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## **Major step forward for elderly patients whose Charter rights are violated by Ford government's law coercing elderly patients into long-term care homes against their will: Patient advocates file court challenge**

Toronto – The Ontario Health Coalition and the Advocacy Centre for the Elderly have made a major step forward in their Charter Challenge to Bill 7, passed by the Ford government last summer. On Wednesday, April 12, 2023, the patient advocates filed a Notice of Application with the Ontario Superior Court of Justice challenging the legislation as contravening the Canadian Charter. The Application is supported by evidence from four expert physicians and a national expert in health services. The Coalition and ACE have been gathering evidence from patients and their substitute decision-makers in support of the Application. The Notice of Application, expert affidavits, and summaries are available online [here](#).

Bill 7 overrides elderly patients' fundamental rights to privacy and informed consent, enabling hospitals and placement co-ordinators from the Home and Community Care Support Services (HCCSS) to share the patient's personal health information with an array of long-term care home operators and others without the patient's consent. The law applies to hospital patients who are deemed "Alternate Level of Care" (ALC). The law also enables hospitals and placement co-ordinators to coerce patients to move to long-term care homes that they do not want to live in because the home is unsafe, inappropriate or far away from family and friends.

If the patient refuses to move into such a home, the regulations enacted by the Ford government requires hospitals to charge them \$400 per day. The regulations allow patients to be moved up to 70 km away in Southern Ontario or up to 150 km away in Northern Ontario (with an additional proviso that patients in the North can be moved even further away if there are no beds available within 150 km).

For most of these patients, this move will be the last of their lives and they will pass away in the long-term care facility that has been forced upon them.

The Ontario Health Coalition and the Advocacy Centre for the Elderly issued a statement summarizing their application to the court as follows:

Through absolutely no fault of their own, these patients find themselves the casualties of a health care system that is unable to provide the health care services they require because of the failures of Ontario governments to provide services at home, in long-term care and in hospitals that can properly provide for the treatment, care, safety and well-being of them.

Bill 7 singles out a particular cohort of older, ill and very vulnerable patients to be deprived of their right to informed consent about where they will live and the health care they receive. It authorizes the discharge from hospital of ALC patients, some of whom still require treatment in hospital, for admission to LTC homes that have not been willingly chosen or consented to by them, and that may not be capable of providing for their treatment, care, safety or well-being. It therefore results in needless physical and psychological suffering by and will hasten the deaths of some ALC patients.

In doing so, Bill 7 deprives these ALC patients of their right to life, liberty and security of the person under Section 7 of the Charter of Rights and Freedoms. Moreover, by denying them their right to consent in respect of the medical care they will receive, or to appeal or seek review of the actions of hospital and provincial officials, these deprivations do not accord with the principles of fundamental justice required by Section 7.

Furthermore, by singling out a cohort of very elderly patients to be deprived of rights that all other residents of Ontario enjoy, Bill 7 also deprives these patients of the right to equality under Section 15 of the Charter which makes clear that every individual in Canada – regardless of race, religion, national or ethnic origin, colour, sex, age or physical or mental disability – is to be treated with the same respect, dignity, and consideration.

There are many things that the provincial government can do to reduce competing demands for acute care hospital beds while improving the quality of care for patients, but Bill 7 is not one of them. Instead, the government should:

- provide sufficient and reliable home and community care services, including palliative care, that would allow individuals to remain in their homes and obviate their need to seek hospital admission, or admission to a LTC home;
- increase funding for, and the capacity, suitability and effective organization of hospital services to better meet the needs of ALC patients that cannot be properly provided for either at home, in the community, or in a LTC home. These are services hospitals have historically provided, but that have suffered from successive funding constraints even while the need has increased; and
- increase funding for and oversight of LTC beds to ensure that Ontario LTC homes provide quality of care for all Ontario residents that require such care.

The Ontario Health Coalition is raising funds to support this legal challenge under the Charter of Rights and Freedoms and is asking Ontarians who are able to donate [here](#).