

The
**CO-OPERATIVE
HOUSING
FEDERATION**
of Canada



Public Hearings on Bill 140

Housing Services Act

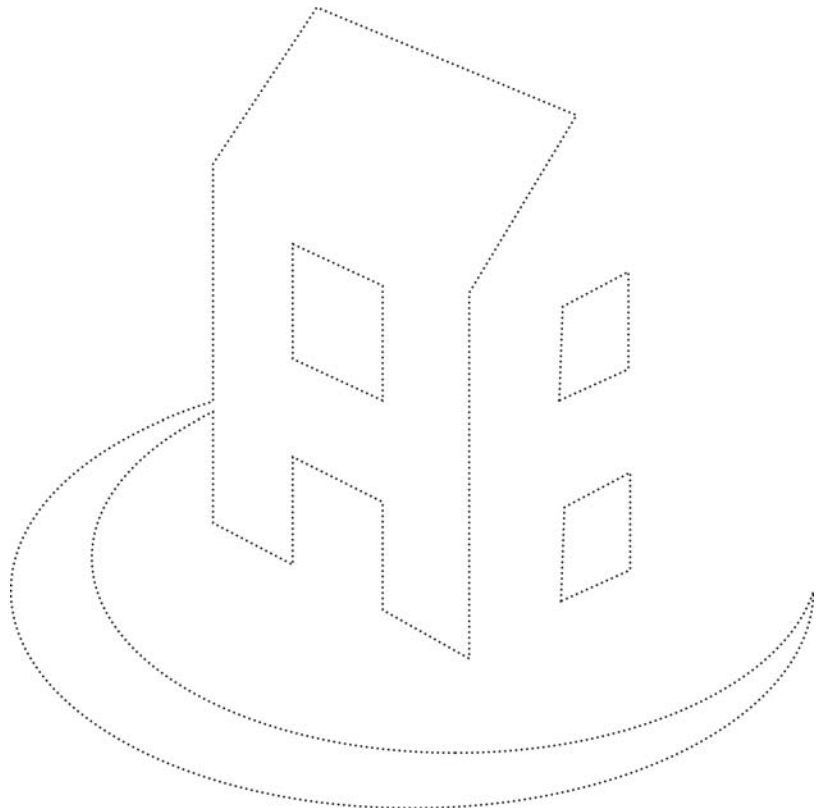
Standing Committee on Justice
Policy

Legislative Assembly of Ontario

March 18, 2011

Briefing Notes
For Co-op Housing
Presenters and Submissions

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*CHF Canada is the national voice of the Canadian co-operative housing movement. Its members include nearly 900 non-profit housing co-operatives and other organizations across Canada.
More than a quarter of a million Canadians live in housing co-ops, in every province and territory.*

Background

As CHF Canada's Ontario has previously reported, a large part of the Province's Long-Term Affordable Housing Strategy, released in late 2010 is to bring in a new legislation, ultimately to be called the *Housing Service Act* that will replace the *Social Housing Reform Act (SHRA)*.

The *Housing Services Act* deals with a range of housing and homelessness services, not just program rules for municipally administered co-ops and non-profits. However, its major focus is on changes to the SHRA.

Current Timing of Bill 140

The draft legislation, known as Bill 140, just finished 2nd reading in the Legislature in Mid-March. The Bill was sent to one of the MPP Standing Committees at Queen's Park – The Justice Policy Committee – for further debate and input as well as clause by clause review. It will then go back to the Legislature for 3rd and final reading.

The Justice Policy Committee has now set the timing and parameters for Public Hearings and further review of Bill 140. There will be only two days of presentations at Queen's Park and no regional meetings.

The two hearings in Toronto are on consecutive Thursdays, **March 24th and March 31st**. The Committee will meet for clause-by-clause consideration of the Bill on the following **Thursday April 7th**. The Government's intent is to have the Bill passed by the time the Legislature rises in early June.

Co-op Engagement in the Process

Unfortunately the timing for co-ops to participate in the public hearing process or submit written comments is extremely tight. That said, it is important that co-op housing try to make as much of an impact as possible at both the hearings and that we have a number of co-op submissions on Bill 140.

