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Assembly  
of Ontario



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**Official Report  
of Debates  
(Hansard)**

JP-27

**Journal  
des débats  
(Hansard)**

JP-27

**Standing Committee on  
Justice Policy**

Supporting Ontario's Recovery  
and Municipal Elections Act, 2020

1<sup>st</sup> Session  
42<sup>nd</sup> Parliament

Wednesday 4 November 2020

**Comité permanent  
de la justice**

Loi de 2020 visant à soutenir  
la relance en Ontario  
et sur les élections municipales

1<sup>re</sup> session  
42<sup>e</sup> législature

Mercredi 4 novembre 2020

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Chair: Roman Baber  
Clerk: Thushitha Kobikrishna

Président : Roman Baber  
Greffière : Thushitha Kobikrishna

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
JUSTICE POLICY**

**COMITÉ PERMANENT  
DE LA JUSTICE**

Wednesday 4 November 2020

Mercredi 4 novembre 2020

*The committee met at 0903 in committee room 2 and by video conference.*

**SUPPORTING ONTARIO'S RECOVERY  
AND MUNICIPAL ELECTIONS ACT, 2020**

**LOI DE 2020 VISANT À SOUTENIR  
LA RELANCE EN ONTARIO  
ET SUR LES ÉLECTIONS MUNICIPALES**

Consideration of the following bill:

Bill 218, An Act to enact the Supporting Ontario's Recovery Act, 2020 respecting certain proceedings relating to the coronavirus (COVID-19), to amend the Municipal Elections Act, 1996 and to revoke a regulation / Projet de loi 218, Loi édictant la Loi de 2020 visant à soutenir la relance en Ontario concernant certaines instances liées au coronavirus (COVID-19), modifiant la Loi de 1996 sur les municipalités et abrogeant un règlement.

**The Chair (Mr. Roman Baber):** Good morning, everyone. The Standing Committee on Justice Policy will now come to order.

We're here for public hearings on Bill 218, An Act to enact the Supporting Ontario's Recovery Act, 2020 respecting certain proceedings relating to the coronavirus (COVID-19), to amend the Municipal Elections Act, 1996 and to revoke a regulation.

As a reminder, the deadline for written submissions is 7 p.m. on Wednesday, November 4, 2020. The deadline for filing amendments to the bill is 5 p.m. on Thursday, November 5, 2020.

We have the following members in the room with us: We have MPP Norm Miller and MPP Teresa Armstrong physically present. We also have the Attorney General, who is ready to depute. Joining us by Zoom are MPP Will Bouma, MPP Lucille Collard, MPP Kaleed Rasheed, MPP Peggy Sattler, MPP Natalia Kusendova, MPP Mitzie Hunter and MPP Lindsey Park.

Have I missed anyone who has joined since? If not, are there any questions or business before I begin?

**MINISTRY OF THE ATTORNEY GENERAL**

**The Chair (Mr. Roman Baber):** Seeing none, I'll now invite the first witness of the day, the Honourable Doug Downey, our Attorney General.

Attorney General, you have 15 minutes for your presentation—

**Ms. Mitzie Hunter:** Chair, sorry; I did see a hand go up. MPP Collard.

**The Chair (Mr. Roman Baber):** I apologize. Madame Collard?

**M<sup>me</sup> Lucille Collard:** No, I'm sorry. I briefly raised my hand. I do have a question of an administrative nature.

I'm wondering how the people we're going to be hearing today have been selected, because I was contacted by a number of people who don't appear on the list. So I'm just wondering about the process and how the people who are appearing were selected.

**The Chair (Mr. Roman Baber):** Madame Collard, I refer you to the motion for time allocation. The motion for time allocation passed by the House provides for a deadline for requests to be submitted to appear. After that, the Clerk provides the requests to the various recognized parties and to the subcommittee, and a priority selection process gets made and subsequently comes back to the Clerk.

**M<sup>me</sup> Lucille Collard:** Thank you for the clarification, Chair.

**The Chair (Mr. Roman Baber):** You're welcome.

Back to the Attorney General: After 15 minutes of initial presentation, 45 minutes of questions follow. Questions will be divided into three rounds of six minutes for the government members, three rounds of six minutes for the official opposition and two rounds of 4.5 minutes for the independent member—and I'll give everyone a reminder.

Attorney General, I invite you to commence your 15 minutes by stating your name for the record.

**Hon. Doug Downey:** My name is Doug Downey. I am the MPP for Barrie–Springwater–Oro-Medonte, and the Attorney General.

**The Chair (Mr. Roman Baber):** Welcome.

**Hon. Doug Downey:** I'm pleased to be here before the committee today to present on a bill that would, if passed, support thousands of Ontario workers, employers, volunteers, businesses and non-profits who make an honest effort to follow the applicable public health guidance and laws related to COVID-19, as Ontario responds to the COVID-19 pandemic. This is a bill that responds to the unprecedented challenges that Ontario workers, employers, volunteers, businesses and non-profits are all facing during the second wave of COVID-19.

Every day, Ontarians are going into work and volunteering their time, putting their own health and safety at risk because they care about the people they serve and because they want to contribute to the recovery of their community. But the threat of COVID-19 is not limited to physical health. Unanswered questions and uncertainty related to these unprecedented challenges made it more difficult for many workers, volunteers, community organizations and businesses to contribute to Ontario's recovery. That is because Ontarians across the province continue to face significant civil liability risk in the event that COVID-19 is transmitted where they work or volunteer their time. Currently, this risk is present even if workers make good-faith efforts to follow procedures and practices set by public health.

I think all members of this committee recognize that these Ontarians do this important work for the betterment of their communities, and they should be able to continue to be able to do this work with a clear understanding of the civil liability they accept when they are helping their communities get back on their feet. They should be able to do their work without fear of civil liability when they are making honest efforts to follow public health guidance.

We've heard from individuals and businesses from all sectors the concerns that they have in being able to continue providing the services that their neighbours are relying on during Ontario's recovery. We've introduced legislation that will respond to these concerns. Our government believes in supporting Ontarians who make these important contributions in accordance with public health guidelines. This proposed legislation will help support Ontario's recovery as we face these unprecedented challenges. We cannot allow the challenges posed by COVID-19 to deter Ontarians from making these important contributions.

We need to allow volunteers to be able to continue offering their skills and experience so that community organizations, charities and sports organizations can continue to operate. We need volunteers to ensure our Legions, our Lions Clubs, our Boys and Girls Clubs can all continue to make a positive impact. We need local charities to continue holding fundraisers and programs, especially now. We need businesses to feel confident that reopening their doors won't cost them more than keeping them closed. We need Ontarians to have the confidence to show up and provide support for our loved ones in congregate care settings and hospitals, to operate their businesses that provide jobs and services to our communities, and to volunteer to make a difference in the lives of those in need.

That is why we are proposing legislation to stand up for the front-line workers of this province—so they can feel confident in putting all their efforts towards safely contributing to Ontario's recovery without fearing unanswered questions around civil liability. If passed, the proposed Supporting Ontario's Recovery Act, 2020, would provide targeted, enhanced liability protection to front-line workers, while ensuring people are able to pursue claims related to gross negligence and intentional misconduct regarding transmission of COVID-19.

Members of the committee, I want to be clear: The proposed legislation will not impede the court's ability to hold bad actors who deliberately ignore the rules accountable. This bill will do nothing for those who act with gross negligence or deliberately ignore public health guidance, and would not apply to criminal charges related to the exposure or transmission of COVID-19. Individuals and organizations that deliberately ignore public health guidance or act with gross negligence will not be protected by this legislation. The narrow, targeted civil liability protection in this legislation has only to do with the inadvertent transmission of COVID-19 and nothing else.

#### **0910**

I would like to take a moment at this point to recognize the Ontarians who inspired this legislation—the thousands of workers and volunteers who make essential contributions every day: health care workers, nurses, PSWs, wait staff, chefs, clerks at grocery stores and pharmacies, minor hockey and figure skating coaches, para-athletic leagues, volunteers at local charities. They are the everyday heroes who keep our communities moving and growing and are the driving force behind our province's recovery.

The proposed legislation is designed to support these people who work on the front lines and make an honest effort to follow public health guidelines and laws related to COVID-19. They should not have to worry about whether they could be held liable for the inadvertent transmission of COVID-19 when they are making an honest effort to follow public health guidance and the laws related to COVID-19.

My cabinet and caucus colleagues and I have spoken with many of these workers, volunteers and business owners since the first wave hit back in March. I know how passionate these workers and volunteers are about the contributions that they make and the many steps that they take to keep the people who work beside them and the people they serve safe. They should not be discouraged from making important contributions to their communities.

The proposed legislation would ensure that Ontarians who make good-faith, honest efforts to follow public health guidance while they contribute to the recovery of our province will have a clear understanding of the civil liability risks they face related to the inadvertent transmission of COVID-19. If this bill passes, the proposed changes would ensure that front-line workers and volunteers are able to focus their work to support families across Ontario and rebuild our province.

The proposed legislation protects good-faith efforts to follow applicable public health guidance and laws related to COVID-19. This is a very narrow, targeted, limited liability protection.

This message has been heard by law firms representing individuals who are taking legal action against long-term-care homes and their providers. I want to quote a few of these legal professionals who have commented on this legislation.

In an October 22 article published by the St. Catharines Standard, Will Davidson, LLP, a firm that has commenced small claims against a long-term-care provider, stated that

even with Bill 218, they are going to “proceed with legal action.”

With this legislation, if a lawsuit is filed, you will be protected from civil liability at a higher level than you are now, unless the court determines that you were grossly negligent or failed to act in good faith. Again, to provide some context on how this is being understood by legal professionals, I want to highlight some comments made by representatives of Thomson Rogers.

In a November 2, 2020, article published by the Lawyer’s Daily, the Thomson Rogers representative said, “Any judicial interpretation of the proposed legislation will look at legislative intent, and the provincial government has been quite clear that they don’t intend for the proposed legislation to protect the worst actors where there are allegations (and ultimately findings) of gross negligence.” They said this because this legislation will only provide protection for those who made an honest effort to follow the rules, those who made good-faith efforts to follow the rules and honestly believed they were following the rules. Individuals and organizations that deliberately ignore public health guidance or laws related to COVID-19, or act with gross negligence, will not be protected by this legislation.

When we discuss good-faith efforts, we’re talking about an honest effort made by a person, business or organization to follow the public health guidance and laws related to COVID-19. This legislation would protect Ontarians making an honest effort to follow the public health guidance and laws that apply to them, and, in making this honest effort, attempting to lower the risk of COVID-19 infection or exposure.

Before I move on, I do want to note that this legislation would not hinder employee rights and would not stop or limit claims against long-term-care homes. Ontarians will continue to be able to access the courts to seek justice when they feel there has been wrongdoing. To ensure workers are protected, the proposed changes will not interfere with employee rights as they relate to the Workplace Safety and Insurance Board and supporting legislation.

As you are all aware, COVID-19 has disproportionately affected residents and staff at long-term-care homes in Ontario. Our government has launched an independent commission into this matter. We feel strongly that the people of Ontario deserve a timely, transparent and non-partisan investigation. I want to be clear on this point: The proposed legislation would not prevent access to justice for individuals in long-term-care homes and their loved ones. Even with the proposed legislation in place, individuals would be able to file claims and seek redress against long-term-care homes for matters apart from exposure to or infection with COVID-19, including but not limited to: failure to provide the necessities of life, failure to have adequate staffing, failure to communicate adequately with family and residents, fraud and fraudulent misrepresentation, unlawful confinement, assault or battery—and the list goes on. We are not changing the standard or legal tests associated with any other claim if it

doesn’t relate to the exposure to or infection with COVID-19.

We aren’t getting rid of negligence law. Negligence is an area of law that encompasses many types of claims, and one area of negligence now includes the transmission of COVID-19, which is the only thing this legislation pertains to. Reasonableness or good faith or gross negligence are standards by which the courts measure and assess whether someone was negligent. This legislation does not protect any other type of negligence that we have heard from the opposition since the bill was introduced, like if a resident is malnourished or not cleaned properly or not given proper medication or mistreated. Ontarians will continue to be able to go to court and file claims and seek redress in the courts for all of these matters.

