

SUBMISSION TO:

UNITED NATIONS INDEPENDENT EXPERT

ON THE ENJOYMENT OF ALL HUMAN RIGHTS BY OLDER PERSONS

Older persons living in long- term care homes

**AND THE RIGHT TO ADEQUATE
HOUSING IN CANADA**

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Centre for Equality Rights in Accommodation
Centre pour les droits à l'égalité au logement

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Centre for Equality Rights in Accommodation (CERA)

The Centre for Equality Rights in Accommodation (CERA) is Canada's leading non-profit organization working to advance the right to housing for the past 35 years. We advance the right to housing by serving renters to help them stay housed, providing education and training about housing rights, and advancing rights-based housing policy through research, policy development, advocacy and litigation.

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EXECUTIVE SUMMARY

Long-term care (LTC) homes are a valuable housing resource for older persons in Canada.

Although LTC homes are governed under healthcare legislation, the right to housing applies to them. In order to ensure that requirements of the right to adequate housing defined in international law are met for older persons, LTCs should be viewed through a right to housing lens.

There are long-standing systemic issues in LTC homes, including inadequate staffing levels and out-of-date infrastructure. These issues have led to unsuitable and inhabitable living conditions which interfere with the right to housing of older persons.

The COVID-19 pandemic had a disproportionate impact on LTC homes in Canada, with Canada having the highest reported number of COVID-19 outbreaks and deaths in LTC homes compared to other wealthy countries.

The pandemic exposed long-standing issues in LTC homes that contributed to the disproportionate impact of the pandemic on residents of LTC homes who were exposed to sub-standard conditions.

Some LTC homes have demonstrated successful practices in meeting right to housing requirements, such as implementing measures to enhance cultural adequacy.

In response to the pandemic, some steps have been taken by different levels of government to address systemic issues in LTC homes, such as the federal government committing to investing in the improvement of LTC homes. Several national organizations have also been working to develop national standards for LTC homes so that they can better meet the requirements of the right to adequate housing. The impact of these efforts is not yet clear.

It's recommended that the Independent Expert on the enjoyment of all human rights by older persons, include a section on LTC homes in their final thematic report, to clarify for states their obligations to protect the right to housing for older persons.

It's recommended that Canada improve protections of the right to adequate housing of older persons in LTC homes, which other states may hopefully draw from. These recommendations include ensuring LTC homes do not violate, but rather support the right to housing of older persons, promoting innovative solutions to current issues within LTC homes, creating national standards for LTC homes across Canada, creating accountability mechanisms to ensure that the federal government follows through with investments to improve LTC homes, and finally, improving coordination between levels of government to ensure that strategies can effectively be developed to improve the state of LTC homes across Canada.

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**THE EXPERIENCES
OF THOSE LIVING IN
LONG-TERM CARE
HOMES**

Long-term care (LTC) homes are an integral part of Canada's housing system, designed to provide a home and necessary health care to adults who require a range of health and support services. LTC homes are sometimes called nursing homes, old age homes or charitable homes, and in Quebec they are called centres d'hébergement et de soins de longue durée (CHSLD). Residents of LTC homes are primarily older persons, and age is a strong predictor of admission to long-term care. Studies have shown that 91% of long-term care residents are over age 65, and 74% are over age 80.¹ LTC homes are an essential housing option for older persons in Canada.

LTC homes should be distinguished from seniors residences or retirement homes, where residents receive less medical care and are often significantly more independent. This is a critical distinction, because LTC homes function both as housing and as a health care facility for adults who need frequent access to health and personal care services throughout the course of daily living. One study found that 90% of residents living in LTC homes in Ontario have some form of cognitive impairment, while 86 percent need help with daily activities such as getting out of bed and eating.²

In Canada, responsibility for the regulation of LTC homes is primarily within the jurisdiction of the provinces and territories, because the LTC homes are considered a health care service. While Canada's *Constitution Act, 1867* does not specifically address the question of health care jurisdiction, it assigns responsibility for hospitals to the provinces.³ This has been interpreted as directing exclusive jurisdiction of almost all medical care regulation and legislation to provinces and territories. In practice, all legislation regarding the delivery of LTC homes is carried out by the provinces and territories.

Although legislation related to LTC homes is under provincial jurisdiction, the federal government plays a significant role in their funding. The provinces and territories receive funding for running LTCs from the federal government through the Canada Health Transfer, which is governed by the *Federal-Provincial Fiscal Arrangements Act*.⁴ National health care standards and conditions are set by the federal government under the *Canada Health Act*.⁵ Long-term care is not considered an insured health service in the *Canada Health Act*, so the provinces and territories do not have an obligation to publicly fund LTC homes in order to receive federal funds through the *Canada Health Transfer*. Due to this structure, in practice

¹ "Pandemic Experience in the Long-term Care Sector", Canada Institute for Health Information, June 2020, <https://www.cihi.ca/sites/default/files/document/covid-19-rapid-response-long-term-care-snapshot-en.pdf>

² "This is Long-Term Care 2019," Ontario Long-Term Care Association, April 2019, <https://www.oltca.com/OLTCA/Documents/Reports/TILTC2019web.pdf>.

³ Constitution Act, 1867 (UK), 30 & 31 Victoria, § 92(7).

⁴ Federal-Provincial Fiscal Arrangements Act, R.S.C., 1985 ch. F-8, § 24 (1985).

⁵ Canada Health Act, R.S.C. 1985 ch. C-6, (1985).

LTC homes are regulated by each province individually, resulting in a patchwork of laws and regulations across the country. Funding provided to provinces by the federal government and directed to LTCs has no conditions attached, which means that there are no universal requirements in terms of standards and conditions for quality and care.

Ontario is Canada's most populous province with 40% of the country's total population.⁶ In Ontario, LTC homes are regulated by the *Long-Term Care Homes Act* and managed by a combination of public and private actors.⁷ More than half (57%) of Ontario's LTC homes are owned by private for-profit organizations, while the remaining are either publicly owned (16%) or owned by not-for-profit organizations (27%).⁸ The province grants a license to each LTC home to operate. The waitlist for entry into LTC homes is currently over 35,000 people, with an average wait time of 5 months. This leaves many people in prolonged vulnerable situations while they wait for a home and the care they need.⁹ Generally, residents of LTC homes pay for their accommodations, while the government of Ontario subsidizes the cost for residents with low incomes.

In Canada's next most populous province, Quebec, LTC homes are primarily operated by public institutions. As of June 2021, 88% of CHSLD's are publicly owned.¹⁰ Similar to Ontario, each CHSLD is granted a permit from the government to operate, and are subject to regulations in the *Act Respecting Health Services and Social Services* where residents pay a fee to reside in a CHSLD but can qualify for a subsidy based on their income and assets.¹¹

Residents of LTC homes are generally excluded from the legislative regime that regulates tenancies and therefore are afforded limited protections related to their homes under the law. For example, Ontario's *Residential Tenancies Act* (RTA) sets out the rights of tenants and the obligations of landlords in areas such as rent increases, habitability standards and evictions but explicitly exempts residents of LTC homes from its legal protections.¹² Because LTC homes are generally excluded from regimes that protect tenancies, it is even more crucial

⁶ "Ontario Population 2022," World Population Review, accessed March 2, 2022, <https://worldpopulationreview.com/canadian-provinces/ontario-population>

⁷ Long-Term Care Homes Act, S.O. 2007 ch. 8 (2007).

⁸ "Long Term Care Homes in Canada: how many and who owns them?," Canadian Institute for Health Information, June 10, 2021, <https://www.cihi.ca/en/long-term-care-homes-in-canada-how-many-and-who-owns-them>

⁹ "This is Long-Term Care 2019," Ontario Long-Term Care Association, April 2019, <https://www.oltpca.com/OLTCA/Documents/Reports/TILTC2019web.pdf>.

¹⁰ "Long Term Care Homes in Canada: how many and who owns them?," Canadian Institute for Health Information, June 10, 2021, <https://www.cihi.ca/en/long-term-care-homes-in-canada-how-many-and-who-owns-them>.

¹¹ "Residential and Long-Term Care Centres (CHSLDs)," Government of Quebec, Accessed March 2, 2022, <https://santemontreal.qc.ca/en/public/montreals-institutions-at-a-glance/residential-and-long-term-care-centres-chslds/>

¹² Residential Tenancies Act, S.O. 2006, ch. 17, § 5(e) (2006).

that the homes of LTC residents are protected under legislation that is consistent with international human rights, including the right to housing.

