



Psychiatric Patient Advocate Office

LONG-TERM CARE RIGHTS PROTECTION

Submission Regarding Bill 140

– An Act Respecting Long-Term Care Homes, 2006

January 2007

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RIGHTS – EMPOWERMENT – RECOVERY



Psychiatric Patient Advocate Office

Bureau de l'intervention en faveur des patients des établissements psychiatriques

January 16, 2007

Ernie Parsons, M.P.P.
Chair
Standing Committee on Social Policy
Room 1405, Whitney Block, Queen's Park
Toronto, Ontario M7A 1A2

Dear Mr. Parsons:

RE: Bill 140 – *An Act Respecting Long-Term Care Homes, 2006*

Thank you for the opportunity to make an oral presentation to the Standing Committee on Social Policy respecting *Bill 140 – An Act Respecting Long-Term Care Homes, 2006*. A copy of our written submission is included for your reference.

In our submission, we made several recommendations that we believe, if implemented, will improve the proposed legislation and enhance rights protection mechanisms for residents of long-term care homes in Ontario. Our recommendations include: expanding the number of mandatory rights advice situations in the long-term care sector; seeking clarity in the law on the definition of restraint; recommendations on how to move towards a “hands free” and “restraint free” environment; requirements for training and certification of staff in crisis prevention and intervention; strategies for restraint minimization; inclusion of both independent advocacy and rights protection mechanisms; strengthening resident and family councils; appointment of a Seniors’ Ombudsman; and strengthening the penalties for non-compliance with the law.

Please contact me at (416) 327-7004 should you have any questions regarding this submission.

Sincerely,

David Simpson
Director (A)

Encl.

SUMMARY OF RECOMMENDATIONS

Rights Advice

Expanding Rights Advice Situations

The PPAO recommends that residents receive independent rights advice in the following circumstances:

- When found incapable of consenting to admission to a long-term care home;
- When found incapable of consenting to treatment of a mental disorder in a long-term care home;
- When a Form 24 “Notice of Continuance” of financial incapacity is issued pending a hospital discharge, but where rights advice did not take place prior to admission to a long-term care home;
- When assessed within the long-term care home by a capacity assessor and found financially incapable.

Admission or Transfer to a Secure Unit

The PPAO recommends that:

- Timelines be identified to guide the provision of rights advice for incapable individuals admitted or transferred to a secure unit.
- A process of continuance of admission to a secure unit be devised to ensure opportunities for application to the CCB and regular review.
- Rights advice should be provided every six months to those residents who are on the secure unit for an indeterminate amount of time.
- The CCB hold a deemed hearing to review a resident’s admission to a secure unit once per year in cases of continued admission.
- A form be identified in the regulations to confirm the provision of rights advice in all rights advice situations.

The Use Of Restraint And Minimizing Restraining

The PPAO recommends:

- The inclusion of a clear and comprehensive definition of restraint for physical, chemical and environmental methods.
- The omission of restraint from the plan of care.
- Restraint be clearly distinguished from treatment.
- Restraint be considered a means of managing emergent situations where the risk of serious bodily harm to the resident or others is imminent.
- Restraint be carried out exclusively under authority of the common law duty.
- The inclusion of crisis intervention plans in the plan of care with consent and involvement of the resident and SDM, if any.
- All restraint require a physician’s written order, or order by a registered nurse in situations where a physician is not available and the risk of serious bodily harm to the resident or others is imminent.
- The extended use of restraint must be supported by re-evaluation by a physician with continued written orders.

- The establishment of a written documentation standard within the statute or its regulations requiring a detailed account of relevant occurrences, interventions and outcomes.
- Statistics regarding the occurrence and details of resident restraint be made available to the public.
- Staff in long-term care homes be trained and certified in crisis prevention intervention.

Independent Advocacy And Rights Protection

Access To An Independent Advocate

The PPAO recommends that:

- An independent Seniors' Advocate be appointed to protect the legal and civil rights of seniors residing in long-term care home in Ontario.

