Submission to the Standing Committee on Social Policy Re: An Act Respecting Long-term Care Homes; Bill 140

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Introduction

The Canadian Union of Public Employees is Canada's largest Union representing more than half a million workers across Canada including approximately 200,000 employees in Ontario.

CUPE Ontario members are employed in Health Care, Education, Municipalities, Libraries, Universities, Social Services, Public Utilities, Transportation and Emergency Services. Our members include service-providers, white-collar workers, technicians, and labourers, skilled trades people and professionals.

Across Ontario's long-term care sector, CUPE represents 24,000 workers in 217 long-term care homes.

CUPE represents workers at 35 charitable homes, 69 Homes for the Aged, 71 nursing homes and 42 retirement homes.

Based on home type, 47% of CUPE members work in the non-profit sector and 53% working in for-profit sector.

In addition, CUPE members are residents and users of Ontario's health system. Many of us have family members, colleagues and friends living in Ontario's nursing homes.

The CUPE Ontario brief is submitted on behalf of our 200,000 members and in support of the 24,000 CUPE members working in the long-term care sector.

Overview

Health care reform and demographic trends over the last decade have made long-term care homes more and more central to care. The increasing age and acuity of residents in Ontario's long-term care facilities is now so well documented as to be beyond question. The continued movement of heavier care patients out of hospitals and mental health facilities into long-term care homes has created mounting care needs, which remain unmet. Demographic trends mean that the progressively more complex and heavier care needs of Ontario's long-term care residents will only increase in the next twenty years.

While the proposed legislation was initiated for the purpose of rolling the existing acts governing facilities into one, it also provides an opportunity modernize the legislation and to design a significantly improved long-term care homes system for the wave of aging Ontarians. With the new Bill, the well-documented problems of appropriateness of care standards and funding that have chronically plagued the sector could finally be rectified. It will not succeed in these without substantial amendment. For, despite lofty rhetoric about a "revolution" in long-term care, the proposed legislation is, in the main, a modified version of the existing acts governing municipal, non-profit and for-profit homes, pulling largely on the Nursing Homes Act.

In its present form the proposed legislation fails to provide the statutory and regulatory framework that would achieve the safety of residents and staff in Ontario's homes.

- It fails to ensure even minimal accountability for meeting residents' assessed needs and improving accountability of government.
- It provides no right to access any level of care at all.
- It abandons promises to re-establish care standards and compliance regimes to ensure these are met.
- It fails to promote public and non-profit care, instead creating the conditions for an increase in the proportion of facilities run for profit-seeking purposes.
- It fails to provide the necessary tools to accomplish the desperately needed cultural shift away from secrecy and fear to improved democracy and transparency.
- It fails to protect residents, staff, family members and visitors from the inexcusable increase in violence, illness, accident and injury in Ontario's homes.

CUPE Ontario, together with the other unions representing long-term care workers, senior's groups and public health advocates believe that the key focus of any long-term care reform must be the provision of a minimum staffing standard to ensure adequate care levels, a mechanism to measure and provide adequate funding to reach these staffing standards, and a compliance regime to ensure they are respected. Staffing levels are key to providing sound care, to preventing abuse and neglect, for ensuring the safety of residents and care workers, and for improving the quality of life of residents. The government must recognize that the homes are also workplaces, that current levels of care are inadequate and unsafe, and that the rates of illness, injury and violence in facilities must be recognized and prevented. The government must send a strong message to support non-profit and public delivery of long-term care, and to reverse the trend of for-profit privatization. Ontarians must have a right to access care to their assessed level of need as close to their home communities as possible. Furthermore, the government must address the issues of respect, openness, transparency, respect and support

that are required to change the culture of secrecy and reprisal in the homes. These issues can be addressed with amendment to the proposed legislation.

Not Enough Hands: Our Members' Experiences in Ontario's Homes

In 2004, CUPE commissioned a report by Dr. Pat Armstrong and Dr. Tamara Daly to assess the key issues in long-term care homes, as identified by the nurses, personal support workers, maintenance staff, homemaking staff, dietary workers, therapists and recreational workers who are involved in caring for residents on a daily basis. The purpose was to assess long-term care workplace issues, including staff training, workload, perceptions of resident care, worker health and safety and the relationship between work and family life. Based on over 900 detailed surveys from workers in a random representative sample of non-profit and for-profit facilities in March and April 2004, professors Armstrong and Daly compiled an illustrative and disturbing catalogue of issues and challenges. The report is appropriately titled "There Are Not Enough Hands: Conditions in Ontario's Long Term Care Facilities".

