Ontario Health Coalition Summary & Analysis of Ontario's Long-Term Care COVID-19 Commission Final Report

May 5, 2021

The work of the Commission, and the openness of their process, has much to be commended. They accomplished a Herculean task in a very short time, while dealing with obstruction from the Ministries and politicians who failed to provide several hundred thousand pages of documents in a timely manner, and did not provide some key documents at all.

While we support many of the recommendations of the Commission, we do not support them all. In a number of areas, the Commission has adopted wholesale recommendations without critical analysis. Many of these recommendations appear to have been made to the Commission by health provider companies themselves who have their own set of vested interests and the perspectives. Given more time, the Commission would have had an opportunity to consult on some of these recommendations and get a more rounded view of their implications. As such, the depth of research and recommendations are variable. The sections on pandemic planning within government, public health and long-term care homes are very thorough, for example. On the other hand, there are several areas -- particularly those relating to privatization -- that contain only a superficial analysis, and in a few sections, result in recommendations that are deeply problematic.

We will advocate strongly for the best of the recommendations and we will strongly oppose the recommendations for continued and expanded privatization and profit-taking.

Summary of key findings of the Commission

Overarching messages:

- The report supports and vindicates the agonizing experiences and the helplessness of the families and residents of long-term care during the pandemic as well as the sacrifices and suffering of the staff.

- The clear overall message is that the government was slow, reactive, and their response was inadequate.
    - The Commission takes Long-Term Care Minister Merrilee Fullerton's claims about being worried about asymptomatic transmission of COVID-19 early on in February at face value, despite the lack of evidence of this and despite the Minister's public message on October 8 that the pandemic in long-term care was no worse than a bad flu season. This does not seem credible to us.
    - The Commission clearly criticizes the government's decision to cancel the comprehensive annual inspections of long-term care homes and identifies significant problems in pandemic response resulting from this. Long-Term Care Minister Merrilee Fullerton has, since CBC first exposed that the Ford government stopped the inspections, repeatedly denied that they were stopped and cited limited and not surprise investigations into specific complaints and critical incidents to obscure the fact that the government cancelled the comprehensive annual surprise inspections. More recently she has been forced to admit their cancellation. The Commission's report puts a full stop on any attempt to deny and obfuscate about inspections. It is clear that the annual comprehensive surprise inspections were stopped. It is clear that the critical incident- and complaint- based inspections are not the same and are narrowly focused on the incident. It is clear that there are too few inspectors, that capacity was not ramped up

when needed and funding was delayed, it is clear that even existing capacity and integration of the efforts of inspectors in the Ministry of Labour and Public Health Units was not done, and that inspections were fragmented and vital information from surveys of long-term care homes was not shared by the Ministry of Long-Term Care. It is clear that these led to inadequate oversight and compliance even with existing requirements.

- The Commission clearly reports that the Ministry of Long-Term Care was responsible for the slowness and inadequacy of interventions including management takeovers of long-term care homes that were unable to provide care and protect residents and staff. Although hundreds of LTC homes were in outbreak, outbreaks were clearly out of control and care levels had crumbled, there were only 7 management orders made by December. In this section, they quote the Ontario Health Coalition's interim submission to the Commission.
- The Commission identifies numerous instances in which Chief Medical Officer of Health, Dr. David Williams' response was slow, inadequate and failed to follow the precautionary principle.
- The Commission finds that the Ford government overall demonstrated inadequacies in management and lack of clarity in lines of decision-making, and failed to sort these out throughout. Though it is clear that some of these problems pre-existed the current government, it is also clear in the report that the government did not respond with urgency, did not set up an effective and clear decision-making structure, and failed to address problems when it had the opportunity to do so.
- The Commission reports that the Minister of Health, Christine Elliott "sidelined" the Ministry of Long-Term Care, and faults the Ministry of Health for failing to plan, and respond adequately and quickly.
- The Commission provides no evaluation of the PR messaging of the Premier, or the decision to hold daily political press conferences, which has distracted from pandemic response, has included damaging and unhelpful messages at times.