It is ultimately up to the courts and judges whether the protection under this bill applies to the case at hand. It’s a case-by-case determination based on the facts of the case and the types of claims being made. To be absolutely clear—the court is not going to reject a statement of claim at the counter just because it has to do with COVID-19 transmission.

The safety and well-being of the residents and staff at Ontario’s long-term-care homes is and continues to be our government’s top priority.

Let me be clear: We are not going easy on those who deliberately ignore public health guidance or act with gross negligence.

Ontario is not the only province to put forward legislation to provide workers and businesses protection for civil liability related to the inadvertent transmission of COVID-19. In fact, both NDP and Liberal governments have introduced similar protections. The NDP government of British Columbia passed legislation earlier this year that protects people and businesses who can prove they followed or reasonably believed they were following emergency and public health guidance. The Liberal government in Nova Scotia issued a ministerial direction to protect long-term-care workers who act or reasonably believe they act in accordance with public health guidance. In addition to more than 30 US states that have enacted some type of civil immunity protection for front-line workers—our government is proud to join these jurisdictions in standing up for the people who make important contributions to their communities and play a key role in the COVID-19 recovery.

Before I conclude, I want all members of this committee and all participants to hear some of the feedback we received from people around the province who reached out to our government for support. COVID-19 has caused a great deal of strain and unanswered questions for thousands of workers, volunteers, community organizations and businesses across the province. This bill would be a lifeline for so many because it provides a clear understanding of the civil liability that people and organizations accept when they are contributing to Ontario’s recovery in these uncertain times. Health care workers, businesses, grocery and retail store workers, the charitable sector, non-profit organizations and sports organizations have all told

us that they fear the financial implications of litigation related to COVID-19 infection, despite their honest efforts to inform themselves and take action on the guidance provided by public health. They are concerned that litigation could impact their ability to continue to serve their communities or bring in employees to help them do so.

The Registered Practical Nurses Association of Ontario said, “All front-line workers are doing their very best in a rapidly changing environment to adhere to the latest guidance and tools that are available to them. The last thing they should have to worry about is the future threat of being held personally or professionally liable after the pandemic for outcomes beyond their control.”

We received a letter from Family Services Perth-Huron and Family Counselling and Support Services for Guelph-Wellington, which called upon the government to “immediately pass an emergency order providing good Samaritan COVID-related liability protection to non-profits if they have followed all public health guidance in order to avoid catastrophic loss/damage to our organization.”

We received a letter from the Ontario Nonprofit Network in July, who you will hear from later in the committee, which indicated that civil liability immunity would help address significant cost increases in the industry and challenges recruiting and retaining volunteer boards of directors.

This is the very intent of the proposed legislation. This legislation responds to these calls.

I will also quote an article published on October 22 in my hometown newspaper in Barrie, BarrieToday, because I think it provides important real-world context and nuance. It quotes lawyer Darryl Singer, who is the head of commercial and civil litigation at the law firm of Diamond and Diamond. The article states that in Singer’s opinion, “The new law won’t impact the two class actions he has launched against three Ontario nursing homes....

“I don’t believe it will affect my class actions,” he said, suggesting that the homes involved in his class actions do not meet the good-faith standards that include following public health guidelines.”

**0920**

I recognize that I’m coming to the end of my allotted speaking time. I’d like to conclude by thanking the members of the committee and all participants for taking the time to consider this legislation. As we’ve done throughout the process to support Ontario’s recovery, I look forward to reviewing the valuable input that you provide.

I want to thank and give recognition to the thousands of workers and volunteers who have put their own health at risk to keep others and their families safe. The proposed legislation would provide protection for those workers. It would give workers and volunteers the confidence to continue supporting their communities without worrying about the liability of inadvertent transmission of COVID-19. As I’ve said here already, individuals and organizations that deliberately ignore public health guidance or act with gross negligence will not be protected by this

legislation. Our government does not believe in providing protection for those who engage in this type of behaviour and threaten our province’s recovery.

I ask all participants in this committee to consider supporting the Supporting Ontario’s Recovery Act, 2020. I look forward to engaging further with members of the committee, the rest of our colleagues here at Queen’s Park and Ontarians on this important Legislation. Thank you. Merci. Meegwetch.

**The Chair (Mr. Roman Baber):** Thank you, Attorney General.

Before we proceed with rounds of questioning, I’d like to welcome MPP Triantafilopoulos. Would you kindly confirm that it is indeed you and where you’re located in Ontario?

**Ms. Effie J. Triantafilopoulos:** I’m Effie Triantafilopoulos. I am located in Oakville, Ontario.

**The Chair (Mr. Roman Baber):** Thank you very much.

We’ll now proceed with the first round of questioning, going to the government, with a total of six minutes. MPP Kusendova.

**Ms. Natalia Kusendova:** Good morning. First of all, I would like to thank the Attorney General for his thorough presentation this morning and also for recognizing the important work that our front-line workers have been doing throughout this pandemic. It’s reassuring to hear, as a front-line worker myself, that this piece of legislation was inspired by front-line workers to ensure that they have appropriate liability protections as they are battling COVID-19 on the front lines each and every day.

It was concerning to me, during second reading of this bill, when I was listening in from my office in Mississauga—due to social distancing, I wasn’t able to be present in the House; however, I was listening with great intent—that there was so much misleading information that was spread from the opposition members about what this bill, Bill 218, does. I think it was unfair and misleading, not only to the public but also to front-line workers themselves. I think the committee members and the record would benefit from some clarity from the Attorney General on what this bill does and what this bill does not do, because when I was listening to the debate, I was actually getting confused myself. I think this clarification will be really important.

Attorney General, can you explain more in layman’s terms how this bill operates in negligence law and which type of negligence claims this bill applies to?

**The Chair (Mr. Roman Baber):** I appreciate that. Before the Attorney General answers, I would just caution the member not to suggest that another member engaged in misleading of the House.

The Attorney General to answer.

**Hon. Doug Downey:** Every time we delve into law, it is confusing, and sometimes people wrestle with that. So it’s a good question, and I’d like the opportunity to clarify.

Specifically, I know that you do front-line work, and so I’m going to use the word “surgical.” This is a very surgical approach to a very specific issue. We’re only

dealing with the inadvertent transmission of COVID-19 if somebody makes an honest effort, a good-faith effort, to follow public health advice and apply that advice. That's all it is. It's very straightforward in that sense. What that means is that when a statement of claim is filed and it goes before a judge, the judge will make a determination, the court will make a determination, on whether that standard has been met or not for that specific incident.

Where the confusion comes is, people think that it applies to all areas of negligence. This is where law gets confusing, because it uses the same word for two different things. Negligence is an area of law, and so that can cover all sorts of things. It can cover all types of activity and all different topics, but the measure of liability also uses the word "negligence," and so it's kind of like having the same word as a noun and a verb. It can be very confusing.

We're specifically protecting front-line workers, volunteers and community organizations for the inadvertent transmission of COVID-19 if they made an honest effort, in good faith, following public health advice. It doesn't cover failure to provide necessities of life or adequate staffing or not communicating properly with family and residents or proper hygiene. It doesn't cover any of that. It's strictly about the inadvertent transmission of COVID-19.

**Ms. Natalia Kusendova:** Thank you for that clarification and for specifically clarifying that this bill does not provide absolute immunity on claims regarding exposure to COVID-19, but rather increases the legal standards to good faith. Several front-line organizations have actually come out in support of this bill, and I know that we will be hearing from them later on today.

Can you explain what will happen if a person brings a lawsuit based on exposure to COVID-19? Would the court automatically reject a lawsuit out of the gate? What would the process look like?

**Hon. Doug Downey:** The court process doesn't change. What will happen is, somebody will articulate their claim, they'll put in what's called a statement of claim, and that statement of claim is filed with the courts—because of our modernization, it may actually be e-filed, but that's a whole other topic. The court will receive that claim. The court will process that claim. There's no vetting at the front end. There's no gatekeeper that says, "Your claim doesn't meet the standard." Anybody can put a claim in. It will be assessed on its merits, and it will be assessed by the courts.

Once the claim is in, that claim is then served on the other party. The other party has a chance to file a defence, and it goes through the court process like any other court process. There's no front-end bar to it. It's the judge who is going to decide whether somebody made an honest effort in good faith and took public health advice. That's where the decision will be made. All that we're doing is giving guidance to the courts, to say that we want protection to that level. If somebody made an honest effort, in good faith, and followed public health advice, then we want them to have that protection. We want our workers and front-line staff to have that protection.

**The Chair (Mr. Roman Baber):** MPP Kusendova, with 20 seconds remaining, I would invite you to conclude or simply thank the witness.

**Ms. Natalia Kusendova:** Thank you, Attorney General. Perhaps in the follow-up we can talk a little bit about what other provinces are doing and how Ontario compares in terms of liability protections for front-line workers.

**The Chair (Mr. Roman Baber):** Before we proceed with questioning by the opposition, I'd like to welcome MPP Gurratan Singh, who has also joined us. Good morning, Mr. Singh.

**Mr. Gurratan Singh:** Good morning, Chair. I'm Gurratan Singh, MPP for Brampton East. I'm calling in from Brampton.

**The Chair (Mr. Roman Baber):** We'll now proceed with the first round of questioning by the official opposition. Mr. Singh.

**Mr. Gurratan Singh:** There has been a lot of discussion around Bill 218. Can you comment on the new test and how the discussion has been that this new test is a subjective test—good faith being that someone can just exhibit that as an honest mistake, as opposed to being an objective "reasonable person" test?

**Hon. Doug Downey:** Absolutely. It's a great question, because what we're talking about is the level of liability. As you'll remember from law school—and all the lawyers around the table will remember—if you talk about the "reasonable person," it has developed over time through case law to mean something. It's a term of art, but there's still some judgment that needs to be brought to bear for that. Similarly, good faith is a measure. It's something that has been tested through the courts at various levels for various reasons, whether it be contract law or otherwise.

There's a difference between reasonableness and good faith. Currently, the common law sits at reasonable. We're setting it, for the very specific inadvertent transmission of COVID-19, at good faith as a level. Whether it's subjective or objective, it's not just a term that we made up; it's a term that comes from the courts. It means something. Judges will interpret it to mean something in this instance. The NDP used some words that weren't quite as, I'll say, road-tested, in BC, but we went with something that was known to the courts and known to the public, through their lawyers, if not directly.

**0930**

**Mr. Gurratan Singh:** The biggest concern that folks have been raising is the issue that while good faith is a standard which may be appropriate for a sports club, it's not good enough for long-term-care facilities—facilities that should be held to a higher standard. It's akin to if you have a cut and your friend patches it up and it gets infected—okay, your friend is not a professional. But if a doctor patches it up and it gets infected, that's a definite issue, for the doctor should have a higher duty of care.

What do you say to the criticism that this bill favours long-term-care facilities over those other needs, because you're putting billion-dollar corporations at the same level of a local community hockey team?

**Hon. Doug Downey:** I'm not going to pre-empt what the courts will or won't do, because they will interpret. But we know that, as a lawyer, if you are doing something, the good-faith and honest belief comes with the baggage of what you should know. So in a sense, people are treated equally, but they're not necessarily treated the same, and so we'll leave that for the courts to wrestle with.

I think, and our government thinks, that it's incumbent on us to provide the same level of protection to the PSWs who work in the homes, to the cooks who work in the homes, to the people who are delivering in restaurants and well beyond just the sport organizations. We want all front-line workers—hospital workers—to have the same level of protection. So, no, I don't want to exclude all of those people on some, I guess, prejudice of whether they were acting in good faith, with honest belief.

**Mr. Gurratan Singh:** I don't think anyone is going to disagree that front-line workers and the people you've described should be given that kind of leeway.

Let me refocus. Why not draft legislation that excludes billion-dollar corporations that should be held to a higher standard of care, as opposed to grouping them alongside front-line workers and alongside local community soccer clubs or hockey clubs and restaurant workers?

**Hon. Doug Downey:** Well, I guess the corollary is true: Why would we specifically exclude somebody or some organization who is acting in good faith and in an honest belief and trying to follow the public health advice? Why would we specifically exclude somebody just because the entity exists as a business, as opposed to an individual who is volunteering their time at the Big Brothers Big Sisters? I don't actually understand, unless the premise is that a business is inherently less deserving of protection of the law.

**Mr. Gurratan Singh:** Do you accept the position that a business with far more resources, that's in the business of health care, should be held to a higher standard of care than that of a local hockey team?