Like Monique Smith's investigation and many other studies, the survey identifies staff shortages as the central problem. Unlike the ministry report, however, our survey indicates that shortages in every occupational category are critical to care. While shortages in nursing, therapy and personal care staff are vitally important, so too are shortages in laundry, dietary, clerical, recreational, housekeeping and maintenance staff. If the dietary and housekeeping staff are not there, nursing staff end up doing cleaning and feeding. Our survey finds that future shortages result not only from the pay inequities and poor conditions that Smith identifies, but also from the aging of the workforce. A majority of our members surveyed were 45 and older, and one in five have worked in long-term care homes for over 20 years. Further our study shows that shortages in formal staffing levels, recognized by Smith's report, are in actuality even lower due to a failure to replace absent staff members.

Like the Smith report, our survey reveals a deeply disturbing lack of care. Heavy workloads mean that there is not enough time to complete tasks in a way that complies with standards. Nearly one in five reported that they are able to complete their tasks to established standards less than half the time. An additional 14.3% report they are *never* able to do so. The survey authors tallied the types of care that are going undone:

> "We asked workers to indicate whether specified tasks were completed or left undone in the seven-day period prior to responding to the survey. What we found is disturbing and goes far beyond a lack of baths, appropriate food and recreation.... Nearly 60 percent of the time workers don't have the time to provide emotional support (59.8%), while walking and exercising of residents is not done more than half the time (52.3%). More than 40 percent of the time, recording, foot care, and providing

> support to co-workers is left undone.... More than 20 percent of the time, turning of residents, bed changing, room and bathroom cleaning, learning necessary skills and other unspecified tasks remain to be done. Bathing and building maintenance are left undone nearly 20 percent of the time. Nearly 15 percent of the time (14.7%), workers are unable to attend to clothing changing. Finally, referral to outside medical support is left undone more than 10 percent of the time. Nearly ten percent of the time (8.5%), feeding is left undone!"

The consequences of more residents with complex and heavy care needs were evident. The authors of the study found,

> "... Alarming rates of violence among residents and against workers and of both illness and injury. Within the most recent three-month period, almost three-quarters of workers have experienced some form of violence directed at them from one or more individual residents (73.3%). The combination of rising acuity, inadequate staffing and facilities creates conditions that are dangerous for workers' health. A stunning number (96.7%) in our survey reported having been ill or injured as a result of work in the past five years (1999 - 2003). More than 50% report that work caused illness or injury more than 11 times during this time period."

The proposed legislation must tackle the serious issues of understaffing and illness and injury revealed in our research, and echoed in many other studies. The government must recognize that the levels of care are inadequate and unsafe, and that the rates of illness, injury and violence in facilities must be recognized and prevented. We believe it is unconscionable to leave vulnerable and dependent adults without enough care to provide adequate feeding, bathing, repositioning and activation. It is also unconscionable for the government to knowingly allow the continuation of inadequate regulation that has created understaffed workplaces in which caregivers are punched, kicked, strangled, injured and made ill while attempting to provide care.

Long-term Care Homes Are Homes and Workplaces

Obvious to all residents, family and caregivers in long-term care homes is that the homes serve as places where people live and where people work. These two central assumptions should be recognized in the legislation. The first, which is in the Framework Principle of the proposed legislation, is that long-term care facilities are residents' homes and should provide comfort, security and care. The second, which is not recognized in the proposed legislation, is that long-term care facilities are also places of work where workers are entitled to health and safety, freedom from violence and abuse, proper work supplies, appropriate physical conditions and sufficient staff

resources and support. The legislation should be amended to provide explicit recognition of these rights.

CUPE Ontario submits that the proposed Bill fails to recognize the importance of the staff and their need to work in a safe and supportive environment.

CUPE Ontario recommends that:

The Bill should be amended to add a new section under "Fundamental Principle" that recognizes long-term care homes as places of work in which "every employee is entitled to health and safety, freedom from violence and abuse, proper work supplies, appropriate physical conditions and sufficient staff resources and support."