Residents' Bill of Rights

The PPAO recommends that:

- Residents should be provided with independent information with respect to their general rights under the Resident's Bill of Rights and have the right to appoint a third party or person of choice to ensure that their rights are upheld.

Reporting Certain Matters to the Director

The PPAO recommends that:

- Independent advocates should have access to long-term care homes to meet with residents.

Determination of Ineligibility for Placement in a Long-Term Care Home

The PPAO recommends that:

- Applicants should be provided access to independent information regarding the finding of ineligibility for placement in a long-term care home.
- Applicants should be provided access to independent advocacy in order to receive assistance in crafting an appeal, if that is their wish, in these circumstances.

Access To A Seniors' Ombudsman

The PPAO recommends that:

- The government appoint a Seniors' Ombudsman who will have the authority to proactively visit long-term care homes, explain the role and function of the office and discuss any concerns put forward by the residents.
- Ombudsman representatives be enabled to assist seniors, advise them of avenues of appeal where necessary, investigate complaints, identify systemic

issues and make appropriate recommendations to government where necessary.

Resident And Family Councils

The PPAO recommends that:

- The creation of family councils be mandated for every long-term care home in Ontario.
- Resident and family councils be established as autonomous entities with well-delineated funding and reporting relationships.

Penalties For Non-Compliance

The PPAO recommends that:

- A legal sanction be developed holding that every person who contravenes any provision of the legislation is guilty of an offence, except where a specific penalty provision exists.

LONG-TERM CARE RIGHTS PROTECTION: A Submission Regarding Bill 140 – An Act Respecting Long-Term Care Homes, 2006

Bill 140 addresses many concerns raised in our December 15, 2004 submission on *Future Directions for Legislation Governing Long-Term Care Homes*.¹ From our perspective, additional revisions are required to safeguard the rights and entitlements of residents in long-term care homes. The current submission focuses on: specific situations with respect to capacity to consent to admission to a long-term care home, capacity to consent to treatment and financial capacity; the provision of rights advice on admission or transfer to a secure unit; the use of restraint and determination of capacity to consent to the use of restraint; resident and family councils; and penalties for non-compliance with the proposed statute. In particular, rights protection issues will be addressed and recommendations made to strengthen the proposed legislation

Introduction To The Psychiatric Patient Advocate Office

The Psychiatric Patient Advocate Office (PPAO) was established in 1983 as an arm's length program of the Ministry of Health and Long-Term Care to protect the legal and civil rights of inpatients in the current and divested provincial psychiatric hospitals. The PPAO now also provides rights advice services to individuals living in the community and being considered for the issuance or renewal of a community treatment order (CTO), and their substitute decision-maker, if any, and to patients in Schedule 1 hospitals where the PPAO has been designated as "rights adviser."

The PPAO provides independent and confidential advocacy (instructed, non-instructed and systemic), rights advice and education. Using information, education, and referrals, we support self-advocacy and promote self-determination by working to empower mental health consumers to make informed decisions. Our vision is that persons with mental illness in Ontario will be treated with dignity and respect, that their legislated rights and entitlements are upheld at all times, and that they are actively involved in decisions affecting their life, care, and treatment.

Vulnerability And Rights Protection Mechanisms

Some seniors who reside in long-term care homes may be vulnerable due to their life circumstances – they may be medically fragile, have diminished capacity, be isolated from family, friends, and familiar surroundings; and may not fully understand their legal rights and entitlements. Many have suffered the loss of their spouse, their principle residence, their pets, access to their friends and most of all their independence. Some may not have regular visitors or they may be estranged from family and natural supports.

¹ <http://www.ppao.gov.on.ca/pdfs/pos-ltc.pdf>

As a result, they may not have anyone to be their advocate, give voice to their concerns or address quality of care and life issues on their behalf. This can magnify their feeling isolated, alone, disconnected from the community and completely dependent on those who provide care. Such dependency and reliance on care providers may make it difficult for some residents to express concerns about the quality of care they are receiving or to complain about those who provide care. Fear of retribution may silence them because they may believe that if they make a complaint they may be asked to leave the home or may become labelled as a “difficult” resident or a “chronic complainer.” Instead, they may choose to remain silent and not address outstanding issues or complaints. Some may have brought their complaints to the attention of care providers but those concerns may not have been addressed to the satisfaction of the resident and so they may adopt a “why bother” stance to making complaints in the future.

