



EXTENDICARE'S INTERESTS OR THE PUBLIC INTEREST? A PUBLIC STATEMENT BY SSAO IN RESPONSE TO PREMIER FORD

On Friday, September 18, 2020 with yet another outbreak of COVID-19 at an Extendicare facility¹ with the infection and death rate rising, Mr. Ford made the following statement according to a press report:

"We have an outbreak in Ottawa right now at West End [Villa]. We've sent in the hospital to take over the long-term care, but the ownership of these long-term care companies, they have to take responsibility. And I'm calling out Extendicare. They have to take responsibility," said Premier Doug Ford during a visit to Ottawa on Friday.

"They're a good company, but we want to make sure that the front-line healthcare workers are protected, until they can protect the patients," he said."

Mr. Ford's statement was in response to a West End Villa employee reporting that staff of this facility was not provided with N95 masks. The Canadian Union of Public Employees (CUPE) called for action as over 40 residents had confirmed cases of COVID-19² and staff were seeing co-workers becoming infected and going

¹ "Extendicare is a Markham, Ont.-based company that owns 69 long-term care and retirement homes in Ontario, Manitoba, Saskatchewan and Alberta and provides contract services to 53 other Canadian long-term care homes. Extendicare made \$1.13 billion in revenue in 2019 and is on track to make more this year, even as the novel coronavirus devastates some of its homes. The company's revenue for the first quarter of 2020 was up \$6.1 million over the same quarter last year for a total of \$268.8 million, according to a press release last month. **Extendicare attributed the increase, in part, to government funding provided to help with COVID-19 outbreaks**" (Lum & Paling, June 11, 2020). https://www.huffingtonpost.ca/entry/extendicare-coronavirus-investor-payout-jagmeet-singh_ca_5ee2931ac5b62d56fb4d99fa

² In fact this facility had 78 cases of COVID-19 as of September 18, 2020 with at least 52 residents and 26 staff having tested positive. 8 residents had died. <https://www.cbc.ca/news/canada/ottawa/ontario-premier-west-end-villa-outbreak-covid-19-1.5730766>

off sick. They termed Mr. Ford's words "hollow" and said "the time for talk is over. Workers and residents need action" (Johnstone, September 19, 2020).

Seniors For Social Action Ontario (SSAO) is in full support of CUPE's statement.

Mr. Ford appears to be misinformed about Extendicare's track record if he still considers it a "good company".

What Is Extendicare's Track Record?

What follows are only some examples of Extendicare's track record in the U.S. and Canada. It shows a pattern of corporate behavior that, it is alleged, has created conditions for vulnerable residents that expose them to conditions that put them at risk.

2008

Washington State

A class action lawsuit was filed in Washington state against Extendicare and all Extendicare nursing homes there on behalf of residents living in its facilities between July 1, 2004 and July 1, 2008. It was alleged that Extendicare falsely advertised that it would provide high quality skilled nursing care in spite of the alleged short staffing and substandard care that was placing residents at risk.

An expanded lawsuit later filed in the same state alleged that "the homes admitted residents to boost their profits, with no regard for their conditions or whether facilities were able to provide the type of care the resident requires. The complaint also alleges that admission agreements Extendicare required residents to sign, violated state law by waiving liability for nursing home injury lawsuits and property loss" (About Lawsuits, October 7, 2008).

A family launched the class action after a loved one "died of brain damage from lack of oxygen after her windpipe closed when she was left alone for hours following a stroke" (Associated Press, August 22, 2008)

Minnesota

Extendicare was also accused of deceptive marketing practices in order to entice wealthy seniors to its facilities that it was claimed were “frequently cited for deficiencies and substandard care...Extendicare has a “green flag” policy of admitting all patients with certain high-reimbursement conditions whether its homes can meet their care needs or not, according to the lawsuit, filed Wednesday in the U.S. District Court in Minneapolis. The suit intends to represent all Extendicare residents in Minnesota, but names Laura Bernstein, a 59-year-old who has lived in Extendicare’s Texas Terrace facility in St. Louis Park...”Extendicare facilities are consistently cited by the Minnesota Department of Health ... for being in violation of applicable laws and regulations that results in substandard care for residents and violates their rights,” said Gale Pearson, the Minneapolis attorney who filed the complaint. “Yet Extendicare’s promotional materials claim that the company offers high-quality, skilled nursing care services and that it maintains quality standards above government regulations” (Olson, October 30, 2008).

