



## **FEDERATION OF ONTARIO BED & BREAKFAST ACCOMMODATION** **Hospitality Lives Here!**

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### **Regulatory Proposals for Private Home Sharing and B&Bs**

In September 2016 the Federation of Ontario Bed & Breakfast Accommodation (“FOBBA”), the Stratford Area Bed & Breakfast Association and the Niagara-on-the-Lake Bed & Breakfast Association (collectively referred to as the “B&B Associations”) made a joint submission to the Ontario Sharing Economy Taskforce in respect of the growth in private home sharing. Copies were provided to several municipalities, including the City of Toronto.

We have received the October 19, 2016 Toronto staff report entitled Developing an Approach to Regulating Short-term Rentals. We are in general agreement with the approach and hope that our submission will be of assistance. The following briefly summarizes our suggestions and approach for appropriate regulation. A comprehensive solution requires action by both government (provincial and municipal) and industry (operators/hosts and platforms).

Private home sharing has experienced rapid growth in recent years facilitated by the emergence of internet booking sites, such as Airbnb. It has been estimated that there are over 15,000 host listings in Ontario alone. This rapid growth has led to a number of issues and concerns that regulators, at both the provincial and municipal levels, must consider including the impact on job creation and existing businesses, new investment, regulatory compliance, taxes, neighbor concerns, criminal and noise complaints. As well, many in the hotel/ motel industry feel that private home sharing creates an uneven playing field and leads to the avoidance of taxes and other public safety regulations.

These are not new issues and there are many sources in Ontario from which to draw guidance. Bed & Breakfasts (“B&Bs”) are a long established form of private home sharing and have operated in Ontario for many years. FOBBA was formed in 1987 as a result of similar concerns raised by the Hotel/ Motel industry. FOBBA was formed as an industry association that would enforce operating standards and deal with guest complaints. However, membership is not mandatory and most B&Bs operating today in Ontario do not belong.

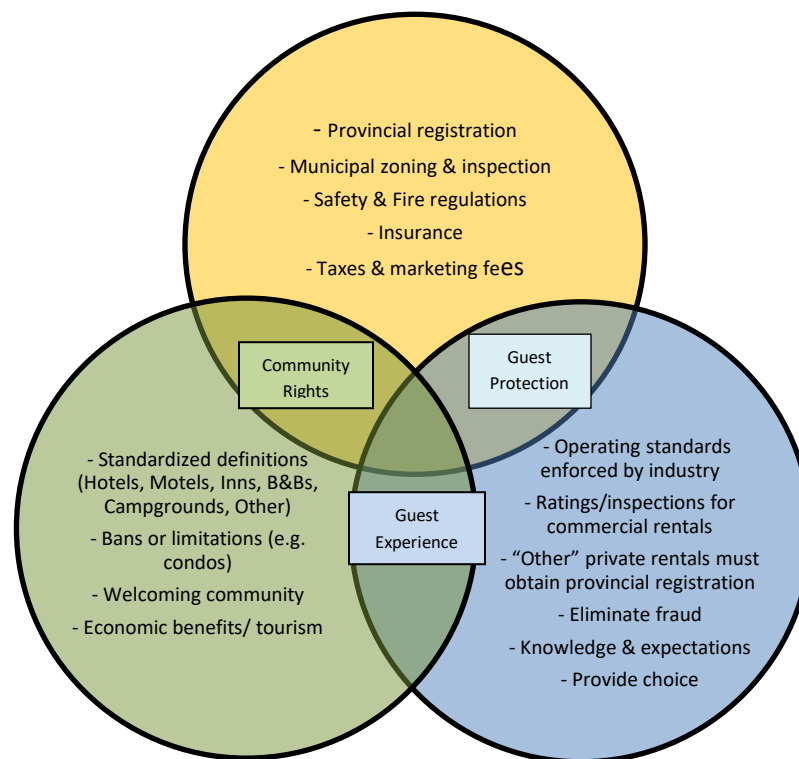
In some municipalities, such Niagara-on-the-Lake and Stratford, the issues associated with small scale tourist accommodation like those outlined in the shared economy initiative have been dealt with over

the past two decades with the establishment of extensive bylaws with the intent to protect the guest, and respect the community and neighbours. So while there are excellent frameworks in Ontario to manage short-term accommodations, they are not uniformly applied throughout the province. Ontario has no mandatory registration or inspection system such as is found in Quebec and the Maritime provinces. Even in jurisdictions where strict licencing requirements are in place, compliance is a challenge that is only exacerbated by the ease by which properties can be listed on booking sites such as Airbnb. CRA is also a good source of information (e.g. publication GI-007) about operating a B&B or other business from a primary residence, including the concepts of principal residence and commercial versus residential use.