Residents may be vulnerable given their financial circumstances; some may receive only a comfort allowance while others may have their property managed by someone with power of attorney who may not adequately provide for their needs. Again, they may become fully dependent on others in meeting their basic needs which may create or magnify their fragility or vulnerability. Others may also become involved in making decisions on their behalf with respect to admission or treatment, further heightening feelings of vulnerability.

Bill 140 must ensure that there are specific and adequate rights protection mechanisms in place to reduce the vulnerability of seniors residing in long-term care homes so they can live their lives with autonomy, dignity and respect. Every effort must be made to support their involvement in all decisions that affect their care, treatment and lives. Bill 140 is a positive step toward the protection of seniors’ rights; however, the circumstances in which rights advice is provided are far too limited and there are other rights protection issues which require attention.

Rights Advice

For the past twenty years, the PPAO has been providing rights advice in the mental health sector and has developed best practices that protect and promote the rights and entitlements of individuals with a mental illness. Rights advice is a process by which patients in psychiatric facilities and persons being considered for CTOs and their substitute decision-maker, if any, are informed of their rights when their legal status has changed. Rights advice is an important component in the system of checks and balances established under the *Mental Health Act* and its regulations for the protection of the rights of the individual. Rights advice is currently required in eight mandatory situations. The rights adviser explains the significance of the legal situation to the client, discusses the options available, and, upon request, assists the client to apply for a hearing before the Consent and Capacity Board (CCB; the Board), obtain a lawyer, and apply for financial assistance from Legal Aid Ontario.

By definition, a rights adviser may not be involved in the direct clinical care of the person to be seen or provide treatment or care and supervision to that person under a

community treatment plan. Rights advisers must meet the qualifications specified in the regulations to the *Mental Health Act*, including successful completion of a training program approved by the Minister of Health and Long-Term Care. The PPAOs training program has been so approved.

Bill 140 sets out one new mandatory situation in which a resident of a long-term care home must receive rights advice. When facing transfer or admission to a secure unit in a long-term care home, the individual will be provided with rights advice and the assistance necessary to exercise their legal rights. The provision of formal rights advice in this situation will become an important part of the checks and balances established under this legislation and in this sector.

Expanding Rights Advice Situations

The PPAO commends the Ministry for providing the opportunity for residents of long-term care homes to receive formal rights advice. As a rights protection organization, we believe that enhanced rights protections should be extended to Ontario's long-term care sector.

Respectfully, the proposed legislation has not addressed many of the concerns raised in our earlier submission, particularly where residents' rights would be better protected through having access to rights advice. The PPAO previously recommended the extension of formal rights advice to the long-term care sector when residents are found incapable of consenting to admission to a long-term care home; incapable of consenting to treatment due to a mental disorder; or financially incapable.

The provision of rights advice to persons found incapable to consent to their admission or transfer to a secure unit is an important safeguard in the proposed legislation. However, individuals found incapable of making long-term care placement decisions and facing admission to a long-term care home do not have the same opportunity for rights advice. Currently, rights information is given by health care providers proposing admission. For those facing admission, there is still an opportunity to apply to the CCB, however, they may not be as effectively supported in accessing their rights in the absence of right advice. Therefore, the PPAO recommends that rights advice be provided to all incapable individuals facing admission to a long-term care home. This will ensure equitable access to rights advice and address the disparity in the current legislation.

Under existing law, if patients of a psychiatric facility are found to be incapable of making a decision about their treatment for a mental disorder, rights advice is mandatory. However, residents of a long-term care home are not afforded this same right. Being treatment incapable means an individual is unable to make decisions about their own treatment and another person (substitute decision-maker) consents to treatment. Due to this loss of personal autonomy, the PPAO recommends that the legislation stipulate that rights advice must be provided to residents of long-term care homes in these situations.