2009 – 2012

“..between 2009 and 2012, they [Extendicare] had 43 civil lawsuits filed just in Kentucky, including five wrongful death claims. The company left that state after they were denied a corporate bailout. Additionally, the provider also left Florida and Texas in previous years, all soon after million dollar settlements were awarded in similar cases.”

<http://www.nursinghomeabuseguide.org/resources/extendicare-health-services>

Kentucky

Extendicare, which operated 21 nursing homes in Kentucky, left the state after lawmakers there refused to grant the company immunity protection from being sued for alleged negligent care of residents. Extendicare was being sued for wrongful death and negligent care, with at least 43 civil lawsuits pending filed since 2009 (Bello, July 8, 2012).

Toronto, Ontario

Also in 2012, it is alleged that “a resident of the Extendicare Lakeside Long Term Care Facility in Toronto, Piccolo, was discovered by on-duty staff shortly after the

attack on Feb. 18, 2012, slumped over the chair in his room, and drenched in his own blood. Blood was splattered all over the walls, floor and ceiling” (Rinaldo, February 9, 2013 and W5, undated).

Tecumseh, Ontario

Extendicare Tecumseh was in the news after a resident there “died in hospital as a result of complications from severe dehydration and blood loss.....In a lengthy report, a ministry inspector found Extendicare Tecumseh not only failed to follow-up on Ives’ concerns about her mother’s intestinal bug, it also did not address Deneau’s symptoms or complete the appropriate assessments. The home was told to comply with specific sections of the Long Term Care Homes Act by preparing three written plans of correction to ensure each resident is properly assessed for bowel and bladder function. Those plans were “to be implemented voluntarily,” according to the report. The home was also served with an order from the inspector to “prepare and submit a plan to ensure that all resident needs are addressed in a timely manner and are not neglected” (Fantoni, November 8, 2012).

2014 and 2015

Ohio

On October 10, 2014 the New York Times reported that Extendicare, at the time one of the largest nursing home chains in the U.S., had agreed to pay \$38 million after Federal prosecutors said that Extendicare’s executives had not hired enough “trained nurses to care for the patients in 33 of its homes, leading to what they described as “pervasive” problems, including failing to prevent serious falls and head injuries and failing to prevent bed sores.” It was also alleged that it had “inappropriately billed for physical therapy” providing care that prosecutors said was “effectively worthless” (Thomas, October 10, 2014).

A whistleblower who filed a False Claims Act lawsuit against Extendicare Health Services, Inc., also received \$1.8 million in connection with “allegations that the company provided inappropriate rehabilitation therapy services to elderly patients in order to increase Medicare billings. As part of a settlement announced today by the Department of Justice, Extendicare will pay \$10 million to resolve the allegations made in a whistleblower qui tam lawsuit filed in April 2010 by Tracy Lovvorn, a former Area Director of Rehabilitation at Progressive Step

Corporation, a division of Extendicare. In addition, Extendicare will pay Lovvorn \$990,000 in settlement of her claims for unlawful retaliation and attorney's fees" (BusinessWire, October 10, 2014).

Alberta

"Increasingly frustrated by the apparent reluctance of Alberta Health Services and the Alberta Government to enforce the Nursing Home Act and its required-staffing regulations, United Nurses of Alberta has taken the unusual step of going to court to force the province to enforce its own law.

UNA asked the Alberta Court of Queen's Bench yesterday to issue a writ of mandamus in the case of a nursing home in the town of Athabasca. The writ would order the province to enforce the Nursing Home Act and its Regulations which require the presence of a Registered Nurse in a facility legally defined as a nursing home..... in the case in question, a private, for-profit nursing home run by Extendicare Canada in Athabasca has been refusing since last fall to staff the site with RNs at any time" (United Nurses of Alberta, 2015).

