



## © SENIORS FOR SOCIAL ACTION ONTARIO

# A MED MODEL OF ACCOUNTABILITY, ENFORCEMENT, AND DETERRENCE IN ONTARIO'S LONG TERM CARE FACILITIES

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Seniors For Social Action Ontario's second major objective is to improve the effectiveness of the Long Term Care Inspection Branch.

This report will detail the ways that SSAO believes it could be improved based on historical approaches that worked.

On April 25, 1983 Bob Rae, the Leader of the Ontario New Democratic Party at the time rose in the Ontario Legislature and made this statement: ***"One of the problems with institutional care, in general, is that institutions are a way of blocking people out; they are a way of segregating people. That is why we have been so supportive of the principle, and have argued for it throughout this entire decade, that wherever possible we should be caring for people in the community, and that as a general rule people, regardless of their background, regardless of their abilities or disabilities, regardless of whatever problems they may have, have the right to be cared for and live in the community as much as possible.....But as long as we have institutions, it is important that they be open to the public; that they be open to the light of day, to the fresh air of publicity, to the fresh air of people coming in and out, to the fresh air of doctors being able to come in -- the doctors of one's choice being able to come in -- to the fresh air of families being able at all times to come in and visit; and if I may say so, that they be open to the fresh air of being able to raise one's voice in complaint and not have to be worried that as a result of that complaint there would be reprisals taken, or steps taken, or threats made, or services cut off, or a change in attitude on the part of those who were administering the care."***<sup>1</sup>

### The History

In the 1980's what was then the Nursing Home Inspection Branch worked more closely with community advocacy groups like Concerned Friends<sup>2</sup>, responded quickly and effectively to the concerns they raised, and assisted in rescuing children from a particularly bad nursing home in Stroud, Ontario, relocating them to residences in the community.

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<sup>1</sup> Bob Rae – statement to the Ontario Legislature, April 25, 1983 – 4 PM  
<http://hansardindex.ontla.on.ca/hansardespeaker/32-3/1005-44.html>

<sup>2</sup> Concerned Friends of Ontario Citizens in Care Facilities was established in 1980 by founders Betty Hatt and Olive Mitchell to be an advocacy organization working on behalf of residents of long term care facilities. Later Presidents – Patricia Spindel (a current co-founder of SSAO), Anne Marie Johnston, and Joan Fussell continued its original advocacy work and incorporated the organization. Concerned Friends' mission can be found here  
<https://www.concernedfriends.ca/advocacy/>

Concerned Friends regularly and repeatedly worked with the NDP and Liberals to have concerns about care in nursing homes raised in the Ontario Legislature. A brief was also presented to Minister Larry Grossman in September of 1982, Consumer Concerns And Recommendations Related To Nursing Home Care In Ontario, documenting the conditions in nursing homes, later described in the Ontario Legislature by Bob Rae, who referred to the report.<sup>3</sup>

Many of the concerns documented in 1982 by Concerned Friends continue to exist today – some made worse after the original gains in legislative reform and improvements to inspection and enforcement made in the 1980's were lost in the 1990's and 2000's after the original leadership had left, and intense systemic advocacy was abandoned.

### **A PC Minister Acts to Protect Residents**

Minister of Health, Larry Grossman initially decided not to renew Ark Eden's license, but later employed the Health Facilities Special Orders Act<sup>4</sup> specifically created to give him the authority to shut down Ark Eden nursing home after a Ministry-employed nurse manager was installed to operate the facility as it was being deinstitutionalized.

This case provides the precedent for the Ministry having one of its nurse managers operate a nursing home, and for the Ministry deinstitutionalizing it – relocating its residents to community residential accommodation with the assistance of community-based agencies, and in cooperation with a union.

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<sup>3</sup> Statement to the Legislature by Bob Rae: "We then have the brief of the Concerned Friends of Ontario Citizens in Care Facilities, the relatives of people in institutions in this province. This is an organization which has done a tremendous amount to get this issue into the open and to give courage and confidence to residents and to friends and relatives of residents who are caught in this labyrinth of secrecy, this labyrinth of free enterprise, and in decisions taken which prevent them from being able to provide adequate care for their families. They say, for example: "Within the membership of this organization we have now documented situations involving neglect through confidential feedback from relatives who visit homes frequently."