Where an individual is a patient in a psychiatric facility and has been found incapable of managing his or her property and a notice of continuance (Form 24) is completed by a physician, a rights adviser must be notified promptly and must meet promptly with that person to explain the significance of this finding and the right to apply to the Board for a review. Frequently, individuals found incapable of managing their property may be discharged from hospital before receiving rights advice. This calls into question the validity of a statutory guardianship where the procedural requirements for continuance of financial incapacity have not been met. For this reason, the PPAO recommends that residents receive rights advice when a Form 24 is issued pending a hospital discharge, but where rights advice did not take place prior to admission to a long-term care home.

Residents found incapable of managing their property by a capacity assessor currently receive only rights information. The PPAO recommends that these persons also receive formal rights advice which represents a higher standard of advice and support in exercising one's rights than rights information and which is commensurate with the importance of a finding of financial incapacity.

The PPAO recommends that residents receive independent rights advice in the following circumstances:

- When found incapable of consenting to admission to a long-term care home;
- When found incapable of consenting to treatment of a mental disorder in a long-term care home;
- When a Form 24 "Notice of Continuance" of financial incapacity is issued pending a hospital discharge, but where rights advice did not take place prior to admission to a long-term care home;
- When assessed within the long-term care home by a capacity assessor and found financially incapable.

Admission or Transfer to a Secure Unit

Sections 30(4) and 43 of Bill 140 requires the provision of rights advice to residents found incapable of consenting to their admission or transfer to a secure unit where substitute consent has been provided. A secure unit is a part of the long-term care home that residents are prevented from leaving. Notice is provided to the person subject to admission or transfer and the rights adviser is notified. The rights adviser will apprise the person of their right to apply to the CCB under section 53.1 of the *Health Care Consent Act* and their right to retain and instruct legal counsel without delay. The rights adviser will also assist the person in making application to the CCB and in obtaining legal services. The application is to determine whether the SDM complied with principles of giving or refusing consent outlined in section 42 of the *Health Care Consent Act*. Neither admission nor transfer to a secure unit may take place until rights advice has been provided, or until the matter has been disposed of by the CCB.

As the admission or transfer to a secure unit is effectively an involuntary admission within a long-term care home, the liberty interests of the individual must be protected by stringent safeguards. Therefore, every person being admitted or transferred to a secure unit should receive rights advice in order to understand the implications of being detained on a secure unit.

Bill 140 does not contain a framework to protect residents who remain on a secure unit for an indeterminate amount of time. Timelines should be enacted for both the regular provision of rights advice and the review of decisions to keep residents on secure units in order to safeguard their liberty interests and maintain accountability. With this in mind, the PPAO recommends that residents detained on a secure unit obtain rights advice every six months. Moreover, the CCB should hold a deemed review once per year in cases of continued admission on a secure unit.

Written confirmation of rights advice should be required and a form identified in the regulations. This form should capture whether the person has applied to the CCB or is considering making an application. Such a form would provide clear information on whether rights advice had been provided and the status of an application to the Board. Otherwise, there is no mechanism for rights advisers to disclose the personal health information of the individual. This information would also ensure that admission or transfer to a secure unit is not effected until rights advice is provided, or the matter is heard and decided by the Board.

The PPAO recommends that:

- Timelines be identified to guide the provision of rights advice for incapable individuals admitted or transferred to a secure unit.
- A process of continuance of admission to a secure unit be devised to ensure opportunities for application to the CCB and regular review.
- Rights advice should be provided every six months to those residents who are on the secure unit for an indeterminate amount of time.
- The CCB hold a deemed hearing to review a resident's admission to a secure unit once per year in cases of continued admission.
- A form be identified in the regulations to confirm the provision of rights advice in all rights advice situations.

