

SUBMISSION TO THE STANDING COMMITTEE ON SOCIAL  
POLICY

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**BILL 140**  
**AN ACT RESPECTING LONG-TERM CARE HOMES**

Canadian Pensioners Concerned, Ontario Division

Presented by:

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## Brief on Bill 140

Canadian Pensioners Concerned Inc. (CPC), founded in 1969, is a national and provincial voluntary, membership-based, non-partisan organization of mature Canadians committed to preserving and enhancing a humanitarian vision of life for all citizens of all ages.

CPC began with a special concern about whether retirement income would allow for a good quality of life for seniors. We have expanded our interests over the years to include all age groups and especially those who by virtue of illness, physical or psychological impairments, age and/or economic need are especially vulnerable in a society driven by the market place and economically determined values, often to the exclusion of other social values that sustain and enhance a fair, just and inclusive social order.

We are grateful to the members of the Standing Committee for giving us time to make a presentation to you on this proposed legislation.

### **Introduction**

We are particularly pleased that the government has taken the time to research and review the evidence that has been accumulating that there is a need for new legislation dealing with this complex area of health and social policy. We commend them for the effort they have made to consult widely and to listen to what they have heard. We are very supportive of most of what is included in Bill 140 but believe that there is room for some improvements.

We have five overarching themes that inform our brief:

- 1. The primacy of Non-Profit provision of care in the Ontario Health Care system.**
- 2. The need to give explicit and precise recognition to the ethno-cultural needs of Ontarians in this legislation.**
- 3. The critical importance of protection for the residents of Long Term Care Homes.**
- 4. The need for training for all those providing services in the system of Long Term Care Homes.**
- 5. The need for long term sustainable funding that will ensure that the excellent objectives of the legislation can and will be carried out.**

Our detailed brief follows the order of topics found in the Bill, however, for purposes of our presentation we will focus on the five themes noted above.

### **1. The primacy of Non-Profit provision of care in the Ontario Health Care system.**

Section 95(b) refers to the balance between for-profit and non-profit provision and we believe this is inadequate. As in the discussions over the Act creating the LHINs many people argued for the primacy of the non-profit sector – and won. We are also concerned about the one-sided handling of the transfer of beds (**Section 103**)

**2. The need to give explicit and precise recognition to the ethno-cultural needs of Ontarians in this legislation.**

The absence of explicit requirements to meet the ethno cultural needs of Ontarians is striking. We have provided recommendations in a number of areas where this must be addressed such as the Residents Bill of Rights, Training programs etc.

**3. The critical importance of protection for the residents of Long Term Care Homes.**

Too many cases over too many years have brought the public's attention to the vulnerability of people living in Long Term Care homes. We strongly support the actions taken by the government in this legislation to ensure protection for residents but we believe that more can be done. Some examples are the use of more definitions in the interpretation section; the number of registered nurses; minimizing of restraints; inspections and enforcement; and training requirements.

**4. The need for training for all those providing services in the system of Long Term Care Homes.**

We commend the government for recognizing the importance of training for all those working for and with residents in Long Term Care Homes. However, we argue that more can be done and there is a need for clarification of the requirements found in the Bill. Some examples of what we have looked at are the standards and programs of training, and the requirement for training in the ethno cultural needs of residents, the elimination of abuse and neglect.

**5. The need for long term sustainable funding that will ensure the excellent objectives of the legislation can and will be carried out.**

We realize that levels of funding are not part of this legislation – nor can they be. However, we are deeply concerned that unless the funding is stable and adequate to carry out the excellent intentions of this Bill, the system will fail and the people of Ontario will have lost an important opportunity to protect the lives of their vulnerable citizens.

## Brief on Bill 140

### Part I Interpretation

We find some definitions lacking in clarity or are missing and thus request that work be done on the following:

**Restraints:** No definition is provided and we believe that, given the history of this issue, a clear definition should be in the section on interpretation.

**Abuse:** We believe that the definition should be expanded to cover the less obvious forms of abuse and thus be more reflective of what we know happens in our society and institutions, e.g. slurs, subtle intimidation etc.

**Needs:** No definition is provided though there is reference throughout the Act to the term. We have not found any reference to **ethno-cultural needs** except in a minor reference to the spiritual needs. (**S. 13**) (e.g. examples would be the different physiological or psychological needs)

Furthermore, we have found no reference to the need for **dental care** at any place in the Act. Dental health is essential to the good health of residents.

**Consent to Treatment:** We believe that it would be helpful if a clear definition was provided in this section. It would clarify for both residents and substitute decision-makers exactly what it means – especially the right to refuse treatment.

### Part II Residents Rights, Care and Services

We are pleased with many of the sections outlined in the legislation but recommend the following changes be made:

#### 1. Bill of Rights

a) The Bill of Rights must protect the Human Rights of everyone. The connection must be explicit.

b) The Residents Bill of Rights must include the right of “advocacy”. Residents and family members are frequently intimidated about complaining about services and treatments. They fear retribution if they complain. (**S. 5**)

The Director and Ministry should operate on the assumption that complaints are not frivolous until proven to be so. There should be an Annual Report for each Long Term Care Home that summarizes the valid complaints and their resolution.

c) Every resident should receive the care they need.

d) Awareness and responsiveness to **Ethno-cultural** services must be part of the Residents Bill of Rights.

## **2. Plan of Care (S.6)**

A **Plan of Care**, written in ‘plain language’, must be given to the intended recipient and their substitute decision maker. This will give them the necessary information with which they can agree or disagree in consultation with their medical care provider.

