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Ford Government's New Legislation Will Make It Significantly Harder to Hold For-Profit Long-term Care Homes Liable for COVID-19 Harms

Toronto – The Ford government has introduced legislation that would make it significantly harder for residents and families to hold long-term care homes liable for harm resulting from exposure to and infection with COVID-19. The legislation covers any individual, corporation or entity and includes the crown (which means the government and its agencies).

Bill 218, which was both introduced in the Ontario Legislature by the Ford government and passed First Reading yesterday, is retroactive to March 17, 2020 meaning the legal rights of those who were infected, potentially infected or exposed to coronavirus on or after March 17, 2020 will be compromised by the legislation, if it is passed, no matter when they started any legal actions. There will be no compensation or relief for plaintiffs as a result of having their rights extinguished under this bill. The major changes in the legislation are as follows:

- It requires those harmed as a result of exposure to and infection with COVID-19 to prove gross negligence rather than the current standard which is ordinary negligence. This is a significant difference which requires proof of a higher legal standard that is more difficult to prove.
- It redefines “good faith effort”. Currently a good faith effort to comply with legislative, regulatory and policy requirements means a competent and reasonable effort. Instead, the new bill explicitly changes the definition to state “an honest effort whether reasonable or not”.

Bottom line: if passed, the legislation would make it at once significantly harder to sue a long-term care home and significantly easier for a home to defend itself.

In Ontario, more than seventy percent of the deaths from COVID-19 in the first wave have been in long-term care homes, according to a [CIHI analysis](#) of the first wave (to May 25, 2020). A host of [legal actions](#) have been started, alleging negligence and failure to follow public health measures, particularly against for-profit long-term care home chain companies.

“No resident or family member who has suffered harm and injury as a result of the negligence of a long-term care home operator should have their rights to access justice extinguished in this way,” said Graham Webb, LL.B., LL.M., Executive Director of the Advocacy Centre for the Elderly, a community legal clinic specializing in seniors’ issues. “It is difficult enough for residents and their families to prove the ordinary civil standard of negligence against business operations like a long-term care home without having to discharge the higher and ambiguous standard of ‘gross negligence’. This is all about protecting the rights of negligent long-term care home operators at the expense of residents injured through the fault of the operator.”

“We are calling for this bill to be defeated,” said Natalie Mehra, executive director of the Ontario Health Coalition, which represents more than half-a-million Ontarians committed to safeguarding and improving public health care. “Elderly people in long-term care have suffered enormously as a result of negligence, incompetence and indifference by profit-seeking corporations that have engaged in egregious practices while at the same time paying out tens of millions of dollars a month in profits to their shareholders. This is morally reprehensible.”

The Coalition pointed out that it has been the practice of some of the big for-profit long-term care chains to try to change legislation to reduce their liability and make it harder to sue them. Other [jurisdictions](#) have refused to change legislation at the behest of for-profit long-term care companies facing lawsuits for negligent and poor care.