**Hon. Doug Downey:** I think when they look at good-faith efforts and honest efforts in good faith, I think all of those components will be looked at. They'll look at what resources were available to be brought to bear. They'll look at the individual who opens their store and say, "Do they have a full-time HR person who can come up with how to provide protection to customers, or is a bigger business better equipped to respond in a different way?" I think that's for the courts to balance—how good faith applies based on the facts and the individual circumstances. I really don't think that government should specifically exclude a company simply because they're a company and they're providing a service.

**Mr. Gurratan Singh:** You keep on—you make reference to the fact that—

**The Chair (Mr. Roman Baber):** Excuse me, Mr. Singh. I apologize. You have about 10 seconds remaining. I invite you to conclude and wait for your next round.

**Mr. Gurratan Singh:** Thank you.

**The Chair (Mr. Roman Baber):** We'll now move on to the independent members for four and a half minutes. I recognize MPP Collard.

**M<sup>me</sup> Lucille Collard:** Thank you again to the Attorney General for being here this morning to be able to answer some of our questions. We appreciate you being here.

I understand the intent of the change being suggested under schedule 1, and I also understand that the pandemic has made it very complex on the question of liability to protect workers, volunteers and businesses.

While it's very legitimate to protect those that have made their best effort not to spread the virus, I think that we need to recognize that private long-term-care homes have decided to open a business and operate with the very specific responsibility to protect the health and safety of those they are caring for. In fact, they advertised themselves as having qualified and experienced staff to provide quality care to seniors, and we should, for sure, expect them to have important experience in controlling viruses almost on a daily basis. That's what they do. So why do you think that they should benefit from the same protection as restaurants and fitness centres that don't have that expertise or specific responsibility?

**Hon. Doug Downey:** We're dealing specifically here with the inadvertent transmission of COVID-19. Let's start back in March with who had what expertise. We still, to this day, scientifically, don't necessarily know what we're dealing with entirely. As we're moving forward, what we're asking everybody to do is to follow public health advice, to let those experts guide us in every sector—and they're doing that. They're doing tremendous work. You see it every day. You hear Dr. Williams. You hear the health table. You hear your local public health agencies.

Everybody is fully engaged in this effort. That's what we're asking individuals and businesses to do—to get fully engaged in their community to provide the services to help Ontario recover. We want to provide a level of security that, if they're making an honest effort, if they're operating in good faith and they're doing it by following public health advice, we want them to have the confidence to move forward with what they do. Again, I don't know why it's being suggested that we exclude an entire sector.

**M<sup>me</sup> Lucille Collard:** This particular sector has a responsibility—it's their daily business to control the spread of viruses. There are viruses every year and every so often in those homes, and they have experienced staff—medical staff and nurses. This virus spreads much like other viruses, with the same kind of transmission. They should be held to a higher standard, and I don't understand that—we fell short of requesting from them to at least make a reasonable effort. It doesn't seem to be overboard to require that these homes with specific experience and knowledge would be required—to just do whatever and then not have any accountability.

**Hon. Doug Downey:** This is where the confusion comes. I just want to be really clear again: This is specifically about the inadvertent transmission of COVID-19. If those homes or those facilities are failing to have adequate staffing or failing to provide the necessities of life or failing to communicate adequately with family and residents or failing to maintain proper hygiene of residents,

this doesn't do anything to help them. This legislation does nothing to help against those claims. This legislation is very targeted, simply at the inadvertent transmission of COVID-19. If some of these facilities aren't acting reasonably on those items, they still remain at risk. We have not gone near or affected dozens of other types of claims that may come forward.

Again, this is the confusion that's happening: People are talking about types of activity that is not encapsulated within this. It's not entirely accurate to suggest that they're getting immunity for those types of things. It's just simply not the case. This is just about the inadvertent transmission of COVID-19.

**M<sup>me</sup> Lucille Collard:** In that same provision, you've also—

**The Chair (Mr. Roman Baber):** I apologize, Madame Collard. You'll have another round in a few minutes. Your time is up.

Back to the government for six minutes: MPP Triantafilopoulos.

**Ms. Effie J. Triantafilopoulos:** Thank you, Attorney General, for being here today to discuss this really important legislation particularly aimed at protecting our front-line workers who were working throughout the pandemic, starting back in March.

I noticed that at all levels of government, people have come together, organizations have come together, governments have come together during the pandemic. There were a lot of lessons that were learned and also shared with other provinces.

**0940**

So I wonder if you could tell us today, what did you learn about what other provinces were doing? What did the NDP government in British Columbia do regarding civil liability and the need to protect their front-line workers, organizations and small businesses?

**Hon. Doug Downey:** Thank you for the question.

I'll talk about BC, and then maybe I'll touch on the Liberals in Nova Scotia.

Our legislation is broader than the BC legislation. It covers the non-profits, it covers the sports organizations and it covers some others for this very targeted inadvertent transmission of COVID-19. What the NDP did in BC is they enacted legislation that protects individuals and businesses from liability for the transmission of COVID-19, as we did, provided they can prove they followed, or reasonably believed that they followed, emergency and public health guidance.

The BC civil immunity legislation and regulation's definition of essential services includes all government functions. It applies to health and health care and services for vulnerable people, such as seniors.

When the NDP government there introduced the protection for essential businesses and front-line workers, they said the purpose of the legislation is "to ensure that, where appropriate, fears of civil liability will not unduly discourage activity that promotes the province's response to and recovery from the pandemic." Their legislation

ensures "essential service providers and sport organizations operate in compliance with extremely high standards that serve to protect the health and safety of British Columbians." Again, it's the same type of purpose, very targeted and defining the front-line workers, which is exactly what we're doing.

**Ms. Effie J. Triantafilopoulos:** Attorney General, you also mentioned that you had some information to share with respect to the experience with the Liberal government in Nova Scotia and what they—

**Hon. Doug Downey:** Sorry, I said I would jump to them. Thank you for reminding me.

In Nova Scotia, the provincial government did something a little bit different—same sort of intent, much more targeted. In Nova Scotia, the Liberal government did what's called a ministerial direction. It's a different tool. It protects long-term-care-home sectors if they are acting in accordance with applicable emergency and public health guidance or reasonably believe they are doing so. The Nova Scotia ministerial order only applies to the long-term-care sector. It's very targeted that way, as well. The order doesn't speak about the government. I'll note the government may have some immunity based on other statutes, but this ministerial order doesn't touch on that.

So the Nova Scotia experience is, again, very targeted, and the target they picked was long-term-care homes. We've gone much, much broader than that, to provide some comfort and protection for the inadvertent transmission of COVID-19 for those acting in good faith and making an honest effort to follow the public health advice in all sectors—in volunteer, in non-profit, as well as the front lines, and long-term care, as Nova Scotia has.

**The Chair (Mr. Roman Baber):** Two minutes remaining.

**Ms. Effie J. Triantafilopoulos:** Thank you for explaining to us the difference that the two other provincial governments took and how they targeted their assistance.

Minister Downey, in your view, does Bill 218 strike the right balance between giving people a remedy through the court process while protecting individuals, businesses and organizations who are having to go into work and operate each and every day as Ontario continues to battle the second wave of this pandemic?

**Hon. Doug Downey:** Yes. I just want to go back to first principles on what negligence is and the different levels. We could have, in theory, said, "Even if you're grossly negligent, you're covered." Or we could say, "You have absolutely immunity," which means regardless of anything, you've got total coverage on the inadvertent transmission of COVID-19. We didn't go to either of those standards. We stayed down at good faith, because we believe that if you're acting in good faith, you should have some protection, some comfort from that.

It is a balance, and it's government's job, quite frankly, to find that balance in many areas of law, in many areas of things that we do. There are always different factors you have to consider—and I think, in consultation, since you're going to hear deputations today from a number of people who were calling for this kind of protection since

the spring, some organizations shuttered. They didn't operate simply because this kind of protection wasn't there, and we want them to be able to help us recover in Ontario.

**The Chair (Mr. Roman Baber):** Thank you very much. Back to the official opposition: MPP Gurratan Singh.

**Mr. Gurratan Singh:** You leave it up to the courts. Legislation that is left up to the courts can be left in appeal. It can be left in a situation that causes, ultimately, greater cost to the taxpayer because of the cumbersome process the appeal process is, and it also leaves less protection for folks as new legislation is being determined in the courts. Why not just address this criticism that is being raised around billion-dollar long-term-care facilities and exclude them from this piece of legislation to avoid this kind of cumbersome backlog that can happen with this act being challenged in the courts?

**Hon. Doug Downey:** I can tell you that the statements of claim will come regardless; they'll be accepted and they'll be decided. So in terms of the courts, it's the courts that will decide, in any event, when the claims come.

What we're doing is providing a level of protection—that if somebody comes forward and says, "I got COVID-19 from this other person. It was inadvertent, but I still got COVID-19 from this store that I went into." A lawyer may look at it and say, "Let's see what they did." The lawyer says, "They acted in good faith. You can tell. They screened as people came in. They followed the public health advice," whatever that happened to be. They had a mask policy, and they had sanitizer at the front door. They had a limited number of people in their store. They followed the guidance of public health. That lawyer may say, "They acted in good faith, and if a judge says that they had an honest belief in following that public health advice, the claim isn't going to go anywhere. We can still file it if you want, but it may not go anywhere." Those are the claims I don't want in the courts. Those ones that aren't going to meet the standard, that are going to put a small business or a non-profit into jeopardy, into a court system that—quite frankly, if they're acting in good faith and with an honest effort, and they're following public health advice, we want them to have the comfort that they won't end up in court over that level of claim.

But in terms of the court and the cost, there's tremendous cost because anybody can file anything—unless they're determined to be a vexatious litigant, but that's fairly rare.

So we are wanting to reduce costs overall in the system for those individuals who would otherwise have to defend a claim when they were acting in good faith, with an honest effort, following public health advice.

**Mr. Gurratan Singh:** You make a lot of reference to small businesses and local community organizations. I'm looking at the Toronto Star right now, and there's a headline that says, "For-Profit Nursing Homes Have Had Far Worse COVID-19 Outcomes Than Public Facilities—And Three of the Largest Paid Out \$1.5 Billion to Shareholders."

Respectfully, the focus on my questions are with respect to these billion-dollar long-term-care facilities—not the small businesses, not the community organizations. I'm talking about these billion-dollar organizations. They have more resources and they have a higher duty of care to their residents. If you can speak directly to them—why should they be grouped alongside the example you just provided of small businesses and community groups, which have far less access to resources than these billion-dollar corporations?

**Hon. Doug Downey:** I know we may have a philosophical difference in thinking that profit is a dirty word, but that's really not the focus here. The focus is on honest effort, good faith. That's the focus. You want me to draw the line somewhere. You want me to exclude based on—currently, it's profits. A few moments ago you wanted me to draw it up based on knowledge. Do you want me to carve out doctors and nurses or other health care officers? The line has to get drawn somewhere. I think the law needs to apply to all the same.

0950

**Mr. Gurratan Singh:** When the army went into these long-term-care facilities, specifically for-profit long-term-care facilities—which is where my line of questioning is directly focused—they found deplorable conditions for residents. They found people sitting in soiled diapers for hours. They found a direct correlation between a lower standard of care with for-profit long-term-care facilities, as opposed to public long-term-care facilities.

I am drawing a very distinct line around for-profit long-term-care facilities and the higher standard of care that they should have—not doctors, not the rest. This is my line of questioning. Can you comment on that directly—about why they should be grouped alongside these other individuals when the data shows clearly that these long-term-care facilities, the for-profit ones, have failed our seniors?

**The Chair (Mr. Roman Baber):** Thirty seconds, Attorney General.

**Hon. Doug Downey:** Thank you.

I'll simply say this: You're going to hear from lawyers—and I've given you quotes previously—who are going to tell you that claims in those areas are going to go forward. Claims in those areas with those allegations are going to go forward. This does not do anything to protect the bad actors. It doesn't do anything to protect people who failed to provide the necessities of life—it's simply the inadvertent transmission of COVID-19.

**The Chair (Mr. Roman Baber):** Back to the independent members: I recognize MPP Mitzie Hunter.

**Ms. Mitzie Hunter:** Thank you, Attorney General, for presenting today.

I'm just wondering if you can tell the committee why this goes retroactively, which is highly unusual.