The Use Of Restraint And Minimizing Restraining

Sections 27 through 34 govern the use of restraint within the context of minimizing restraining and ensuring that the guidelines outlined in the proposed legislation are complied with through policy development and implementation. Restraint by the use of physical devices and barriers, locks and other devices is permissible providing certain criteria are met, including consent to the use of restraint by the resident or SDM where the resident is incapable of providing consent. If these criteria are met, restraint may be included in a resident's plan of care. A necessary precondition is that there is a "significant risk that the resident or another person would suffer serious bodily harm if the resident were not restrained." Alternatives must also have been considered, but deemed ineffective to manage the risk. The restraint method must be reasonable and consideration must be given to the least restrictive approach. Restraint by the use of physical devices must be approved or ordered by a physician, registered nurse in the extended class, or other person identified in the regulations. Chemical and physical restraint of a resident may be carried out under authority of the common law duty to

restrain or confine a person where immediate action is necessary to prevent serious bodily harm to the person or others.

While Bill 140 captures many important requirements for the use of restraint and its minimization, there are significant concerns raised by the inclusion of restraint in the resident's plan of care. By definition, the plan of care is broad and includes all dimensions of "treatment and interventions." It is unclear in this scheme whether restraint is considered to be treatment. If restraint is considered to be treatment, then there must be a determination by the health care provider of the person's capacity to give consent to this intervention. Then, if there is a finding of incapacity, pursuant to the *Health Care Consent Act*, restraint could not be used as a treatment if the resident found to be incapable plans to apply or has applied to the CCB for a review of this determination. For persons found to be incapable, consent must then be given by an SDM. If restraint is not considered treatment but still requires consent for inclusion in the plan of care, then how and under what authority would capacity be determined? Also, under what authority would an SDM consent to the use of restraint outside of the context of treatment? Finally, what would be the resident's right of review, if any, before the CCB?

The inclusion of restraint in the plan of care suggests that it may be used on an as-needed basis provided there is a significant risk of bodily harm to the resident or others. In accordance with the restraint minimization requirements of the proposed legislation, the restraint must be discontinued if there is no longer a significant risk or if there is an alternative to restraint that may be used, or a less restrictive form of restraint. Bill 140 distinguishes between restraint carried out as part of a plan of care and restraint pursuant to the common law duty; according to section 34(1), nothing in the proposed legislation affects the common law duty to restrain where there is a risk of serious bodily harm and immediate action must be taken. However, nowhere in Bill 140 is there a definition of restraint. This is a serious omission. Providing a clear and comprehensive definition of restraint would strengthen the proposed legislation. A comprehensive definition of restraint should include all types of restraint, such as, the use of physical devices or force, chemical agents (drugs or pharmaceuticals), and environmental barriers or seclusion.

The PPAO recommends that restraint be clearly differentiated from treatment. This is consistent with the views presented by the PPAO in its "Review of Seclusion and Restraint Practices in Ontario Provincial Psychiatric Hospitals" (October 2001). Bill 140 distinguishes the use of personal assistance services devices in support of residents' activities of daily living from the use of the same devices in restraint. Accordingly, if a personal assistance services device is used as a restraining device, the guidelines for restraint must be followed. Yet, the proposed legislation falls short of protecting residents' rights by including restraint in the plan of care. Restraint seriously limits individual autonomy and is associated with significant physical and psychological risks. The benefits of restraint may be difficult to ascertain, while risks of morbidity and mortality are well documented. For this reason, it is difficult to conceptualize restraint as a treatment for which informed consent may be sought.

On the surface, the establishment of clear guidelines for the inclusion of restraint in the resident's plan of care seems a positive step in ensuring its appropriate application and limiting its misuse. Moreover, requiring the consent of the resident or SDM, where the resident is found incapable of providing consent, appears consistent with fundamental principles of self-determination. However, it is hard to imagine a situation where a resident would consent to his or her own restraint. Inclusion of restraint in the plan of care is a more likely scenario where the resident is found incapable and consent is provided by the SDM. What process of review would be available to the incapable resident whose SDM had consented to the inclusion of restraint in the plan of care? Could the incapable resident apply to the CCB to determine whether the rules for substitute decision-making had been adhered to? Once it becomes part of the plan of care, the use of restraint is no longer an exceptional intervention. The PPAO recommends that restraint not be included in the plan of care and that it be considered a means of managing emergent situations where the risk of serious bodily harm to self or others is imminent. Consistent with this recommendation, restraint would be carried out under authority of the common law duty.

