

To: Members of the Standing Committee on Justice Policy

Re: Bill 218, An Act to enact the Supporting Ontario's Recovery Act, 2020.

November 4, 2020.

My name is Malcolm Buchanan and I am the President of the Hamilton, Burlington and Oakville Chapter of the Congress of Union Retirees of Canada [HBO CURC]. I applied to seek standing before the Standing Committee regarding Bill 218 but to no avail. So my only option to address my concerns about Bill 218 is to directly email you.

HBO CURC represents approximately 6,000 members and their families in the Hamilton, Burlington and Oakville areas.

HBO CURC members are gravely concerned about the present status of Ontario's long-term care homes, especially how long-term care homes have dealt with the coronavirus and the impact on their residents. HBO CURC is aware about the chronic and persistent underfunding by successive governments and corporations has resulted in understaffing, overcrowding, low wages and difficult working conditions in Ontario's long-term care facilities, all of which contributed to the high number of deaths during the first wave of the pandemic. To date, nearly 2,000 residents in Ontario's long-term homes have died as a result of COVID-19. Most of the deaths have occurred in private for-profit long-term care homes

HBO is aware that a class-action lawsuit has been filed on behalf of long-term care residents who contracted COVID-19 and their families.

Another lawsuit alleges that the Ontario government was slow to address a chronic staff shortage, in preventing staff from working in more than one facility, in providing face masks and other personal protective equipment for front line workers, and ensuring ill residents were separated from others.

Yet another lawsuit alleges that the provincial government is to blame for lax oversight and "wanton and callous disregard" to the vulnerability of the frail elderly during the pandemic. It states that the province was negligent in its regulation, oversight and control of the the long-term care system, breached its fiduciary duty-the obligation it owes to the vulnerable to ensure they are cared for-and violated the constitutional rights to personal security and equality of the residents.

The governments response to these and other lawsuits was to issue a statement of defence that stated: The government should not be held legally or financially responsible because there is no long-term care "system" it controls, and

because it does not "act as a guarantor of [long-term care] residents' health or safety". The statement went on to say that licensed operators, some for-profit, others run by municipalities or non-profits, are responsible for ensuring homes are safe and secure for residents.

The Ontario government denies that anyone in the proposed lawsuits, including the families, "suffered any loss or damages" and if they did, long-term care operators, not the government, are responsible. This is a chilling response.

This then is the background as to why the Ontario government has introduced Bill 218. It is designed to protect the interests of the government and its private for-profit long-term owners and operators friends.

Bill 218, if passed, would take effect retroactive to March 17, 2020, meaning that the legal rights of those who were infected, potentially infected or exposed to the coronavirus on or after March 17, 2017, will be compromised by the legislation no matter when legal action was initiated. There will be no compensation or relief for plaintiffs as a result of having their rights extinguished under Bill 218.

The Ontario Health Coalition and HBO CURC are concerned with the following:

Bill 218 requires those harmed as a result of exposure to and infection with COVID-19 to prove gross negligence rather than the current standard which is ordinary negligence. This is a significant difference which requires proof of a higher standard that is more difficult to prove.

Bill 218 redefines "good faith effort". Currently a good faith effort to comply with legislative, regulatory and policy requirements means a competent and reasonable effort. Instead, the Bill explicitly changes the definition to state "an honest effort whether reasonable or not".

HBO CURC is aware that some of the big for-profit long-term care corporations have for many years attempted to change legislation to reduce their liability and make it harder to sue them. Bill 218 is a gift to them.

HBO CURC is calling for Bill 218 to be either withdrawn or defeated.

Premier Ford is on record of saying that the long-term care system is broken and that he is going to build an "iron wall around long-term care homes" Instead, Premier Ford is building a "legislative iron wall of protection around the government and owners and operators of private for-profit long-term care homes from lawsuits".

Submitted by Malcolm Buchanan

President: HBO CURC

macbuchanan@rogers.com

[905]575-5639