**Hon. Doug Downey:** Yes, that's a great question.

It was intentional. It was a decision point that we made. People have been trying to follow public health advice, making that honest effort, that good-faith effort. They've been listening to the news every day. If your small business owners on your main streets are asking, "What

PPE do I get? Where do I get it? How do I do this? How do I do that?"—they've all been doing their best. Most of them have been doing their best. The reason we're making it retroactive is because they've been trying to do that for some time. If they've made the honest effort in good faith to follow public health advice—sometimes lawsuits lag. Lawsuits don't happen in real time. If I contracted COVID-19 in August, it may not be until December or even into next year before the claim is launched.

We wanted to provide certainty. We said, "We're going to tie it back to when the emergency orders came into effect," so that those who were following that public health advice, making the honest effort in good faith to comply, all the way back to when the emergency orders were filed—we wanted to provide a level of protection to there, because the lawsuits will come from that point forward.

**Ms. Mitzie Hunter:** I just urge you to please listen to the groups that are advocating on behalf of the elderly and on behalf of the families who have been impacted. Certainly, many in my constituency of Scarborough–Guildwood have been affected adversely. They do want to have their day, and we should be making access to justice available to those individuals.

I want to use the remainder of my time to ask you about why schedule 2 is in this bill. It doesn't seem that there is any great urgency. We've had over 10 mayors who have said that the government should slow down. Why is there schedule 2, which revokes a ranked ballot in Ontario? And who has asked for this, in any case?

**Hon. Doug Downey:** So your question is really about timing, sort of "Why now?", from what I gather.

**Ms. Mitzie Hunter:** Well, why at all? No one has been asking for this. It has nothing to do with the pandemic response.

**Hon. Doug Downey:** Well, in fact, it does. I heard from several clerks who sent messages along and said, "Thank you for doing this, and doing this now," because they were—we're two years out from a municipal election. We're really right in the middle, as you know. Some of the clerks in some of these municipalities were being sent down the road to explore this, to think about it and do some navel-gazing. We're in a pandemic. All resources need to be focused on providing services to the public and providing the highest ability that each of us has. We wanted to give early warning to all of the municipalities that this was a decision that was being made, so that they wouldn't spend precious resources and precious time over the next year—or however slow you wanted us to go; I don't know. It's interesting: When people agree with things, they say, "Speed up," and when they disagree, they say, "Slow down." But the decision was made. We wanted to get it out there early so precious resources weren't being spent on things, especially in the middle of a pandemic.

We can get into the reasons why, if you want. I think—

**Ms. Mitzie Hunter:** Did those clerks proactively approach you on this?

**The Chair (Mr. Roman Baber):** Thirty seconds.

**Hon. Doug Downey:** I can tell you that there have been many discussions with the Minister of Municipal Affairs. He has been engaged in this and other parts of municipal—he's very active in the municipal world. In fact, he was the youngest municipal mayor in his time and went on to become the head of AMO.

I can tell you that a third of our caucus comes from the municipal sector—including me; I served on municipal council—so we know well what the municipal sector is about, and—

**Ms. Mitzie Hunter:** I just want to say—

**The Chair (Mr. Roman Baber):** I apologize, MPP Hunter. Your time is up.

We are time-allocated, which means we have a hard stop at 10 a.m. We have three minutes remaining, and the last round will consist of 90 seconds for each of the recognized parties.

A member of the government—MPP Park, 90 seconds.

**Ms. Lindsey Park:** I'll just jump in and ask the Attorney General if there's anything else he'd like to share—particularly what he's hearing locally in his riding, and any particular stakeholders he wanted to highlight that he hasn't had the chance to yet.

**Hon. Doug Downey:** Minister MacLeod set up a Zoom call for sports organizations in Ontario shortly after this was introduced. You're going to hear from some of them today. They have been calling for this since June, if not before, and it is so well received. Things like the Cobourg soccer club, which didn't even operate this summer, will now, for this reason, be able to activate its board of directors and re-engage when the time comes.

**Ms. Lindsey Park:** I heard specifically, locally, from a number of organizations that have been fearful to continue on, particularly volunteer-based organizations, who obviously are just helping out of their own goodwill and their own generosity and not being compensated. Of course, it's a bit scary for them that they might be held liable for spreading this new, contagious infection. I want to personally thank you for your initiative on this file. I know they have been ecstatic. I think of even some of the health care organizations or mental wellness organizations—

**The Chair (Mr. Roman Baber):** I apologize, MPP Park. I'm terribly sorry to interrupt you.

There are 90 seconds for the official opposition. I recognize MPP Armstrong.

**Ms. Teresa J. Armstrong:** I want to get on record that this is about over 2,000 people who have died. We're discussing legalities, and I understand that's what legislation is about, but we can't forget the human element. Over 2,000 people died in deplorable conditions—and I will point out that these conditions were not new. We had ample evidence prior to these conditions—such as the underfunding of long-term care for decades, coroners' inquests, the Wettlaufer inquest, report after report, inspection non-compliances, the commissioners, the Canadian Armed Forces. We were all informed prior to this, and we are now dealing with what we're calling insurance costs and hoping that the cost of this is the problem. The cost has been, ultimately, the lives of people

who were in long-term care—but there is a responsibility in risk management prior to this pandemic. Why weren't we managing this risk before it got to this point? There is responsibility and there is negligence, as far as I'm concerned. Prior to the pandemic, this was already happening. As you pointed out, there have been class action lawsuits pointing out that quality of care wasn't adhered to. I say on record that these things should have been dealt with before we came to this crisis in the pandemic.

It's disappointing that what we're focusing on and have focused on is protecting the large, profitable corporations that, yes, make billions of dollars that could have been used to help risk-manage these problems so they wouldn't be here today.

**The Chair (Mr. Roman Baber):** Thank you, MPP Armstrong.

Members, I'm mindful of the fact that we were unable to complete the last round of questions. I did inquire with the desk and we did inquire with the House. Given that we're time-allocated, we have a hard stop.

I'd like to thank the Attorney General for his testimony this morning. The committee is in recess until 1 p.m.

*The committee recessed from 1001 to 1300.*

**The Chair (Mr. Roman Baber):** I now call the meeting of the Standing Committee on Justice Policy to order. We are here to continue hearings on Bill 218, An Act to enact the Supporting Ontario's Recovery Act, 2020 respecting certain proceedings relating to the coronavirus (COVID-19), to amend the Municipal Elections Act, 1996 and to revoke a regulation.

I'd like to confirm that MPP Nina Tangri has joined us.

Welcome. MPP Tangri, kindly confirm that it's you and where you're located.

**Mrs. Nina Tangri:** Yes, this is MPP Tangri. I am in Mississauga, Ontario.

**The Chair (Mr. Roman Baber):** Thank you.

For the afternoon panel, each presenter will have seven minutes for their initial statement, followed by two rounds of seven and a half minutes each for both recognized parties and four and a half minutes for the independent member.

I would invite our first afternoon panel—specifically, from the Ontario Hockey Federation, Phillip McKee, executive director; from the Canadian Medical Protective Association, Lisa Calder, their CEO; and from Thomson Rogers, Stephen Birman, partner.

I recognize MPP Collard.

**M<sup>me</sup> Lucille Collard:** I apologize for delaying the start of the meeting, but I have a point of order. I want to state that, after receiving numerous requests from various people who wanted to be able to participate in or actually view and listen in on the public hearings this afternoon, I sought and received permission from the Clerk and made according arrangements to have the hearings of this afternoon live-streamed.

I learned today that that might have been incorrect advice that I received, and I don't want to be contradictory to the rules and be disrespectful. I would like to seek the

unanimous consent of the members of the committee for me to live-stream the hearings so that people can have access to it, given that the room doesn't have the capacity to make those hearings public, as they should be.

**The Chair (Mr. Roman Baber):** MPP Collard, thank you for bringing this matter to our attention. I have conferred with the Clerk, and I understand as follows: There is no process right now to stream this proceeding by the Legislative Assembly. However, I understand that there is no prohibition on you streaming this on your own social media from your office.

**M<sup>me</sup> Lucille Collard:** Thank you very much, Chair.

**The Chair (Mr. Roman Baber):** Any other business before we begin hearings? Seeing none, I'd like to invite our first panel.

I'd invite Mr. McKee to begin his seven minutes of submissions, starting by—I see MPP Lindsey Park on a point of order.

**Ms. Lindsey Park:** Thank you, Chair. Can we hold a 20-minute recess, please?

**The Chair (Mr. Roman Baber):** For what purpose?

**Ms. Lindsey Park:** To consider the point that Madame Collard has raised.

**The Chair (Mr. Roman Baber):** I'm a little hesitant to give you 20 minutes, given that this is a time-allocated bill and so we will have a hard stop at 6 p.m. However, I would like to get clarification myself. My preliminary ruling was based on the advice given to me by the Clerk in the room. However, I appreciate you wanting to get your own advice. Could we settle on—

**Ms. Teresa J. Armstrong:** Chair?

**The Chair (Mr. Roman Baber):** MPP Armstrong.

**Ms. Teresa J. Armstrong:** This has been the procedure since we started, which I don't agree with—that it's not live-streamed and open to the public, so I don't know why we need to deliberate it. This is a time allocation. This room is not live-streamed. All members know that. It's the fault of the government—to time-allocate things and not have public access to it. I think using our time to debate this is actually taking away from the people who registered to present on this issue.

**The Chair (Mr. Roman Baber):** I am very mindful of the fact that there are substantive submissions to be made. I'm mindful that a lot of stakeholders wish to be heard on this issue. There's also no question that the government is entitled to time-allocate the bill. The time allocation motion has been duly debated and passed by the House.

We are under extraordinary circumstances, and I made a ruling. Nonetheless, I do not wish to deny MPP Park an opportunity to get advice on what appears to be somewhat of a novel issue, given the circumstances in which we find ourselves. So I will entertain Ms. Park's request, subject to whatever she wishes to present next.

MPP Park.

**Ms. Lindsey Park:** I think 10 minutes will be sufficient, if that's possible.

By the way, the government doesn't choose the room. Thank you.

**The Chair (Mr. Roman Baber):** I appreciate that. I did not suggest that.

I will recess until 1:15 p.m.

*The committee recessed from 1306 to 1314.*

**The Chair (Mr. Roman Baber):** I call resumption of the hearing of the Standing Committee on Justice Policy with respect to Bill 218.

I understand that MPP Will Bouma would like to speak to a point of order. I also anticipate that MPP Lindsey Park may wish to be heard. However, I would propose that members of the committee allow the Chair to issue a fresh ruling first.

Do we have MPP Lindsey Park?

*Interjection.*

**The Chair (Mr. Roman Baber):** If I'm going to recognize Mr. Gill, then I have to recognize Mr. Bouma first. Mr. Bouma.

**Mr. Will Bouma:** I just want to say thank you to Madame Collard for bringing this issue forward, because it raised a whole bunch of questions in my mind during the recess—principally, if we are allowed, as members of committee, to live-stream committee meetings on our own, and if so, what does that mean for in the House? Committees are typically an extension of the House. If we can do that on Zoom from wherever we happen to be in the province, would that also mean that we can do that from a committee room, and can we also live-stream personally from the House if we want to, because committees are considered an extension of the House?

Many questions arise in my mind. So, again, I appreciate Madame Collard for bringing that forward.

**The Chair (Mr. Roman Baber):** MPP Gill.

**Mr. Parm Gill:** For the benefit of all the members, can we just clarify what the ask is? I think there is some confusion surrounding that, as well.

**The Chair (Mr. Roman Baber):** I am prepared to, of course, restate the ask, and I'm also prepared to rule.

Madame Collard asked the committee for permission to broadcast today's proceedings from her own office via her own social media. Upon seeking clarification from the Clerk of the Committee, I have issued a ruling that she is permitted to do so.

Subsequent to Ms. Park's objection, the Clerk and I have contacted procedural services and sought the advice of a senior Clerk. I have been informed and will therefore revise my ruling as follows:

Only members of accredited media are permitted to take pictures or stream committee proceedings. Such a rule also applies to the House.

The government does not determine where hearings are to be held. Today's room has been determined fortuitously, as it is determined by operation of the House.