3 |

**THE RIGHT TO
ADEQUATE
HOUSING FOR
OLDER PERSONS
LIVING IN LONG-
TERM CARE HOMES**

The right to adequate housing is an element of the right to an adequate standard of living under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Having acceded to the ICESCR in 1976 and adopted the National Housing Strategy Act (NHTA) in 2019,¹³ Canada has an obligation to progressively realize the right to housing. This commitment includes obligations of immediate effect as well a longer term obligation to realize the right to housing within the shortest possible time, and by applying all appropriate means and the maximum of available resources.¹⁴ The right to housing is not to be interpreted narrowly, as merely a right to physical shelter, but is defined as the right to a home in which to live in peace, security and dignity.¹⁵ The housing and related care needs of residents of LTC homes are obligations of immediate effect under international law. States have an immediate obligation to attend to the needs of those in the most vulnerable circumstances and in these contexts, the indivisibility of the right to adequate housing with the right to life, to health and to freedom from cruel and inhuman treatment means that obligations are of immediate effect.¹⁶ Where some time is required to implement necessary measures, these must be given the highest priority by governments.

The present submission will focus on State obligations to ensure the right to adequate housing of residents of LTC homes. According to General Commentary No.4 by the UN Committee on Economic, Social and Cultural Rights (CESCR), there are certain requirements that must be fulfilled for housing to be considered adequate. These include legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.¹⁷

While LTC homes in Canada are typically regulated under healthcare legislation, they are nonetheless a vital form of housing for older persons, and as such, those living in LTC homes have the same right to adequate housing as all other residents of Canada.

¹³ Centre for Equality Rights in Accommodation *The National Housing Strategy Act – a Primer* | CERA. Accessed February, 4 2022. <https://www.equalityrights.org/resources/national-housing-strategy-act-primer>

¹⁴ UN Committee on Economic, Social and Cultural Rights (1991), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant). Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf> (CESCR, General Comment 4) at paras 10 – 14; Committee on Economic, Social and Cultural Rights, An evaluation of the obligation to take steps to the “maximum of available resources” under an optional protocol to the covenant, http://www2.ohchr.org/english/issues/escr/docs/e_c12_2007_1.pdf

¹⁵ UN Committee on Economic, Social and Cultural Rights (1991), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), at para 7. Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf>

¹⁶ See, for example, Human Rights Committee, 2004, Concluding Observations, Germany, CCPR/CO/80/DEU, at para 17. Available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/412/44/PDF/G0441244.pdf?OpenElement>

¹⁷ UN Committee on Economic, Social and Cultural Rights (1991), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant). Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf>

It is important to consider the various elements that constitute adequate housing as they apply to the circumstances of LTC Homes. These elements include:

Availability of Services, Materials, Facilities and Infrastructure: This requirement means that adequate housing must contain “certain facilities essential for health, security, comfort and nutrition.” These include access to safe drinking water, heating and lighting, common resources, sanitation and washing facilities, means of food storage and emergency services.¹⁸

Habitability: This requirement means that adequate housing must be habitable and provide residents with protection from severe weather conditions such as extreme heat and cold, threats to health and disease vectors. The commentary further states that inadequate housing and living conditions are “invariably associated with higher mortality and morbidity rates.”¹⁹

Cultural Adequacy: This requirement means that adequate housing must be constructed in such a way that “building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.”²⁰

Accessibility: This requirement means that adequate housing must be accessible to those entitled to it, and that disadvantaged groups, such as the elderly persons, must be given priority in the housing sphere.²¹ Measures must also be taken to address disadvantages caused by systemic discrimination to ensure that elderly persons belonging to groups facing racial, religious or other forms of discrimination are ensured equal access to LTC homes.²²

¹⁸ UN Committee on Economic, Social and Cultural Rights (1991), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), at para 8 (b). Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf>

¹⁹ UN Committee on Economic, Social and Cultural Rights (1991), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), at para 8 (d). Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf>

²⁰ UN Committee on Economic, Social and Cultural Rights (1991), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), at para 8 (g). Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf>

²¹ UN Committee on Economic, Social and Cultural Rights (1991), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), at para 8 (e). Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf>

²² UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights). Available at <https://www.refworld.org/docid/4a60961f2.html>

Affordability: This requirement means that the cost of housing should not interfere with people's ability to access other basic needs such as food.²³

In order to determine whether the right to housing of older persons in LTC homes is sufficiently protected, the conditions that exist within LTC homes must be assessed against these requirements.

²³ UN Committee on Economic, Social and Cultural Rights (1991), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), at para 8 (c). Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf>

4 |

**BARRIERS TO A
FULLY REALIZED
RIGHT TO HOUSING
FOR THOSE LIVING
IN LONG-TERM CARE
HOMES**

There were many long-standing systemic issues plaguing LTC homes prior to the COVID-19 pandemic, including insufficient staffing and aging infrastructure. These issues have created barriers to the right to adequate housing for older persons for some time in Canada, specifically in relation to ensuring habitability, accessibility and availability of infrastructure and services as part of their right to housing.

Staffing

Inadequate staffing is one of the most significant problems in LTC homes and has resulted in some of the most serious safety issues for residents. When staffing is low, each resident gets less personal care, which creates significant risks. Unsafe conditions in LTC homes caused by low staffing puts the right to adequate housing of residents in jeopardy, specifically when it comes to the obligations of habitability and accessibility.

Because each Canadian province and territory has its own legislation that governs staffing requirements in long-term care, quality of care for residents varies across the country. Often, provincial legislation related to staffing levels lacks detail, leaving room for inadequate staffing. For instance, some provinces simply require that there is a minimum of one registered nurse present every 24 hours in the facility. This requirement sets a very low standard for compliance, and creates a heightened risk of harm to residents.²⁴ One recent survey in Ontario found that 95% of long-term care home employees felt their workplace was short-staffed, with 53% reporting it was short-staffed every day.²⁵ That same report found that residents were missing critical care, such as baths, emotional support and cleaning due to inadequate staffing at their LTC home. The majority (58%) of staff in LTC homes are personal support workers. Personal support workers are critical caretakers for those living in LTC homes but do not have medical training and are generally low-wage earners.²⁶ Some provinces have even reported temporarily closing admission to their LTC home due to severe staffing shortages.²⁷

²⁴ "Long-Term Care Staffing Study", Ontario Ministry of Long-Term Care, July 30, 2020, <https://www.ontario.ca/page/long-term-care-staffing-study>

²⁵ "Long-Term Care Staffing Survey Report," Ontario Health Coalition, July 22, 2020, <https://www.ontariohealthcoalition.ca/wp-content/uploads/LTC-staffing-survey-report.pdf>

²⁶ *ibid.*

²⁷ Luck, Shaina, "Staff Shortages Forcing Some Long-Term Care Homes to Close Admissions", *CBC News*, September 2, 2021, <https://www.cbc.ca/news/canada/nova-scotia/long-term-care-homes-staffing-shortages-1.6161303>

The staffing shortages in LTC homes interfere with older persons' right to a habitable home. Staffing shortages lead to insufficient levels of care, which translate to many long-term care residents not being able to live free from threats to their health and safety.²⁸

Though Ontario recently passed the *Providing More Care, Protecting Seniors, and Building More Beds Act, 2021* we have yet to witness its impact.²⁹ No other province or territory in Canada has sought to address the deficiencies in long-term care through passing permanent legislation. Without change, staffing shortages will continue to negatively impact residents' health, safety and wellbeing across Canada.

Infrastructure

Much of Canada's LTC homes' infrastructure is in desperate need of renovation, a regrettable situation which has had and continues to have negative impacts on vulnerable residents.

Prior to the COVID-19 pandemic, long-term care residents were frequently housed in 3 to 4-bed ward-style rooms in which they shared one bathroom among many residents. In Ontario, this formation was particularly common, accounting for 46% of all LTC beds.³⁰ Residents who wanted a private room were required to pay extra. On December 24, 2021, Ontario issued a directive that reduced the number of residents in one room to two, though long-term care providers were still permitted to charge a premium for additional privacy.³¹ The overcrowded conditions in some rooms where residents share facilities can lead to outbreaks of disease and even lead to resident deaths. One study found that 31% of deaths in Ontario's LTC homes could have been prevented if each resident had their own room.³²

²⁸ UN Committee on Economic, Social and Cultural Rights (1991), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), at para 8 (d) Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf>

²⁹ "Ontario Introducing New Legislation to Fix Long-term Care", Ontario Ministry of Long-Term Care, October 28, 2021, <https://news.ontario.ca/en/release/1001060/ontario-introducing-new-legislation-to-fix-long-term-care>.

