

Ontario's Leading Experts on the *More Bed, Better Care Act*

The following experts have provided affidavit evidence in support of the application by the Ontario Health Coalition and the Advocacy Centre for the Elderly to the Ontario Superior Court strike down provisions of Bill 7: the More Beds, Better Care Act. Their full affidavits can be found on the websites of OHC and ACE.

Dr. Pat Armstrong

Dr. Armstrong holds the title of Distinguished Research Professor Emeritus at York University, and she is a fellow of the Royal Society of Canada. Dr. Armstrong is a sociologist in the fields of social policy, health care, and of women's work, and a Canadian and international expert in the field of health care and social services, work, pay equity, and social policy.

In Dr. Armstrong's expert opinion:

Bill 7 ignores the Government's failure to provide sufficient access to care and appropriate care staff to accommodate the increasingly complex needs of LTC residents. In allowing patients to be transferred out of hospital into LTC based on the clinician's opinion that a "person does not require the intensity of resources or services provided in the hospital care setting" ... Bill 7 only takes hospital resources and services into account, allowing people in hospital to be moved to one of the very few spaces available regardless of whether the resources and services can accommodate their needs.

For reasons she explains in detail, "Bill 7 will increase the likelihood of ALC patients being admitted to already overtaxed LTC homes that are ill-suited or incapable of properly meeting their needs. The result will only exacerbate the problems the "More Beds, Better Care Act" is ostensibly advanced to address. There are not enough spaces in LTC for those outside hospitals who have previously been determined by clinicians to require such care. Current estimates indicate that nearly 40,000 people assessed as requiring 24-hour nursing and personal care in LTC homes are on the wait list. There is no room in the homes and will not be for a very long time. Bill 7 gives priority to those in hospital care for the very few numbers of beds available. It thus alters the wait list, denying the rights of those already on the list and with the potential to create a perverse incentive to seek hospital care as a way into LTC, in the process increasing the pressure on hospital beds.

In allowing actions "to be performed in respect of an ALC patient without their consent or the consent of their substitute decision-maker, despite any other provision of this Act, the regulations or any other Act," Bill 7 also ignores the fundamental right to consent which itself is already shaped by particular vulnerabilities like gender and age.

Dr. Amit Arya

Dr. Arya is a palliative care physician who works in acute care hospitals, outpatient clinics, long-term care, and home care. He is the Palliative Care Lead at Kensington Gardens long-term care home (LTC) in Toronto, and also a palliative care physician at the Freeman Centre for the Advancement of Palliative Care at North York General Hospital. He has served as Lecturer for the Department of Family and Community Medicine at the University of Toronto and as Assistant Clinical Professor for the Department of Family Medicine at McMaster University. He has held leadership roles at the national, provincial and local levels, and received the 2020 Award of Excellence in Social Responsibility from the Department of Family and Community Medicine, University of Toronto and also an Award of Excellence from the Ontario College of Family Physicians in 2022.

Dr Arya concludes his opinion by commenting

...on the not uncommon and very unfortunate perception that it is somehow the fault of ALC patients that they are occupying acute care hospital beds that are needed by others. In fact, these patients find themselves in this circumstance very much against their wishes. Many want to return home, and often can't understand why they cannot do so. Most others are anxious to leave the hospital for a LTC home they have chosen. In light of long wait lists for a chosen home, virtually all patients are willing, when the options are compassionately explained to them, to compromise by applying for placement in LTC homes with shorter wait lists. It is only on very rare occasions that I see patients or SDMs [substitute decision makers] who, at least at first, are unwilling to accept something other than their preferred choices. But even in these cases, patient and compassionate discussion about what is ultimately in the patient's best interest will create the trust necessary for them to accept the wisdom of such compromise.

Dr. George Heckman

Has been working as a physician in hospitals since 2000, in geriatric assessment units and as a geriatric medicine consultant on medical and surgical floors. He also works on Clinical Teaching Units in Hamilton as a General Internist. He is a consultant at the St. Mary's General Hospital heart function clinic. He is on the receiving end of older persons discharged from hospitals as a medical director in a Waterloo retirement home, and a consultant in a Waterloo long-term care home. He is the co-author opinion editorials published in

He concludes that:

...it is clear that the process under Bill 7 will cause serious and unnecessary harm to older persons. The problem that Bill 7 is trying to fix is caused by flaws in the current treatment of older persons in the health system that can readily be addressed. Taking even some of the measures I have highlighted above would allow the Province to

improve the situation of older persons in hospitals and waiting for long-term care in a way that is more person-centered, effective and cost-effective, respectful and humane.

