make improvements to housing projects under the SHRA and the new Act is cumbersome and puts DSSAB Service Managers under a competitive disadvantage in



the market. They can only raise funds based on the borrowing capacity of the municipalities in their service areas. As most municipalities in DSSAB service areas are small in terms of volume of debentures, even with a good credit rating they cannot obtain good rates for their debt. The ability to participate in bulk financing schemes, such as that offered by Infrastructure Ontario (IO), to raise funds for the repair and renovation of housing projects would enable them to get the lowest possible financing. Since IO subjects borrowers to well accepted risk assessment, the DSSAB would only be allowed to borrow the level of funds it could support. If necessary, DSSAB borrowing could be subject to OMB approval.

Recommendation:

DSSAB Service Managers be empowered to participate in bulk financing schemes as prescribed.

Issue: Environmental Liability Subsection 34 (2) of the SHRA

Subsection 34 (2) of the SHRA states: "A transfer order cannot relieve a transferor of a liability under the Environmental Protection Act." Under this provision, the Ontario Mortgage and Housing Corporation retains responsibility for any environmental costs associated with the transfer of the former public housing portfolio. Indeed, under the Canada Ontario Social Housing Agreement (SHA), CMHC and Ontario continue to be responsible for their respective share of costs arising from environmental claims.

Subsection 15 (c) ii of the SHA notes: "If the environmental claim ... is in respect of a program or property in a program set out in Schedule A, Ontario and CMHC agree that the liability for that claim ... will be apportioned between CMHC and Ontario or OHC based on agreements in force prior to the Effective Date."

If failure to include a similar clause with respect to environmental liability was an oversight, then the issue is easily resolved by including a similar clause in the new Act.

Recommendation:

The new Act be amended to include a clause with respect to environmental liability as follows: "The repeal of the former Act does not relieve a transferor of a liability under the Environmental Protection Act for property transferred by Transfer Order under Part IV of the former Act."

Note: If MMAH intends to download any costs arising from environment liability, then it should only be for its share of costs and Service Managers are to be provided with the authority to bill CMHC for their share of environmental costs. We



assume that the Ministry does not intend that Service Managers indemnify CMHC for their share of costs.

Part IV: Rent-Geared-to-Income Assistance and Special Needs Housing

Issue: Modified units

A number of housing providers experience chronic vacancies in units that are wheelchair accessible. A housing provider, with the consent of a Service Manager, should have the ability to fill modified units with applicants from the chronological waiting list, or its replacements system, who do not require modified units. Alternatively, if a Service Manager wishes to ensure modified units are available, additional subsidy dollars should be paid to the provider to keep these units open. A Service Manager decision that is negative should be subject to review as may be provided for under section 157 of the new Act.

Recommendation:

Housing providers may, with the prior written consent of the Service Manager, fill modified units from the waiting list for rent-geared-to-income assistance in accordance with their revised target plan as per subsection 49 (1.)

It is further recommended that denial of a housing provider's request be subject to a review as permitted under section 157.

Issue: Notice of Certain Decisions

Under the SHRA, a housing provider received copies of all notices to households regarding eligibility for RGI assistance except for the inclusion of a household in the SPP (special priority policy) category. While the new Act provides for additional notices to be prescribed, at a minimum, housing providers should also receive notice of the size(s) and type of unit permissible for a household receiving RGI assistance to ensure compatibility with the household's entitlement and the type of accommodation the housing provider has available. As well, both the household and housing provider should be provided with written notice regarding decisions on the deferral of geared-to-income rent, the household for obvious reasons and the housing provider because subsection 53 (4) binds the housing provider to decisions made. For households, a denial of a request to defer geared-to-income rent should be subject to review and included in



section 156 – Reviews requested by households. While there are general provisions related to funding for housing providers, Service Managers should be required to make up any shortfall in revenue caused by their decisions related to deferred rent as is presently the de facto arrangement.

Recommendation:

Subsection 55 (1) - Notice of certain decisions be amended to include deferral of geared to income rent, and

Section 156 be amended to include a review of a decision made under section 53 deferral of geared-to-income rent, and

Subsection 55 (2) - Notice to housing provider be amended to include notice of maximum size(s) and type of unit permissible for a household receiving RGI assistance, and deferral of geared-to-income rent, and

Section 53 be amended to address how a housing provider will be financially compensated for the revenue shortfall.