The process in this situation is to revert to Madame Collard's original ask, whereby she would seek unanimous consent of the members of the committee to stream committee proceedings from her own social media. Before I seek such consent, are there any questions with respect to my ruling? MPP Hunter.

**Ms. Mitzie Hunter:** Okay. I just wanted to support Madame Collard's request that the opportunity to stream this meeting be made available, given that it is a public hearing and anyone in the public, really, could have visited, because it is not being held in camera; it is being held in public. I do think that it is incumbent on the resources that we have to make that available to those who would wish to observe the proceedings.

**The Chair (Mr. Roman Baber):** Mr. Singh.

**Mr. Gurratan Singh:** I do want to note that these hearings are public, and I know that there are many folks who do want to watch and are unable to. My understanding is that around 58 groups applied to the standing committee and only 15 were accepted, and that there is a degree of frustration from folks who cannot access what's going on in the committee right now. I think it would be important, if this committee is an extension of the Legislature, that there is as much transparency as possible in terms of being able to access the information being shared at this committee today.

**The Chair (Mr. Roman Baber):** Before I allow Mr. Bouma to be heard, I just want to stress that the debate that's currently ongoing is about the granting of unanimous consent to Madame Collard to do something that is otherwise not permitted by the House; namely, that no one is allowed to broadcast, other than the House or an accredited member of the media.

Mr. Bouma.

1320

**Mr. Will Bouma:** I hear every comment made, and I disagree with none of those comments. However, this is novel and I believe very firmly that, before we set the precedent, this should be looked at further. So in due regard for caution, I will be saying no to unanimous consent.

**The Chair (Mr. Roman Baber):** MPP Hunter.

**Ms. Mitzie Hunter:** I'm hearing the member's concern, and I'm just wondering, because of the nature of what is being deliberated, can there be consideration made to be in a space in the Legislature that has the capability to actually broadcast this hearing?

**The Chair (Mr. Roman Baber):** Further debate? MPP Hunter, your point is noted.

On the advice of the Clerk, I will proceed by posing the question. Madame Collard seeks permission to live-stream this hearing from her own office. Agreed? I see a no.

*Interjection.*

**The Chair (Mr. Roman Baber):** I did hear a no, but I will recognize MPP Armstrong.

**Ms. Teresa J. Armstrong:** If we're allowing MPP Collard, I would also like the capability of doing that. I think, if it's something we allow MPP Collard to do, that we should all have same privilege of doing that today as well.

**The Chair (Mr. Roman Baber):** The committee did not allow MPP Collard to do that. The rule is clear, and while we're in extraordinary circumstances, and while I appreciate that some members may be passionate about the bill, I am not prepared to waver from the rule.

MPP Gill.

**Mr. Parm Gill:** I just wanted to say no to the unanimous consent as well, Mr. Chair.

**The Chair (Mr. Roman Baber):** Thank you.

ONTARIO HOCKEY FEDERATION  
CANADIAN MEDICAL PROTECTIVE  
ASSOCIATION  
THOMSON ROGERS

**The Chair (Mr. Roman Baber):** I will attempt one more time to invite Mr. McKee.

Mr. McKee, I apologize. Please commence your seven minutes of submissions by stating your name for the record.

**Mr. Phil McKee:** My name is Phil McKee. I'm the executive director of the Ontario Hockey Federation.

**The Chair (Mr. Roman Baber):** Thank you.

**Mr. Phil McKee:** Thank you, Mr. Chair and members of the committee. I have the pleasure to serve for a board of volunteers who work with Hockey Canada and our minor hockey associations, as well as the many PSOs around this province, small and large. It's the work with those organizations that makes this request in this bill to move forward ever more important.

Our organization is a large organization with resources and is the largest member of Hockey Canada, and we work alongside Hockey Eastern Ontario and Hockey Northwestern Ontario as the governing bodies for hockey in Ontario.

OHF has been working since the start of the pandemic to support individuals and families who have seen their programming cut short at the end of last year and are continuing to try to figure out how that programming will come back. We work with our national organization, Hockey Canada, who built a return-to-hockey framework. We have modified that based on Ontario government regulations and put that to the highest standard possible.

Our challenge is putting players, coaches, volunteers in a safe environment on the ice and in the sport. And since COVID-19 has hit, we recognize the significant liability risk for those volunteers and those players who partake in our sport—and not only our sport, but all sports across the province of Ontario. It is all fuelled by volunteer power—those individuals who are putting their extra time to the opportunity to give our kids and youth the opportunity to participate in our programming.

When we learned about the issue, in concert with the other provincial sport organizations, we went to the Minister of Heritage, Sport, Tourism and Culture Industries and the Attorney General, to advocate that liability protection be put in place. We highlighted similar action taken in BC, but did ask for a permanent solution versus one tied to the emergency order. If passed, Bill 218 will provide our organization and other sport organizations protection for players, coaches and employees, and our volunteers. This protection will prevent them from being caught up in lengthy and costly legal battles if they have

made a good-faith effort to comply with our plans we have in place that are aligned with the Ontario government regulations. This is the solution we asked the government to put in place and that was needed to get sports running safely by provincial sport organizations province-wide.

Hockey, as you know, is Canada's national sport. Under our organization, 230,000 players participate and lace up their skates each year. To compete for a team in that atmosphere, it grows them both mentally and physically—and working with our 40,000-plus volunteers who help build the lifelong friendships and the community ties that develop through participation in local programs. The volunteers and the organizations that operate with our PSOs and the other PSOs in the province of Ontario are the lifeblood of our communities and the lifeblood of our youth sport. The swift passage of this bill will protect them and others involved acting in good faith.

Over the past few months, we have met with the ministers and MPPs on this issue from different parties. While COVID-19 has taken a number of body checks on our organization, we sincerely appreciate the support that we've had to give kids back their sport, on all sides of the Legislature. Furthermore, I thank Minister MacLeod, Attorney General Downey and MPP Smith, and the administrative officials and minister's office staff who worked hard to get us here today. This bill is important for hockey, but more so for all the sports that are small and are challenged, if cases do come forward. I hope that you guys take the necessary steps to see that this passes and becomes law.

I would be pleased to answer any questions you might have.

**The Chair (Mr. Roman Baber):** Thank you very much.

I invite Lisa Calder of the Canadian Medical Protective Association to make her seven minutes of submissions. Kindly begin by stating your name for the record.

**Dr. Lisa Calder:** My name is Dr. Lisa Calder. I am the executive director and CEO of the Canadian Medical Protective Association, or CMPA. Thank you, honourable committee members, for the opportunity to speak with you today.

The CMPA is a not-for-profit, mutual-defence organization operated for physicians by physicians. Our mission is to both protect the professional integrity of physicians and advance the safety of medical care. We are the principal provider of medico-legal assistance to Canadian doctors, with over 40,000 members in Ontario and over 100,000 members across the country.

In providing medico-legal advice, assistance and education to our members, the CMPA sits at the intersection between the Canadian health care and legal systems. We are already, and will continue, to be guiding and assisting doctors through the numerous medico-legal issues they are encountering when providing care to patients during the COVID-19 pandemic. We are pleased to appear here today, and it is through this lens, as a doctor-run organization providing medico-legal advice, assistance and education to Ontario doctors during these difficult times, that we offer our comments on Bill 218.

The CMPA is supportive of Bill 218 as a positive step in providing reassurance to our valuable front-line health care providers who are assuming significant personal and professional risks while providing care during the pandemic. There is already evidence that health care providers' health and wellness is suffering during this protracted crisis. The unprecedented pressures on health care providers can challenge their ability to deliver safe care.

**1330**

I have three key messages to share with you today. The first is that immediate efforts by the government are critically important to support front-line health care providers. As a first step, Bill 218 provides this support. Secondly, we are pleased to offer today some ways in which Bill 218 can be improved to further address the risks to health care workers when caring for patients who are infected or potentially infected with COVID-19. Lastly, we encourage the Legislature to consider broader protections to address the additional risks associated with treating any patient during this health crisis. I will now expand on these three key points.

Firstly, in terms of supporting physician wellness and health: Over the last number of months, the CMPA has heard daily from our members in Ontario and across the country, doctors on the front lines during the pandemic, that in these difficult times, front-line health care providers are doing the best they can to provide appropriate medical care to patients. They are providing this exceptional care at great personal and professional risk, and with limited resources. Doctors must adjust to continuously changing public health directives and guidelines and adapt to the ever-evolving clinical information related to COVID-19. This has created additional anxiety for doctors, not only to stay abreast of rapidly changing information, but also from the inability to provide robust, evidence-based reassurance to patients regarding the diagnosis, treatment and prognosis of the disease.

Some of the pandemic's impacts on doctors are already documented and described. Front-line health care workers engaged in direct COVID-19 care are at higher risk of depression, anxiety, insomnia and distress. Not surprisingly, they are also suffering from increasing levels of exhaustion and burnout. There are likely to be longer-term implications on the resilience of doctors in providing care through this protracted public health crisis. Research shows that feelings of distress may reduce doctors' ability to deliver care, increase medical errors and impact the health care system. Front-line health care providers need support from the government to overcome these challenges and risks that they are facing because of this health crisis. The CMPA supports these efforts in Bill 218. In terms of statutory liability protection, the CMPA believes it is a positive step in providing reassurance to Ontario's doctors and other health care providers.

Secondly, in terms of improving Bill 218: On a daily basis, our work with physicians demonstrates their need for additional support. As an immediate step, Bill 218 should be amended to clarify that it is intended to protect front-line health care providers from exposure to liability arising from the screening, assessment, diagnosis and

treatment of patients infected with or suspected of being infected with COVID-19.

My last point is addressing additional risks through broader statutory liability protections. The CMPA also supports broader immunity provisions to help assist health care workers with additional liabilities that arise in the context of providing care during the COVID-19 pandemic. In addition to exposure-related allegations, there are a number of other scenarios that create medico-legal risk for health care providers, which are not captured, during the current limited-protection provision in Bill 218.

In this time of uncertainty, ongoing consideration of broader liability protection is needed to reassure front-line health care providers that their good-faith efforts to provide care during the public health crisis will not put them at increased medico-legal risk. Broader efforts are also necessary to support health care providers who continue to provide care despite the disruptions of the impact of public health measures on conditions unrelated to COVID-19.

The health care system is challenged to provide medical services during the current environment. A recent study suggests it may take over a year to clear the backlog of surgeries in Ontario. The CMPA is aware that some patients and their families have already threatened to bring legal actions against doctors as a result of delayed care or care that was disrupted for reasons related to the pandemic. When faced with a lack of adequate resources, health care providers will not be able to provide all patients with a level of care as would be expected outside of a pandemic emergency. Given the time required to enact an appropriate response, efforts to help front-line health care workers need to be considered now.

Honourable committee members, in summary, our three key messages are as follows:

The CMPA supports Bill 218 as a means of providing reassurances to our valuable front-line health care providers.

The CMPA supports amendments to Bill 218 to clarify that it is intended to protect doctors and other health care providers from exposure to liability arising from screening, assessing, diagnosing and treating patients infected with or suspected of being infected with COVID-19.

The CMPA encourages the Legislature to consider broader statutory protections to ensure that Ontario doctors can continue providing needed care to patients in the face of COVID-19 with confidence and support and without fear of liability.

**The Chair (Mr. Roman Baber):** Thank you.

Mr. Birman, please begin your seven minutes, stating your name for the record.

**Mr. Stephen Birman:** Good afternoon. My name is Stephen Birman. I'm a partner at the law firm Thomson Rogers.

**The Chair (Mr. Roman Baber):** Thank you.

**Mr. Stephen Birman:** Since 1936, Thomson Rogers has specialized in personal injury law. We were involved in and actually commenced the Indian residential schools class action, which was one of the most significant

systemic abuse class action claims in Canadian history. Today, Thomson Rogers represents many of the victims who are pursuing class action lawsuits against long-term-care operators as a result of the COVID-19 outbreaks.

Allow me to first respond to the submissions of Mr. McKee and Dr. Calder. I wish to make it unequivocally clear that neither my law firm nor any of the members of the Ontario Trial Lawyers Association are pursuing claims against PSWs, front-line workers, hockey coaches or volunteers in these lawsuits primarily against the for-profit long-term-care operators. That is simply not our issue.