Adequate Standards and Compliance

The first goal of any long-term care facility legislation should be to ensure that the assessed care needs of people residing in the facility are met. As it stands, the legislation fails to do this. To effectively ensure that the care needs of residents are met and to fulfill its obligation to provide sound oversight and accountability for the use of public funds, we recommend a province-wide minimum staffing standard that ensures sufficient hands-on staff to provide a minimum of 3.5 hours per day of nursing and personal care per day per resident. This is to reach the goal of prevention of risk, it is not an optimum. In addition, the government must fund and set standards for specialty units or facilities for persons with cognitive impairment who have been assessed as potentially aggressive, and staff them with sufficient numbers of appropriately trained workers. This recommendation is grounded in the best research available, as outlined below.

Despite decades' worth of evidence, reports, media exposes and regular chastisement by the Provincial Auditor, the proposed legislation does not reinstitute care standards and compliance mechanisms. The new legislation mentions care standards fleetingly in Section 36 in which it allows for - but does not require - standards to be put into regulation. This should be replaced with a clear commitment to establish staffing standards to ensure adequate care levels and a mechanism to measure and provide adequate funding to reach these staffing standards.

We are not alone in our deep concern that care levels are inadequate. The provincial auditor in 1995 and 2002 noted that inaction on issues such as the staffing mix and appropriate levels of funding meant that there was no basis to assess whether funding in the sector is appropriate to meet the assessed needs of residents. In addition, the auditor criticized the government for inadequate financial reporting, inadequate inspections, the lack of action to address the findings of the 2001 PriceWaterhouse

Coopers Report, and inadequate tracking of contagious disease outbreaks.

As of the 2004 auditor's report, some improvements to the inspection regime and reporting requirements had been made. However, the collected staffing data is not available publicly, the appropriateness of the funding is not assessed - or if it is, the information is not available to the public - and no staffing standards have been created, despite the auditors' repeated recommendations. Further, the Ministry has never updated nor has it addressed the findings of the 2001 PriceWaterhouse Coopers report that found Ontario lagging behind all other similar jurisdictions in care levels and therapies while having significantly older residents with complex care needs including depression, cognitive impairment and behavioural problems. While every year funding has increased to the sector, there is still no assessment of whether funding levels are adequate to provide care to meet the assessed needs of residents. It is not clear what proportion of the new funding has gone to the expansion of the sector, and how much is going to increasing care levels. The best information available information puts Ontario's actual care levels still well-below the 2001 minimum standards of other jurisdictions, while the complexity and heaviness of care requirements continues to increase with further downloading of mental health facilities and aging.

From the 1995 study on overstretched long-term care staff by O'Brien, Pallas et al to the 2001 PriceWaterhouse Coopers Report and our own study by Drs. Pat Armstrong and Tamara Daly, the chronic inadequacy of the current system in Ontario is indisputably revealed. While we are generally supportive of the improvement in assessment that will likely result from the pilot projects using the RAI MDS 2.0 classification system, the union should be consulted for input and changes before it is fully adopted. Moreover, the change in assessment is insufficient to deal with the problem of assessing adequate staffing and funding. What is needed is the necessary framework of legislation, regulation and policy that would ensure that care and funding are aligned and provided at levels necessary to reduce harm and provide safe and sufficient care conditions. This relies on the reinstitution of a staffing standard.

There is no paucity of research from the last decade linking staffing standards to improved care outcomes and safety:

- Nova Scotia has adopted an increase in staffing hour guidelines from 2.25 to 3.25 hours.
- The US Health Care Financing Administration (HFCA) was federally mandated to deliver a report on whether there was an "analytical justification for establishing minimum nurse staffing ratios in nursing homes". The term "nurse" is used here to encompass RN, RPN and PSW/HCAs. The HCFA delivered two phases of its "Report to Congress: Appropriateness of Minimum Nursing Staff Ratios in Nursing Homes". Multivariate analysis and time motion studies yielded strong findings on the relationship between staffing and quality. They found that

preferred minimum levels existed above which quality was improved across the board. The total preferred minimum level was 3.45 hours of care, with a staffing mix of aides, RPNs (or equivalent) and RNs.[1]