³⁰ "Ontario's For-Profit Long-Term Care Homes Charged Extra for Private Rooms During Deadly Pandemic," *Press Progress*, November 2, 2021, <https://pressprogress.ca/ontarios-for-profit-long-term-care-homes-charged-extra-for-private-rooms-during-deadly-pandemic/>

³¹ *ibid.*

³² "Long-term care infrastructure must be reimagined in a post-pandemic world", University of Waterloo, April 26, 2021, <https://uwaterloo.ca/health/news/long-term-care-infrastructure-must-be-re-imagined-post>.

There are other habitability issues in LTC homes such as mold and pest infestation. For example, in Regina, Saskatchewan in April 2018, nearly 100 residents were displaced due to severe mold in their facility.³³ Bedbugs and other infestations have been reported across the country, including in Quebec in November 2021.³⁴

Additionally, many LTC homes across Canada do not have air conditioning. As global temperatures rise due to climate change, air conditioning is increasingly a necessary infrastructure for the health and safety of long-term care residents who are by definition vulnerable and often older. In recent years there have been many heat-related deaths in LTC homes during heat waves, particularly in Quebec.³⁵ Though Ontario does not track heat-related deaths in LTC homes, it recently required all LTC homes to establish an area in the building where residents can access air conditioning, though individual rooms are still not required to be air conditioned.³⁶ Additionally, in light of insufficient staffing levels, advocates have expressed concern that residents may still be unable to access the shared cooling centres as they might not be able to leave their room without assistance.

These problems with LTC homes' infrastructure and amenities interfere with the rights of older persons to access habitable and safe homes where they are protected from heat, threats to their health such as mold and pest infestations, and disease outbreaks.

Provincial and territorial governments across Canada have provided little oversight of LTC homes in recent years. This is particularly true in Ontario. Indeed, only fourteen LTC homes in Ontario received a Resident Quality Inspection (RQI – also referred to as comprehensive inspections) in 2019, compared to an average of 650 in the three previous years.³⁷ RQIs are supposed to be administered by the Ministry of Long-Term Care and involve the inspection of the homes, including interviews with residents and their families.

³³ "Nearly 100 long-term care residents forced to move due to mould", *CTV News*, May 17, 2018, <https://regina.ctvnews.ca/nearly-100-long-term-care-residents-forced-to-move-due-to-mould-1.3934749>.

³⁴ e.g. Lalonde Michelle, "Families denounce 'horrific;' conditions at N.D.G long-term care facility", *Montreal Gazette*, November 18, 2021, <https://montrealgazette.com/news/local-news/families-denounce-horrific-conditions-at-n-d-g-long-term-care-facility>

³⁵ Gray Jeff, "Sweltering temperatures make life and work in nursing homes even more difficult," *Globe and Mail*, May 29, 2020, <https://www.theglobeandmail.com/canada/article-sweltering-temperatures-make-life-and-work-in-nursing-homes-even-more/>

³⁶ "Advocates push for more air conditioning in long-term care as heat hits Ontario," *CBC News*, June 5, 2021, <https://www.cbc.ca/news/canada/toronto/ontario-long-term-care-air-conditioning-1.6053948>

³⁷ Pederson Katie et al., "Comprehensive nursing home inspections caught up to 5 times more violations. Why did Ontario Cut them?", *CBC News*, September 25, 2020, <https://www.cbc.ca/news/canada/long-term-care-inspections-violations-1.5737081>

However, in recent years, the number of RQIs undertaken has been decreasing, despite the fact that these proactive and unannounced inspections play an important role in uncovering inadequate conditions in LTC homes.

5 |

**IMPACT ON LONG-
TERM CARE HOME
RESIDENTS DURING
THE COVID-19
PANDEMIC**

The COVID-19 pandemic has exposed and exacerbated long-standing deficiencies in Canada's LTC homes, including its aging and insufficient infrastructure, inadequate funding, gaps in capacity and expertise, and government failure to ensure residents are protected from exposure to disease and other health hazards.³⁸ Overall, LTC homes are failing to meet various requirements under the right to adequate housing, and this has contributed to devastating impacts as a result of the pandemic.

The pandemic has had a disproportionate impact on the residents of LTC homes, both in terms of the number of outbreaks and deaths.³⁹ Between March 1, 2020 and February 15, 2021, more than 2,500 LTC homes across Canada experienced COVID-19 outbreaks, resulting in the deaths of over 14,000 residents and close to 30 staff. During the first wave of the pandemic, 81% of COVID-19 related deaths occurred in LTC homes and congregate settings.⁴⁰ This represents more than two-thirds of Canada's overall COVID-19 deaths⁴¹ during the first year of the pandemic and is nearly twice the national average for member states of the Organization for Economic Co-operation and Development (OECD).⁴² The number of COVID-19 related deaths in LTC homes and retirement homes, compared to older Canadians living in communities outside of LTC homes and retirement homes, was also three times higher than the OECD average.⁴³

Overall, Canada had the worst record for COVID-19 deaths in LTC homes when compared to other wealthy countries, with residents of LTC homes accounting for 69% of deaths in

³⁸ National Institute on Ageing. 2021. Pandemic Perspectives on Long-Term Care: Insights from Canadians in Light of COVID-19. Toronto, ON. Available at: <https://www.cma.ca/sites/default/files/pdf/Activities/National-Institute-on-Ageing-CMA-Report-EN.pdf>

³⁹ Canadian Institute for Health Information. The Impact of COVID-19 on Long-Term Care in Canada: Focus on the First 6 Months. Ottawa, ON: CIHI; 2021. Available at: <https://www.cihi.ca/sites/default/files/document/impact-covid-19-long-term-care-canada-first-6-months-report-en.pdf>

⁴⁰ National Institute on Ageing. 2021. Pandemic Perspectives on Long-Term Care: Insights from Canadians in Light of COVID-19. Toronto, ON. Available at: <https://www.cma.ca/sites/default/files/pdf/Activities/National-Institute-on-Ageing-CMA-Report-EN.pdf>

⁴¹ Canadian Institute for Health Information. The Impact of COVID-19 on Long-Term Care in Canada: Focus on the First 6 Months. Ottawa, ON: CIHI; 2021. Available at: <https://www.cihi.ca/sites/default/files/document/impact-covid-19-long-term-care-canada-first-6-months-report-en.pdf>

⁴² National Institute on Ageing. 2021. Pandemic Perspectives on Long-Term Care: Insights from Canadians in Light of COVID-19. Toronto, ON. Available at: <https://www.cma.ca/sites/default/files/pdf/Activities/National-Institute-on-Ageing-CMA-Report-EN.pdf>

⁴³ Ibid, page 5

Canada. This is significantly higher than the national average for wealthy countries, which is 41%.⁴⁴

The pandemic experience varied greatly between provinces and territories across Canada (refer to table A) and between for-profit and publicly funded LTC homes.

Table A

Province	COVID-19 death and infection rate per LTC home population
Alberta	22,269 cases and 1,552 deaths
British Columbia	8,372 cases and 1,017 deaths
Manitoba	4,283 cases and 556 deaths
Northwest Territories	0 cases and 0 deaths
New Brunswick	1,884 cases and 59 deaths
Nova Scotia	761 cases and 62 deaths
Newfoundland and Labrador	146 cases and 7 deaths
Nunavut	0 cases and 0 deaths
Ontario	56,833 cases and 4,898 deaths
Prince Edward Island	64 cases and 9 deaths
Quebec	35,943 cases and 8,181 deaths
Saskatchewan	773 cases and 154 deaths
Yukon	0 cases and 0 deaths

⁴⁴ Canadian Institute for Health Information. The Impact of COVID-19 on Long-Term Care in Canada: Focus on the First 6 Months. Ottawa, ON: CIHI; 2021. Available at: <https://www.cihi.ca/sites/default/files/document/impact-covid-19-long-term-care-canada-first-6-months-report-en.pdf>

During the pandemic, Ontario experienced the highest rate of COVID-19 cases in LTC homes, while Quebec saw the second highest rate of cases, as well as the highest number of COVID-19 related deaths. Ontario and Quebec were followed by Alberta and British Columbia who had the next highest COVID-19 cases and related deaths.⁴⁵ Smaller provinces and territories fared better, such as Northwest Territories, Yukon and Nunavut, where no COVID-19 related deaths were reported in LTC homes.