Our issue is in respect the long-term-care facilities, which are ground zero for the tragic COVID-19 outbreaks that have claimed over 2,000 lives to date. For the reasons that I will explain, I am requesting that this committee consider carving out or excluding long-term-care operators from Bill 218, so that these lawsuits can continue. Please let me explain why.

If you take nothing else from my brief submission, I wish for you to understand the difference between the current standard of ordinary negligence that is prevalent in Ontario law and the standard of gross negligence that is being proposed for lawsuits to proceed in Bill 218. Currently, long-term-care operators owe their residents a duty of care pursuant to legislation. This includes a duty to ensure the reasonable safety and well-being of their residents: our seniors. When an operator falls below the standard of care by not acting reasonably, the resident may sue for negligence. That is the law in Ontario and the principle of ordinary negligence.

But it is neither easy nor straightforward to establish a claim of negligence. A defendant in a negligence claim can succeed in defending itself by establishing that they acted with reasonable care, and every long-term-care operator in this province has that defence available to them. Many will meet that standard, as they performed well. If the operator can show that they acted reasonably in the context of this global pandemic, then they will not face liability in ordinary negligence.

But establishing ordinary negligence is already extremely challenging, and this will be especially so where victims are deceased or suffer from dementia and would be unable to give evidence about what has transpired. What Bill 218 is proposing is to raise the negligence bar to a standard of gross negligence, which will prevent and result in the immediate dismissal of lawsuits against negligent operators. Premier Ford has promised the people of Ontario that negligent operators will be held fully accountable. Surely it is not his intention or this government's intention to pass a bill that will do the opposite.

The proposed legislation, again, raises the already high negligence standard to a standard of gross negligence. What is "gross negligence"? Well, it's a very ambiguous term and phrase. It has been defined as "very grave negligence." Some say it is a very high and indeterminate bar, and it's a definition that creates legal uncertainty. Uncertainty means more, not less, litigation, which will fall to our courts and appellate courts, and possibly one day to the Supreme Court; it will need to grapple with this

ambiguous language. That will mean delay for the victims and clutter in our court system.

**1340**

I should also let you know that the gross negligence standard is virtually non-existent in Canadian law. It is reserved for circumstances where the government wants to notify courts that a defendant ought to be given less onerous responsibility—I repeat, less responsibility. For example, it applies to snow and ice claims against cities when there are slips and falls on sidewalks, likely because these are frequent occurrences. There, an imbalance is created in favour of the city to make it more difficult for the victim to show that conduct should result in legal liability.

However, a death in a long-term-care home is not a fall on an icy sidewalk, and it should not resolve in such an imbalance. There is nothing frequent or routine about negligent conduct towards our seniors, and tilting the balance in favour of long-term-care operators will make it difficult for victims of neglect and abuse to seek access to justice, accountability and a modification of negligent behaviour, all of which are objectives of class actions.

And let's think about the message that a reduced standard of care would send to the public. It would allow operators to act negligently when caring for our vulnerable seniors, and it would do so retroactively, extinguishing the existing rights of litigants. To be frank, doing so in the midst of this tragedy only adds insult to injury for our clients.

To be clear, the lawsuits will continue either way. However, many claims which only meet the ordinary negligence standard will be dismissed by the courts. The bill will lead to operators and their insurance companies arguing that they should be protected from liability because they only acted negligently. That is not accountability.

The primary beneficiary of this elevated standard would be insurance companies, which would issue policies to respond to allegations of negligence—policies that were paid for—and will now be protected from having to pay compensation. Ontario should not be protecting long-term-care operators and insurance companies over our seniors.

So what is the solution? We are seeking a carve-out to exclude long-term-care operators and retirement homes from the legislation. This will ensure that operators who acted negligently are held accountable by our judicial system. We ask that you not pass a bill that will lead to a less onerous standard of care for our seniors.

Recall back in May that Premier Ford, upon receiving the Armed Forces report, commented on the heartbreaking and horrific findings.

Our seniors deserve the opportunity to hold long-term-care operators accountable, and carving operators out of this bill is the only way to do that.

I've also delivered written submissions that I kindly ask that you consider.

**The Chair (Mr. Roman Baber):** We'll now proceed with seven minutes of questioning, beginning with the government. Mr. Gill.

**Mr. Parm Gill:** I want to take the opportunity to thank our presenters for appearing before the committee and being part of this important process.

My question is for Phil McKee from the Ontario Hockey Federation. First of all, I want to thank you for your public support of this bill. I've heard from the hockey association teams and families in my riding that providing no protection to Ontarians or businesses and organizations that provide such an important service is getting in the way of getting kids active and safely back on the ice.

In fact, it was many of our supporting associations that immediately brought to our government's attention that the NDP government in British Columbia introduced ministerial orders, and eventually legislation, that protects individuals and small businesses from liability for the transmission of COVID-19, provided they can prove they followed, or reasonably believed that they followed, emergency and public health guidance.

Can you please expand on the practical effects for your organization and its members if this legislation was not introduced, and ultimately what it means for Ontario's hockey coaches, players, parents, arenas and affiliated organizations, and the small businesses that, of course, rely on hockey tournaments, practices and others to earn their revenue?

**Mr. Phil McKee:** Thank you very much for the question.

From the Ontario Hockey Federation's and the sport's perspective, it's going to allow people that relief to know they're operating in good faith—that they're operating to a standard and want to come back.

For the Ontario Hockey Federation specifically, we have 40,000 participants in the GTHL, the Greater Toronto Hockey League, who aren't participating because of this fear that's related for the volunteers who are part of the organizations. To get those players back into a safe environment, where they're part of a national program under an insurance program versus playing on their own outside, is an important step. It will help not only our organizations and our volunteers to feel comfortable to provide that programming to the standard that they do every single year—but for those players to be back in a system that has a national insurance program that does protect them from a number of different things regarding any medical injuries that they don't have when they're outside of our system.

That goes for all the sports. The PSOs do such a good job of making sure their athletes are protected. That's something that having them participate in PSOs, provincial sport organizations, because a volunteer can feel comfortable to operate, is going to be so important to those kids, as well as to those operators that—the mental health and physical health of those individuals just would be second to none in our sport.

**Mr. Parm Gill:** Would you be able to share with us in terms of the morale of a lot of these individuals who are involved in making a difference in their communities—obviously, for a fear of being potentially sued, even though they might have taken every precaution necessary or communicated to them by their local health department,

and the fear that they may still be sued? Are you able to share some of the concerns that your organizations or individuals might have shared with you?

**Mr. Phil McKee:** Absolutely. We have organizations that are over the number of 500 in hockey, but if you look at PSOs across the board—thousands of minor associations that are all made up of board directors.

In hockey, those boards of directors are offering up their opportunity—they have directors' and officers' insurance, but in most cases there is no protection under COVID-19. If their liability coverage isn't large enough in their specific sport, then those individuals could take on that personal liability themselves.

There's a great fear. There are a lot of organizations that aren't operating because of that fear. Just being sued for negligence could bankrupt the PSO, it could bankrupt the organizations, and then there's not any provision providing those participants the opportunity to play. Not even talking about the claim that might come in the end—just the aspect of defending the claims is a fear for the volunteers because of, potentially, the numbers of claims when they're following the government regulations and what's in place.

It is a challenge. There are boards of directors and volunteers stepping down and stepping away, which is our lifeblood. Without volunteers, kids don't get to play sport in the masses at the lower costs. It will all become a higher-cost program.

Our fear, second to that, is that we won't have insurance in the future. If we get too many claims, we're going to be in a situation where we will be an uninsurable entity to the insurance business. Therefore, we're putting kids in a position that the insurance they have currently that protects them on the ice if they get injured or protects them on the field if they get injured, and that has been worked on over the last 20 or 30 years, goes out the door because of something that we can't control. We've done an excellent job of making a safe environment and acted in good faith for those participants.

**Mr. Parm Gill:** I see that your organization said on Twitter, following the introduction of Bill 218, "We are pleased to see the government is taking an important step to bring forward legislation. This change will give sport confidence that the government will help protect players, coaches and volunteers who continue to provide a safe return to sport."

Can you please explain to us why the timing of the passage of this bill is so critical for your organization and the thousands of hockey coaches, players, parents, arenas and affiliated organizations across our province?

**1350**

**Mr. Phil McKee:** The timing right now is that we're right in the flow of a lot of our programming coming back in for indoor soccer, for volleyball and basketball. They're coming into the seasons of their sports. For all of us, it's very important now because our sports seasons are making the decision to operate or not operate. For the mental and physical health of our children who participate and engage, it's very timely for the purpose of making sure that we can make these decisions with comfort, that we've

done the hard work to put a great return to hockey or a great return to soccer or a great return to sport back into place that is safe and, in most cases, is above and beyond the standard of the Ontario government for our participants. We feel that the timeliness is something that we've been looking for, for three or four months at least, in discussions with the government. It's great that we're now at this point—that as we come into our season, this, hopefully, will be passed and our volunteers can then operate with a little bit less stress on their shoulders than they are currently right now.

**The Chair (Mr. Roman Baber):** We will now proceed with seven and a half minutes of the official opposition. I recognize MPP Singh.

**Mr. Gurratan Singh:** My first question is for Mr. Birman. If you could be very short with these initial questions, just to make sure I got it right. The first point is that this new legislation changes the standard from negligence to gross negligence. Is that correct?

**Mr. Stephen Birman:** Correct.

**Mr. Gurratan Singh:** And the standard of “gross negligence” is a term that's not really used in jurisprudence, it's not used in common law, and it's—

**Mr. Stephen Birman:** Yes. Almost nowhere. The only place I'm aware of it is in the slip-and-fall sidewalk ice cases against cities.

**Mr. Gurratan Singh:** So what that ultimately means is that it's going to be a really contentious point and probably litigated extensively in the courts. Correct?

**Mr. Stephen Birman:** Extremely contentious, and it will be relied upon by the operators and their insurance companies and litigated very, very strongly.

**Mr. Gurratan Singh:** I want to note that there's also a change from an objective standard, such as the “reasonable person” standard, to now an objective good-faith standard. Is that correct?

**Mr. Stephen Birman:** That's also correct, yes.

**Mr. Gurratan Singh:** And the benefit of an objective standard is that there are objective comparables—what would a reasonable [*inaudible*] person do—as opposed to a subjective one, which is that as long as the person shows an intention, they can get away. Correct?

**Mr. Stephen Birman:** That's correct.

**Mr. Gurratan Singh:** If we continue on that line of understanding—are you aware of the BC legislation that has been referred to by the Conservative government during this committee?

**Mr. Stephen Birman:** I'm not overly familiar with it.

**Mr. Gurratan Singh:** Just for your benefit and for the benefit here, reading from it directly—the conditions for protection are that individuals had a reasonable belief that a person was engaging in an act in accordance with the guidelines. I know you don't have the legislation in front of you, but if they're saying “a reasonable belief,” it would be in line with legislation which is more in tune with a “reasonable person” objective test, as opposed to the subjective good-faith one being put forward to us right now. Correct?

**Mr. Stephen Birman:** Yes. That connotes the “reasonable” objective negligence standard.

**Mr. Gurratan Singh:** I don't know if you're aware or not, but the hearings that are happening right now are not being broadcast. Are you aware of this inability to access this webcast? Have you been told about this, or are you aware of this?

**Mr. Stephen Birman:** I just heard about that. That's unfortunate.

**Mr. Gurratan Singh:** Did you know of any of your people who have been negatively impacted by long-term-care facilities who would want to hear about this and probably want to see this discussion in the public domain? Is that something that you think people would want?

**Mr. Stephen Birman:** There are thousands of families who are affected. We're in contact with hundreds, and there are thousands who are on Facebook groups and social media who are obviously tragically impacted by what's happened.

**Mr. Gurratan Singh:** I want to switch over to Mr. McKee right now.

Mr. McKee and Dr. Calder, you are aware of the tragic amount of deaths that happened in our long-term-care facilities—if you just want to say “yes” if you're aware of that.

**Dr. Lisa Calder:** Yes, I'm aware.

**Mr. Phil McKee:** Yes.

**Mr. Gurratan Singh:** And you're aware that the military had to come into these for-profit homes and it was so bad that they found people in soiled diapers and people who were being—with used syringes, and it was a terrible, deplorable situation. Are you both aware of that? Who wants to say yes?