Issue: Information requests – Subsections 71 (4) and 83 (1)

There are various clauses that pertain to Service Manager requests for information from a housing provider, e.g., subsection 71 (4) - Information to Service Manager and 83 (1) - Other reports etc, from housing provider. To streamline the new Act and minimize repetition, these sections should be consolidated in one area possibly under duties of a housing provider and apply broadly to the Act as a whole.

Recommendation:

Sections of the Act respecting the provision of information by a housing provider to a Service Manager are to be consolidated in one subsection of the Act dealing with all information requests.

Issue: Plans – Subsection 71 (5)

The proposed obligation on housing providers to follow plans as determined by Service Managers over their governance and operations is highly intrusive and unwarranted particularly where a provider is (as indeed most are) in compliance with the Act and its regulations. There are no qualifications on the types of plans a Service Manager may



impose and under what circumstances. Importantly, there is no provision for the Minister to regulate - prescribe rules or criteria.

Subsection 71(5) is in fact redundant and contrary to the proposed purpose of the Act. The purpose as noted in subsection 1(b) is to “provide flexibility for Service Managers and housing providers while retaining the requirements with respect to housing programs...” Subsections 71 (2)-(4) and 77 (1) clearly state the responsibilities of a housing provider. If a housing provider is operating in compliance with the Act and its regulations, then there is no need for Service Manager involvement in how a housing provider governs and how it chooses to operate its property. If a housing provider is in non-compliance, then there is a wide array of highly effective remedies available to the Service Manager. As part of the remediation process, as provided for in subsection 92 (2), the Service Manager is required to specify what a housing provider must do to rectify the problem -- that is to prepare and follow a plan acceptable to the Service Manager. Therefore, the ability for a Service Manager to impose a plan that addresses the governance and operations of a housing provider already exists in the Act and appropriately it exists within the context of non-compliance.

Recommendation:

Subsection 71 (5) - Plans be deleted and replaced with a housing provider duty to comply with the Act and its regulation.

Issue: Projects in Difficulty – Subsections 74 (1) - 74 (4)

The designation of a project as being in difficulty is at the sole discretion of the Service Manager. There is a need to add rigour and equity with respect to subsections 74 (2) (b) and (c) rather than relying on an opinion. This can be achieved by linking the classification of a project as a project in difficulty (PID) directly to triggering events that are material and substantive and will result in mortgage default if left unattended. At a minimum, the Service Manager’s opinion should be required to meet the test of reasonableness and compare a provider to other housing providers.

Once a project has been declared a PID, the Service Manager should be obligated to resolve any issues or triggering events expeditiously and not longer than one (1) year from the date the housing provider receives formal written notice. Additionally, a housing provider should have the benefit of appealing any Service Manager action or inaction related to issues not resolved within the specified time period.



Recommendation:

Subsections 74 (2) (a) and (b) be replaced with “the Service Manager has determined that one or more material and substantive triggering events have occurred or will occur within three (3) months of identification of the potential triggering event, and

The Service Manager shall employ best efforts to return the housing project to good standing within one (1) year from the date the housing provider received written notice of its project in difficulty classification, and

The housing provider be given the right to appeal its classification as a PID together with any Service Manager action or inaction related to issues not resolved within the one (1) year time period.”

Part VII: General Rules for Certain Housing Projects

Issue: Projects governed by operating agreement

The Act should list and prescribe those projects that are subject to a project operating agreement. Project operating agreements can only be changed with the consent of the housing provider. As well, it is to be made clear what sections of the Act do and do not apply.

Recommendation:

Part VII of the Act does not apply to a prescribed housing project under a prescribed housing program which has an operating agreement to which the Government of Canada or Canada Mortgage and Housing Corporation is a party. Said operating agreements cannot be altered or amended without the consent of the housing provider.