Regardless of whether LTC homes are privately or publicly owned, systemic issues such as lack of appropriate funding, insufficient infrastructure, and lack of staff capacity, are pervasive and this state of affairs has contributed to the devastating impacts of the COVID-19 pandemic on their vulnerable residents. For example, in Ontario, privately owned for-profit LTC homes with older design standards and chain ownership experienced the most COVID-19 outbreaks and deaths.⁴⁶ Challenges posed by adherence to older design standards and chain ownership models made it more difficult to implement effective infection control policies, such as isolation. This is in contrast to Quebec, where publicly owned LTC homes saw higher rates of COVID-19 cases relative to privately owned LTC homes.⁴⁷ Prior to the pandemic, publicly funded LTC homes in Quebec were severely short-staffed due to poor wages. After the pandemic began, these homes struggled to recruit more staff to provide quality care for residents. There were also reports of insufficient personal protective equipment (PPE) being provided to workers. In response, the Quebec government increased pay for workers of both publicly and privately owned LTC homes. However, despite the wage increases, public LTC homes in Quebec remained overwhelmed.⁴⁸ Further, workers in Quebec continued to work shifts at multiple LTC homes at the same time, a measure which increased the spread of the virus.

Under international law, governments are required to respect, protect and fulfill the right to housing in their countries. This does not mean in general that governments are required to directly provide housing for everyone, but there are some special circumstances where this might be the case. These include circumstances where people cannot provide housing for themselves, which is the case for some people who experience homelessness or have disabilities or are within the care and control of the government including people assisted by the welfare system.

⁴⁵ NIA Long Term Care COVID-19 Tracker, <https://ltc-covid19-tracker.ca/>

⁴⁶ Nathan M Stall et al, “For-profit long-term care homes and the risk of COVID-19 outbreaks and resident deaths” *Canadian Medical Association Journal*, 192, No.33(August 2020): E946–E955. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7828970/pdf/192e946.pdf>

⁴⁷ “New data show deterioration of the situation in long-term care homes”, CTV News Montreal, accessed March 3, 2022, <https://montreal.ctvnews.ca/new-data-show-deterioration-of-the-situation-in-long-term-care-homes-1.5734478>

⁴⁸ Stevenson, Verity and Shingler, Benjamin, “How the COVID-19 crisis in Quebec's nursing homes unfolded”, CBC News, April 25, 2020, <https://www.cbc.ca/news/canada/montreal/timeline-quebec-nursing-homes-covid-crisis-1.5544538>

LTC homes are publicly funded institutions that provide housing for older persons who need extra care and therefore fall into these categories. As mentioned earlier, the CESCR obligates governments to prioritize disadvantaged and vulnerable groups and provide them with access to adequate housing.⁴⁹ The populations that reside in LTC homes are some of the most vulnerable people in Canada due to their age and experiences of illness and disabilities. In fact, in most provinces in Canada, 60% of LTC residents live with severe cognitive impairments, adding another dimension to their vulnerability.⁵⁰

Residents of LTC homes can be characterized as a “voiceless population,” which means a population whose intersecting vulnerabilities are often not accounted for by governments. They are constituents whose voices need to be heard, and for them to be heard, further advocacy and protections are necessary.⁵¹ In this context, the question of adequate levels of care is germane to the question of how different levels of governments meet their obligations under the right to housing. It is clear that these vulnerable groups’ right to adequate housing cannot be met without LTC homes providing adequate levels of care. Providing adequate levels of care will include providing appropriate services, facilities and infrastructure, protecting residents from disease, and ensuring accessibility for the most vulnerable groups, such as low-income seniors.

Availability of Services, Materials, Facilities and Infrastructure

Existing deficiencies in the essential services required to protect the health, security, comfort, and nutrition to residents of LTC homes were exacerbated as a result of the lockdowns imposed at the start of the pandemic. Services necessary for the well-being of residents were restricted during these periods – some residents had to be confined to their rooms and floors for upwards of 16 months, were cut off from accessing common spaces and seeing their

⁴⁹ UN Committee on Economic, Social and Cultural Rights (1991), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), at para 8 (e). Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf>

⁵⁰ Estabrooks CA, Straus S, Flood, CM, Keefe J, Armstrong P, Donner G, Boscart V, Ducharme F, Silvius J, Wolfson M. Restoring trust: COVID-19 and the future of long-term care. Royal Society of Canada. 2020. Available at: <https://alzheimer.ca/sites/default/files/documents/Restoring-Trust-COVID-19-and-The-Future-of-Long-Term-Care-The-Royal-Society-of-Canada.pdf>

⁵¹ Office of the Chief Science Advisor of Canada, *Long-Term Care and COVID-19: Report of the a Special Task Force Prepared for The Chief Science Advisor of Canada*, Office of the Chief of Science Advisor of Canada, 2020. Available at [https://www.ic.gc.ca/eic/site/063.nsf/vwapj/Long-Term-Care-and-Covid19_2020.pdf/\\$file/Long-Term-Care-and-Covid19_2020.pdf](https://www.ic.gc.ca/eic/site/063.nsf/vwapj/Long-Term-Care-and-Covid19_2020.pdf/$file/Long-Term-Care-and-Covid19_2020.pdf)

relatives, and were prevented from going outdoors.⁵² Long-standing staffing shortages became particularly acute when staff fell ill from COVID-19 and LTC homes experienced higher absenteeism rates. Some LTC homes in Ontario and Quebec were so understaffed that in spring 2020, the Canadian Armed Forces (CAF) were deployed to assist with staffing the 32 most severely impacted homes. Once they were deployed, members of the CAF reported that severe understaffing problems had led to poor care for residents who were sometimes being denied food or not being fed properly.⁵³

LTC homes often do not have permanent staff members who work full-time. In many cases, staff work in LTC homes on a part-time basis, for low wages and in poor working conditions. The Ontario Health Coalition found that most LTC homes in Ontario are understaffed, leading to poor health conditions for residents. Workers also reported that they often left their roles because they felt over-worked, burnt out and underpaid.⁵⁴ The part-time nature of this workforce played a direct role in increasing the spread of COVID-19 in LTC homes, as many staff worked multiple jobs at different facilities, increasing the chance of the virus spreading throughout the LTC sector.⁵⁵ This was found to be the case in multiple provinces including Quebec, Ontario⁵⁶ and British Columbia.⁵⁷ The majority of the workers at LTC homes are women, immigrants and from racialized communities.⁵⁸ These groups generally earn less income, with racialized women in particular earning 58 cents for every dollar earned by non-

⁵² Colin Perkel, "'It's beyond appalling:' Long-term care residents plead for release from COVID-19 confinement", (30 March 2021), online: *Toronto* <https://toronto.ctvnews.ca/it-s-beyond-appalling-long-term-care-residents-plead-for-release-from-covid-19-confinement-1.5368348>

⁵³ Canadian Institute for Health Information. *The Impact of COVID-19 on Long-Term Care in Canada: Focus on the First 6 Months*. Ottawa, ON: CIHI; 2021. Available at: <https://www.cihi.ca/sites/default/files/document/impact-covid-19-long-term-care-canada-first-6-months-report-en.pdf>

⁵⁴ CBC News, "PSWs burned out, stressed and underpaid, Ontario Health Coalition report says", CBC News, February 20, 2020. <https://www.cbc.ca/news/canada/sudbury/ontario-health-report-psw-1.5468946>

⁵⁵ Estabrooks CA, Straus S, Flood, CM, Keefe J, Armstrong P, Donner G, Boscart V, Ducharme F, Silvius J, Wolfson M. *Restoring trust: COVID-19 and the future of long-term care*. Royal Society of Canada. 2020, available at: <https://alzheimer.ca/sites/default/files/documents/Restoring-Trust-COVID-19-and-The-Future-of-Long-Term-Care-The-Royal-Society-of-Canada.pdf>

⁵⁶ Mulligan, Cynthia and Burman, Dilshad. "Long-term care staff need to work multiple jobs, increasing spread of coronavirus." *City News Everywhere*. April 13, 2020, <https://toronto.citynews.ca/2020/04/13/long-term-care-staff-multiple-homes-coronavirus/>

⁵⁷ Ivanova, Iglia and Strauss, Kendra. "[Working multiple jobs to make ends meet: More common in BC than we might think](https://www.policynote.ca/multiple-jobs-bc/)". Policy note. May 6, 2020. <https://www.policynote.ca/multiple-jobs-bc/>

⁵⁸ Ahmad, Farah and Syed Unisa Iffath. "COVID-19 and Healthcare Workers' Struggles in Long Term Care Homes." *Journal of Concurrent Studies* (September 2020). https://www.researchgate.net/publication/344352723_COVID-19_and_Healthcare_Workers%27_Struggles_in_Long_Term_Care_Homes

racialized men.⁵⁹

The lack of adequate staffing and services had a devastating impact on residents, and the level of care they received. In April 2021, Ontario’s Long-Term Care COVID-19 Commission reported that 26 residents in one home died due to dehydration and malnutrition caused by “the lack of staff to care for them.”⁶⁰ The report spoke of “horrifying” levels of sanitation in some homes, as cleaning services were restricted, including persistent fungus, mold and cockroach infestations, feces and vomit on the floors, walls, and under residents’ fingernails.⁶¹ This report was consistent with the Commission’s previous findings, which, in May 2020, found LTC homes with bug infestations, old food trays stacked inside resident rooms, and patients being ignored while crying for help for 30 minutes to an hour.⁶²