2017 and 2018

Ottawa, Ontario

"A cognitively impaired resident at Extendicare Medex in Nepean was punched so hard by another resident that the impaired resident went flying three feet in the air, a July 2017 ministry report says. The resident was taken to hospital for treatment" (Fenton, December 18, 2017)

In November of 2018 W5 reported that over 200 families in Canada had joined in an "unprecedented lawsuit" against the three largest nursing home chains in Canada, including Extendicare. A family member, referring to an Extendicare facility in Scarborough said that her mother "was in diapers. She was always wet and dirty. To me, they didn't keep the place clean because there was a cockroach in bed with my mom" (O'Keefe, November 2, 2018).³

³ In 2017 a Canadian forensic accountant quoted in the W5 story said that Extendicare had paid its President and CEO just under \$4 million and had also paid out \$37 million to its shareholders. <https://www.ctvnews.ca/w5/groundbreaking-legal-action-alleges-nursing-home-chains-put-profit-ahead-of-care-1.4155852>

At the end of November, 2018, the Ministry had ceased admissions at the Extendicare Maple View facility in Sault Ste Marie because of “multiple concerns related to resident care” (Kelly, November 3, 2018). This kind of directive is only issued if the Director of the Long Term Care Inspection Branch has cause to think there may be serious risk of harm to the health or well-being of residents.

2019 and 2020

In May, 2019, a year before the pandemic struck, workers rallied in front of Extendicare’s head office in Markham, demanding that more of its profit be invested in direct care to residents.

Workers entered the head office asking to speak with senior executives about working and living conditions but were denied. Citing profits of \$31.7 million in the previous year from taxpayer funding, SEIU said that Extendicare facilities were consistently understaffed. "Extendicare is increasingly making it impossible for seniors to receive quality care," said SEIU Healthcare President Sharleen Stewart. "They have the profits to hire more staff, but to this point, haven't been willing to do so. If an executive is getting rich from government business, why doesn't a senior have the right to quality care?" (SIEU Healthcare, May 6, 2019).

Good question.

Three outbreaks of COVID-19 had occurred at a Timmins Extendicare facility in April, May, and July, 2020 (Hoggett, August 26, 2020). In August 2020 another staff member tested positive for COVID but no outbreak was declared (Papineau, August 26, 2020).

On February 23, 2020 the CBC reported that Athabasca Extendicare “locked up diapers to limit their use while incontinent residents sat in urine-soaked pads, suffering from severe bladder and yeast infections, painful skin rashes and open wounds.... The allegation is just one of many in a complaint filed in December 2018 with the College and Association of Registered Nurses of Alberta (CARNA), claiming that senior staff at Athabasca Extendicare — a facility 145 kilometres north of Edmonton — did not deliver proper care and hygiene to 50 residents and that the home was constantly understaffed.....Statistics from the Canadian Institute for Health Information indicate that from 2017 to 2018

the home had a reported urinary tract infection rate of 7.5 per cent, much higher than the national average of 4.3 per cent” (Johnson, February 23, 2020).

On April 17, 2020, 31 residents and 12 staff tested positive for COVID-19 at Bayview Extendicare. 5 residents had died (Wilson, April 17, 2020). Apparently residents weren’t being told much. “[I’m] scared. How can I avoid getting it?” said 73-year-old Patricia O’Connor, a resident at Extendicare Bayview. O’Connor is living with high-risk lung conditions, including Chronic Obstructive Pulmonary Disease (COPD) and emphysema, and has survived five heart attacks and a stroke. “I’d kind of like to know how close it is to me,” she said. In an interview, O’Connor said she was not made aware of the latest numbers until CTV News Toronto informed her of the update Friday afternoon. “Last I heard there were only 16 cases,” O’Connor said, adding that she wants staff to be more transparent with the residents” (Tong, April 17, 2020).

On April 28, 2020, Public Health Sudbury & Districts confirmed that an outbreak of COVID-19 had been declared at Extendicare York long-term care home in Sudbury (Public Health Sudbury & District, April 28, 2020). This is the same facility where in 2007 a man with a developmental disability was beaten to death by his roommate (Lacey, January 26, 2007).

In 2019 staff at another Extendicare facility – on Falconbridge Road in Sudbury, raised concerns about the company putting profits above care for residents (Carmichael, 2019). In both the York and Falconbridge Extendicare facilities, staff tested positive for COVID <https://www.manitoulin.com/covid-19-outbreak-declared-in-long-term-care-home-extendicare-york/>

<https://northernontario.ctvnews.ca/covid-19-outbreak-declared-at-sudbury-s-extendicare-falconbridge-1.5039373>

On May 14, 2020, SEIU made a formal request to Premier Ford asking the provincial government to take over control of Extendicare Guildwood after 96 residents and 16 staff members had tested positive for COVID-19. 24 residents had died (SEIU Healthcare, May 23, 2020). In June a family filed a lawsuit for \$8.3 million claiming that Extendicare had failed to protect their mother from COVID-19 (Adler, June 17, 2020).

