Toronto Area Interfaith Council

November 24, 2021

Members of the Legislative Committee,

Thank you for giving the Toronto Area Interfaith Council (TAIC) the opportunity to make a submission to you on Bill 37. TAIC is a multi-faith Council in Toronto that is concerned with the spiritual and material wellbeing of the residents of the City and especially those who live at the margins. One of these groups are residents of long term care homes.

Given the historic failure of government regulation of long term care homes and the care that is provided to residents, even prior to the onset of COVID - 19, Bill 37 is a deep disappointment. The Bill as currently worded will not ensure that residents are provided with the care they need and in a manner that is reflective of the dignity residents deserve. There are still no effective enforcement mechanisms. The Bill does not create the confidence needed to assure the public that staffing levels will be increased sufficiently, so that staff can truly care for residents and not simply rush from one resident to the next, engaging in nursing interventions.

Long Term Care facilities are supposed to be the homes of the residents. Residents should be able be in control of their lives, to the extent that they have the capacity to do so. That means that their wellbeing should be the focus of the operation of the LTC Home, as opposed to the administrative convenience and the profit of the Home operator. Residents should be able determine their waking hours, their meal times, their physical hygiene and their preferred social, recreational and educational activities. Finally residents should be able to welcome visitors whether family members, volunteers or otherwise at their discretion, in the absence of a clearly established more crucial public interest. The practice under COVID -19 breached this interest of the residents far too extensively.

Unfortunately there is nothing in the Bill that will implement the Butterfly or other equivalent approach to running a long term care home. In addition, there is nothing to empower residents to set their awake hours, whether in terms of wakening in the morning or going to sleep in the evening or even, to take a nap in their beds mid-day. Residents will still have no guarantee of a bath in a tub as opposed to a sponge bath in bed or to have showers at their discretion.

Residents have been refused the request to be toileted and have been forced to urinate and defecate in diapers. Residents have not been provided with support to eat their meals with dignity. Residents have not been

provided with sanitary living conditions, which result in unnecessary exposure to infection.

Residents need to be the focus of all activities in long term care homes. Their views must be effectively sought out and considered. The Assessment of how well things are, should include feedback from residents and families, and careful evaluation and attention paid towards these feedbacks, and a proper plan to implement and re-evaluate the improvements, needs to be decided upon and implemented in accordance with the feedbacks received.

All these deficiencies are in large part a result of the vastly inadequate numbers of nursing and personal care staff as well as housekeeping staff. Sections 8, 9 and 11 in the Bill only provide for targets and discretionary regulation. The timetable set out is far too lengthy. The targets themselves are not enforceable by either the residents or the staff who are denied sufficient support. The wording of these sections needs to be expanded to include housekeepers, firm qualifications for personal support workers who provide the bulk of the care and strengthened to provide firm standards that must be complied with by each individual home. All staff should be trained and expected to focus on **respect** and **care** rather than **speed of service.** Providing spiritual care to front line staff will be helpful. The 1 RN 24/7 requirement in Section 11 is far too inadequate and has been routinely waived by Ministry policy. Only RNs have the training to assess slight changes in resident condition. Residents will not be secure unless the RN staffing level is significantly strengthened in the Act.

Section 8 standards should be amended to require 3.25 hours of care by March 31, 2022 and 4 hours of care by March 31, 2023. Moreover resident care needs are not static, they are constantly increasing as the population ages and conditions become more complex. As of March 31, 2024 the 4 hour standard should be increased annually no less than the average increase in acuity and that the updated standard should apply to the home whose residents have the lowest level of acuity with proportionately higher levels of staffing for homes with higher levels of resident acuity.

There needs to be a right for all stakeholders to access an independent effective enforcement mechanism. Reliance on an “after the fact” 6 month report by the Minister is insufficient. Residents and their families have a right to know if staffing standards are not met. The Government website should be expanded to include staffing data, updated at least quarterly and should identify each home individually setting out their staffing levels in relation to the standard. As well, Inspectors should be mandated to require operators to

remedy within 48 hours any failure to meeting the staffing standards over a period no longer than 7 days.

