



October 2, 2007

Mr. John Tory, MPP  
Leader of the Progressive Conservative  
Party of Ontario  
19 Duncan Street, Suite 401  
Toronto, ON M5H 3H1

Dear Mr. Tory:

**Legal Opinion Re Validity of Continence Care Policies and  
Practices in Long Term Care Homes**

We are writing to ask for immediate action to address an appalling situation affecting over 75,000 vulnerable elderly Ontarians who are residents in long-term care facilities. Without regard for the needs of residents, long-term care homes have implemented policies of rationing the amount of incontinent care products. The rationing of incontinence care products means that residents are required to sit, walk or lay in pads until they are at least 75 percent or more urine-soaked before they are replaced. Such a fixed requirement discriminates against elderly, incontinent residents on the basis of disability and/or the intersecting grounds of age and disability. We believe that such practices compromise the health, dignity and self-esteem of these Ontarians. To allow this situation to continue undermines any vision of Ontario as a caring society.

This situation first came to the attention of the Ontario Federation of Labour (OFL) in 2005 when we held seventeen (17) meetings across Ontario with health care workers to discuss the critical issue of understaffing in health care. A report entitled *Understaffed and Under Pressure – a Reality Check by Ontario Health Care Workers* was written and distributed by the OFL. A copy was sent to all MPPs. Among the recommendations of this report was a call for the implementation of a staffing standard of 3.5 hours per day of nursing and personal care for residents in long-term care facilities. A staffing standard has still not been implemented despite the obvious need and the activities of many Ontarians in favour of such a standard.

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Related to the lack of adequate staff in long-term care facilities, is the rationing of incontinent care products under the "75 percent (or more) full before replacement" policy. A 2007 survey of our members in long-term care facilities, conducted by the OFL and affiliated unions in the health care sector, forms the basis of the attached legal opinion from the Toronto law firm Cavalluzzo Hayes Shilton McIntyre & Cornish. To quote from the legal opinion:

*Challenging these policies and practices as recommended in this opinion would further the rights of elderly residents to proper, sufficient and dignified care and the rights of health care workers to receive support and proper working conditions for providing such quality care.*

We call on you to clearly commit your Party to immediate, positive action to address and rectify this demeaning practice. The people of Ontario should know your intentions before the October 10 provincial election.

We wish to see a speedy resolve of this issue from whichever government is elected on October 10. We intend to pursue any or all legal recourse as outlined in the opinion. Our actions will be based on: Long-Term Care Laws (Section 9 of opinion); Human Rights Legislation (Section 11 of opinion); Canadian Charter of Rights and Freedoms (Section 12 of opinion); Relevant Collective Bargaining Agreements (Section 13 of opinion; and Sanctioning nursing home management (Section 14 of opinion).

It is our intention to make Ontarians aware of this situation and to release this legal opinion.

Thank you for your attention to this important matter.

Yours truly,



**Wayne Samuelson**

President

WS/DM/ss  
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c: I. Harris, T. Downey  
OFL Executive Board and Council  
OFL Health Care Committee