

June 23, 2016

Residential and Commercial Tenancies Unit
Housing Policy Branch
Ministry of Municipal Affairs and Housing
777 Bay St., 14th floor
Toronto, Ontario M5G 2E5

Submitted via email: residential.tenancies@ontario.ca

To Whom in May Concern,

Re: Response to Consultation Paper “Proposals to Encourage Small Landlords to Provide Rental Housing”

We write in response to the above-noted consultation paper because of our involvement in a multi-year research and outreach project called RentSafe that is addressing indoor environmental health risks affecting low-income tenants in Ontario.¹

About RentSafe

RentSafe has the active involvement of municipal public health departments, community-based legal aid clinics as well as clinics working in specialized areas of law, social service organizations, and many tenants that live in both urban and rural settings.

An overarching goal of RentSafe is to build awareness and capacity in the social services sector so that low-income tenants, when faced with mould, pests and pesticides, lead in old paint, radon, second-hand smoke, and other indoor environmental health threats, are better able to get the support they need to achieve healthier living conditions.

RentSafe partners are nearing completion of extensive baseline research that has included tenant engagement workshops and surveys of staff in public health units and legal aid clinics. An additional survey of frontline workers in social service agencies will occur in the near future as will a pilot project in Grey-Bruce to combine the inspection activities of public health and property standards officers. The Grey-Bruce Health Unit is also conducting workshops with landlords as part of its innovative “Above Standard Housing” initiative.

As well, we are compiling the results of a review of decisions at the Landlord and Tenant Board, Health Services Appeal and Review Board, and Human Rights Commission, and related case

¹ RentSafe is a collaborative initiative led by the Canadian Partnership for Children’s Health and Environment (CPCHE) launched in December of 2014 and funded for three years by the Ontario Trillium Foundation. For more information: <http://www.healthyenvironmentforkids.ca/collections/rentsafe>

law. Results of all of this research will inform the outreach and capacity-building objectives of the project as well as recommendations for law reform.

General Support for the Submissions of ACTO

In light of this work we are interested in the consultation paper and have worked closely with our legal aid clinic colleagues, particularly at the Advocacy Centre for Tenants Ontario (ACTO) in its review.

We focus our specific comments herein on issues related to indoor environmental health. However, in reviewing the concerns raised by ACTO and other legal aid clinics, we wish to state our support for the ACTO analysis insofar as it raises a number of serious concerns about increasing the power of landlords to evict tenants or otherwise removing tenants' legal rights.

As ACTO notes, the purpose of the RTA is to balance the rights and responsibilities of residential landlords and tenants. Within this context, ACTO's analysis questions why the Ministry of Municipal Affairs and Housing is proposing amendments to the RTA to update a strategy for long-term affordable housing that would worsen the existing imbalance of rights and responsibilities.

Moreover, ACTO notes several instances where the purported objective of increasing affordable housing is undermined by a lack of constraints on rents that private landlords can charge and an expanded range of circumstances wherein tenants can lose their homes. The proposals also add procedural roadblocks that would undermine tenants' ability to assert their rights.

Given the seriousness of these problems, we also support ACTO's request that many of the ill-advised recommendations in the April 2016 consultation paper be put aside and that the Ministry take a start fresh with the new Housing Minister – who is also responsible for the Poverty Reduction Strategy.

In addition to the above overall concerns, we wish to comment on two areas in the discussion document of relevance to indoor environmental health, namely, exposure to second-hand smoke, and radon.

Second-Hand Smoke

Proposal 3.1 in the Discussion paper recommends that Ontario: “Explore whether to allow landlords to terminate a tenancy based on violation of no-smoking provisions in tenancy agreements.”

We recognize that causal evidence exists to link second-hand smoke to lung cancer and that many people are bothered by such exposures. We are aware of tenants' concerns, expressed to our intake staff on many occasions, about the nuisance, discomfort, and irritation caused by second-hand smoke and that it can be a source of significant conflict among tenants and between tenants and building superintendents or landlords.

However, proposal 3.1 and the questions for discussion provided on page 12 of the Discussion Paper contemplate a severe response. While we might support a more lenient response, such as a

three-step warning about the contractual agreement before starting eviction proceedings, it is unclear how extensively such new provisions would be applied. The Discussion Paper implies, though not clearly, that such provisions would apply to “small landlords, especially those providing a second unit in their home, [having] a particular interest in having better means to enforce no smoking rules.” But, there appears to be no recommendation that would limit same to the “small landlords” that these proposals are supposedly supporting in efforts to create new affordable housing units. Rather, if such provisions are to be applicable to all existing tenancies regulated under the RTA, such a change would create a great deal of conflict and hardship for existing tenants who are smokers.

Smoking is highly addictive. It is one thing to begin a contractual arrangement that disallows smoking (in an already smoke-free building) and quite another to apply such an arrangement retroactively to existing tenants or even to new tenants in a building where smokers already reside given the reality of how second-hand smoke moves through a building.