Long-standing issues related to poor infrastructure and design were also exacerbated by the pandemic and contributed to the rise in cases. Examples of design issues are narrow hallways, as well as the existence of four-person shared bedrooms that do not meet current design standards which limit shared bedrooms to two people. These conditions meant that some residents were living in close proximity during the pandemic, which led to higher rates of COVID-19 infections. Ongoing failures to renovate some LTC homes and to ensure that they meet current design standards is indicative of a larger systemic failure to meet the infrastructure needs for adequate housing.⁶³

Habitability

Ontario’s Long-Term Care COVID-19 Commission reported that LTC homes failed to provide sufficient protections for residents against the spread of COVID-19, leading to higher rates of cases and deaths. Gaps in protections included inappropriate use of personal protective

⁵⁹ Centre for Equality Rights in Accommodation. “The systemic barriers to women’s right to housing.” Centre for Equality Rights in Accommodation. March 8, 2021. <https://www.equalityrights.org/cera-blog/systemic-barriers-of-womens-right-to-housing>

⁶⁰ Coke, Angela and Kitts, Jack and Marroco, Frank. 2021. *Ontario’s Long-Term Care COVID-19 Commission Final Report*. April, 2021. Ontario: Ontario’s Long-Term Care COVID-19 Commission. Ontario available at: <https://files.ontario.ca/mltc-ltcc-final-report-en-2021-04-30.pdf>

⁶¹ Ibid, page 186

⁶² Taylor, Geroge, Letter to the Headquarters 4th Canadian Division Joint Task Force (Central), May 14, 2020. Available at: <https://www.macleans.ca/wp-content/uploads/2020/05/JTFC-Observations-in-LTCF-in-ON.pdf>

⁶³ Common, David and Mancini, Melissa and Pederson, Katie “These nursing home chains have the highest COVID-19 death rates in Ontario, data analysis finds”, CBC, December 18, 2020 <https://www.cbc.ca/news/canada/nursing-homes-covid-19-death-rates-ontario-1.5846080>.

equipment (PPE), residents sleeping on bare mattresses, and individuals being moved into different rooms that had not been sanitized.⁶⁴ Members of the Canadian Armed Forces (CAF) who were deployed to assist with gathering information reported that there were insufficient medical supplies, training and PPE.⁶⁵ In addition, as mentioned above, existing infrastructure and design issues made it difficult for residents to maintain physical distancing. As cases rose, the quality of life in LTC homes continued to deteriorate, along with residents' right to housing.

The right to housing and the right to health go hand-in-hand, and therefore a component of the habitability requirement under the right to adequate housing is that residents of LTC homes must be protected from threats to their health. During the pandemic, the level of protection LTC residents had from threats to their health other than the COVID-19 virus suffered. For example, the proportion of residents who received visits from a physician dropped markedly in Ontario, British Columbia, Alberta, Manitoba, Newfoundland and Labrador. This impacted residents' health and level of care, especially since in-person visits from doctors were not replaced by virtual visits.⁶⁶ In the same provinces, the proportion of residents who did not have any personal contact with friends or family (including virtual contact) due to COVID-19 restrictions was three times higher than it was prior to the pandemic in 2019. This had direct impacts on the health of residents, as those who did not receive in-person or virtual visits experienced higher rates of moderate to severe symptoms of depression.⁶⁷ Further, in some provinces, there was a drop in the number of resident transfers from LTC homes to hospitals in order to receive treatment during the pandemic, due to "care in place" policies that discouraged transfers to hospitals. The number of transfers from LTC homes to hospitals for treatment decreased by 27%.⁶⁸ Fewer transfers to hospitals combined with fewer visits from physicians and loved ones who understand residents' conditions suggest that residents did not receive the care they needed while "care in place"

⁶⁴Coke, Angela and Kitts, Jack and Marroco, Frank. 2021. *Ontario's Long-Term Care COVID-19 Commission Final Report*. April, 2021. Ontario: Ontario's Long-Term Care COVID-19 Commission. Ontario. Available at: <https://files.ontario.ca/mltc-ltcc-final-report-en-2021-04-30.pdf>

⁶⁵Canadian Institute for Health Information. *The Impact of COVID-19 on Long-Term Care in Canada: Focus on the First 6 Months*. Ottawa, ON: CIHI; 2021. Available at: <https://www.cihi.ca/sites/default/files/document/impact-covid-19-long-term-care-canada-first-6-months-report-en.pdf>

⁶⁶ Canadian Institute for Health Information. *The Impact of COVID-19 on Long-Term Care in Canada: Focus on the First 6 Months*. Ottawa, ON: CIHI; 2021. Available at: <https://www.cihi.ca/sites/default/files/document/impact-covid-19-long-term-care-canada-first-6-months-report-en.pdf>

⁶⁷ Ibid

⁶⁸ Ibid

policies were implemented.⁶⁹

Throughout the pandemic, there were also deaths in LTC homes resulting from residents not being protected from severe weather conditions such as heat.⁷⁰ Many residents of LTC homes died of dehydration⁷¹ which was related to a lack of air conditioning and proper ventilation in provinces like Ontario, an issue that has been a longstanding problem in the sector. As mentioned, the majority of LTC homes in Ontario provide air conditioning in common areas only, which during the pandemic created a deadly and dangerous situation for residents confined to their rooms. While staff are often tasked with monitoring temperatures in residents' rooms, due to staffing shortages they were often unable to do so effectively. Despite promises that the Ontario government would rapidly mandate air conditioning in all resident rooms one year ago, nearly 40% of LTC homes are still without air conditioning in common spaces or resident rooms.⁷²

In 2020, the number of people admitted to LTC homes in Newfoundland and Labrador, Nova Scotia, Ontario, Manitoba, Alberta, British Columbia and Yukon dropped by 40%. While this drop may be partially attributed to changes in admission practices to control the spread of COVID-19, most of the decrease was seen in community admissions, which dropped by 58%. Community admissions refer to admissions into LTC homes of older persons who until this point were still living within their communities. This drop indicates that older Canadians and their families were more reluctant to move to LTC homes, and this is likely because of the widely reported problems at LTC homes during the pandemic.⁷³ A survey assessing the views of older Canadians on living in LTC homes was carried out by the National Institute on Aging in 2020. The survey found that almost all respondents aged 65 and older in various provinces (including 97% of respondents in Ontario, 98% respondents in Quebec, 97% in Saskatchewan

⁶⁹ Loriggio, Paola. "Long-term care residents got less medical care during COVID-19 1st wave: study". CP24. March 30, 2021. <https://www.cp24.com/news/long-term-care-residents-got-less-medical-care-during-covid-19-1st-wave-study-1.5367688?cache=klfcnyffis>

⁷⁰ Coke, Angela and Kitts, Jack and Marroco, Frank. 2021. *Ontario's Long-Term Care COVID-19 Commission Final Report*. April, 2021. Ontario: Ontario's Long-Term Care COVID-19 Commission. Ontario. Available at: <https://files.ontario.ca/mltc-ltcc-final-report-en-2021-04-30.pdf>

⁷¹ Taylor, Geroge, Letter the Headquarters 4th Canadian Division Joint Task Force (Central), May 14, 2020. Available at: <https://www.macleans.ca/wp-content/uploads/2020/05/JTFC-Observations-in-LTCF-in-ON.pdf>

⁷² Ceolin, Caryn and Lepage, Michelle "Many long-term care residents still without air conditioning", CityNews Toronto, August 11, 2020 <https://toronto.citynews.ca/2021/08/11/many-long-term-care-residents-still-without-air-conditioning/>

⁷³ Canadian Institute for Health Information. The Impact of COVID-19 on Long-Term Care in Canada: Focus on the First 6 Months. Ottawa, ON: CIHI; 2021. Available at: <https://www.cihi.ca/sites/default/files/document/impact-covid-19-long-term-care-canada-first-6-months-report-en.pdf>

and Manitoba, 93% in British Columbia and 87% in Atlantic Canada) said they will do everything in their power to avoid moving into a LTC home.⁷⁴