Private home sharing, of the types listed on Airbnb, includes traditional B&Bs along with many other forms (private homes, condominiums, cottages, etc.) of short-term accommodation. Very often the owner is not present during the rental period and the arrangement does not always include breakfast. In fact, most listings on Airbnb are not B&Bs at all, but simply short-term rentals.

We believe that booking sites, such as Airbnb, are not in themselves the issue. They can be viewed as an innovative or disruptive force that will lead to change in an existing industry. Many traditional B&Bs consider such sites to be a good source of bookings.

As the following diagram illustrates there are three key pillars or objectives of any regulatory framework for short-term accommodation. They are protecting the guest, enhancing the guest experience, and respecting the rights of the neighbours and the community in which the accommodations operate.



## **Hosted versus Un-hosted Accommodation**

We would submit that the small scale tourist accommodation sector, which is the focus of this private home sharing discussion, can be divided into two quite distinct categories: Hosted accommodation where the owner/manager lives on the premises (such as Hosted B&B's); and Un-hosted accommodation where the owner/manager is absent from the property (such as a cottage or condominium rental). Each of these categories has their own characteristics and challenges with respect to the protection of the guest, the guest experience, and respect of the neighbours and the community in which the accommodation operates.

FOBBA believes that all forms of short-term accommodation should be subject to minimum regulatory requirements. The minimum protection of the guest is assured through compliance with fire code, building code; adequate liability insurance; a site inspection; and registration of valid business license. The minimum requirement for the respect of neighbours and the community is the compliance with local bylaws including land use, noise and parking, and compliance with any condominium agreements.

The standards of FOBBA and some municipalities, such as Stratford and Niagara-on-the-Lake, exceed these requirements, so there is no need to reinvent a regulatory framework. There is a need to apply it province-wide.

We believe that municipalities are best placed to develop and enforce regulations dealing with private home sharing. Such regulations would apply to all forms of short-term accommodation other than those already subject to regulation such as hotels, motels, and permitted B&Bs. Our specific industry concern is that there is no common definition of a "permitted" B&B in Ontario. Our recommendations focus on resolving this issue in a relatively simple manner.

It is our position that private home sharing can be a vibrant, innovative way to provide accommodations to guests across Ontario. However, there is no need to suggest that it must operate outside of any regulatory structure. Traditional B&B guests are attracted by the personalized atmosphere while experiencing unique homes, meeting other guests and enjoying the home-cooked breakfasts. This type of accommodation is an important alternative to provide in Ontario to both tourists and local guests.

## **B&B Industry in Ontario**

Currently there are approximately 1,600 B&Bs in Ontario (48 in Toronto) listed on BBCanada.com (the primary listing and booking site for B&Bs in Canada). Of these, approximately 330 belong to one of our three B&B Associations and all are subject to minimum operating standards and inspections. Other B&Bs operating in Ontario are not subject to FOBBA standards and many would not qualify as a B&B under our definition (e.g. may not be a primary residence).

Some municipalities have passed specific B&B bylaws containing a B&B definition and imposing size restrictions (# of bedrooms) or other limitations. Others have no specific rules or deal with B&Bs within zoning bylaws. Some municipalities (e.g. Stratford and Niagara-on-the-Lake) carry out their own inspections using municipal bylaws officers and/or fire department officials. There is no consistency across the province leading to a patchwork of municipal regulation and definitional differences.

Our B&B Associations believe that the province should adopt a uniform definition of a Permitted or Hosted B&B and require B&Bs to meet minimum operating standards. FOBBA defines a B&B as:

*“An owner-occupied, private, residential dwelling that is the owner’s primary residence and in which the owner has control of the environment. It provides temporary accommodation not exceeding 28 consecutive days, and amenities and services auxiliary to guest accommodation, including the preparation and service of breakfast for an all-inclusive fee.”*

Our B&B Associations require all B&B members to meet this definition and operate in accordance with our ethics and operating standards, including adequate liability insurance, an Ontario Business License, and importantly, owners that are required to live within the premises. As well, FOBBA members are inspected, rated and approved in their compliance with FOBBA’s Quality Assurance Program. This involves a paid inspection from a third-party company following an extensive checklist to ensure that we all meet the same standard. The inspection determines a Star Rating that can be displayed by the owner.