- The HCFA found that patients in understaffed homes are at a greater risk of preventable health conditions that led to hospitalization, including pneumonia, urinary tract infection, sepsis, congestive heart failure and dehydration.
- 37 U.S. States have established minimum staffing standards either in statute or in regulation.
- While Ontario axed its care standard, 13 U.S. states increased their staffing standards (between 1999 and 2001).[2]
- The Institute of Medicine (IOM) report Improving the Quality of Long Term Care (2001) recommended the development of minimum care levels integrated with case mix adjusted standards concluding: "The committee concludes that in view of the increased acuity of nursing home residents, federal staffing levels must be made more specific and that the minimum level of staffing has to be raised and adjusted in accord with the case-mix of residents. The objective should be to bring those facilities with low staffing levels up to an acceptable level and to have all facilities adjust staffing levels appropriately to meet the needs of their residents, by taking case-mix into account."[3]
- The Coroner's Jury in the Casa Verde inquest recommended increased staffing and regulation, including a minimum-staffing standard.[4]
- The New Brunswick Liberal Party just won an election with a key campaign promise to phase in a 3.5 hour minimum staffing standard by 2008.
- A recent study by researchers from the University of Toronto and University of Maryland found that for each hour of care, injury rates for nurses and nurses' aides fall by nearly 16%. For every unit increase in staffing, worker injury rates decrease by two injuries per 100 full time workers. Study authors concluded that more hours of care provided per patient, the fewer the workplace caregiver injuries, which leads to better care.[5]

Finally, we are well aware that umbrella lobby groups representing the for-profit providers in the sector have been lobbying hard against standards. In fact, it was these same groups that were listened to by the Tory's almost a decade ago when standards of care were removed from the legislation all together. Clearly this was a mistake. The Liberal government needs to understand that when the voices that are listened to in relation to standards are those of the for-profit lobby, and when those speaking against standards of care win; that the residents, their families, and workers in the sector loose.

CUPE Ontario recommends that:

The Bill be amended to state that in addition to the regulatory powers given to cabinet in this section, cabinet *must* make a regulation setting a minimum staffing standard and appropriate staffing mix that must be met by all facilities.

CUPE recommends that this regulation provide a province-wide minimum staffing standard that ensures sufficient hands-on staff to provide a minimum of 3.5 hours per day of nursing and personal care per day per resident. This is to reach the goal of prevention of risk, it is not an optimum. In addition, the government must fund and set standards for specialty units or facilities for persons with cognitive impairment who have been assessed as potentially aggressive, and staff them with sufficient numbers of appropriately trained workers.

The Bill be amended to ensure that there is consultation on the assessment system adopted in the regulations. The pilot of the new classification system should be assessed with input from CUPE and it must be ensured that the special care needs of residents with cognitive impairment and those with aggressive tendencies are properly assessed and adequate care levels are provided to minimize risk.

The Bill be amended to provide that the provincial government is required to create and maintain a *provincial* funding model that is based on a uniform assessment tool across the province to ensure that there are uniform provincial standards and funding assessment tools across all LHINs. The funding model must provide adequate funding directed to the nursing and personal care envelope to meet the required staffing standard, adjusted to case-mix, as set out in the regulation and strong accountability as to how that money is spent.

Safety from Violence

While the proposed legislation includes provisions to deal with mandatory reporting of abuse and undefined neglect, it fails to address the serious problem of violence in Ontario's long-term care homes. The goal of government policy should be prevention of violence, not simply the reporting of violent incidents. Moreover, the startling rates of violence between residents or on staff by residents must be recognized and dealt with. Violence in the homes can be perpetrated by operators or staff on residents, and it can also be perpetrated by residents on residents or by residents on staff. There is an urgent need for the new legislation to explicitly recognize the increasing violence in the facilities – in all its forms – including resident-on-resident violence and resident attacks on workers. A closer look at the numbers shows the urgency:

In the last 5 years, violence in the homes has shown a precipitous increase.