While restraint should not be included in the plan of care, it is crucial to include crisis prevention plans and strategies with the consent and involvement of the resident and SDM, if any. While it is positive that licensees must maintain records and submit reports to the Director regarding restraint, statistical information about the prevalence of restraint should also be shared with the public to enhance accountability. It is also essential that staff of long-term care homes be trained and certified in the use of crisis prevention intervention.

Guidelines for the use of restraint should be consistent across all forms of restraint including physical, chemical and environmental methods. Under the proposed legislation, physical restraint requires an order, while restraint using barriers, locks or other devices is recommended for inclusion in the plan of care. This power is properly delegated to a physician or nurse in the extended class but it is submitted that this responsibility is improperly delegated to an unidentified "other person provided for in the regulations." The proposed legislation is very broad and does not guarantee that a person with relevant clinical experience or knowledge of the resident will be making restraint decisions. Thus, the PPAO recommends that all restraint require a written order by a physician, or registered nurse in situations where a physician is not available and the risk of serious bodily harm is imminent. The extended use of restraint must be supported by re-evaluation by a physician with continued written orders. While the proposed legislation requires that licensees to keep records on restraint occurrences and submit these to the Director, it does not detail a documentation standard for restraint use. The PPAO recommends that a written documentation standard be established within the proposed legislation or its regulations requiring a detailed account of relevant occurrences, interventions and outcomes.

The PPAO recommends:

- The inclusion of a clear and comprehensive definition of restraint for physical, chemical and environmental methods.
- The omission of restraint from the plan of care.

- Restraint be clearly distinguished from treatment.
- Restraint be considered a means of managing emergent situations where the risk of serious bodily harm to the resident or others is imminent.
- Restraint be carried out exclusively under authority of the common law duty.
- The inclusion of crisis intervention plans in the plan of care with consent and involvement of the resident and SDM, if any.
- All restraint require a physician's written order, or order by a registered nurse in situations where a physician is not available and the risk of serious bodily harm to the resident or others is imminent.
- The extended use of restraint must be supported by re-evaluation by a physician with continued written orders.
- The establishment of a written documentation standard within the statute or its regulations requiring a detailed account of relevant occurrences, interventions and outcomes.
- Statistics regarding the occurrence and details of resident restraint be made available to the public.
- Staff in long-term care homes be trained and certified in crisis prevention intervention.

Independent Advocacy And Rights Protection

We believe that residents in Ontario's long-term care homes should have access to an independent advocacy and rights protection program. Independent rights advice provides residents with information about decisions that have been made about them which will affect their care and treatment. An independent advocate would help residents navigate a complex health delivery system, support them in self-advocacy efforts, give a voice to an issue when residents are unable to speak for themselves, assist with problem resolution and engage in systemic advocacy. This would reduce the vulnerability of the resident and provide a rights protection perspective not currently included in Bill 140. The work of the advocate would also complement the work done by the proposed Resident and Family Councils, creating opportunities for collaboration.

Providing independent advocacy and rights protection to residents would assure seniors and their families that, not only will they have rights, but that their rights will be protected and they will be supported in exercising them. Advocacy and rights protection support residents in maintaining independence and autonomy, as long as they are able, and would supplement additional rights protection mechanisms including an Office of the Long-Term Care Homes Resident and Family Adviser and Seniors Ombudsman, should these be appointed.

Independent advocacy and rights protection would assist long-term care homes in accomplishing what they do best – providing safe and effective living environments for seniors. Independent advocacy and rights protection will provide adjunctive mechanisms to prevent and investigate situations that may negatively impact the care, treatment, living environments and, ultimately, health of residents. The PPAO model of

advocacy and rights advice has proven to be an effective service delivery model over the last two decades. This model could easily be adapted to the long-term care sector.