Accessibility

Despite long-standing and widespread problems across LTC homes in Canada, they remain a vital housing option for older persons who need care in their homes. That being said, the COVID-19 pandemic also rendered LTC homes less accessible to their older residents. During the pandemic many LTC homes across the country reduced their capacity, and have not accepted new residents during the pandemic. This has contributed to increased wait times, and in some parts of Ontario, waitlists have grown to as long as five years.⁷⁵ In Nova Scotia, wait times increased by about 10-12% since the start of the pandemic⁷⁶ and, in Alberta, wait times increased by 61%. Delays in access to LTC homes threaten the well-being of prospective residents who cannot care for themselves. These delays also have a downstream impact on other parts of the healthcare system, and shift the pressure for providing care to families.⁷⁷ Wait times are especially long when it comes to basic rooms – more affordable shared rooms – leaving low-income (often the most vulnerable) candidates at a striking disadvantage and having to endure even longer wait times than others.⁷⁸

⁷⁴ National Institute on Ageing. 2021. Pandemic Perspectives on Long-Term Care: Insights from Canadians in Light of COVID-19. Toronto, ON. Available at: <https://www.cma.ca/sites/default/files/pdf/Activities/National-Institute-on-Ageing-CMA-Report-EN.pdf>

⁷⁵ Buekert, Kate, "More beds coming as system tackles 5-year wait lists for long-term care," CBC, March 31, 2021, <https://www.cbc.ca/news/canada/kitchener-waterloo/long-term-care-homes-wait-times-waterloo-wellington-1.5968393>

⁷⁶ Grant, Taryn, "COVID-19 increases long-term care wait-list by 10% in Nova Scotia," CBC, May 29, 2020, <https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-long-term-care-wait-list-1.5591054>

⁷⁷ Tait, Carrie, "COVID-19 has major impact on wait lists for Alberta continuing-care facilities", The Globe and Mail, November 20, 2020, <https://www.theglobeandmail.com/canada/alberta/article-covid-19-has-major-impact-on-wait-lists-for-alberta-continuing-care/>

⁷⁸ Buekert, Kate, "More beds coming as system tackles 5-year wait lists for long-term care," CBC, March 31, 2021, <https://www.cbc.ca/news/canada/kitchener-waterloo/long-term-care-homes-wait-times-waterloo-wellington-1.5968393>

LTC homes offer an affordable housing option for older persons who are on low incomes and need extra care. This can be the case because many provinces and territories offer subsidies to help low-income residents cover the costs. As the capacity of LTC homes has been reduced during the pandemic, more older persons on low incomes are unable to access this vital affordable housing source. Whether or not the decision to limit the capacity at LTC homes in response to the pandemic was the right one at the time, this measure created a barrier for older persons seeking affordable housing. The pandemic also highlighted and exacerbated a long history of insufficient resources being invested in the sector, as well as insufficient planning for this type of health crisis in LTC homes.

6 |

**RESPONSE TO THE
COVID-19 PANDEMIC
FOR THOSE LIVING
IN LONG-TERM CARE
HOMES**

The disproportionate impact of the pandemic on the residents of LTC homes has led many Canadians to question the ability of provincial, territorial and federal governments to protect older persons, and their right to a safe and adequate home.⁷⁹ While the problems facing LTC homes have existed for decades and worsened over time, due to media reporting during the pandemic, taking action to resolve them has become a major priority for Canadians. As a result, governments throughout Canada have begun to take important steps to address the systemic issues plaguing LTC homes across the country.

In the Speech from the Throne on September 23, 2020, the federal government announced that it would work with provincial governments to introduce national standards for long-term care.⁸⁰ Later, in 2021, the federal government announced that it was investing up to \$1 billion into a Safe Long-term Care Fund, to help provinces and territories protect people from the spread of COVID-19 in LTC homes and improve measures for infection prevention and control, including carrying out control readiness assessments, improving ventilation systems, hiring more staff, and increasing wages.⁸¹

In addition, the federal government has made other investments aimed at improving conditions in LTC homes, such as allocating \$740 million to support provinces and territories to address the immediate needs of LTC homes, \$3 billion in federal funding to support provinces and territories to increase wages for low-income essential workers (which could include staff working in LTC homes) as well as earmarking \$8.4 million to support Healthcare Excellence Canada's LTC+: Acting on Pandemic Learning Together program, which creates opportunities for teams from LTC homes to learn from each other and work to improve staff preparation, prevention and pandemic response and surge capacity.⁸² Over 1,000 facilities are currently participating in the program. Finally, in its 2021 budget, the federal government included a \$3 billion investment over five years (\$600 million per year), starting in 2022 to enable provinces and territories to provide a high standard of care in long-term care

⁷⁹ National Institute on Ageing. 2021. Pandemic Perspectives on Long-Term Care: Insights from Canadians in Light of COVID-19. Toronto, ON available at: <https://www.cma.ca/sites/default/files/pdf/Activities/National-Institute-on-Ageing-CMA-Report-EN.pdf>

⁸⁰ National Institute on Ageing. 2021. Pandemic Perspectives on Long-Term Care: Insights from Canadians in Light of COVID-19. Toronto, ON available at: <https://www.cma.ca/sites/default/files/pdf/Activities/National-Institute-on-Ageing-CMA-Report-EN.pdf>

⁸¹ Government of Canada, "Shared Health Priorities and Safe Long-term Care Fund, Government of Canada", accessed on March 3, 2022 <https://www.canada.ca/en/health-canada/corporate/transparency/health-agreements/shared-health-priorities.html>

⁸² Healthcare Excellence Canada, "LTC+ Acting on Pandemic Learning Together," Healthcare Excellence Canada, accessed on March 22, 2022. <https://www.healthcareexcellence.ca/en/what-we-do/what-we-do-together/ltc-acting-on-pandemic-learning-together/>

facilities.⁸³

On the provincial level, no legislation related to LTC homes has been passed by any of the provinces or territories in Canada in response to the impact of the COVID-19 pandemic, except in Ontario. In 2021, Ontario passed the *Providing More Care, Protecting Seniors, and Building More Beds Act, 2021* which increased protections for residents of LTC homes, and introduced new features that lay the groundwork for systemic and long-term reforms to improve residents' quality of care and quality of life. The Act will regulate publicly funded LTC homes. Some of the features include “expanding the rights of residents to have support from their caregivers, establishing a target for an average of four hours of direct care to be provided per resident per day by March 2025, and implementing new enforcement and compliance tools to hold poor performing homes to account.”⁸⁴ It is too soon to assess whether this new legislation will have a positive effect; however it's important to note that this Act does little to move on the recommendations made by the Ontario's Long-Term Care COVID-19 Commission. For example, instead of addressing immediate staffing needs in LTC homes to improve the quality of care for residents, as recommended by the Commission, the Act makes promises to meet staffing targets by the year 2025. The Act also ignores recommendations to require province-wide planning for emergencies, such as epidemics and pandemics, and it leaves it up to individual homes to develop such plans.⁸⁵

In response to the disproportionate impact of the pandemic on LTC homes, each province and territory except Nunavut released guidelines and directives to LTC homes to promote better protection for residents. These guidelines and directives differ from the Act that was passed in Ontario, because they are not permanent legislation that are binding on LTC homes. In some cases, these directives will expire at the end of the public health emergency declared by provincial governments during the pandemic.

⁸³ Government of Canada, “Shared Health Priorities and Safe Long-term Care Fund, Government of Canada”, accessed on March 3, 2022 <https://www.canada.ca/en/health-canada/corporate/transparency/health-agreements/shared-health-priorities.html>

⁸⁴ Government of Ontario, “Ontario Introducing New Legislation to Fix Long-Term Care”, Government of Ontario, accessed on March 3, 2022, <https://news.ontario.ca/en/release/1001060/ontario-introducing-new-legislation-to-fix-long-term-care>

⁸⁵ Braedley, Susan, “Braedley: Ontario's Bill 37 on long-term care ignores what's best for seniors,” Ottawa Citizen. December 6, 2021. <https://ottawacitizen.com/opinion/braedley-ontarios-bill-37-on-long-term-care-ignores-whats-best-for-seniors>

To further respond to the fallout from the pandemic, the Health Standard Organization (HSO) is currently working in collaboration with the Standards Council of Canada (CSS) and the Canadian Standards Association (CSA) to design new national standards for care and services provided in LTC homes. These standards are currently in the process of being drafted.⁸⁶ These groups are working together and integrating input from communities about the needs of residents, their families, and employees of LTC homes. The aim is to develop national standards that will be incorporated into future LTC homes accreditation programs across Canada.⁸⁷ The standards will outline requirements for the delivery of safe, reliable and high-quality services (which the HSO will focus on), and operational and infection prevention and control practices in LTC homes (which the CSA Group will focus on). The HSO launched a public review of draft standards in January 2022.⁸⁸ These draft standards must be taken seriously and implemented by the federal government.