- In 2004 violent residents attacked other residents 864 times and attacked staff 264 times, a ten-fold increase in five years.[6]
- In 1999 there were 101 assaults in the homes.[7]
- There have been 11 homicides in Ontario nursing homes since 1999 and 3,000 reported attacks.[8]

- Ontario health care and social assistance workers reported 5,333 violent incidents between the years 1997 and 2004, out of 12,383 reported by all workers, for an average of 1.21 incidents per 1,000 health and social assistance workers, compared to 0.17 incidents per 1,000 workers in other industries.[9]
- Annually, Ontario health care and social assistance workers lost 24.5 days per 1,000 workers due to violence, compared to four lost days per 1,000 workers in all other incidents.[10]
- Neil Boyd, a criminology professor at Simon Fraser University who is studying physical abuse in the health care sector, says the main reason for increasing violence is the aging population. He says abuse of workers occurs most frequently in long-term-care facilities, where residents have disabilities such as brain injuries, age-related dementia and chronic progressive diseases.[11]
- 60 - 80% of residents have some form of cognitive impairment.
- In 2005 - 140,000 Ontarians had Alzheimer Disease or related dementia. This number is expected to double to 307,000 in the next 25 years.[12]

CUPE Ontario recommends that:

Section 5 of the proposed legislation be amended to require that homes be safe and secure for residents and staff.

In addition, the safety of residents, our members, family members, volunteers and visitors requires that the new legislation provide the following:

- **access to and standards for special care units or facilities**
- **clear appropriate training guidelines and improved training opportunities**
- **clear guidelines for admission of residents with dementia and cognitive impairment and aggressive tendencies**
- **establishment of care plans for those with a history of violence prior to admission**
- **a stop to inappropriate downloading of patients from mental health facilities and acute care facilities into long-term care homes.**
- **a minimum staffing standard of 3.5 hours of care, to meet the goal of prevention. More care must be allocated to those with dementia and other cognitive impairment that results in agitation and aggression.**

Right to Care

There is nothing in the proposed legislation that provides any vulnerable and dependent Ontarian with the right to access care. In the former acts, the Fundamental Principle included recognition that the physical, psychological, spiritual, cultural and social needs of the homes' residents are adequately met. Indefensibly, this is now removed. This minimal requirement should be re-instituted in the proposed legislation. Moreover, the new legislation should require actual accountability for the Ontario government to ensure that staffing and funding levels are measured and provided on a basis that can reasonably be expected to ensure that any resident admitted to a home is provided care to meet their assessed need. Given the long and well-documented history of government negligence and the brutal statistics of violence, injury and death, this basic requirement of sound governance can no longer be ignored.

Since the intention is that the Ministry/LHINs will be evaluating access to determine transfers of beds from one geographic area to another, it is imperative that the legislation ensures that all Ontarians, regardless of their health area, have a similar standard of access to long-term care homes. Therefore, the Ministry and the LHINs must be held accountable in the new legislation for ensuring access at a reasonable level across the province. In the proposed legislation, placement coordinators are organized according to geographic areas. It is not clear if the geographic areas referred to in this section might be the LHINs. Given the size of the LHINs, and the high risk of death when residents are transferred - demonstrated so tragically recently in Sudbury - the new legislation should make it an explicit policy goal to ensure that people can access the care they need as close to their home communities as possible, with minimum disruption.

The setting of fees and assignment of beds to levels of accommodation that require increased fees for residents is left to regulation. The legislation should set a clear policy direction for these regulations so that fee levels are not increased above CPP increases, and that if the proportion of semi-private or private beds increases due to modernization of care standards and expectations, this does not result in out-of-pocket fee increases for residents.

CUPE Ontario recommends that:

The Bill be amended so that the Fundamental Principle includes "the recognition that the physical, psychological, spiritual, cultural and social needs of the homes' residents are adequately met."

The Bill be amended to require the government of Ontario to ensure that staffing and funding levels are measured and provided on a basis that can reasonably be

expected to ensure than any resident admitted to a home is provided with care to meet their assessed need.

The Bill be amended to state that approved and licensed beds be allocated with the goal of providing access to long-term facility care to Ontarians as close to their home communities as possible, with minimum disruption.

The Bill be amended so that the Preamble confirms a continued commitment that every Ontarian has the right to access appropriate care in their community.

The Bill be amended to provide a clear policy direction that fee levels not be increased above CPP increases, and that if the proportion of preferred beds increases due to the modernization of care standards and expectations, this does not result in out-of-pocket fee increases for residents.