Access To An Independent Advocate

Section 35 of the proposed legislation indicates that the Ministry may establish an Office of the Long-Term Care Homes Resident and Family Adviser to assist and provide information to residents, families and others, advise the Minister and other duties as appear in the regulations or assigned. The wording of this section is permissive, not mandatory. The PPAO believes that residents of long-term care homes should have access to independent advocacy. We believe that advocacy can have a positive impact on the quality of care and life of residents of long-term care homes and lead to improved outcomes. Having access to an independent advocate would assist clients in resolving their own issues, and where that wasn't possible, the advocate could give voice to their issues.

The PPAO recommends that:

- An independent Seniors' Advocate be appointed to protect the legal and civil rights of seniors residing in long-term care home in Ontario.

Residents' Bill of Rights

We are pleased that both staff and residents will be provided a copy of the Residents' Bill of Rights to inform them of the important rights contained therein and that the rights will be explained to residents. However, providing vulnerable individuals with access to rights and information, without a mechanism to enforce them, may be akin to not having any rights at all.

The Residents' Bill of Rights provides, in section 3(1)17, that every resident has the right to raise concerns or recommend changes in policies and services on behalf of himself or herself or others to the following persons and organizations without interference and without fear of coercion, discrimination or reprisal, whether directed at the resident or anyone else. This section assumes that residents will be capable of raising concerns or recommending changes in policies and services, or that perhaps other residents may raise concerns on behalf of incapable residents. Section 3(3) reiterates this approach by leaving it to the resident to "enforce the Resident's Bill of Rights against the licensee as though the resident and the licensee had entered into a contract under which the licensee had agreed to fully respect and promote all of the rights set out in the Residents' Bill of Rights." This assumes that in all circumstances the resident and the licensee are equals. However, we recognize that residents of long-term care homes may experience various incapacities which render them, at times, unable to enforce their rights. Residents' rights would be better protected if residents were provided independent information and support to enforce the Residents' Bill of Rights. An independent advocate could assist clients in knowing and exercising their rights, should they choose to do so.

The PPAO recommends that:

- Residents should be provided with independent information with respect to their general rights under the Resident’s Bill of Rights and have the right to appoint a third party or person of choice to ensure that their rights are upheld.

Reporting and Complaints

Sections 19 through 21 provide for reporting and investigating complaints in long-term care homes: section 19 ensures that every licensee shall ensure that complaint mechanisms are in place; section 20 says that written complaints shall be immediately forwarded to the Director; and section 21 provides that in specific circumstances where alleged, suspected or witnessed incidents of abuse and neglect may have occurred, that they are investigated, addressed and reported.

Such measures may not afford vulnerable long-term care residents with adequate protections. Ensuring that residents have access to independent advocacy and rights protection will result in an additional measure to ensure that these procedures are being adhered to and that residents have access to independent advice and support when they have complaints about their care and treatment. While families are natural advocates for their family members, there may be circumstances where residents wish to have independent advice and support in bringing their complaints forward.

Reporting Certain Matters to the Director

Sections 22 and 23 allow for reporting and investigating matters harmful to residents. Such situations are serious and may pose grave physical or financial harm to residents. By providing resident’s access to independent advocacy, and ensuring that staff and family members are aware of this access, residents may be better protected. Access to an independent advocate will complement the responsibilities of an inspector appointed by the Director.

Residents should have access to independent advocacy in order to receive information regarding complaint mechanisms and support to bring complaints forward. In circumstances where residents are incapable of complaining, the presence of an independent advocate provides an additional oversight mechanism to ensure that residents are being cared for safely and that they are treated with dignity and respect.

The PPAO recommends that:

- Independent advocates should have access to long-term care homes to meet with residents.