⁸⁶ Health Standards Association *Long Term Care Services Draft Services Draft Standards*. January, 2022. Health Standards Association. Available at: [30-Standard-EN-LTC-Public-Review-26Jan2022.pdf \(healthstandards.org\)](https://healthstandards.org/30-Standard-EN-LTC-Public-Review-26Jan2022.pdf)

⁸⁷ National Association of Federal Retirees, "Have your say: The Standards Council of Canada tackles long-term care", National Association of Federal Retirees, April 12, 2021, <https://www.federalretirees.ca/en/news-views/news-listing/april/have-your-say-the-standards-council-of-canada-tackles-long-term-care>

⁸⁸ "Developing a new National Long-Term Care Services Standard", National Long-Term Care Services Standard, accessed March 3, 2022, https://longtermcarestandards.ca/?_ga=2.103874182.745424724.1627321130-2058887652.1627321130

7 |

CULTURAL ADEQUACY

Some LTC homes have adopted practices that improve cultural adequacy. Attention to cultural adequacy for residents is particularly important for older persons whose lives are rooted in culturally specific backgrounds and neighbourhoods. Without attention to cultural adequacy, these residents may experience culture shock and face barriers to equitable treatment when moving into LTC facilities. Many immigrants or racialized seniors do not have the same information about the services available to them as residents born in Canada, and may have different expectations for care. As a result, racialized seniors often experience a particularly difficult transition to living in LTC homes, facing issues such as inefficient communication with staff and residents, discrimination or isolation, and being misdiagnosed or having misleading assessments due to language barriers. These issues can lead to nutrition problems and an overall decrease in quality of life.⁸⁹ When placed in LTC homes suited to their ethnic or cultural needs, racialized seniors experience reduced stress, higher morale, self-esteem and satisfaction, as well as greater physical and psycho-social well-being.⁹⁰ Culturally specific LTC homes also generally provide a higher level of care as they are often developed by the communities they serve.⁹¹

Cultural adequacy is also important because language barriers can make it very difficult for residents to live in an LTC home if they do not speak English or French (Canada's official languages) as a first language in order to communicate their needs. There are a great number of older persons in Canada who do not speak English or French as their first language, and many who reside in LTC homes develop conditions like dementia in old age and may lose their English or French language skills.⁹² Many positive practices have been developed in LTC homes to promote cultural adequacy, which became evident during the pandemic. During the COVID-19 pandemic, many of the LTC homes that experienced fewer pandemic-related problems were culturally specific facilities, which had a higher level of care for residents, which in turn translated into better protective measures being implemented during the pandemic. One example is the Yee Hong non-profit group that operates culturally appropriate LTC homes across the Greater Toronto Area in Ontario. These homes offer spiritual, religious, cultural support and celebrations, and have linguistically trained staff that serve Chinese and other Asian communities. The home experienced no COVID-19 cases, largely due to early monitoring practices that began in January 2020, one-employer policies, mass hiring and training, and early use and stockpiling of Personal Protective Equipment

⁸⁹ Dziejdzic, Sarah "Why Ontario needs more culturally sensitive long-term care homes", *TVO*, July 19, 2016 <https://www.tvo.org/article/why-ontario-needs-more-culturally-sensitive-long-term-care-homes>

⁹⁰ Ibid

⁹¹ Meiklejohn, Michelle "Long waits for Toronto-area nursing homes geared to cultural groups reflect need for more of them, report says", *CBC*, July 25, 2021 <https://www.cbc.ca/news/health/cultural-nursing-homes-demand-greater-toronto-area-1.6113593>

⁹² Dziejdzic, Sarah "Why Ontario needs more culturally sensitive long-term care homes", *TVO*, July 19, 2016 <https://www.tvo.org/article/why-ontario-needs-more-culturally-sensitive-long-term-care-homes>

(PPE).⁹³ Another example of a success story is the Rose of Sharon LTC home, also located in Toronto. Members of the local Korean Canadian community, many of whom resided in the home, raised the funds to take over its operation, preventing it from being sold to another company that owned LTC homes that had a poor operational track record during the COVID-19 pandemic. The community members took every precaution to protect their residents, provided supports that were culturally adequate for the residents and, as a result, the Rose of Sharon did not experience any outbreaks of COVID-19 among residents or staff.⁹⁴

There is a lack of culturally appropriate LTC homes for Indigenous peoples in Canada. While there have been some recent initiatives to provide Indigenous led long-term care facilities, these facilities are generally located in larger cities, leaving many Indigenous people with a choice of leaving community and family support or going without receiving necessary care.⁹⁵ The federal government has committed to co-develop with Indigenous peoples a distinctions-based, community-led, Indigenous Long-term Care Framework that prioritizes Indigenous peoples and ensures they receive care services in or near their own communities and culturally appropriate care and programming, whether they are in urban, rural, and northern areas.⁹⁶

⁹³ Ho, Solarina, "Nobody died in these nursing homes - what did they do right?", CTV, June 24, 2020 <https://www.ctvnews.ca/health/coronavirus/nobody-died-in-these-nursing-homes-what-did-they-do-right-1.4998204>

⁹⁴ Boisvert, Nick, "Korean community group strikes deal to buy LTC home, averting sale to for-profit company", CBC, March 3, 2021, <https://www.cbc.ca/news/canada/toronto/rose-of-sharon-arirang-agreement-1.5933911>

⁹⁵ Danielle Gionnas et al. "Accessing Indigenous Long-Term Care." *Canadian Journal of Bioethics/Revue canadienne de bioéthique* 4.1 (2021): 83-88. <https://www.erudit.org/en/journals/bioethics/2021-v4-n1-bioethics06069/1077634ar.pdf> at p 84.

⁹⁶ Liberal Party of Canada, "A New Framework for Indigenous Long-term Care," Liberal Party of Canada. Accessed March 29, 2022. <https://liberal.ca/our-platform/a-new-framework-for-indigenous-long-term-care/>

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RECOMMENDATIONS

We recommend that in their upcoming report on older persons and the right to adequate housing, the Independent Expert include a section on the right to adequate housing and other rights of residents of LTC homes. We believe that the right to adequate housing as it has been interpreted by the UN Committee on Economic, Social and Cultural Rights, guarantees the right to a place to live in peace, dignity and security, and protection of all other human rights, including the rights to life, health and freedom from cruel and inhuman treatment, and that this establishes an important dimension of the rights of older persons living in LTC homes. In this section, we recommend that the Independent Expert provide clarity to states about their obligations to implement and protect the right to adequate housing for older persons living in LTC homes. The recommendations below are based on the Canadian context, but we believe that they are helpful recommendations which other states can learn from, particularly states that face similar challenges in LTC homes.

1. The Government of Canada has a duty to respect, protect and fulfil the right to housing of LTC residents.

Canada should recognize that the right to housing applies to LTC homes, which are homes for their residents and not simply a health care service. LTC homes have suffered from long-standing problems resulting in poor living conditions for older persons, which are inextricably linked to their health and quality of care. The Committee on Economic, Social and Cultural Rights has outlined the standards for adequate housing, such as habitability and the availability of services and proper infrastructure. The requirement of habitability in particular requires the provision of protections against health threats and disease. The Government of Canada should develop any future legislation related to LTC homes through a right to housing lens and should also direct LTC homes to apply a right to housing lens in their operations. In adopting this lens, LTC homes have the tools to improve living conditions for older residents and ensure that they live in safety and dignity. In addition, adopting this lens can help LTC homes to better prepare for future healthcare crises and enable them to continue to provide adequate housing to older persons during a crisis.

Canada should ensure that LTC homes provide opportunities for residents to be heard regarding their fundamental human rights, including their right to housing, and their particular concerns and needs. A residents' bill of rights should be provided to all residents in accessible formats to ensure that residents are aware of their human rights and are able to

affirm them.⁹⁷ Respecting the dignity and humanity of residents must be affirmed as a central guiding principle in all policies and practices.