The proposed legislation has some positive elements, but may be less than we had hoped for. The Public Hearings are our opportunity to win some improvements.

Using the Briefing Notes

We have prepared these briefing notes to help co-op members and staff write submissions to the Province and possibly take part in the Public Hearings on Bill 140. We review both the potential gains and challenges that are in the draft legislation. CHF Canada has more detailed materials and submissions that we have sent to the Province on Bill 140. We can make that material available to anyone interested.

Written submissions

These materials are designed to help you prepare to take part in the process, please only use them as a guide and speak and write in your own words. There is an abundance of information contained here. Feel free to focus in on one or two issues that may be important to your household and your co-op. A simple letter on your co-op letterhead can be highly effective.

Why co-ops matter

Feel free to talk about your own personal experiences.

- What has affordable housing meant to you and your family?
- How has living in a housing co-op benefitted you and other members?
- Personal stories are often quite compelling and can have a very positive impact on the outcome.
- Co-op members by working together to run their housing often develop broader forms of interaction and strong communities are created.
- The Province in Bill 140 should be looking to build on this social cohesion and engaged citizenry and strengthen co-op communities.
- Including this type of information in your letter/submission, including how many households are in your co-op can often receives the attention of politicians and public officials.

Who to write to

All submissions/letters must be in by **Thursday March 31 @5:00 p.m.** They should be addressed to:

Trevor Day
Clerk Justice Policy Committee
Room 1405, Whitney Block
Queen's Park
Toronto, ON
M7A 1A2

Please send a copy of whatever you submit to the following two people:

The Honourable Rick Bartolucci
Minister of Municipal Affairs and Housing
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Bill 140 Housing Services Act

Potential gains for co-ops in the draft legislation as follows:

1. Statement of Purpose includes community:

- The statement of Purpose in the Act includes reference to “community based planning and delivery of housing and homelessness services” and to providing “flexibility for service managers and housing providers”.
- In the SHRA, the statement of Purpose has no reference to a community-based approach or to housing providers. This language is important and a definite improvement.

2. Provincial Interest in a role for co-ops

- A new section sets out 10 areas of Provincial Interest that municipalities must have regard for when planning and delivering services.
- One Provincial Interest is that there is “a role for non-profit corporations and co-operatives” in the housing and homelessness services offered by municipalities.

3. Supervisory management as alternative to receivership

- Appointment of a supervisory manager has been added as a remedy that a service manager can use to deal with “triggering events”.
- As a general rule, a service manager would not be able to appoint a receiver unless a supervisory manager had been acting for at least six months.
- In the case of co-ops, the supervisory manager would have to be “knowledgeable about the structure and operation of co-operative corporations”.
- CHF Canada pushed hard to have supervisory management added to the Act as a constructive alternative to receivership.
- Unfortunately, as we outline in a later section of these notes, there are various inadequacies in the way supervisory management is currently set out in the Bill that may well preclude it from being as positive a measure as we would like.

4. Duty of supervisory manager and receiver to report to co-op members

- The Act says that a supervisory manager and a receiver must report to the co-op or non-profit every three months on what it has done and plans to do, and on the operations and finances of the co-op/non-profit.
- This requirement reflects the goal of returning control of the housing to the housing provider whenever possible.

5. Review of service manager decisions

- Co-ops and non-profits will now be able to request a review of some service manager decisions.
- The decisions that will be subject to review will be set out in regulations.
- While this is a measure that co-ops have been pressing for over the last decade, undercutting the potential effectiveness of the review mechanism is that in the Bill the Province seems to leave it in the hands of service managers regarding what the process may look like. More on this later in the notes.

Shortcomings of Bill 140

While there are a number of potential gains in the legislation that we have outlined above, the overall thrust of the new statute is to give municipal service managers more flexibility and control in the oversight and administration of the housing program. Even in some of the areas outlined above where co-ops are hopeful for improvements a lot of the details are dependent on what the regulations may say. As well in some cases the Act itself is rather permissive giving service managers options of using their own judgment to suit local circumstances.