Determination of Ineligibility for Placement in a Long-Term Care Home

Section 41(8) provides for an applicant’s right to apply to the Health Services Appeal Board for a review of the placement coordinator’s determination of ineligibility for placement in a long-term care home, or any subsequent redetermination as per section 42(13). Simply notifying potential residents of their ineligibility by mail, providing them reasons and indicating their right to apply for a review may not be sufficient to assist potential residents in their appeal. While families are the natural advocates and

protectors of their family members, there may be circumstances where access to independent rights protection is required to ensure rights are protected and that individuals are supported to exercise their rights.

The PPAO recommends that:

- Applicants should be provided access to independent information regarding the finding of ineligibility for placement in a long-term care home.
- Applicants should be provided access to independent advocacy in order to receive assistance in crafting an appeal, if that is their wish, in these circumstances.

Access To A Seniors' Ombudsman

As an adjunct to the Office of the Long-Term Care Homes Resident and Family Adviser and the provision of independent advocacy, the rights of residents in long-term care homes would be better protected with the additional oversight of a Seniors' Ombudsman. In 2003, Bill 49 (*An Act to Amend the Human Rights Code*) was advanced to ban mandatory retirement. The Bill also contained provisions that, if enacted, would create a Seniors' Ombudsman. The proposed legislation indicated:

- The Seniors' Ombudsman would,*
- (a) act as an advocate on behalf of the elderly who are residents of long-term care homes and similar medical homes;*
 - (b) investigate complaints of abuse and neglect in the homes mentioned in clause (a); and*
 - (c) report to the chair of the Commission on the results of his or her investigations.*²

We applaud the government for addressing the issue of mandatory retirement, but believe that the government missed an opportunity to serve Ontario's vulnerable seniors by not using the occasion to appoint a Seniors' Ombudsman.

The PPAO recommends that:

- The government appoint a Seniors' Ombudsman who will have the authority to proactively visit long-term care homes, explain the role and function of the office and discuss any concerns put forward by the residents.
- Ombudsman representatives be enabled to assist seniors, advise them of avenues of appeal where necessary, investigate complaints, identify systemic issues and make appropriate recommendations to government where necessary.

Resident And Family Councils

As noted in an earlier submission, the PPAO fully supports the development and implementation of resident and family councils in all long-term care homes across the

² http://www.ontla.on.ca/documents/Bills/37_Parliament/Session4/b049_e.htm

province. The proposed legislation mandates the creation of resident councils in every long-term care home. It is the obligation of the licensee to ensure that a resident council is implemented. In contrast, the licensee *may* establish a family council. This disparity is potentially problematic insofar as families are not guaranteed an opportunity to collaborate with residents and licensees in the delivery of services. In the opinion of the PPAO, this is an important omission as the creation and implementation of family councils should be mandated by law.

Bill 140 clearly articulates the roles and powers of resident and family councils and establishes these as separate entities. This is a positive step in providing residents and their families avenues for redress of their concerns and opportunities for collaboration in the delivery of services. However, the relationship of these councils to long-term care homes remains to be defined. Resident and family councils must be autonomous to function effectively and avoid potential conflicts of interest with the long-term care homes they operate in. The PPAO recommends that resident and family councils be established as autonomous entities with well-delineated funding and reporting relationships.

The PPAO recommends that:

- The creation of family councils be mandated for every long-term care home in Ontario.
- Resident and family councils be established as autonomous entities with well-delineated funding and reporting relationships.

Penalties For Non-Compliance

Bill 140 proposes a comprehensive strategy in the areas of compliance and enforcement with well-defined penalties for non-compliance. The Director is given extensive powers to ensure compliance and to mete out sanctions in enforcing compliance with the proposed statute. Violations of some sections of the proposed legislation carry legal sanction; however, there is no overarching legal penalty or sanction for non-compliance. The PPAO recommends the inclusion of a legal sanction holding that every person who contravenes any provision of the legislation is guilty of an offence.

The PPAO recommends that:

- A legal sanction be developed holding that every person who contravenes any provision of the legislation is guilty of an offence, except where a specific penalty provision exists.