Also in 2020 Orchard Villa, a facility with the highest death rate in the province and managed by Extendicare Assist was named in a major lawsuit filed by

families. Families also called for a police investigation of occurrences at the facility. The \$40 million class action suit alleged negligence in care provision to residents. The military report stated that residents were left in soiled diapers, and that there were cockroaches and flies in the facility and that infection prevention procedures were poor (Russell & Bell, May 29, 2020).

There appears to be a pattern here.

Corporations and Senior Executives Did Well While Residents Suffered

In 2020 the Toronto Star reported that “three of the largest for-profit nursing home operators in Ontario, which have had disproportionately high numbers of COVID-19 cases and deaths, have together paid out more than \$1.5 billion in dividends to shareholders over the last decade, the Star has found. This massive sum does not include \$138 million paid in executive compensation and \$20 million in stock buybacks (a technique that can boost share prices), according to the financial reports of the province’s three biggest publicly traded long-term-care home companies, Extendicare, Sienna Senior Living and Chartwell Retirement Residences. That’s a total of more than \$1.7 billion taken out of their businesses” (Oved, Wallace & Kennedy, May 22, 2020).

“Extendicare which owns 69 long term care and retirement homes and contracts its management services to 53 others, made over \$1 billion in 2019”(McLaren, August 19, 2020).

In June of 2020, the Federal NDP leader criticized Extendicare publicly for committing to pay \$10.7 million in dividends to its shareholders while spending only \$300,000 of its own money in response to the pandemic (Lum & Paling, 2020). This, in spite of Extendicare’s business update showing that “as at April 24, 2020, we have \$129.8 million of cash and cash equivalents on hand with access to a further \$70.2 million in undrawn demand credit facilities..... For the balance of 2020, the only remaining debt maturities are \$23.5 million of CMHC mortgages in the fourth quarter” <https://www.globenewswire.com/news-release/2020/04/28/2022938/0/en/Extendicare-Provides-Business-Update-Related-to-COVID-19.html>

Not bad, especially when you consider that Extendicare received \$21 million under the Canada Emergency Wage Subsidy (CEWS) for its ParaMed healthcare subsidiary while paying millions to shareholders. “Extendicare executives said the

subsidiary will be applying for more wage subsidies and they expect the next payment, if approved, to be “in line” with the \$21 million already received.... What is difficult to understand, is how large for-profit corporations that provide long-term care are receiving government subsidies and paying out substantial dividends, while at the same time claiming they are underfunded and need protection from class action lawsuits due to negligence during COVID,” Tamblyn Watts said” (Welsh & McLean, August 15, 2020).

The Ontario Government Response

Extendicare Is A “Good Company” – Premier Ford

As shown, Extendicare’s corporate care history over many years in both the United States and Canada can be seen as problematic. Inspection reports of its facilities show a litany of issues, including 5 Director’s referrals against its Maple View facility in Sault Ste Marie (Inspection Report dated February, 2019 - <http://publicreporting.ltchomes.net/en-ca/File.aspx?RecID=21279&FacilityID=21315>) and a Cease Admissions Order on October 30, 2018. <http://publicreporting.ltchomes.net/en-ca/File.aspx?RecID=20472&FacilityID=21315>

Consequently it is difficult to understand how Premier Ford has arrived at the conclusion that Extendicare is a “good company”. On what is he basing that claim?

Legislation to Limit Class Actions

The Ford government appears to have done large nursing home chains like Extendicare an enormous favor while the infection and death rates were rising in facilities they owned or operated.

The Smarter and Stronger Justice Act which received Royal Assent on July 8, 2020 https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2020/2020-07/b161ra_e.pdf is a wide ranging bill that makes changes to legal aid, civil proceedings, and adds new certification tests for class action lawsuits among other things.