**Dr. Lisa Calder:** Yes, I'm aware.

**Mr. Gurratan Singh:** Mr. McKee, are you aware of that?

**Mr. Phil McKee:** Other than from the news—that's all I'm aware of it from.

**Mr. Gurratan Singh:** As a hockey institution, do you want to be grouped and have a standard of care which is the same for a hockey group as billion-dollar long-term care facilities that, frankly, have blood on their hands? Do you want to be grouped with them? Is that something that is advantageous to you at all?

**Mr. Phil McKee:** I appreciate the question, MPP Singh, but my expertise is not in long-term care and not in—

**Mr. Gurratan Singh:** I'm not asking you—

**Mr. Phil McKee:** —so I'm happy to speak to sport, and specifically this sport. But I don't have the knowledge and the information to speak to it.

**Mr. Gurratan Singh:** It's very simple. Do you think billion-dollar long-term-care facilities should be put into the same group and grouped along with hockey groups that need this kind of protection? Do you think that makes sense?

**Mr. Phil McKee:** I can tell you from my perspective that the level of requirement of gross negligence is a positive for sport. From that perspective, we like that

terminology because it does raise the bar, similar to what—

**Mr. Gurratan Singh:** I understand your point.

Dr. Calder, do you think that billion-dollar long-term-care facilities should be given the same protections as doctors?

**Dr. Lisa Calder:** At CMPA, we don't have an institution-specific perspective on liability protection. We're really concerned about protecting doctors providing long-term care.

**Mr. Gurratan Singh:** Can you agree with this perspective? Your concern is doctors and front-line-care workers, but do you think that billion-dollar long-term-care facilities should be afforded the same protections as front-line workers who are putting their lives on the line day after day?

**Dr. Lisa Calder:** What I can say is that we think there need to be urgent provisions, such as Bill 218, to provide protections to health care workers, and so we do support this as a step.

**Mr. Gurratan Singh:** Back to Mr. Birman: How much is this going to prevent folks from getting access to justice with respect to the deaths and the negligence that have happened in long-term care?

**Mr. Stephen Birman:** It's huge. The proposed bill says that the claims in negligence are dismissed immediately and retroactively. They vanish. They no longer exist. They need to be recalibrated using this higher standard of gross negligence, and there's now a spectrum. There will be a spectrum of homes, some who will not have been negligent at all, some who will meet a negligence standard, and maybe some who may meet a gross negligence standard. But there's going to be a group in the middle of negligent operators who will be immunized from liability. I don't know how big or small that group is, but it's going to exist, and it's going to result in some Ontarians not having access to justice.

**Mr. Gurratan Singh:** It's important to note that, looking at a Toronto Star article, during this long-term-care crisis—

**The Chair (Mr. Roman Baber):** Thirty seconds.

**Mr. Gurratan Singh:**—some for-profit homes actually gave \$1.5 billion worth of dividends to the shareholders while those homes actually had terrible care, resulting in the deaths of thousands of patients. Are you aware of this, as well?

**Mr. Stephen Birman:** I am aware of that. I don't know the exact numbers, but that's sad.

**Mr. Gurratan Singh:** I'll continue in the next segment.

**The Chair (Mr. Roman Baber):** We now turn to the independent members for four and a half minutes. I recognize Madame Collard.

**M<sup>me</sup> Lucille Collard:** I do want to thank all the presenters this afternoon—Dr. Calder, Mr. Birman and Mr. McKee—for taking the time to appear before the committee, sharing your views and your perspective and your experience.

I think that your testimony this afternoon puts into light the different realities between long-term care and hockey

associations and even medical caregivers. I think the big mistake that this bill does is, it puts everybody in the same basket. It requires the same standards and gives the same protection to everyone.

Mr. McKee, I do agree that protection that we've got in Bill 218—small businesses, restaurants and associations that don't have a duty to care for health and safety as a primary goal deserve certain protections. But long-term-care homes, especially the ones for profit, are businesses that have decided to operate with a duty to provide care with expertise and experienced staff. So their primary objective is to look after the health and safety of the residents they are responsible for taking care of.

**1400**

Mr. Birman, I do appreciate the way that you've explained with some clarity the difference in the standards and the difficulty to prove gross negligence for family members or residents who would want to have some justice about the way they were treated or the way their family members were treated. Can you just comment a little bit more about why it's important to carve out an exception for long-term-care homes that do have that responsibility to care for them and why gross negligence is something that's going to be impossible for those poor family members and residents to prove? Can you explain or use different words or examples to demonstrate that?

**Mr. Stephen Birman:** I come back to the example of the ordinary negligence standard and the gross negligence standard. We have hundreds of years of traditions in our courts of applying the ordinary negligence standard. The gross negligence standard sends a signal to certain actors that they don't have to act as carefully, that they get these extra protections.

The question is, why in these circumstances would it be appropriate to offer that extra level of protection for long-term-care operators, especially when the evidence that we're hearing—and it is challenging, because the evidence is hard to gather. Our seniors were isolated for long periods of time. A large percentage of them suffer from cognitive issues and dementia, so it's very, very hard to gather evidence. It would be very, very hard to meet the negligence standard.

Why would the gross negligence standard, which only applies to these slip-and-fall cases, apply to this great tragedy? It's the greatest tragedy in Canada, from my perspective, since the residential schools. I spent four years working on residential schools. The federal government, for residential schools, didn't even try to adopt a gross negligence standard. Why would our government, and our Premier, who has promised accountability, who has spoken so aggressively about helping seniors, protecting seniors, ban the accountability of—you have a commission now that hasn't even returned its final report. Why would you elevate the standard and make it difficult for our seniors to pursue these claims, and even worse, extinguish their rights? That's the question.

**M<sup>me</sup> Lucille Collard:** Thank you for that clarity.

Would you agree, in terms of access to justice—am I already out of time, Mr. Chair?

**The Chair (Mr. Roman Baber):** No, 30 seconds.

**M<sup>me</sup> Lucille Collard:** Thank you.

In terms of access to justice: Would it be discouraging for people to even attempt to invest in some lawsuits to try to prove gross negligence when it's almost impossible to do so?

Maybe we could speak to that in the second round, because I'm out of time.

**The Chair (Mr. Roman Baber):** Just a reminder, Madame Collard: The independents get four and a half minutes, as opposed to the recognized parties, who get seven and a half.

Back to the government: MPP Tangri.

**Mrs. Nina Tangri:** I do want to thank all of the members for presenting to us today.

My question is for Dr. Calder. I really want to thank you for the support of this bill.

In my experiences here, I've heard from many health care professionals, including many doctors, too, in my riding, that providing greater protection to support Ontario health care professionals is needed now more than ever. We expect your members to go to work each day. They save lives despite that legal uncertainty, the risk and the fear that they face each and every day.

I'm going to ask you if you can expand on the practical effects for your members and other health care professionals if this legislation was not introduced, and ultimately, what it means for sick Ontarians and the health care sector. And do you believe that the intent of Bill 218 strikes the right balance?

**Dr. Lisa Calder:** Thank you very much for the question.

I'll just reflect on a couple of things. I'm an emergency doctor by training. I worked on the front line, so I know what our members are facing and how extraordinary these conditions are for them. There's no question that our health care providers are the most valuable asset in our health care system, and right now they're doing extraordinary acts of courage, providing care to patients who are both affected and not affected by COVID-19.

I would just add that the impact if this Bill 218 was not to be passed could be significant in terms of stress on health care providers. We are also worried about their resilience and the impact on human health care resources moving into the future. That impacts on the sustainability of the health care system. What that means for sick Ontarians is that there will be fewer physicians in the system able to provide care.

We really appreciate the spirit and intention of Bill 218 as a first step in offering these important protections.

**Mrs. Nina Tangri:** As you know, the intent of Bill 218 is to provide liability protection for those on the front lines who make a good-faith effort [*inaudible*] public health guidelines and government directives during the COVID-19 pandemic. It does not cover those who commit gross negligence. Do you feel that Bill 218 strikes that wise balance?

**Dr. Lisa Calder:** As I mentioned in my comments, I think that in terms—the CMPA views Bill 218 as an important first step.

With respect to the terms of “good faith” and “gross negligence,” my understanding is that these terms have been found in these types of liability protection provisions elsewhere, and we support their use in this bill.

We do think there are urgently needed considerations of a legislator to look at broadening provisions, because physicians are facing threats of legal proceedings around providing care during pandemic conditions, both to patients affected by COVID-19 and not. This is a great source of stress and anxiety. So we urge the government to really look at expanding the provisions and modifying Bill 218.

**Mrs. Nina Tangri:** Could you please shed some light for us, in layman's terms, on how the protection offered in Bill 218 will apply to a new or an existing lawsuit brought against a doctor or a nurse. In other words, how does the court process play out, and what is the role of the court in that process?

**Dr. Lisa Calder:** We would say that Bill 218 is quite narrow in its protection, in the sense that—let's say I bring my mother to the emergency department for a head injury and she contracts COVID-19 in the course of her care. Then, we would not be able to bring legal action forward to the health care providers providing her care.

I can't really speak to the role of the courts in terms of this, other than to say that these protections recognize the extraordinary times that we're in and that health care delivery right now is not business as usual and is extremely challenging.

**Mrs. Nina Tangri:** Chair, how much time do I have left?

**The Chair (Mr. Roman Baber):** Just under three minutes.

**Mrs. Nina Tangri:** I want to go back to the mandate of the Canadian Medical Protective Association: that you provide physicians with advice with respect to medico-legal issues that may arise in their work.

If the measures that are proposed in Bill 218 are not implemented, would the sustainability of the CMPA's liability protection program be put into question? Simply put, would the CMPA continue to have the ability to provide the medical liability protection that Ontario doctors have come to rely on?

**Dr. Lisa Calder:** Thank you for the question.

The CMPA has a broad range of services that we provide physician members. Yes, we provide medico-legal advice and assistance. We also educate our members in terms of how to improve the safety of care that they're providing. We do have the ability to provide medico-legal protection to our members related to the care they provide, be it related to COVID-19 or other courses of care.

If Bill 218 were not to be enacted, it would not impact the sustainability of our organization. That said, we are anticipating an increasing volume of both regulatory body complaints and civil/legal actions towards physicians as a result of the changes to the health care system related to the COVID-19 pandemic.

**Mrs. Nina Tangri:** I just want to take the last few seconds of my time to thank you and your membership for the great work they're doing on the front lines. Thank you.

**The Chair (Mr. Roman Baber):** There is still about a minute left for the government, or we can pass it on to the official opposition.

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**Mrs. Nina Tangri:** I'll pass on.

**The Chair (Mr. Roman Baber):** Back to the official opposition: Mr. Singh.

**Mr. Gurratan Singh:** Back to Mr. Birman: How unprecedented is this use of “gross negligence” in respect to Ontario and our legal systems?

**Mr. Stephen Birman:** It's unprecedented, as I think I've said. As far as I know, and I've looked into this, it only applies to snow and ice claims against city municipalities. It used to apply back in the 1950s to passengers in vehicles. They were unable to sue drivers unless they met a gross negligence standard, on a basis that drivers are doing passengers a favour.

Again, it's about a signal. These words have meaning to judges and to lawyers, and it's about the signal that you send to the courts about what type of activities are condoned and what type of activities aren't condoned. It would be highly unusual, in my experience, to attach this label to an institutional-type standard of care that is prescribed by statute in the Long-Term Care Homes Act.

**Mr. Gurratan Singh:** In addition to that, it's important to note that the government keeps on saying that it just pertains to COVID-19. But arguably—if I were to go through an example with you—if there is a long-term-care facility that had incredibly terrible conditions, and in these terrible conditions, it resulted in the spread of COVID-19, they would be protected; correct?

**Mr. Stephen Birman:** That's correct.

**Mr. Gurratan Singh:** There were examples given in question period last week in which a long-term-care facility had people who were diagnosed with COVID-19 and they only had a curtain separating those who were COVID-19-negative—so COVID-19-positive and COVID-19-negative with just a small curtain separating them. As long as that long-term-care facility demonstrated that they acted in good faith, they would arguably be free from liability.

**Mr. Stephen Birman:** This is a major issue that we're seeing in most of our claims. There are outdated facilities in Ontario, as I'm sure you know, that are subject to design guidelines that had underlying conditions that were present prior to this pandemic relating to these ward-style rooms and the separation of residents. COVID-19 or no COVID-19, that would have been an issue whether there was flu in those institutions. That's an infection-control issue. They will have the protection with respect to their design issues, such that those issues would now need to meet a gross negligence standard, which is very, very onerous.