2. Promoting innovative solutions

While there is no single solution to the problems that plague LTC homes in Canada, there are many opportunities to explore promising alternatives and innovative care models. As demographic trends suggest, demand for LTC homes will increase in the coming years. Therefore, it is critical that every viable option is considered to ensure that older persons in Canada have access to adequate LTC homes.⁹⁸

One area which should be explored is increasing supports that would enable older persons to remain in their homes while receiving the care they need, to relieve pressure on the demand for LTC facilities where other options exist. As Canada continues to deal with the effects of the COVID-19 pandemic, LTC homes may still have to be cautious about the number of new residents that they accept. Providing supports so that older persons can remain in their homes would help ensure that they are receiving necessary care while remaining safely housed, avoiding long hospital stays or remaining on an LTC home waitlist for lengthy periods. Care could be provided by a cadre of home care providers and community service agencies and could be of significant benefit for older Canadians who report that they prefer to remain in their homes as opposed to being moved into an institutional setting, such as an LTC home.⁹⁹

Canada should also consider exploring the “Green House Model”, which creates housing communities for people in need of care. Residents move into small, residential-style homes

⁹⁷ See, for example, Advocacy Centre for the Elderly, and Community Legal Education Ontario. *Every Resident: Bill of Rights for Residents of Ontario's Long Term Care Homes*. Ontario: Advocacy Centre for the Elderly and Community Legal Education Ontario, 2008, Available at

<http://www.advocacycentreelderly.org/appimages/file/Every%20Resident%20-%20Bill%20of%20Rights.pdf>

⁹⁸ “Canada’s Elder Care Crisis: Addressing the Doubling Demand”, Canadian Medical Association, March 25, 2021, <https://www.cma.ca/sites/default/files/pdf/health-advocacy/activity/CMA-LTC-Deloitte-Report-EN.pdf>

⁹⁹ Laucius, Joanne, “the Danish model, plus 5 more alternatives to LTC as we know it,” The Ottawa Citizen, April 2, 2021,

<https://ottawacitizen.com/news/local-news/the-danish-model-six-more-alternatives-to-ltc-as-we-know-it>

located in communities in which they have their own room but share a central living space with care provided by in-house caregivers.¹⁰⁰

Finally, Canada should prioritize policies that support the development of more culturally adequate LTC homes. Living in housing that is not culturally adequate can result in social isolation and loneliness which can in turn result in serious health consequences for those who are not able to communicate their needs. Culturally appropriate LTC homes had measurable success during the pandemic in protecting residents and serve as a model that should be further explored throughout Canada. The federal government should also act expeditiously to fulfil its commitment to a co-developed, community-led, Indigenous Long-term and Continuing Care Framework.

3. Ensuring that the federal government fulfills the funding commitments that it has made.

The government of Canada must act with urgency to fulfill the funding commitments to long-term care that it has made, such as the *Safe Long-Term Care Fund*. Canada spends less on long-term care than the average for all 38 member countries of the Organization for Economic Co-operation and Development, and significant investments are needed in order to make necessary improvements to LTC homes and long-term care.¹⁰¹ Funding can come not only from the *Canada Health Transfer*, but also from other streams such as infrastructure or social services funding programs. For instance, both Quebec and Ontario have invested in infrastructure projects to modernize, redevelop, and upgrade health and social services institutions. Canada should explore other opportunities to properly fund long-term care. Accountability mechanisms should be put in place to ensure that the government is meeting its funding commitments, such as annual reporting and independent monitoring bodies.

¹⁰⁰ Cohen, Lauren et al, Health Service Research, "The Green House Model of Nursing Home care in Design and Implementation," *Health Services Research*. 51(Suppl 1) (February 2016) 2016 Feb: 352–377. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5338211/pdf/HESR-51-352.pdf>

¹⁰¹ Underwood Nora, Everything Zoomer, "How Better Building Design Can Help Improve Long-term Care in Canada", October 26, 2021, <https://www.everythingzoomer.com/health/2021/10/26/how-better-building-design-can-help-improve-long-term-care-in-canada/>

4. National standard setting.

There are several long-standing problems in LTC homes across Canada that were exacerbated by the COVID-19 pandemic, including staff shortages that have resulted in less care for residents, as well as out of date infrastructure. These problems exist in both privately owned and public LTC homes. There remains no effective oversight of long-term care on a national level, and legislation that regulates the sector varies across the country. It is clear that all LTC homes must be held to the same minimum standards, regardless of their ownership, and regulated to better protect the right to adequate housing of older persons.

Uniform national standards can and should be developed and implemented to ensure minimum common standards for LTC residents and effective oversight across the country. These standards must incorporate the right to housing and other human rights principles and requirements. This includes implementing measures to create safe and habitable homes by protecting residents from disease and ensuring that there are enough staff present to provide adequate care to residents.¹⁰² As adequate levels of care are intertwined with the right to housing in the context of LTC homes, ensuring workers are available to provide that care to residents will require compensating them with adequate pay. Further principles include governments requiring LTC homes to keep their infrastructure and design up to date and reflective of environmental changes. Examples include implementing design requirements such as having wider hallways and a maximum number of two people in shared rooms. In terms of infrastructure, requirements could include adding air conditioning to all LTC homes so that residents do not suffer from weather conditions during the summer months.

As mentioned above, there are groups that are currently working in collaboration to design new national standards for care and services provided in LTC homes. While this has been regarded as a positive step, the right questions must be asked in order to truly transform the state of LTC homes. For instance, the inequalities in LTC homes, and the needs of immigrant seniors with a non-English mother tongue, especially racialized immigrants, who experience cultural and linguistic barriers in accessing LTC homes, must be addressed. In Ontario it was found that being an immigrant and applying for an ethno-specific home resulted in significantly longer waiting times. It was also found that LTC homes in Ontario have

¹⁰² Executive Summary of Estabrooks CA, Straus S, Flood, CM, Keefe J, Armstrong P, Donner G, Boscart V, Ducharme F, Silvius J, Wolfson M. Restoring trust: COVID-19 and the future of long-term care. Royal Society of Canada. 2020_at p.3, available at: https://rsc-src.ca/sites/default/files/LTC%20PB%20ES_EN_0.pdf

historically failed to take residents' diverse needs into account. It is crucial to take the viewpoints of these communities into account when developing the national standards, to ensure equal access to and treatment within LTC homes.¹⁰³ The inequalities of workers at LTC homes must also be taken into account to improve the standards of care in LTC homes. In developing these standards, the views of the LTC residents must be considered, especially those who are calling for LTC homes to have a more home-like environment, where residents' cultural and linguistic needs are met, and they can feel at home.¹⁰⁴

Bringing LTC homes under the Canada Health Act or drafting legislation specific to LTC homes are potential means by which this recommendation may be operationalized. The federal government can also use its considerable influence in developing bilateral funding agreements with its provincial and territorial counterparts to incentivize the implementation of standards.

5. Improving the coordination between federal and provincial governments.

LTC homes are in an area of provincial jurisdiction. Improving the state of LTC homes across Canada will require provincial governments to enact necessary policies and legislation and a stronger role to be played by the federal government to implement national standards. Provincial and federal levels of government will also need to work together to develop and implement solutions. Different levels of government can use features in Canada's federal model to improve coordination. For example, in Canada's current model, provinces and territories can operate LTC homes and deliver care in accordance with local preferences of their areas while adhering to national standards developed by the federal government. In addition, provinces can experiment with different policies to assess what works best, and the federal government can facilitate cross-provincial learning to spread best practices in maintaining adequate LTC homes across the country.¹⁰⁵ The federal government can also use its resources to collectivize funds from across Canada and spread the financial risk of LTC

¹⁰³ Um, Seong-gee, "Reforming long-term care requires a diversity and equity approach," Policy Options, May 27, 2021, <https://policyoptions.irpp.org/magazines/may-2021/reforming-long-term-care-requires-a-diversity-and-equity-approach/>

¹⁰⁴ Ibid

¹⁰⁵ Tuohy, Carolyn Hughes, "A new federal framework for long-term care in Canada", Policy Options, August 20, 2020 <https://policyoptions.irpp.org/magazines/august-2020/a-new-federal-framework-for-long-term-care-in-canada/>

homes.¹⁰⁶

Another aspect of coordination is the ability to evaluate the adequacy of LTC homes across the country using assessment tools that would allow for drawing comparisons between the provinces to determine what practices are working best. To facilitate this, the federal government can develop a data-based assessment tool for compliance with the national standards for LTC homes. Data collection can be used to develop a national database with information on LTC homes that can include the adequacy of LTC homes, their quality of care and the quality of life of residents.¹⁰⁷ Assessment tools can also be developed with reference to the requirements of the right to housing under international law.

¹⁰⁶ibid

¹⁰⁷ Royal Society of Canada. *Restoring Trust: COVID-19 and The Future of Long-Term Care Executive Summary*. Royal Society of Canada, 2020. Available at: https://rsc-src.ca/sites/default/files/LTC%20PB%20ES_EN_0.pdf

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