Issue: Changes to targets without housing provider approval – Subsection 79 (5)

A Service Manager is able to change the target without housing provider agreement as long as the housing provider is consulted and subject to prescribed restrictions. SHRA subsections 101 (6), (5) and (2) specified the restrictions including the requirement to notify a housing provider. A Service Manager could only change the target of RGI units by 10% without housing provider agreement. Without knowing what restrictions may be specified in the new regulations, it is critical to maintain the 10% of RGI units restriction so as not to fundamentally alter the community and character of each building without the housing provider’s agreement. As some Service Managers may



have already changed RGI unit targets by 10% without the agreement of the housing provider, continuity should be provided between Acts in order to protect these projects from further unilateral changes.

Recommendation:

Subsection 79 (5) is to be amended to provide for a maximum 10% restriction on changes to RGI unit targets without housing provider agreement as initially prescribed under section 98 of the former Act, and

The Service Manager is to be required to give written notice to the housing provider of any unilateral changes to the targets.

Where a Service Manager has failed to consult or imposed restrictions greater than 10%, the housing provider should have the authority to appeal the actions of the Service Manager.

Issue: Amount of subsidy – Subsection 80(2)

ONPHA supports a province-wide subsidy model and is pleased that the duty to pay subsidy is retained in the proposed legislation whereas the funding model is to be specified in regulation. This will greatly facilitate the ability to make any changes to the funding model should the need arise. However, it is noted that the amount of funding to be provided by a service manager falls under Ministerial regulation-making authority. To add greater scrutiny to any proposed changes to how the amount of subsidy is determined, regulation making authority should rest with the Lieutenant Governor in Council.

Recommendation:

The regulation determining the amount of subsidy paid by a Service Manager is to be a Lieutenant Governor in Council regulation.

Issue: Reduction in subsidy – Subsection 82 (4)

The penalty for late filing of the annual report has been increased significantly from 0.5% or \$1,000 whichever is less, to 2% or \$5,000 whichever is less, for each month the report is late. An increase of this magnitude is unwarranted particularly as chronic failure to submit an annual report on time may constitute a triggering event and the Service Manager has other remedies that it can employ including the cessation of subsidies.

**Recommendation:**

The penalty provision is to be left as it is in the SHRA, 0.5% or \$1,000, whichever is less.

Issue: Supervisory Management

ONPHA agrees with CHF Canada that the concept of supervisory manager as enacted in the legislation does not recognize the need to maintain the independent role of the non-profit housing provider.

The idea as proposed by CHF Canada is that, in order to address problem situations encountered by housing projects, additional supervision is required by the Service Manager for a period of time to work out the issues and return the provider to sound operation. To assist the Service Manager, a property manager is to be appointed that, in addition to normal duties, would work on the specific issues that put a project in difficulty. The legislation, on the other hand, will create a body with powers not substantially different from a receiver manager with costs that are commensurate.

During the tenure of the supervisory manager, as proposed, the housing provider will lose any involvement in the operation of its project. CHF Canada's proposals strike a balance between the housing provider losing control over the parts of the project's operation that have put it in difficulty, and the need to have continuity of involvement so that it can take over the project again once control is relinquished. The provider's Board should still be allowed to meet during a period of receivership to maintain continuity until the project is turned back to its control.

Subsection 95 (3) of the Act provides for the requirement of a supervisory manager knowledgeable about the structure and operation of a non-profit housing co-operative. This requirement for expertise as amended by CHF Canada's recommendation 95 (4) should be extended to ensure every person who is appointed under a supervisory management arrangement is knowledgeable and experienced about the program and mandate of the housing provider (e.g., if the housing provider is a private non-profit housing corporation that serves special needs clients then the person is to be experienced in managing non-profit housing projects that serve that particular client group).

Subsection 95 (18) of the Act addresses reports to housing providers. ONPHA supports CHF Canada's revisions to 95 (21) with the additional provision that summary reports include a status of actions taken to remedy triggering events. As well, the financial



reporting is to include the trial balance and statement of financial position. The housing provider should have available sufficient information to assess the status of its project and should have the ability to request additional information where it deems the information provided is insufficient.

Recommendation:

See CHF Canada's proposed amendments to Sections 87 (5), 95 (1)-(26).

The requirement to have a person acting under a supervisory management arrangement be experienced and knowledgeable of non-profit housing co-operatives be extended to private non-profit housing corporations.

The reports produced by the property manager under a supervisory management arrangement be required to specifically include a status of the triggering events, timeline for remediation, a trial balance and a statement of financial position, and

The housing provider should have the ability to request additional reports.