This will make it more difficult to launch class action lawsuits for negligence against facilities like those operated by Extendicare. “If Bill 161 is law, our most

vulnerable citizens, seniors in long-term care homes overrun with COVID, will not be able to use class actions to get justice,” Siskinds LLP lawyer Daniel Bach told MPPs at a Queen’s Park committee Thursday. “If we can’t have class actions in these sorts of mass tragedies, only some of those people will be able to afford to do it individually” (Siskinds, June 18, 2020). [Bach] said that in the U.S., similar rules have stopped important class actions.... Both he and Jana Ray, chief membership officer for the Canadian Association of Retired Persons (CARP), told MPPs that those tests could keep future lawsuits against negligent long-term care homes out of court.....The superiority test could let corporations argue that plaintiffs should be given refunds or take complaints to a tribunal instead of suing en masse, Bach said....“Like all these things, we’re going to have to see what the courts do with it. But the concern is the superiority requirement will let defendants design their own justice” (Siskinds, 2020).

So the plan is to give families refunds if their loved ones die while in the care of one of these corporations? If there was ever any doubt that government and long term care companies see residents of these facilities as commodities, this approach would seem to dispel it.

Where Federal prosecutors in the U.S. undertook to take Extendicare to court, the Ontario government is apparently making it easier for Extendicare and other long term care companies to avoid lawsuits by families.

The question on everyone’s minds is why? Why in the face of so much suffering and death is the Ford government continuing to protect, throw funding at, and speak well of for-profit corporations like Extendicare that have been shown to perform so much worse than municipally operated facilities? (Oved et al, May 16, 2020; Perkel, July 22, 2020).

The NDP has been outspoken in denouncing Ford government staffers having been hired by large companies like Extendicare to lobby the campaigns or government they had previously been a part of. The NDP stated that on April 27, 2020 Melissa Lantsman, who had been Premier Ford’s war room director and campaign spokesperson registered to lobby for Extendicare (Paling, May 20, 2020). <https://www.linkedin.com/in/melissalantsman/?originalSubdomain=ca>

West Park, where Premier Ford’s mother-in-law was in residence during the pandemic, is one of the facilities managed by Extendicare. It had at least 5 COVID

related deaths. 10 other residents and 14 staff had tested positive (Pedersen & Mancini, April 14, 2020).

The fact is that the tentacles of the long term care sector are everywhere, reaching the highest echelons of government. This is an entrenched system with a too close relationship to government and it must stop. There is no hope that elected officials can properly represent the people who elect them and the most vulnerable people in this province, unless they are free of this kind of influence.

Infection and Death Toll Ongoing While Ford Government Is Limiting The Right To Sue

During the summer of 2020 the Bill that would limit families' rights to launch class actions for alleged negligence by long term care corporations was making its way through the legislative process.

By the beginning of June there had been over 5000 confirmed cases of COVID-19 in long term care facilities. Fatalities were at 28.4% meaning that over 1200 residents had died. 308 outbreaks had been reported in these institutions (Public Health Ontario, June 1, 2020). Unions representing health care workers were advertising that "many of those who died were in overcrowded and squalid conditions, while staff lacked proper personal protection equipment" (Perkel, July 23, 2020).

Even though residents had a much higher risk of dying from COVID, they had also been hospitalized far less frequently than the non-institutionalized population, raising the question of whether or not they were being transferred to hospital when required (Public Health Ontario, June 1, 2020).

Government's Responsibility

Any government responsible for the licensing, inspection, and funding of long term care should have been concerned about residents of these facilities – concerned enough not to try to prevent them and their families from suing owners and operators they considered negligent.

The government should have been more concerned about the disproportionately lower rates of hospitalization of residents in light of the more serious consequences for older adults of becoming infected.

The Premier should certainly have known better than to portray a company with the kind of corporate history outlined here as “a good company” after its workers said they did not have appropriate PPE to do their jobs and were becoming infected along with residents at Extendicare West End in Ottawa.

He should not have portrayed Extendicare as “a good company” after the track record of its Extendicare Assist management company at Orchard Villa in Pickering where the Canadian military detailed deplorable conditions and the local hospital had to take over its management to try to bring infections and death under control after being ordered in by the Regional Medical Officer of Health.

There is no way the Premier could not have known about at least some of Extendicare’s corporate history. So why did he make this statement? To whom is he listening? Ontario taxpayers deserve answers.

The first concern of this government and especially the Premier, should be protecting the residents in these facilities, not praising companies with this kind of track record. Premier Ford should publicly explain his comments concerning Extendicare.

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