Dr. Samir Sinha

Since 2010, Dr. Sinha has served as the Director of Geriatrics at Sinai Health System and the University Health Network in Toronto and a Professor of Medicine at the University of Toronto and the Director of Health Policy Research at Toronto Metropolitan University's National Institute on Ageing. He is also a Professor of Medicine, Family and Community Medicine and Health Policy, Management and Evaluation at the University of Toronto and an Adjunct Professor of Medicine at the Johns Hopkins University School of Medicine.

Dr. Sinha's extensive critique of Bill 7 concludes with this assessment:

There is clearly a double standard operating here in terms of how we fundamentally fail to respect the rights or meet the needs of older persons, as compared with how we treat other patients in the healthcare system. The fact that most ALC to LTC patients are quickly approaching the end of their lives does not justify characterizing them, whether explicitly or otherwise, as "bed-blockers" or depersonalizing them as a faceless group who are the reason why our hospital system is struggling. The implication of Bill 7 is that it allows us to further inappropriately characterize ALC patients as being selfish and hijacking the system by taking a bed that really should belong to somebody with more important needs.

The large majority of ALC patients are older persons, they are persons who are often suffering from dementia and close to the end of their lives. They are people who, due to their health conditions, often cannot actually raise their own voice and therefore engage public sympathy. This is why ultimately this is an easy population to target and strip of the rights everyone else is entitled to, because the rights of ALC patients seem to not matter as much, and they are almost seen and treated by our society increasingly as "useless eaters".

I find it deeply disturbing when we start actively treating ALC patients as a problematic group and use formal legislation – rushed through without any hearings – to help 'manage' this problem more expeditiously. By increasingly classifying ALC patients as being less worthy than others in our society, we are essentially whittling away their rights little by little by little, so that we can ultimately regard them as being dispensable. I am increasingly finding myself repeatedly asking the question: "What's a life worth?"

So, a very unfortunate narrative has further arisen to gloss over what I see as fundamental violations of people's human rights by justifying these deprivations as being for the ultimate benefit of the overall healthcare system and our society. If we

accede to this narrative, what we are fundamentally saying is simply that some human lives are not worth as much as others.

Dr. St. Martin

Dr. St. Martin has practiced medicine for over four decades, and is currently the Medical Director at St. Joseph's Villa LTC home in Sudbury. St. Joseph's Villa is a not-for-profit LTC home run by the Sisters of St. Joseph. Much of his medical career has been focused in the long-term care (LTC) sector.

Over the course of his career, Dr. St Martin has served in many appointed and elected medical positions including as Chief of General Practice at Laurentian Hospital, as a Board Member for Ontario Medical Directors Long-Term Care, Geriatric Lead at Sudbury Regional Hospital, Chief of Staff at St. Joseph's Complex Continuing Care Hospital and on the Ontario Hospital Association's Physician Provincial Leadership Council. In June 2020, he received the Ontario Long Term Care Association's Circle of Excellence Award, which recognizes significant contributions to long-term care homes in Ontario.

Dr. St. Martin's states that:

.....there has been a general and increasing trend towards admission of patients to LTC who have much greater medical needs than LTC homes can actually manage or whose care needs would be much better served in other settings. Generally-speaking, LTC has clearly and increasingly become a 'dumping ground' for patients who are discharged from acute care but cannot receive the care necessary to remain in the community. They are often sent for admission to a LTC with little regard to the ability of the home to provide appropriate or proper care and whether it is the most appropriate type of facility to meet their needs. Given the limited ability of LTC homes to refuse patients, they often must be admitted despite them being more suited to other types of care.

He goes on to note that:

Many LTC admissions are older and frailer than was previously the case. Many of these patients are sent to LTC essentially as a 'default' when discharged from hospital, when in many cases they should have been considered for or transferred to palliative care or hospice.

In respect of the intention of Bill 7 to expedite the process of placing ALC patients in LTC homes, Dr. St Martin states

that doing so "can only exacerbate the problems that I have described, while doing nothing to address the lack of suitable care options for ALC patients, many of whom cannot properly or appropriately be cared in most LTC homes. Moreover, in my

opinion, any measure that reduces the participation of an ALC patient, or their substitute decision maker, in the process of the patient transitioning from the hospital to a LTC home can only add to the issues of a lack of consultation and transparency in respect of ALC admissions to LTC homes.”

1387-6050-4066, v. 1