Strongest Parts of the Report & Recommendations:

In addition to the overarching messages, which are very strong and helpful, the following are the best parts of the report and recommendations:

- Staffing crisis & care levels

  The Commission report is very strong on the analysis of the staffing crisis and the need for urgent action, noting that care in long-term care fundamentally requires staff, and that this is perhaps the highest priority. They clearly recommend faster implementation of staffing increases and improvements to care levels and they embrace the 4-hour average care standard per resident per day similar to that we have advocated for many years. They describe fully and repeatedly the inadequacy of staffing, staff shortages, and poor wages and working conditions. They lend voice, in heartrending terms, the traumatic conditions that the staff suffered and quote front-line staff throughout the report, often with devastating accounts of what they experienced.

  - The report is clear that current LTC staffing levels (they report 2.45 hours of care per resident per day currently) are lower than at the beginning of the pandemic (the government's own staffing report stated 2.75 hours/resident/day at the beginning of the pandemic). This is helpful since the Minister of Long-Term Care continues to claim that they have hired 8,000-10,000 staff. They have not, as the Long-Term Care Minister intimates repeatedly in press conferences, expanded staffing by 8-10,000+. As per the Commission Report, there is less staffing and thus care than even the crisis-level inadequacy of these when the pandemic started.

- The Commission calls for fast-tracking the staffing plan to get to 4-hours of care more quickly, an implementation plan with clear timelines and public reporting of progress. They also call for inspectors to audit progress on this.
- The 4-hours of care is, as per the Commission's recommendations, to include RN, RPN and PSW direct care as we have advocated. The Commission specifically states that Resident Care Aides (who have been hired to replace trained PSWs) should not be counted in the 4-hours of care. This is positive because it disincentivizes the LTC home operators from replacing PSWs with lesser-paid and untrained staff.
- The Commission also makes a strong recommendation on increasing health professionals' care (including dietary, speech-language pathologists, physiotherapists, occupational therapists, social workers and others) in addition to the 4-hours of direct hands-on care staff. They state that the government's plan to increase allied health professionals from 30 minutes to 36 minutes per resident per day is not enough and recommend increasing it to 60 minutes. The Commission takes the reported staffing (30 hours of allied health professionals' care) which is, as with the PSW/RPN/RN direct care hours above, a self-reported figure that may be higher than is actually in practice.
- The Commission also recommends that there be a new staffing standard of one Nurse Practitioner for every 120 residents.
- There is no specific recommendation regarding Behavioural Supports.
- The Commission recognizes the high acuity (complexity of care needs) of residents and recommends amendment of the Fundamental Principle in the LTC Homes Act to recognize this.
- They recommend that staffing and outcome data be collected by the Canadian Institute for Health Information (CIHI) and reported in a timely fashion.

- Access for essential caregivers and visitors

  The Commission is very strong on access for family caregivers (including paid caregivers) and visitors. They describe in painful detail, with quotes from residents and families, the terrible inadequacy of care, the loneliness, the people who died alone, and the heartbreak of the families. They call for an amendment to the LTC Homes Act regulation to recognize essential caregivers, to require homes to maintain a list of essential caregivers, to include a 'presumption' against prohibiting visitors and to support technology for outside contact for residents.
  - They recommend publicly-funded counselling to be provided to both staff and residents without any cost being borne by those who suffered trauma as a result of what has happened. They did not include families.

- Inspections & enforcement

  The report supports the reinstatement of annual comprehensive surprise inspections for all LTC homes. This section is very strong. It calls for more inspectors, funding and training and meaningful penalties for non-compliance up to and including management takeover and loss of licenses. They do not note that the Minister has the power to fine homes, as passed in 2017 but never put into effect when the Ford government took power.
  - They recommend inspectors audit the reports on progress toward the 4-hours of staffing and care.
  - They recommend greater coordination between inspections under the Ministry of Long-Term Care, Ministry of Labour and Public Health. In this section, they do not recognize or make recommendations that would extend the stronger provisions in workers' health and safety regimes, including enforcement and accountability and worker representation that could be applied in long-term care.

- Precautionary principle & infection prevention & control

  The Commission's report and recommendations are excellent on the precautionary principle (in short, layperson's terms: while evidence is emerging, err on the side of caution and protect first). They devote considerable space and detail to the failures to follow this principle in long-term care in PPE and in overall pandemic response. They recommend that the precautionary principle be the guiding principle for an array of legislation, be included in the LTC Homes Act, be clearer in health and safety legislation, and more.