Issue: Defaults and Remedies

ONPHA agrees with CHF Canada that the provisions of Bill 140 related to default and remedies do not respect the position of non-profit housing providers as key players in the housing system. There needs to be a check on the exercise of the Service Manager's powers in relation to housing providers. In every situation there should be the test of reasonableness in the judgements of Service Managers.

On the issue of project transfer, ONPHA is less concerned with the disposition of the asset as long as it is retained for the public benefit, however, it believes that this should be a last resort and agrees with the CHF suggested changes to the sections of the legislation that gives these powers to a Service Manager or receiver.

Recommendation:

See CHF Canada's proposed amendments to sections / subsections:

82

83

85 (1), (3), (5), (7), (8) (10), (12),

86,

88 (1), (2),

92 (4) (b),

93 (2),



94 (2),
96 (1), (1) (a), 96 (2)(1) - 96 (2)(6), 96 (3)(1)-(3)(4),
97 (2), (7), (9), (11), (13), (16), (19),
98 (1)-(3),
99 (1)-(10),
100 (4), (7), and
162

Issue: Review of Certain Decisions – Subsection 155 (3)

ONPHA is pleased with the provision to have certain decisions made by a Service Manager reviewed by a review body. However, Bill 140 states that the Service Manager is the one responsible for defining a review system for both household and provider decisions. A legal opinion commissioned by CHF Canada cites many reasons as to why the approach being proposed in Bill 140 is inappropriate where provider reviews are concerned – namely, ensuring impartiality.

To ensure impartiality, ONPHA believes that the review body effecting decisions that impact providers must not be solely under the control of the Service Manager but should be comprised of peers, both provider and Service Manager and at least one (1) independent individual. However, with this being a new area for all parties concerned, ONPHA recommends that the review body be prescribed by regulation. In the interim, a panel of three (3) Service Managers, three (3) housing provider representatives and one (1) Ministry representative should be struck to develop the review process and report back to the Minister within three (3) months. Upon approval, the review process would be adopted by regulation.

Recommendation:

Subsection 155 (3) be amended to say “an independent review body as prescribed”.

Issue: Reviews Requested by Households – Section 156

Under the SHRA, a household could request an internal review of a negative decision with respect to the deferral of RGI rent. Whether inclusion of this review in section 156 was an oversight or not, ONPHA feels it should be incorporated in the new Act.

Recommendation:

Section 156 be amended to include a decision with respect to the deferral of RGI rent payable.



Issue: Reviews Requested by Housing Providers – Section 157

The new Act does not detail those Service Manager decisions that are eligible for review. They are to be prescribed in regulation. ONPHA proposes a number of decisions be subject to review as recommended below

Recommendation:

The following decisions be subject to review:

- *Section 42 – Service level standards – to fill modified units from the general waiting list system*
- *Section 74 – Service manager opinion with regard to designation as a potential PID*
- *Section 79 – Targets for RGI and modified units*
- *Section 85 – Triggering events*
- *Section 86 – For financial and other assistance to resolve potential triggering events*
- *Section 87– Remedies*
- *Section 95-100 – Appointment of supervisory managers, receiver and receiver managers, etc.*
- *Sections 161, 162, and 166 – Service Manager consents*
- *Amount of subsidy (funding model moved to regulation, therefore, no available reference in the Act)*

Issue: Legislation from which certain transfers are exempt – Section 167

The HST should be included in the list of legislation from which certain transfers are exempt.

Recommendation:

Amend Subsection 167 (1) to include HST.

Issue: Personal Information – Sections 171 and 174

Housing providers require the authority to share information with Ontario Works, social service agencies, legal clinics or family members where vulnerable tenants are at risk of losing their RGI assistance because they have not provided information necessary to determine eligibility. If this information could be shared then there is the opportunity for the RGI administrator to obtain the necessary information from an alternate source. To resolve the problem, the following changes are recommended by ONPHA.



Recommendation:

Subsection 171 (1): Agreements of Minister re information – to include legal clinics and agencies providing supports.

Subsection 174 (1) and (2): Agreements of Service Managers re information / Disclosure of personal information – to allow the sharing of information for additional purposes.

Subsection 174 (1): Sharing information – to make changes identified above.