Given our concerns about the health effects of second-hand smoke, we tend to diverge from ACTO’s position that the current RTA provisions are sufficient to address such situations.

Specifically, ACTO has stated:

ACTO does not support changes to the RTA that would allow for evictions of tenants for violation of lease terms without requiring proof that there has been undue damage to the premises, serious impairment of the safety of any person, or substantial interference with the reasonable enjoyment of the premises. While there are clear health concerns involved in any type of smoking, there is also significant value in respecting the freedom of tenants to do what they wish in their own homes as long as it does not demonstrably harm others. As well, there are issues of accommodation of addiction disabilities to be considered. The balance that must be struck among these considerations is best left to the LTB to determine on a case-by-case basis.

Nevertheless, we do support broader discussion on how to address this difficult problem but the Discussion Paper raises too many concerns to support the proposal as currently stated.

Radon

Regarding Proposal 3.3: “Explore opportunities to protect Ontario tenants from the potential health-related impacts of radon” we have conducted extensive research into radon including canvassing law and policy across Canada.²

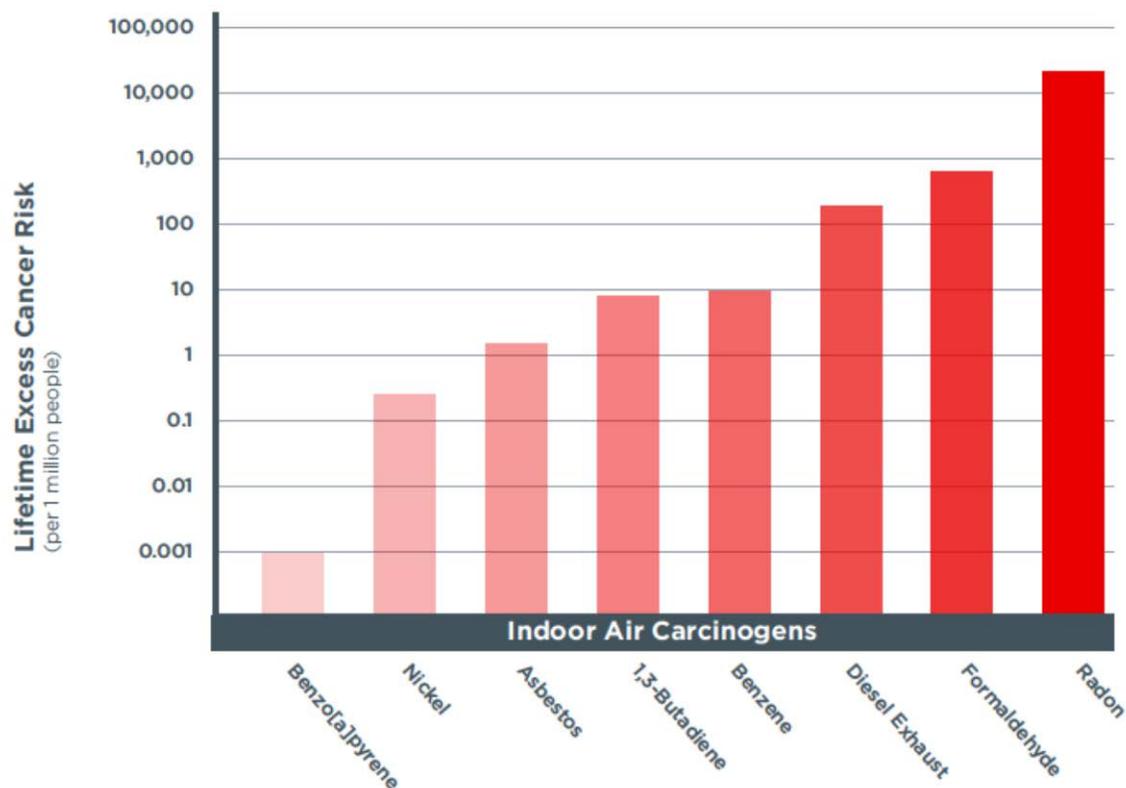
After smoking, indoor radon exposure is the leading cause of lung cancer in Canada and lung cancer remains the leading cause of death from cancer for both men and women. Health Canada notes that approximated 16% of lung cancer deaths are attributable to radon or about 3300 deaths per year, of which 847 deaths occur in Ontario.³

² Dunn B and K Cooper, 2014. Radon in Indoor Air: A Review of Policy and Law in Canada. Canadian Environmental Law Association. <http://www.cela.ca/publications/radon-indoor-air-review-policy-and-law-canada>

³ Peterson, Emily, Amira Aker, JinHee Kim, Ye Li, Kevin Brand, and Ray Copes. 2013. “Lung Cancer Risk from Radon in Ontario, Canada: How Many Lung Cancers Can We Prevent?” *Cancer Causes & Control* 24 (11): 2013–20. doi:10.1007/s10552-013-0278-x.