  Similarly, the Commission's report and recommendations are strong on improved infection prevention and control measures (IPAC). They recommend amendments to legislation and regulations throughout health and labour legislation, changes at the Ministry level, stronger requirements for training, a requirement for an IPAC lead for every 120 beds, with standardized training. They recommend clear infectious disease outbreak plans with requirements to use drills to practice them, and with required updating.

- Access to long-term care & home care

  The report is clear about the real need for LTC homes and the evidence that a significant number of LTC residents could not truly be provided care in home care, that the need for LTC will increase and there must be planning and resources for this. At the same time, the Commission's report is also strong in recommending more funding for home care, though they do not recognize the critical staffing shortages, privatization and dismantling of public governance of home care as the major problems in home care. They do not comment on the bizarre decision by the Ford government to restructure and dismantle the public governance of home care (and privatize it) mid-pandemic.
    - They endorse "person-centred" models of care, without a fuller analysis of the strengths and weaknesses of them. They report without evidence that some of the models increased staffing without more funding. This is not agreed by experts.

- Failure to plan, respond with urgency, intervene in crisis

  The report of the Commission is somewhat clear about how the summer lull in the pandemic was wasted. They mention that staffing was not improved, and had deteriorated. They mention the inadequate and late planning to intervene (through management takeover, teams to support crumbling staffing and inadequate infection control and the like). They note that the pairing of LTC homes with hospitals did not get completed until the end of November 2020 when the second wave was escalating dramatically -- too late to stop the catastrophic spread of the virus in homes that had already been devastated by COVID-19.

- Human Rights, the failure to hospitalize & offloading of patients into long-term care

The report of the Commission recognizes and refers to our complaint to the Ontario Human Rights Commission regarding the failure to provide access to hospital care for long-term care residents during the pandemic. Thousands of long-term care residents who were sick with COVID-19 were left to die in place, often with horribly inadequate care.

- The Commission reports data that shows while most of the elderly in the community who died as a result of the virus were transferred to hospital, the vast majority of those in long-term care were not.
- The Commission recommends against transferring hospital patients into long-term care homes that do not have the staffing and care levels to provide for them.

Worst Parts of the Report & Recommendations:

Overall, the worst parts of the report and recommendations all have to do with for-profit privatization, as follows:

- Privatization of LTC infrastructure (P3s)

  The Commission, which was appointed by the Ford government, is generally very weak on its analysis and recommendations in all sections that involve privatization.

  - The Commission bizarrely and impractically calls for the separation of for-profit long-term care owners into "mission-driven" and "commercial" entities. Commercial entities, they say, include those that are Real Estate Investment Trusts, those traded on the stock market, and financial companies. They provide no clear accountable litmus test to divide up the for-profit companies into these "mission-driven" and "commercial" categories. However murky the distinction, among the for-profit chains, the Commission clearly cites Schlegel Villages as a "mission-driven" for-profit though it is a for-profit chain that like the other for-profit chains has poorer wages and working conditions for workers. Schlegel Villages also had horrific outbreaks and serious problems with infection control and staffing shortages during the pandemic. (The Schlegel family is a significant donor to the Conservative Party and donated $20,000 to Health Minister Christine Elliott's leadership campaign. James Schlegel was appointed to the government's staffing advisory group.) The Commission fails to recognize the stand-alone (not chain-owned) for-profit long-term care homes that also had terrible records.
  - The Commission does not recognize the impact of the for-profit lobby for deregulation of care, inspections, enforcement and staffing requirements. We do not support this attempt to hive off a portion of the "market" to for-profit corporations.
  - They recommend that "commercial" long-term care corporations and entities not provide care. However, "mission-based" for-profits would continue and even expand, along with the non-profits and public homes.
  - The Commission recommends P3 privatization of the construction of long-term care homes with the public paying to rent the usage of privately built homes. The Commission hired a private investment banking advisory firm to give them advice on this. From their report there is no evidence that the Commission sought any perspective that reflects the public interest (rather than the multinational financial industry) on this crucial issue. It is not known whether the Commission was briefed on the Ontario Auditor General's special report on the P3 privatization of the hospitals and court houses that found them to be $8 billion more expensive than if the infrastructure was built publicly. Although multiple Auditor General reports are cited throughout the Commission's Report, the special report on P3 privatization is not.