A Culture of Respect and Openness

There is a significant consensus that Ontario's long-term care homes require a cultural shift. We agree. Our members report that they are run off their feet, stretching themselves beyond thin to provide care without enough staff, and blamed when they are unable to do the impossible. The legislation must include a recognition that the homes are both homes and workplaces; that staff should be treated as partners in setting and protecting care standards; that punishable offenses be clearly defined and communicated; that prevention of harm, not just reporting of it, be the goal; and that the culture of fear and reprisal experienced by our members be replaced with respect, democracy and transparency.

i. Recognize the experience and support the training of care workers
In the research conducted by Dr. Pat Armstrong and Dr. Tamara Daly[13], surveys revealed that a majority of our members were 45 and older, and nearly 60% have been working in long-term care homes for more than 10 years. Just over 20% have been on this kind of job for more than 20 years, with 10% putting in a quarter century or more. Thus, long-term care staff bring to their jobs years of skills learned through experience, as well as formal training. Section 71 of Bill 140 proposes that staff of the home "(a) have proper skills and qualifications to perform their duties; and (b) possess the qualifications provided for in the regulations." This does not adequately recognize qualifications obtained from years on the job.

Dr. Armstrong and Dr. Daly's research also found that actual staff levels might be lower than reported levels due to the failure to replace absent staff. Staff need adequate coverage for training to meet the goal of ameliorating care through improved training opportunities.

Given the make-up of staff at the homes and the need to ensure that actual staffing levels are adequate to provide care,

CUPE Ontario recommends that:

The Bill be amended so that the words "or their equivalent" be added to Section 71 (a) and (b) after the word "qualifications".

The Bill be amended so that Section 74 includes clear assurances of staff coverage for care during absences for training.

ii. Protect the rights and confidentiality of staff in screening measures

Section 73 of the proposed Bill is fraught with problems. The Union sees difficulties with the introduction of criminal reference checks. There are no checks or privacy considerations, level of checks and employee protection. Furthermore, we feel that the language of 73(3) is not clear in its intent.

The Bill should be amended to delete references to Section 73.

ii. Stop the casualization of care work

There is an urgent need to improve the conditions for care workers. CUPE Ontario has consistently opposed the casualization of care staff and is of the view that this Bill does not go far enough in attempting to reduce the use of casual staff and improve staff stability for better resident care.

CUPE Ontario recommends that:

The Bill must be amended to provide a defined commitment to reduce the use of agency staff in Section 72 (1).

iii. Act to prevent abuse, neglect and violence

CUPE has a proud history of leadership in anti-harassment, discrimination and equity work that should be recognized. Health care unions have valuable experience in campaigning against harassment and violence against women in the workplace. We should be treated as partners in reducing resident abuse and neglect.

The goal of the proposed new legislation should be prevention of violence, abuse and neglect. The legislation should be amended to include a strong commitment to fund continuing education for direct care staff including sensitivity training around equity issues and standards, and a provincial tripartite structure to oversee training and skills development.

We are deeply concerned about dangerous working conditions for caregivers of people moved from mental health facilities into long-term care homes. Special training to address the care needs and safety concerns regarding residents with psycho geriatric issues must be included here.

CUPE Ontario recommends that:

The Bill be amended to provide sensitivity training and the creation of a tripartite structure to oversee training and skills development. Special training to address the care needs and safety concerns regarding residents with psycho geriatric issues warrant special mention.

iii. Mandate inspectors to talk to staff

As Monique Smith found in her investigation, standards and both too low and too minimally enforced. While we applaud the introduction of regular, unannounced inspections, the legislation or regulations must mandate inspectors on regular inspection visits to talk to staff about conditions and concerns. Staff must be treated as a vital partner in enforcement, whose experience and observations are welcomed and encouraged. This would normalize staff reporting on conditions in facilities, would give it express authority and approval, and help tremendously to change the culture of fear and reprisal.

CUPE Ontario recommends that:

The Bill be amended to mandate inspectors to talk to staff when on regular inspection visits, and to discuss with staff any concerns about the facility.

The Bill be amended to ensure that it provides for the hiring of sufficient numbers of inspectors to do the important work set out in the legislation.

Section 144 (1) (d) should be amended to add "union representative, agent, or" before "counsel".

The Bill be amended to ensure that all facilities are inspected annually.

iv. Provide real protection for whistle-blowers

The whistle-blower protection in the legislation is inadequate. Staff that whistle-blow can still lose their jobs and will have to grieve or proceed to the Labour Board to get them back. This is a significant financial barrier to whistle blowing.