"The same concerns surface again and again: Poor nutrition; lack of cleanliness; poorly trained staff; staff unwilling to relate to residents or relatives; people left sitting on bedpans for long periods; over-medication of residents; mysterious injuries, unexplained bruises; injuries left untreated; bedsores. There is the lack of any kind of stimulation, which in turn leads to more institutionalized behaviour; no resident or relative input whatsoever in the development of care plans, medical treatment and/or assessments without consent; misuse of form 1 as a means of moving residents into psychiatric facilities; inappropriate moves and transfers to other facilities without consent; total loss of privacy and dignity; inadequate personal care and hygiene. And it goes on and on."

<sup>4</sup> The Health Facilities Special Orders Act was written specifically to allow then Minister Larry Grossman to close the Ark Eden Nursing Home in Stroud, Ontario after a Coroner's Jury found that one of the residents had died with complicating factors of dehydration, malnutrition and hypothermia – see Inquest into the death of Yves Soumelidis. <https://www.ontario.ca/laws/statute/90h05>

At the same time that he announced the non-renewal of Ark Eden's license, Mr. Grossman also announced the inspection of 18 other children's nursing homes, and thus began the process of deinstitutionalizing all of the children living in them (UPI Archives, 1983).

Sadly, in spite of Yves Soumelidis, a young resident having died of pneumonia with related factors of malnutrition and dehydration there, Ark Eden's operator had his license reinstated by the court, which allowed him to continue to operate. However the children were removed, never to return to this facility. This exchange between the New Democratic Party health critic and the Liberal Premier of the day, David Peterson, demonstrates the degree of commitment at the time by all political parties to protect the children from ever having to go back to Ark Eden. The commitment of former PC Health Minister Larry Grossman and NDP Health Critic, Ross McClellan were especially admirable.<sup>5</sup> Both deserve enormous credit for their actions in protecting the children.

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<sup>5</sup> **Mr. McClellan:** In the absence of the Minister of Health, I wish to ask the Premier a question about today's Court of Appeal decision with respect to the Ark Eden Nursing Home. The Premier will be aware that 42 young people were rescued from the Ark Eden Nursing Home and placed in community facilities as a result of a joint endeavour between the Ministry of Health, a number of community associations and the Reena Foundation. The Court of Appeal has ruled that the Ministry of Health did not have the power to revoke the licence. My first question is, will the Premier give us his assurance on behalf of the government that no mentally retarded developmentally handicapped young people will be placed in the Ark Eden Nursing Home?

**Hon. Mr. Peterson:** The facts as outlined by the honourable member are essentially correct. I became aware of that judgement myself just this morning. Unfortunately, the Attorney General (Mr. Scott) is away. I can tell the member that both ministries are looking at the legal and practical implications of that Court of Appeal judgement. The member has asked me to make sure that no young people are returned to that facility now. I think it is fair to give that assurance pending the resolution of these legal problems. I do not know the answer to them, but I can assure the member they will have the very serious attention of this government.

**Mr. McClellan:** The Premier will understand there are still a number of children in homes for special care, such as the Ark Eden Nursing Home, who have not been rescued yet. The impact of this decision means he has no means to regulate the nursing home industry. I have the 1983 nursing home inspection report on the Ark Eden Nursing Home, which shows adult-sized patients in baby-sized cribs, no nursing stations, patients in restraints not positioned, nutritional problems, etc.

**Mr. Speaker:** Question.

**Mr. McClellan:** Will the Premier give us the commitment that when we come back in the second session of this parliament, he and his Minister of Health will have legislation before us which will give his Ministry of Health the power to regulate nursing homes in this province? As of now, he has nothing.

**Hon. Mr. Peterson:** I remember very well the discussions in this House a year ago, or two or three years ago, with respect to Ark Eden and some of the limitations of the power of the government. In response to that, the minister launched a review of the entire policy. I cannot tell the member absolutely that the minister will have that legislation ready for the spring session, but I will remind him of the member's concern. The member's concern about the patients is indeed the most serious concern, but the clients of Ark Eden will not be returned pending a resolution of these legal issues.