    Both the analysis and recommendations in this section are wrong-headed and deeply problematic. The P3 model they propose would drive up the cost of infrastructure hugely, reducing money available for care, their arbitrary and superficial distinction between "mission driven" and "commercial" for-profits would leave many terrible players in place, and even with expansion of their homes and more. Also notable, the Commission reports that 68% of the wait list is for public and non-profit homes and only 32% of the wait list is for for-profit homes. Yet their plan would leave in place private for-profit companies, or even expand them, building new LTC homes and expanding existing ones, even when Ontarians who need long-term care do not want to live in them.

- Laboratories

  The Commission reports the failing of the medical laboratory system to meet the demands of the major health crisis, details the slow ramp up of capacity to test for COVID-19 and the failure to prioritize testing in long-term care, and describes the impact of these on the spread of the virus in long-term care homes, but fails to provide any critical analysis of how this happened. Commissioners did not recognize the parallels between the long-term care system and the laboratory system in being unprepared, underfunded, understaffed and weakened by for-profit operators. The Commission did not ask for input on laboratory fragmentation and capacity from public interest groups, and their report contains only a superficial and brief take on them.

  - In fact, for decades, the province has cut outpatient hospital laboratories and underfunded the hospital laboratories while over-paying the private -for-profit laboratories. There is evidence that the private laboratories have actively worked over the decades to limit any attempts at greater integration of the sector, preferring to consolidate their market in the more profitable and standardized parts of laboratory work. The Commission did not provide any analysis of this.
  - While the LTC COVID-19 Commission reports that Alberta was able to jump ahead on their laboratory response, it fails to note that the majority of that province's lab system, both for hospitals and the community, is an integrated public system.
  - The Commission recommends implementation of Ontario's 2015 Expert Panel report on laboratories. However, suggesting that the implementation of the 2015 Expert Panel report continues the tradition of recommendations that will not deliver better integrated and cost-effective laboratory services. The Expert Panel recommended cementing the system's fragmentation and further reducing competition in the private sector, the force that is supposed to make that sector better. The report also recognizes that the for-profit laboratories overcharge and recommended a cut of $50 million dollars in their payments. The problems with excessively high for-profit laboratory costs goes back to the early 1970s and continues to this day.
  - Implementing the Expert Panel recommendations will not create a more integrated and responsive system. Ontario needs to move the laboratory system to an integrated public system based around hospital laboratories, shifting the private laboratories into this system as their contracts expire. This will provide better integrated, provide more capacity and more efficient service at lower cost. It will create a system that is best able to respond to the next crisis and protect the public's health.

- Ontario Health Teams

  The Commission notes that the regional governance of health care (which was done through the Local Health Integration Networks) was dismantled during the pandemic. They do not provide any analysis of how the decision by the Ford government to go ahead with this restructuring and to prioritize this over pandemic planning has critically reduced capacity to plan, removed leadership that had a knowledge of the local health systems in the midst of a crisis, or any other negative impact and they do not include any critical analysis of the model of devolution and privatization in this restructuring.

  Further, the Commission does not recognize that the so-called Ontario Health Teams are ad hoc, do not exist in parts of the province and where they do exist are nebulous, have eliminated all public governance over local health care planning and eliminated public reporting, public input, and have privatized the control of such planning to provider companies (both for-profit and non-profit) that have no governance structure, no open board meetings, no minutes accessible to the public, and all kinds of provision for expanding for-profit care even to those for-profit providers that the Commission itself recognizes as having no place in the provision of care.

The dismantling of regional governance and oversight of health care will not create a more responsive and accountable local public health system. The Commission did not ask for evidence regarding this restructuring, and from its report, appears only to have heard from provider companies themselves about their perspectives on this. The Commission's recommendation is to move forward with the Ontario Health Teams as they are and expand them. We do not support this.

- Insurance industry

  The Commissioners report that there are problems obtaining insurance for long-term care homes and their directors. This section is unclear but implies that government should cover the cost for insurance for LTC homes, including for-profits that are likely difficult to insure because of their own horrific negligence. They recommend government consult with the insurance industry regarding this, without any protections for the public interest.

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