CUPE Ontario recommends that:
Section 24 (2) be amended to read:

Without in any way restricting the meaning of the word “retaliate”, the following constitutes retaliation for the purposes of subsection (1):

a) harassment, intimidation or coercing;
b) financial penalty;
c) affecting seniority;
d) suspension or dismissal;
e) denial of meaningful work or demotion;
f) denial of a benefit of employment; or
g) an action that is otherwise disadvantageous to the employee

Section 25 deals with complaints under Section 24 proceeding to the Labour Board or by arbitration under a collective agreement and falls short. In order to encourage reporting of incidents by employees, the Bill should ensure that processes are available to employees - unionized and non-unionized - who may have faced retaliation as a result of raising issues under Section 24. Furthermore, interim powers of reinstatement for Arbitrators and Vice-Chairs under the Labour Relations Act should be made part of this section in order to resolve issues, which arise in an expeditious manner.

Bill 140 should be amended to provide for expedited hearings and the issuance of interim orders under the Labour Relations Act.

v. Create advocacy structures

While the proposed legislation recognizes and gives a role to both family and residents’ councils, it fails to provide the resources, support and additional advocacy structures to empower residents, families and staff to become partners in the protection of care standards and promotion of safety. Inspectors should be mandated to talk to staff, families and residents on their regular visits. The Ministry should provide funding and support to establish and continue family councils. It is imperative that residents, family and staff have the ability to complain to a third party that is not the facility operator. Section 35 of the proposed legislation states that the provincial government may create an Office of the Advisor. It is hard to imagine a weaker model that could be introduced. This section should be withdrawn and replaced with an eldercare ombudsman who is mandated to investigate complaints regarding poor practices, standards and compliance by residents, families and staff. The ombudsman should be empowered to investigate complaints about lack of sanctions imposed by the Ministry on routinely non-compliant homes. Further, the proposed legislation contains potential sanctions for non-compliant homes, but there is no obligation for the Ministry to pursue sanctions for persistently non-compliant homes. This should be changed so that the Ministry is compelled to issue sanctions for persistent non-compliance.

CUPE Ontario recommends that:

The Bill be amended to require sanctions for persistent non-compliance.

The Bill be amended to create a Long-term Care Ombudsman Office to investigate complaints regarding poor practices, standards and compliance. The ombudsman should be empowered to investigate complaints about lack of sanctions imposed by the Ministry on routinely non-compliant homes.

The Bill be amended to provide funding and support to establish and continue family councils that are independent of facility operators, and to include only family members and their appointed representatives on family councils.

vi. Institute transparency and access to information
The lack of appropriate reporting and inadequate access to information has been documented by the provincial auditor and numerous media exposes on this sector. It should be required, at minimum, that any operator wishing to purchase beds, or receive in any way a license or a management contract in Ontario's long-term care sector, disclose all previous cases of criminal and civil convictions for fraud and negligence. Currently, there is no clear ability for the public to gain access to information about how much money is received by the facility in each funding envelope and how much is spent.

CUPE Ontario recommends that:

The Bill should be amended to ensure that operators wishing to purchase beds be required to disclose all previous convictions for fraud and negligence.

The Bill should be amended to provide the public with access to salary disclosure of for-profit homes executive personnel, profit levels, and financial reporting of income received and expenditures from each funding envelope.

Support for Public and Non-Profit Homes

Research from well over a decade of experience in the United States shows that care in non-profit and public long-term care homes is superior to that of for-profit homes. It is clear from the research that the problem in the for-profit nursing homes is not the staff; it is the lack of them. For-profit nursing homes are required by their corporate mandates and structures to take as much out of the homes that they can, while non-profits and public homes are required to provide the best care they can. When releasing his recent study showing better performance in non-profit versus for-profit nursing homes, University of Toronto PhD candidate Michael Hillmer noted that the difference "could be as simple as them being required to put any profits back into the homes." His study found non-profits performed better, especially in measures of patient care, than for-

profits. Findings in the for-profits included higher rates of pressure ulcers (bed sores) and use of psychoactive medications to subdue patients and more use of restraints.[14] His conclusions were echoed in the June 2005 release of the University of Toronto, University of Maryland study on caregiver injuries and staffing levels in nursing homes. Lead researcher Dr. Carles Muntaner state, "Reductions in staffing ratios and numbers of staff hours lead to lower quality of care. At the end of the day, it's a policy option, but the consequences are clear. If you try to squeeze the budget to maximize profits, it creates the dangerous situation we see in the United States."[15]