Speaking of effective enforcement, there needs to be an accessible independent tribunal for residents and families to enforce the Resident Bill of Rights. The Tribunal created should provide free translators for residents with language and financial barriers, as well as counsellors to accompany residents and help them to advocate for their needs if necessary. As well the Inspection Process must be made more comprehensive and transparent. Surprise annual RQI inspections must be reinstated. It makes no sense for inspectors to be deprived of the same access to participation and information when it comes to protecting residents than is provided to protecting workers under the Occupational Health and Safety Act. The appeal process should be more balanced just as is the case under OHSA, as presently the only entity with the right to appeal inspection orders is the facility operator. There needs to be a counterbalancing right to appeal if the Inspectors report dealing with failures to meet legal requirements is felt to be inadequate.

While the Bill mandates the requirement to create Emergency Plans covering events like the pandemic, there are no standards on what must be included in these plans. At the very least the Bill must be amended to require the Operator to comply with the “precautionary principle” and provide plentiful access to PPE and proper qualified staff for Infection Control and Prevention Leads.

Finally meaningful legal accountability must be restored.

Firstly, the Ministry and the public will not be made aware of deficiencies in any home unless persons, whether residents, family members or staff are willing to come forward and spill the beans. That won’t happen however if these persons are worried about retaliation, that they will be denied care, access to their family members or loss of employment benefits or their jobs altogether. Whistleblower protection must be strengthened. Community advocates should be consulted to identify what meaningful whistleblower protection would look like for residents and family members. For workers, the Ontario Labour Relations Board should be mandated to oblige the operator to reverse any action taken against an employee who made a disclosure and not re-impose that action unless and until the Employer is able to satisfy the relevant labour tribunal that its action was taken for sufficient misconduct and was not in any way motivated by the whistleblower disclosure.

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Secondly, Bill 218 which relieved Homes of civil liability for damage from COVID-19, if not repealed altogether, must be amended to no longer remove liability for any damage from COVID-19 on or after October 28, 2021, the day Bill 37 received First Reading.

Thirdly, where fines are imposed they should be paid by the parent corporation which ultimately owns the license and not by the licensee itself. Fines paid by the licensee merely remove those funds from meeting the needs of residents.

Finally, “for profit” long term care homes have demonstrated that they are not civic partners in the effort to provide care to residents. Even prior to COVID-19 such homes have historically provided lower levels of staffing and had higher instances of contraventions than not for profit and municipally run homes. For profit homes have had far higher instances of COVID-19 outbreaks and deaths than other homes. The excuse given by the “for profit” sector does not stand up to critical review. They claim that it is not the nature of the operator but the size and age of the home which are the key factors in higher COVID-19 damage. However it is the for profit sector that generally declined to redevelop their homes falling into this category because they were unsatisfied with the level of reimbursement from the Province provided to homes for capital redevelopment.

The stated rationale for the Province to continue granting licenses to the for profit sector is that not for profits have difficulty in accessing financing. However the for profit sector isn’t paying the cost of financing. As stated above they are reimbursed by the Province and in fact the Province can access financing at a lower interest rate than is available to the corporate sector. Thus by continuing to make use of the for profit sector, the Province is increasing its own costs for the redevelopment and expansion of long term care capacity. The Province could raise the funding for capital expansion and redevelopment directly and make those funds available to the not for profit sector.

The amendment to the preamble to expand the “priority” clause to “mission centred” organizations beyond the not for profit sector should be deleted. Part VIII of the Bill as currently worded deletes accountability criteria regarding accountability of licensees and applicants. These provisions must be reinserted.

If the government is going to permit any continuation of the for profit sector when licences are renewed or new ones granted, then the capital funds that the Government provides to such operators must be designated as a debt to

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the Province secured by a lien on the property. If the property ever ceases to be operated as a long term care home, then the debt should be immediately repayable to the province and accrue interest until it is repaid.

This legislation is being subject to a very rushed process with little time for proper engagement and review by the public. It is therefore unlikely to be a comprehensive long lasting “fix” as is mentioned in the title of Schedule 1, nor given the crucial nature of Schedule 1 has there been any meaningful assessment of the content of Schedules 2 and 3. The Bill therefore should also be amended to require a review in 12 months by a legislative committee with at least two weeks of public hearings in communities across the Province with at least one month’s notice of such hearings.

All of which is respectfully submitted by the Toronto Area Interfaith Council.

Sincerely,

Zul Kassamali
President
Toronto Area Interfaith Council