Major concerns regarding Bill 140

Below we list some of the major concerns with the Act that co-ops may want to address in their remarks or written submissions/letters. Again, as mentioned previously please put these in your own words and do not be hesitant to only comment on one or two major areas.

1 Bill reduces authority of housing providers and gives control more to municipalities

- One of the two stated purposes of the Act is “... *provide flexibility for service managers and housing providers*”.
- Unfortunately, while there are a quantity of examples in Bill 140 where the Province has provided for enhanced flexibility for service managers, in a number of cases this comes about at the expense of reducing existing protections under the existing *Social Housing Reform Act (SHRA)* for community-based housing providers.
- This is particularly apparent than in cases where the service manager is of the opinion that the housing provider has possibly committed a breach of the program.
- Some examples where Bill 140 reduces protections for co-ops compared to the SHRA include:
 - A requirement that service manager act “reasonably” has been removed in some places
 - The requirement that breaches be “significant” is taken out in several areas
 - A single year deficit versus an accumulated deficit is now considered a breach.
- The deficit example is a good one to highlight.

- Under the SHRA, a housing provider is in default if it has an accumulated deficit.
- Bill 140 changes the “triggering event” to having an in-year deficit.
- Being in default under the Act puts a co-op at very considerable risk and so the standard must be unimpeachably reasonable.
- The new standard in the HSA of a simple deficit is unreasonable.
- There are many reasons that a co-op may incur a deficit in a single year, such as an unexpected expense or a prudent decision to plan for and incur a manageable deficit given available surpluses from previous years.

2 Housing providers more vulnerable to takeovers by Service Managers

- As way of background the co-operative housing sector had major concerns about the default and remedies sections of the SHRA that left co-ops vulnerable to takeover by service managers.
- In several cases, CHF Canada has supported co-ops in court as they have resisted receivership and, in two cases fought against takeover by the service manager.
- In the court rulings in these cases we have won significant legal protections for co-ops and a new system of law has begun to emerge dealing with receivership and sale in a social, rather than a purely commercial, context.
- As mentioned above the concept of supervisory management has been introduced in Bill 140 to hopefully reduce the incidence of receivership.
- However as currently drafted there are problems with supervisory management.
- Under it co-op members lose control of their housing for an even longer period than under the SHRA rules.
- As well the Bill makes it far too easy for a service manager to avoid even using this remedy prior to resorting to receivership, if it wants to.
- The role of the supervisory manager should be clearly set out in the legislation to deal with operating difficulties identified by the service manager while preparing co-op members to take back control of their housing whenever possible.
- It should also be clear in the Act that the supervisor manager cannot also become the receiver.
- As already noted, by reducing protection of housing providers by allowing triggering events to be more open-ended and easier for service managers to declare, we may well see more co-ops and non-profits be placed in receivership and ultimately taken over by Municipalities.
- Some Municipalities may view this as a relatively neutral exercise, the rationalizing of their social housing portfolio under municipal administration.
- What is lost here is the benefits that come with the co-op housing model of pride of collective ownership, community engagement, resident decision-making, etc.

3 Concerns about sale and or transfers of housing projects

- One particularly crucial protection for housing providers that was included in the SHRA has now been stripped away in Bill 140.
- This relates to where a service manager is petitioning to sell or transfer the assets of a housing provider.
- Under the SHRA such an extreme remedy required the consent of the Minister of Municipal Affairs and Housing.
- The province in their Affordable Housing Strategy explains this elimination of this critical statutory protection of the assets of community-based housing providers as, curiously somehow, “increasing local decision making.”
- The provincial Strategy document rationalizes this casual approach to discarding legislative protection of housing providers this way: “As Service Managers have the experience needed to make locally relevant decisions, our strategy would be to remove this requirement.”
- Contradictorily, Queen’s Park is not removing Ministerial Consents entirely. The provision remains to stop any housing provider for opting out of bulk purchasing of utilities and insurance.
- This is not a mere academic exercise. We have had two lengthy and very expensive litigation cases where service managers were attempting to force the sale of housing co-operative’s assets to the Municipality’s own housing company.
- In one of the cases, involving a co-op located on prime real estate in Thornhill, the Municipality stands to gain significant financial equity paying far less for the properties than the actual market value.
- Co-ops may want to make use in their submissions and presentations of a critical legal ruling.
- Ontario Superior Court of Justices noted in their February 2009 ruling in the Thornhill Green case that the issue of a Ministerial Consent for sale of a social housing property should not be taken lightly:

The decision to consent to the transfer is not a mere recommendation. It is a critical element of this proposed sale, without which it could not proceed, pursuant to s. 95(1) of the SHRA. The Region’s decision is one of two statutorily mandated pre-conditions to the proposed sale. The other is the consent of the Minister. The Legislature has given two separated governmental entities, the Region and the Minister the power to control whether a proposed sale will take place. This ensures that the public interest in social housing and its availability will be taken into account in any proposed disposition of a “housing project” as defined by the SHRA.

- Bill 140 establishes a very dangerous precedent never before seen in any governmental housing programs.
- It legitimizes the sale or transfer of community-based housing providers’ properties and assets to the Municipal Service Managers or other parties as a remedy under the Act.
- There is little in the way of limits on transfer/sale and the most important protection, Provincial Ministerial consent, has been done away with.
- **Simply put, the Ministerial Consent should be re-inserted back into the Housing Services Act.**

4 Review of Service Manager Decisions

- Since the SHRA was implemented a decade ago, housing providers have been quite concerned that a fundamental gap in the Act is the lack of any mechanism for co-ops and non-profits to seek an independent review of a service manager decision.
- The only option open to them has been to go to court.
- This option is very expensive and time-consuming option and certainly not prudent public policy.
- During the extensive Affordable Housing Strategy consultations, a reoccurring theme heard from co-op and non-profits is the compelling need for a cost-effective and efficient system that housing providers can use to seek a review of a service manager decision.
- Unfortunately our co-op/organization has very serious concerns with the model that has been used in the Bill.

- We understand that the CHF Canada and the Ontario Non-Profit Housing Association have retained the services of Raj Anand, a senior civil litigation, administrative and human rights lawyer to review the model in Bill 140.

- Mr. Anand's view is that "the protections provided by these sections are inadequate, indeed probably inferior to what presently exists under the common law and the *SHRA*". The model in the Bill he says:
 - lacks independence
 - lacks procedural safeguards
 - lacks substantive protection, and
 - reduces housing providers' current remedies.

- Mr. Anand advises that "*A much less intrusive, while at the same time more independent system can easily be achieved by providing for an ad hoc or standing board of independent arbitrators to adjudicate disputes as they arise.*"

- The key is that the decision-makers must have the perception and reality of impartiality.

Possible Closing remarks

Co-operative housing in Ontario is a well-documented success story. For almost four decades co-ops have provided good-quality, affordable housing owned and managed by the community members who live there. We are very anxious that Bill 140 will erode the existing fabric of community-based housing across Ontario.

- Bill 140 should be an opportunity to create a workable housing system. Unfortunately we suspect, the legislation as currently drafted is in all likelihood will do the opposite. It will create a more adversarial and litigious environment.
- We also understand that CHF Canada, and umbrella association of housing co-ops across the country and in Ontario has submitted to the Committee a very detailed brief that includes a number of suggested amendments to Bill 140.

Some of the fundamental improvements that we believe are necessary to Bill 140 include:

- The statute should attempt to strengthen the community-based housing sector, not diminish the authority of housing providers by giving more control to Municipal service managers.
 - Co-ops and non-profits should not be left more vulnerable to take over by Municipal authorities.
 - Sale or transfers of housing projects should only be permitted in the rarest of circumstances and that the Provincial Consent for such an extreme remedy must be re-introduced.
 - An independent and fair system of dispute resolution should be instituted to review decisions by service managers.
- Our sense is that those changes will go some distance in creating a more evenhanded statute balancing the rights and responsibilities of housing providers and the authority of municipal service managers. We all benefit from creating more trust in the housing system for all stakeholders, partners and, most importantly, the residents of co-operative and non-profit housing.
 - In closing, we want to thank the members of the Committee for giving us the opportunity to express our views today. We would be pleased to answer any questions.