The legislation must include strong message of support for public and non-profit delivery of care. As it stands, the proposed legislation will promote further for-profit privatization. Transfers from non-profits to for-profits are allowed as specified in the regulations. Municipalities in the North are no longer required to have homes. This allows the balance of homes to shift further to profit seeking multinational companies. In keeping with the principles of democratic non-profit and public governance, the process regarding licensing should be made open and transparent.

CUPE Ontario recommends that:

To protect and promote non-profit and public delivery of long-term care, CUPE Ontario recommends that:

The Bill be amended to ensure that all municipalities be required to operate a home.

The Bill be amended to ensure an increased ratio of non-profit to for-profit homes.

The Bill be amended to ensure that there is no conversion of non-profit or public homes to for-profit homes.

The Bill be amended to require that all new capacity be built in public and non-profit entities.

The Bill be amended to ensure that public consultation regarding licensing includes a provision for appropriate public notice of consultation, a requirement to respond to questions and concerns, and access to documentation.

Interim Manager, Rules Relating to Employees

Section 155 provides for the appointment of an interim manager where one is appointed under Section 154 of Bill 140. CUPE Ontario is concerned that the Bill as currently

proposed might result in labour relations instability in the facilities where an interim manager has been appointed and impact on resident care. Furthermore, the current proposal may lead to labour relation's chaos at the facilities. It is the position of the Supreme Court of Canada in its 2006 decision Industrial Wood and Allied Workers of Canada, Local 700 and GMAC and TCT Logistics [2006] 2 SCR 123 that the Labour Relations Board under the Labour Relations Act has the jurisdiction to determine who is the successor employer. CUPE Ontario agrees that the Labour Board has the jurisdiction to determine labour relations issues that arise from the appointment of the interim manager and other matters that may arise from the appointment and sales of businesses that may derive from it. Employees and those covered by collective agreements should not be treated differently than other employees working in other sectors. Employees covered by collective agreements should be able to continue to work under the same terms and conditions of employment when an interim manager is appointed.

CUPE Ontario recommends that:

The Bill should be amended to provide for as little disruption as possible at facilities where there has been an appointment of an interim manager by deleting Sections 155 (7) and (9).

Other

There are potential regulations under many sections of the legislation. However, there is no process required for consultation on these. The proposed legislation should be amended to balance the powers the government has given itself to regulate with an obligation to consult on the regulations.

CUPE Ontario recommends that:

The Bill should be amended to include a provision requiring the Minister to provide province-wide consultation on the introduction of any regulations introduced under Bill 140.

The government should institute consultation on adequate regulation of retirement homes.

CUPE Ontario recommends that:

The Bill should be amended to include a provision that would require province-wide consultations on adequate regulation of retirement homes.

Footnotes

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1. Health Care Financing Administration "Report to Congress: Appropriateness of Minimum Nursing Staff Ratios in Nursing Homes" Phase One and Phase Two Reports.
2. See Harrington, 2001.
3. Institute of Medicine, Improving Quality of Long Term Care, 2001.
4. Coroner's Jury Recommendations. Casa Verde Inquest. 2005.
5. Medical News Today (medicalnewstoday.com). June 29, 2005. Study published in the American Journal of Public Health, July 1, 2005.
6. CBC News. April 19, 2005.
7.Ottawa Citizen. October 21, 2006.
8.Ontario Nurses' Association. Submission to Coroner's Inquest into deaths of Ezz-El-Dine El-Roubi and Pedro Lopez at Casa Verde Health Centre.
9.CBC News. April 25, 2006.
10. Ibid.
11. CMAJ 1998;159:983-5
12. Alzheimer Society Ontario. Position Paper on Casa Verde Recommendations, September 2005.
13. Dr. Pat Armstrong and Dr. Tamara Daly. "There Are Not Enough Hands: Conditions in Ontario's Long Term Care Facilities" 2004.
14. Hillmer, Michael et al. Study is published in Medical Care Research and Review, April 2005.
15. Medical News Today, June 29, 2005.

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