**Mr. Grossman:** I wonder whether the Premier will undertake to have his Minister of Health share with both opposition parties his intentions given the court decision, and his intention specifically with regard to what happens at Ark Eden? Is anyone going to be moved back? Who is going to go in? I ask the Premier simply to give us

In the end it was a Liberal Minister who completed the deinstitutionalization of children from these facilities.<sup>6</sup> This was a remarkable united response from all three of Ontario's political parties at the time.

Staff of Community Living Ontario, members of Concerned Friends, and CUPE Ontario worked together and with government to accomplish the rescue of these children.

Unfortunately today the will does not exist for these groups to undertake, collectively, this kind of systemic advocacy in spite of SSAO's best efforts to reach out and re-create these alliances. This is one of the reasons conditions continue to be as bad as they are in LTC facilities (SSAO, 2021).

### **What Worked Then In LTC Inspections?**

What was different then was that the Inspection Branch included:

- A Crown Attorney cross appointed from the Ministry of the Attorney General to prosecute nursing homes that were in violation of the Act and Regulations;
- A retired police officer trained inspectors in investigation, evidence gathering, and writing reports that would stand up in court;
- There was a Director under the Act who worked with resident advocacy groups like Concerned Friends of Ontario Citizens in Care Facilities, and responded to the concerns they raised with timely action;
- The Director issued Orders, and revoked or did not renew the licenses of facilities that placed residents in danger;
- There were annual, comprehensive inspections in place where full teams went in to do environmental, nursing, dietary, and fire inspections.

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the assurance that we will be notified before any final decision is taken by the minister.

**Hon. Mr. Peterson:** I just gave those assurances. Unless I am misunderstanding the honourable member's question, I think I just told the member that it is not our intention to move anyone back to Ark Eden. As I recall, he was the minister who closed Ark Eden, presumably in the absence of proper legal authority. Now we have to deal with those legal issues. However, the most important thing is that we protect those patients and anyone else from the kind of situation that existed in the past. The member can be assured that the minister will do the right thing on behalf of those clients. At this point, that is the most important thing as we review the legal issues to determine our next line of offence; if that is a change of legislation, then that is what it will be.

[https://www.ola.org/en/legislative-business/house-documents/parliament-33/session-1/1986-02-12/hansard#P217\\_48954](https://www.ola.org/en/legislative-business/house-documents/parliament-33/session-1/1986-02-12/hansard#P217_48954)

<sup>6</sup> When responsibility for people with developmental disabilities living in facilities was transferred from the Ministry of Health to the Ministry of Community & Social Services (MCSS) in 1974, MCSS took over the big "hospital schools" and began to deinstitutionalize the residents to community accommodation in their home communities. Unfortunately, because these 500+ children lived in private nursing homes rather than public facilities either operated by government or non-profit boards, they were forgotten and left behind (Verbal account of Dr. Dorthea Crittendon, Deputy Minister of Community & Social Services as told to Dr. Patricia Spindel in 1983)

## **Lessons Learned**

The Ark Eden example makes the case strongly for the need to ensure that evidence is gathered appropriately, reports that can withstand legal scrutiny are written, and that criminal charges are laid where appropriate against facilities in breach of the Act and Regulation. It also shows what can be accomplished when members of advocacy groups, unions, disability organizations and members of all three political parties work together to save lives.

It also shows that enabling LTC enforcement legislation must be bullet proof in withstanding court challenges from the long term care industry.

The non-renewal of Ark Eden's license by Minister Grossman, failed to withstand the court challenge by this private operator, and new legislation had to be introduced to strengthen the Minister's hand.

## **One More Reason Profit Does Not Belong In Care**

This case also illustrates why facilities for the care of vulnerable people should not be operated for profit.

The private long term care industry has historically challenged successive governments as they attempted to enforce legislation designed to protect residents, and it has consistently advocated for:

- Adjunct staff without PSW, RPN, or RN qualifications;
- Reduction in police Vulnerable Sector Screening requirements;
- Abandoning any plans to institute a PSW registry;
- "less punitive" inspection - "the ACTION line should be reframed as the 'Resident and Family Feedback Line' rather than a complaints line, which perpetuates a negative public perception of long-term care and a punitive approach."(Ontario Long Term Care Association, n.d. pg. 6)
- An end to yearly inspections (Payne, 2019).