Radon is identified as a top priority for action by CAREX Canada, a multi-institution research project that estimates the number of Canadians exposed to substances associated with cancer in workplace and community environments.

As an environmental cancer agent radon is in a league of its own. When compared to indoor air exposures of four other carcinogens with the highest “lifetime excess cancer risk” in Canada, the cancer risk from radon is orders of magnitude greater than the next four including formaldehyde, diesel exhaust, and asbestos (see graph below).



CAREX Canada risk estimates for indoor air carcinogens show that radon gas is the highest priority exposure in Canadian settings.

Setton E, et al. "Risk-based indicators of Canadians' exposures to environmental carcinogens." *Environ Health* 2013;12(1):15.



An estimated seven percent of homes in Canada are likely to have unsafe radon levels as Health Canada has shown in a cross-Canada survey. These results also confirm that while some areas of Canada are known to have high radon levels, all homes need to be tested. Ontario's Building Code is quite out of date with respect to radon compared to the National Building Code and approaches to radon applied in other provinces.

The Ontario Building Code takes the dubiously legal approach of considering radon a problem only in three areas of the province with historical circumstances of uranium mining. More up to

date understanding of radon risks, supported by actual testing in communities across Ontario, confirms the need to test all indoor spaces.

We therefore strongly support actions to address radon in residential tenancies, especially but not limited to basement apartments. Radon levels can definitely be higher in basement apartments but can also be an issue in higher floors, particularly where energy efficiency measures have tightened the building envelope.⁴

We recommend that radon testing be mandatory in all residential tenancies. Mitigation should also be mandatory where radon levels are above the current federal guideline of 200 Becquerels per cubic metre (Bq/m³). It should also be mandatory that test results be made available to all tenants upon request.

Another recommendation resulting from our review of radon law and policy was for provinces to include property disclosure statements as annexes to prescribed forms under real estate law/regulations providing that sellers disclose whether there is a known presence of radon in homes before agreeing to sell or transfer real property. Such property disclosure statements should include explicit reference to the disclosure of the seller's actual knowledge with respect to radon gas.

In sum, we therefore recommend that within this welcome proposal to create greater protection of tenants from radon, the Province consider a comprehensive approach that includes: application to all residential tenancies; mandatory testing for radon; mandatory mitigation where levels are above the federal reference level; and mandatory disclosure of radon tests at the time of sale or transfer of real property.

Broader Indoor Health Issues Related to Property Maintenance

Finally, we make the above specific comments in response to provisions to address health risks associated with second-hand smoke and radon by noting the broader context of poorly maintained properties contributing to poor health. Mould problems are of particular concern in rental housing across Ontario, especially but certainly not limited to basement apartments.

As ACTO notes in its submissions and as we are revealing through extensive research in RentSafe, there are serious shortcomings in the state of repair of rental premises across the province, leading to health and safety issues for tenants and their families. The failure of landlords to comply with laws about the state of housing repair creates health problems and homelessness.

We therefore echo the concerns raised by ACTO that where the measures proposed in the Discussion Paper impede access to justice for tenants seeking to address these conditions, they undermine the government's policy direction towards increasing affordable housing by inserting measures that would serve to assist those landlords who neglect or refuse to meet their legal obligations.

⁴ Milner, J., C. Shrubsole, P. Das, B. Jones, I. Ridley, Z. Chalabi, I. Hamilton, B. Armstrong, M. Davies, and P. Wilkinson. 2014. "Home Energy Efficiency and Radon Related Risk of Lung Cancer: Modelling Study." *BMJ* 348 (jan09 1): f7493–f7493. doi:10.1136/bmj.f7493.

Moreover, the choice in the Discussion Paper to raise two health-related issues (second-hand smoke and radon) begs the question why broader and arguably more urgent health-related issues in residential tenancies, particularly the widespread problem of mould often resulting from poorly maintained properties, are not also being considered.

We urge the Ministry to broaden its consideration of healthy housing issues and are eager to provide more detailed recommendations as the RentSafe work develops over the course of 2016-17. We also welcome and urge participation of Ministry of Municipal Affairs and Housing officials in a RentSafe-sponsored multi-stakeholder roundtable to be held at McMaster University on November 22-23, 2016.

All of which is respectfully submitted.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read 'Kathleen Cooper', with a stylized flourish extending to the right.

Kathleen Cooper
Senior Researcher and Paralegal

About CELA

The Canadian Environmental Law Association is a public interest organization founded in 1970 for the purposes of using and improving laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and groups in the courts and before administrative tribunals on a wide variety of environmental and public health matters. In addition, CELA staff members are involved in various initiatives related to law reform, public education, and community organization.