## **3. Care and Services**

**Section 7.1** We believe that a minimum level of care must be re-instituted **but** do not want to see that minimum become the maximum. We defer suggesting what that standard should be to those that have expertise and experience in this area.

**Section 7.3** We believe that the requirement of a minimum of one **registered nurse (RN)** is not adequate. We would like to see the requirement modified to take into account the number of beds and the complexity of care required by the residents. We should note that only ‘RNs’ may provide some procedures.

### **Section 8-10**

**Restorative, Recreational and Dietary Services** must take into account the **ethno-cultural needs** of the residents.

### **Prevention of Abuse and Neglect**

**Section 17** As we have said earlier, the duty to protect from abuse and neglect must have a broader definition in order to cover the broader range of abuse and neglect that occurs. There must be a clear role and responsibility for the Ministry in this matter. All protection policies and training programs must require Ministry approval and be part of the licensing requirements.

### **Minimizing of Restraining (Sections 27-34)**

The legislature has acted in the past on this issue and we need to ensure that the human rights of all residents are adequately protected in this Bill. The Bill must protect those deemed to be capable and those deemed incapable and that the resident must agree to the use of restraints unless they are legally proven to be incapable. We are aware of abuses that have existed in this area but defer to the greater knowledge and understanding of the legal issues in the advice given to the Ministry by the Advocacy Centre for the Elderly. .

## **Part III Admission of Residents**

### **Section 37-53**

We support many of the provisions in this section but we are raising two specific matters.

- 1.** We have been concerned for a long time that hospitals have ‘forced’ (or threatened) people into Long Term Care Homes against their will, with no regard for the patient’s or their family’s needs or wishes. This has been done with the knowledge of the Ministry despite the fact it is contrary to current legislation. This practice must be stopped. Only an independent organization, with trained staff, should have the right to act on the placement of people in to a Long Term Care Home. This role should be one carried out under the LHINs. If these organizations “shut their eyes” to breaches of the law, then

automatic and severe discipline must follow.(The recent article in the Saturday, January 13 edition of The Toronto Star is a current example of the use of intimidation in this matter)

2. No home should be allowed to “cherry pick” its residents, thus no home should be allowed to refuse admission without a transparent Appeal Process in place.

#### **Part IV Councils**

##### **Sections 54-63**

We are very pleased with almost everything in this part of the Bill, however, we believe that Family Councils should be mandatory. We suggest that the licensee should be required to stress the importance of Family councils and to note the time limited nature of any one person’s involvement. We understand that they can be hard to form but we believe the licensee should be required to try and to report quarterly on their efforts and to provide evidence of those efforts.

#### **Part V Operation of Homes**

##### **Sections 67-87**

**1. Section 74. Training** We are delighted to see the training requirements but believe that some changes need to be made:

- a) The Ministry should establish the standards and programs of training for the system.
- b) The application of the training requirements be further clarified to show exactly to whom it does or does not apply; i.e. the issue of outside temporary hired service workers such as plumbers, electricians etc.
- c) Ethno-cultural needs must be covered in the training package;
- d) Attendance at training sessions is compulsory for all staff.
- e) All homes must have a budget allocation that, as a minimum, meets Ministry standards.
- f) Funding must be provided by the Government to cover the cost of this training.

##### **2. Section 76 Residents Information Agreements**

It was not clear to us whether the Information packages and Agreements must be standardized in terms of language and format. We argue that they must be in **complete compliance with all the relevant legislation and have been approved by the Ministry and the Director.**

**3. Section 87(1) Limits on temporary/casual staff** We are very pleased with the limitations on the use of temporary/casual staff. We have earlier told you of our concern about the minimal requirement for the employment of RNs and other staff.

## Part VII Licensing

### Sections 93 – 115

**1. Section 93.** We are delighted to see that the Bill requires licenses for the provision on nursing care. We trust it will end illegal operations and protect residents from abuse and exploitation.

**2. Section 95 (b).** This refers to the *balance* between non-profit and for-profit provision of services but is meaningless unless that ‘balance’ is defined. We fought for the primacy of Non-Profit in the Local Health System Integration Act , and won. We believe that the Non-Profit provision of services must be given primacy in this legislation too. Long Term Care Homes are a critical element in the health care system in Ontario.

**3. Section 100 (and Section 180 (3))**

We are concerned over the reference to a “maximum” of 25 years for a license. We believe that shorter, renewable terms are far more appropriate. We are concerned that the longer license term could cause problems around the appropriate handling of complaints.

**4. Section 103 (9)**

This section allows for the transfer of beds from a non-profit to a for-profit provider under certain circumstances. We are opposed to this and argue that if there isn’t another non-profit provider able to take the beds they should revert back to the Ministry.

Furthermore, there is absolutely no reference to the possibility of transferring beds from the for-profit sector to the non-profit sector if circumstances warrant it. We believe that should be included in the Bill.

## Part IX Compliance and Enforcement

### Section 139-170

**Section 141 (2) and Section 142 (b). Inspections**

We are delighted with the provision for unannounced inspections but argue that there must be **no exceptions (S.142(b))**.

Inspections will only be meaningful if the regulations clearly stipulate the licensing and regular training requirements of the inspectors. Reports of the inspections must be accessible to the public. We also believe that enforcement must be rigorous and the actions taken be reported publicly. Such reports must be available to all Residents’ and Family Councils and be provided in clear and simple language.