Government should not be in the position of having to defend its actions in courts as it attempts to protect residents. Reducing and ultimately eliminating its reliance on the private sector in long term care would go a long way to ending the abuse, neglect, and substandard care we continue to see in these facilities. It would also end the undue influence this industry has on the development of government policy and make it easier for government to act to protect residents.

Many effective remedies related to inspection were removed by various governments after intense lobbying by the nursing home industry, and lack of successful systemic advocacy by resident representatives at the time. In looking over the demands made by the Ontario Long

Term Care Association, many have been addressed by government. The absence of a united voice to speak forcefully for residents has meant that there was little to no defence of more effective inspection approaches, and efforts to keep effective measures in place were not successful.

### **A MED MODEL: MONITORING, ENFORCEMENT, DETERRENCE**

What was effective then provides a lesson for what can work now.

SSAO is recommending a MED Model – monitoring, enforcement, deterrence.

This would include:

- **MONITORING:** Patient Advocate monitors hired by the Ministry of Long Term Care – 100 in total, to monitor 6-7 facilities each several times a week at varying hours of the day, documenting findings. These patient advocates would monitor conditions and care in the facilities, document concerns, and educate administrators and staff concerning required changes. To prevent a too close relationship with facilities patient advocates could be regularly rotated through different regions. This approach would provide more eyes on facilities on a regular basis as well as additional documentation to support prosecutions where required.
- **ENFORCEMENT:** Full inspection teams to go into facilities yearly, especially those flagged by monitors as being problematic. Nursing and dietary inspections should occur more frequently - both as part of comprehensive inspections and as part of complaint and critical incident investigations. Inspectors would need to be trained by police in investigation, evidence gathering, and report writing for the courts.
- **DETERRENCE:** 2 Crown Attorneys cross appointed by the Ministry of the Attorney General to the Inspection Branch to prosecute repeat violations of the Long Term Care Act and Regulation that put residents at risk, and to support license non-renewal, fines, cease admissions, and license revocation proceedings.

2 Police Officers hired by the Branch to conduct preliminary criminal investigations where concerns have been raised of serious harm to a resident or residents because of suspected criminal activities within a facility or where death and injury rates are higher than usual. These officers could liaise with local police departments concerning the need to proceed with criminal investigations where necessary.

3 Forensic Accountants attached to the Inspection Branch to conduct audits of facilities that are repeatedly short staff or needed supplies (PPE, resident care supplies), or who fail to meet the dietary needs of residents. Accountants could produce reports that may

result in prosecution of a facility and/or company, a cease admissions order until staffing levels meet residents' needs and adequate supplies are in place, or license non-renewal or revocation if it is shown that funds are not being used for their intended purpose. They could also monitor charges made to residents' trust accounts to determine if services were rendered for charges made.

Director's Referrals and Director's Orders to be issued more frequently based upon reports by Inspectors concerning repeated failures to meet Compliance Orders. This would provide more back up to inspectors than currently occurs.

Prosecutions and license non-renewals, fines, license revocations, and cease admission orders issued where appropriate based on evidence collected by inspectors.

All of these actions would serve as deterrents to companies and facilities and place pressure on them to improve the care of residents in their facilities.

The Minister needs again, to be able to invoke the Health Facilities Special Orders Act to take over a facility that is endangering its residents, install a nurse manager, cease admissions, and begin to reduce the resident population by working with municipalities and community agencies to create residential and in-home support options to return residents to safer, community accommodation with needed supports built in. Ultimately close facilities demonstrated to be unable to provide a safe level of care to residents.

All of these actions would better protect residents, hold operators accountable, and increase public confidence in the Inspection Branch. But none will be accomplished without the public becoming involved and demanding that these remedies be used.

**For this reason, SSAO continues to ask that its members write to their MPP's and copy the Premier and Ministers concerned to advance these badly needed reforms.**

## REFERENCES

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