## **Proposed Responsibility Framework**

We believe that the province, municipalities and industry all have a role to play in addressing the issues raised by alternative forms of short-term accommodation.



## 1) Province

- While the municipal level has the most significant role to play (see below) in private home sharing regulation, we believe that province should take a key leadership role to ensure consistency of application (e.g. uniform definitions and development of a consistent regulatory framework for implementation by municipalities). The adoption of uniform provincial definitions of different types of short-term accommodation (similar to those used in Quebec) would assist in the development of municipal and provincial regulations, eliminate unnecessary differences between municipalities and help ensure that the accommodation meets the guest expectations.
- Identification of providers of short-term accommodation has been raised as a key enforcement challenge. Registration of all providers of short-term accommodation could be centralized at the provincial level, possibly through the Ontario business licensing system. Registration would help enforce provincial tax laws. Municipalities could be notified and the information used to ensure compliance with local bylaws. Industry platforms should be required to collect registration numbers before listing new hosts.
- Provincial legislation may also be required to enact changes to the Condominium Act. This would be the most effective way to ban or limit short-term rental in condominium buildings. If rentals were allowed under the terms of the condominium bylaws, then consideration might be given to requiring owner (rather than board) approval at a higher level than a simple majority.

- FOBBA has requested that the province require all B&Bs operating in Ontario to become FOBBA members. This is the most effective way to ensure that the B&B industry meets a quality standard and it will also clearly differentiate B&Bs from other forms of private home sharing.

## **2) Municipal**

- Municipalities are best placed to enact and enforce bylaws that insure the protection of the guest and respect of the neighbours and the community in which the accommodation operates. The minimum protection of the guest is assured through compliance with the fire and building codes, maintenance of adequate liability insurance, an independent site inspection, and registration of a valid business license. The minimum requirement for the respect of neighbours and the community is the compliance with local bylaws including land use, noise and parking, and compliance with any condominium, apartment or neighbourhood agreements.
- Municipalities may or may not seek to regulate private home sharing, although we believe they should. In some cases municipalities may seek to apply outright bans on certain forms of private home sharing. In other cases, limitations could restrict private home sharing to the rental of an owner's primary or secondary residence on a short-term basis (less than some number of consecutive days and less than some number of days per year). This activity might in some cases be permitted without municipal regulation, but would still be subject to the Fire Code and the terms of private contracts (e.g. condominium corporation bylaws). Without provincial leadership on this issue, it is likely that the accommodation sector would face inconsistent regulation across the province frustrating operators and negatively impacting the guest experience.
- As B&B Associations, our primary concern with municipal regulation targeting private home sharing is that it could be unnecessarily applied to Hosted B&Bs. As is the case in many other jurisdictions, we believe that Hosted B&Bs should be excluded from any outright bans or limitations, as long as there is a regulatory framework in place setting out permit requirements and operating standards for B&Bs.

## **3) Industry**

- Quebec and the eastern provinces require provincial government registration and inspection to ensure that all providers of short-term accommodations (including B&Bs) meet operating standards. These requirements protect the guest and enhance the guest experience. We recommend that B&Bs in Ontario be required to become members of FOBBA (or one of the member associations of FOBBA). This would complete the journey towards self-regulation started in 1987 and ensure compliance with basic operating standards consistently across the province. The FOBBA star rating would be optional for those B&Bs who wish to participate in that program from a marketing standpoint. B&B operating standards and inspections would be the sole responsibility of FOBBA , not the municipalities.

- Booking platforms (such as Airbnb) and industry associations (such as FOBBA and the Ontario Hotel & Motel Association) should ensure that new hosts or members are properly registered with the province as a prerequisite.
- Industry must operate an effective public complaints program requiring follow-up with the host.
- Industry must take responsibility for member education and development.

These preliminary recommendations provide some ideas to assist all parties (government and industry) in the development of a regulatory framework for the short-term accommodations sector. We would be happy to meet and discuss our suggestions.