

LEGISLATIVE UPDATE

January 27, 2025

Backgrounder

Decision on Charter Challenge to Bill 7, More Beds Better Care Act, 2022

I. Context

On April 12, 2023, the Ontario Health Coalition and the Advocacy Centre for the Elderly (together, the Applicants) filed a Notice of Application (Application) with the Ontario Superior Court of Justice (Court) alleging that Bill 7, *More Beds, Better Care Act, 2022* (Bill 7) infringes on the rights set out in sections 7 and 15 of the *Charter of Rights and Freedoms* (Charter).

Bill 7 amended the *Fixing Long-Term Care Act, 2021* (FLTCA) with respect to the management of patients occupying a public hospital bed that are designated as requiring an alternate level of care (ALC). The amendments allow a placement coordinator to perform certain actions, including applying for and authorizing a patient's admission to long-term care (LTC), without an ALC patient's consent or the consent of the patient's substitute decision-maker (SDM). Related regulatory amendments also require a public hospital to charge patients, including ALC patients, \$400 each day that they remain in a hospital bed after being discharged.

A hearing on the matter took place on September 24 and 25, 2024. On January 20, 2025, the Court released its decision¹ (Decision) finding that Bill 7, including the related regulatory amendments, did not infringe on ALC patients' section 7 and section 15 Charter rights and the Court dismissed the Application in its entirety.

II. Section 7 of the Charter

The Applicants alleged that Bill 7 infringes on ALC patients' right to life, liberty and security of the person and that the deprivation of such is not in accordance with the principles of fundamental justice, as provided for in section 7 of the Charter. In dismissing this allegation, the Court emphasized that there is no Charter right to publicly funded health care or for a person to remain in hospital when it has been determined they do not need the intensity of resources or services provided by a hospital. The Court additionally emphasized that section 7 of the Charter is not a tool authorizing courts to second-guess how the Legislature allocates scarce resources, like hospital beds.

Right to Life

With respect to an ALC patient's right to life, the Court found that Bill 7 does not impose an increased risk of death on a patient, nor does it prevent a patient from obtaining access to necessary health care. Further, it found that Bill 7 doesn't even prevent an ALC patient from remaining in a hospital bed after they no longer require hospital-level care; it instead requires the patient to pay \$400 per day,

¹ [Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario, 2025 ONSC 415](#).

LEGISLATIVE UPDATE

which was determined to be approximately one-third of the cost of the ALC patient's care while they remain in a hospital bed.

Right to Liberty and Security of the Person

The right to liberty protects the right to make fundamental personal choices, free from state interference, and the right to security of the person involves having control over one's bodily integrity, free from state interference. In assessing an ALC patient's right to liberty and security of the person, the Court found that Bill 7 does not:

- enact penal prohibitions or impose fines or imprisonment;
- compel an ALC patient to do or refrain from doing anything;
- authorize anyone to touch, restrain, or physically examine an ALC patient without their consent; or
- permit a hospital to transfer an ALC patient to a LTC home without their consent.

Instead, the Court found that Bill 7 permits a limited amount of an ALC patient's personal health information to be disclosed without their consent and that disclosure is integrally linked to the legislative purpose of the Bill. This information, once disclosed, still remains protected by the *Personal Health Information Protection Act, 2004*. By permitting a paper-based assessment of an ALC patient, Bill 7 enables a LTC home to determine if the patient could be safely admitted and this approach avoids the patient being physically examined, touched or tested without their consent.

While the Applicants argued that Bill 7 interferes with a "patient's fundamental right ... to choose where they will live," the Court found that ALC patients do not have a right to live in a hospital when they do not require hospital-level care. The Applicants further argued that the \$400 per day charge is unconstitutionally coercive and interferes with the exercise of informed consent. The Court rejected this argument, finding that there can be economic consequences to a patient's decision and being required to contribute to the cost of their care in hospital when they declined an available bed in a LTC home does not violate a patient's right to liberty or security of the person.

Principles of Fundamental Justice

The Court found that even if Bill 7 did limit an ALC patient's section 7 rights, such deprivation would be in accordance with the principles of fundamental justice. The Court noted that Bill 7 is not arbitrary, as there is a rational connection between the deprivation and the objective of the law (reducing the number of ALC patients eligible for LTC in hospital to maximize hospital resources for patients who need hospital-level care). Bill 7 was also determined to not be overbroad and its effects are not grossly disproportionate to its legislative objective.

III. Section 15 of the Charter

The Applicants alleged that Bill 7 infringes on the right to equal protection and equal benefit of the law without discrimination based on age or disability, as provided for in section 15 of the Charter. The Court rejected this argument, finding that Bill 7 affects all ALC patients waiting for LTC the same way, regardless of age or disability. The Court additionally noted that ALC patients waiting for LTC do not easily fit within an enumerated ground protected by section 15; and that membership in this group is

LEGISLATIVE UPDATE

transient in nature based on clinical assessment and the patient's own decision not to consent to certain LTC options available to them.

IV. Section 1 of the Charter

Section 1 of the Charter enables the government to limit a person's Charter rights if such limit is reasonable and demonstrably justified. The test for section 1 requires a law to have a rational connection between its impact and its objective, be minimally impairing, and have proportionality between its limiting and positive effects. While the Court determined that Bill 7 does not limit ALC patients' section 7 and section 15 rights, it considered the test for section 1 and found that even if it did limit their rights, the limitation is justified.

The Court confirmed that there was a rational connection between Bill 7 and its objective of reducing the number of ALC patients eligible for LTC in hospital to maximize hospital resources for patients who need hospital-level care. Evidence before the Court demonstrated that, as a result of Bill 7, ALC patients and their SDMs modified their behaviour and made different choices than they otherwise would have made.

In assessing if Bill 7 is minimally impairing, the Court acknowledged that it must show significant deference to the Legislature's decisions regarding health care spending while ensuring that the government acts within the limits of the Constitution. The Court found that the Legislature made a reasonable choice in enacting Bill 7 to address the legislative objective.

Finally, with respect to proportionality, the Court found that the benefit of Bill 7, which allows for faster transfers of ALC patients from hospitals to LTC homes, is significant and accrues to every individual in Ontario, whereas the harms to ALC patients caused by Bill 7 are modest and not serious.

V. Conclusion

In light of the Decision, Bill 7 remains in full force and effect. If you have any questions about Bill 7 or the Decision, please contact *Ashley MacDougall*, Legal and Policy Advisor at amacdougall@oha.com.