**Mr. Gurratan Singh:** Is it fair to say that some of these for-profit long-term-care facilities that were so terrible that the army needed to come in—the army provided a very objective report of how terrible these conditions were—would also be free from liability, because this is a retro-active bill?

**Mr. Stephen Birman:** Again, not free from liability; there is still the gross negligence standard. Perhaps, arguably, some of those worst offenders may meet that standard. That's the question. There will be a spectrum. There will be negligent operators that perhaps didn't have the Armed Forces come in, for whatever reason, where there isn't evidence, and won't meet that standard. It may be that even those ones won't meet that standard. It is such an incredibly high standard. I don't think I can overstate that this is such an incredibly high and ambiguous standard, so judges from court to court will define it differently, and that will lead to more litigation, more appeals, more delay. Justice delayed is justice denied for this group.

**Mr. Gurratan Singh:** Would you agree with the position that this is a piece of legislation that would effectively protect for-profit, billion-dollar long-term-care corporations from liability?

**Mr. Stephen Birman:** That's what it does.

**Mr. Gurratan Singh:** You're on the ground; you're doing this day in and day out. How badly do you think this will impact access to justice?

**Mr. Stephen Birman:** It's a punch in the gut for these families and for the victims. These people who come forward to start class action lawsuits don't do this lightly. They don't do this necessarily looking for money. They're looking for accountability, and they're looking to making sure that there's some reform in the system.

Like I've said, it adds insult to injury. It would prevent others from bringing claims. The standard is too high, frankly, for any individual to take on that risk, and it creates a major bar for these class actions. Some of them will be dismissed. Some of them won't succeed. Many of them may not succeed. It's possible all of them won't succeed. We just don't know. The bar is just so high.

There's really no principled reason, from my perspective, to depart from the ordinary negligence standard. If anything, we should be finding a standard that gives our seniors more care during this pandemic, given what we've seen, given what we know. I don't know why we would be looking to offer long-term-care operators protection and less care for our seniors.

**Mr. Gurratan Singh:** You stated earlier that this piece of legislation is really in contradiction with what the Premier said when he said, “I want to protect every senior and hold every long-term-care facility accountable.” It seems like the Premier is saying one thing but this legislation is demonstrating something very opposite. Is that fair to say?

**Mr. Stephen Birman:** A long-term-care company can go to court and say, “We were negligent. This lawsuit should be dismissed, because we were negligent.” Okay? So, yes, if you can go to court and argue that you were negligent and that the claim should be dismissed, and a court will have to dismiss that claim in circumstances where you were negligent, I don't know how that is consistent with holding negligent actors or bad actors accountable. I just don't understand that.

**Mr. Gurratan Singh:** Just to clarify that point: The reason they can say that is that they can say they were negligent but not grossly negligent. Is that the distinction you're making right there?

**Mr. Stephen Birman:** Exactly.

**Mr. Gurratan Singh:** And "grossly negligent," as we've already discussed, is a completely ambiguous term.

You talked earlier about how this is the worst class action series of events you've seen since the residential schools. You made a comparison, or you made some reference before. Can you describe that or expand on that?

**Mr. Stephen Birman:** From my perspective—I've been practising law for 12 years, and I'm a student of history, like I'm sure many members of the committee are—this is a historical tragedy. We'll be talking about this for a very long time and seeking answers for a very long time. I'm not trying to suggest there haven't been other great tragedies, but in terms of my own personal experience and what I've worked on, this is right up there in terms of its historical and tragic proportions.

**The Chair (Mr. Roman Baber):** With five seconds remaining—

**Mr. Gurratan Singh:** Being mindful of the time, I'll continue afterwards.

**The Chair (Mr. Roman Baber):** We will now proceed with the independent member for four and a half minutes. Madame Collard.

**M<sup>me</sup> Lucille Collard:** Ms. Calder, I'm sure that you've been listening to the comments so far, and maybe the explanations of Mr. Birman brought some more clarity into the intent of the bill.

I want to also understand—because you're asking for some modification to the bill to be amended to be more reflective of the fact that the intent is to protect health care workers. You understand from the explanations that lawsuits and class actions against a health care worker will be very difficult to get any success in because, first, somebody has to be able to prove gross negligence, and the defence of any worker could be that they made the best effort, and it may not have been reasonable, but that's still good.

Based on the clarifications that were provided today, do you feel that the current protection is adequate to protect health care workers?

**Dr. Lisa Calder:** Thank you for that question.

I'll just reiterate: We have been watching carefully what has been happening across the country, and we've noticed that BC has put in some legislation with limited protections. Ontario is only the next province to take this step, and we think it's very important. That said, we believe the protections to be very limited. When you think of the scope of medical legal risk and the impact of even the threat of complaints against physicians on their health and wellness and the sustainability of the health care system, we do believe that broader protections are needed.

**M<sup>me</sup> Lucille Collard:** Mr. Birman, we were talking the last time about the access to justice.

We know that the government, earlier this year, brought some more obstacles for class actions to proceed by requiring a new certification process for class actions.

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Now we're having some people who are probably vulnerable—who don't have a lot of financial means to try to defend their loved ones who have suffered or died in those long-term-care homes, to prove gross negligence.

Do you believe that this combination is actually another obstacle to access to justice, that it will discourage people from seeking justice? The ability to prove gross negligence, with a defence of, "Well, I did my best, and what might not have been reasonable, that's my defence and it's in the law"—do you think that access to justice is really affected negatively?

**Mr. Stephen Birman:** I absolutely do. The first thing you have to understand is that these claims likely, in a lot of ways, wouldn't be brought individually. They have been brought as class actions. It would be very hard for any individual citizen or family to bring this type of claim. The compensation that's available at law for these types of losses is significant, but probably not significant enough to warrant or to lead to these claims being brought on any sort of a large-scale basis, especially because there's cost exposure for litigants in Ontario. You bring a claim, you're successful, and you have to pay the other side's legal costs.

These would be risky claims right from the get-go, and that's what I've tried to get across. Even in ordinary negligence cases, these are risky claims. The defendants and insurance companies would be relying upon a standard of care that applies in a global pandemic, and they're going to be risky and they're going to be challenging. I would say, our focus would be on largely the underlying conditions that led to this, that were prevalent even before the pandemic. So these are huge barriers to access to justice.

As far as the class actions go, the legislation that was brought earlier this year, on its own, is going to make it almost impossible for new class actions to proceed. All of the class actions that have been issued were prior to October 1, when that legislation passed. There's a major question to whether these claims could be certified now with that new legislation.

So when you combine that new legislation, which makes these types of claims arguably uncertifiable post-October 1, with this gross negligence standard, it's a real punch in the gut to access to justice. Access to justice is one of the main components or impetuses of the class action process, the class action vehicle, and it has really been harmed this year in Ontario.

**The Chair (Mr. Roman Baber):** That concludes the time we have available for this panel—sorry, that concludes also the order provided for in the time allocation motion.

I'd like to thank Mr. Birman, Ms. Calder and Mr. McKee for their appearance and bid them a good day.

ONTARIO HEALTH COALITION  
ONTARIO FENCING ASSOCIATION  
ONTARIO PARA NETWORK

**The Chair (Mr. Roman Baber):** I understand that all of the members of the 2 p.m. panel are now on. I'd like to

begin by apologizing to you for the delay. Nonetheless, I invite each of you to make seven minutes' worth of submissions, followed by two rounds of questioning from the two official parties and the independents.

We have the Ontario Health Coalition, represented by the executive director, Natalie Mehra; the Ontario Fencing Association, with Mr. Howard Simmons, vice-president; and the Ontario Para Network, with Laura Wilson, who is the executive director.

I'd like to invite Natalie Mehra of the Ontario Health Coalition to make her initial seven minutes of submissions, beginning by stating your name for the record.

**Ms. Natalie Mehra:** My name is Natalie Mehra. I'm the executive director of the Ontario Health Coalition. Thank you for having me today.

Margaret loved music. She was a foster child herself, and when she grew up, she became a foster mother to dozens of children. She was amazingly generous, welcoming single moms with children, sometimes for years at a time, into her home. Her life was valuable. She was loved by her family and all of the children she cared for. She was extraordinary and unique. As a society, we should have seen her life as precious, as something worth protecting. Instead, Margaret died in August, after months of suffering and inadequate care in her long-term-care home.

In her last months, Margaret was isolated in the long-term-care home. She did not receive the foot care for which her family paid extra, and she developed painful sores and blisters on her feet that got infected. She was not given her pain medication, and she spent hours on the phone crying to her daughter. The nurses' station was too busy to speak on the phone and to help. Her daughter was shut out, unable to help.

Like all residents of long-term care, Margaret paid for her care, and we all helped to pay as taxpayers. But Margaret did not get it. There were 30 residents in Margaret's wing of the long-term-care home and only one or two PSWs assigned at any time for all of them. Margaret did not see a doctor from January to June.

Margaret died in hospital of kidney failure and a serious UTI in August. Her daughter said, "I know my mom is out of pain. My family would like me to let this go, but I don't feel I can. My natural reactions of grief are frozen because it's not over or resolved. Caring for people was a thing that my mom believed in, and she would have wanted me to speak up. She wouldn't want me to stay silent.

"It's just all wrong," her daughter said. "My mind and soul will never be the same."

"My mind and soul will never be the same." I can't count the number of times that family members of the dead have described the ways in which their lives have been changed forever by the experiences that they have had trying to get care for their mothers, their fathers, their grandmothers and grandfathers in the last six months. Their pain, like Margaret's, is etched on their minds and their souls.

Justice is fundamentally about fairness. It's about accountability. It's about treating people with respect and

in accordance with the fundamental values and morals of our society.

Ontario's long-term-care residents and their families have already suffered unspeakably. Many are haunted by the conditions in which their loved ones died. There has been no accountability for them. They deserve some kind of closure. They deserve justice.

Bill 218 covers any company or person, the government and its agencies. It does three things in relation to access to justice for families, like Margaret's, of the loved ones who have been harmed as a result of COVID-19 in long-term-care and retirement homes:

(1) It raises the bar from simple negligence to gross negligence for the plaintiffs. Section 2(1)(b).

(2) It lowers the bar for the defence from the normal definition of "good-faith effort," which requires a reasonable and competent effort, to simply be "an honest effort" whether reasonable or not. Section 1(1).

(3) It makes these measures retroactive to March 17, 2020, the very week in which COVID-19 started to spread in long-term-care and retirement homes, and it extinguishes the rights, claims, costs and compensation for anyone who started their legal proceedings during the period covered retroactively.

Bottom line: This bill makes it harder for the families seeking justice and at the same time easier for the homes to defend themselves. What it means is that the bar for those seeking justice for negligence under the laws that currently exist and existed at the time that they started their claims would now be required to meet the new standard of gross negligence—even though the laws would have required simple negligence at the time of their claims. It means that, going forward, long-term-care and retirement homes no longer have to be worried about being held accountable for just negligence. The bar would be gross negligence, and they do not have to meet the normal test of good-faith effort, i.e., that their efforts were reasonable and competent.

The primary entities that benefit from this legislation and policy decision are the long-term-care and retirement home companies.

This bill does not serve the public interest. It is not just.

What we are calling for is simple: Long-term-care and retirement homes should be carved out of this bill.

In other jurisdictions, governments have not kowtowed to the lobby of the for-profit long-term-care industry in trying to achieve what they call tort reform. In fact, in Kentucky, in 2012, the state Legislature refused tort reform in the face of a slew of negligence lawsuits against Extencicare, and Extencicare left the state. That follows the 2001 decision of Extencicare to leave Florida and Texas for similar reasons. In fact, Extencicare actually chose to leave the United States entirely after a \$38-million award to the US Department of Justice.

I just want to read to you, verbatim, what the US Department of Justice said in their release about the company in 2014: "Extencicare Health Services Inc. ... and its subsidiary ... (ProStep) have agreed to pay \$38 million to the United States and eight states to resolve

allegations that Extencicare billed Medicare and Medicaid for materially substandard nursing services that were so deficient that they were effectively worthless....” Subsequently, Extencicare sold its US homes and expanded into Canada. This is one of the companies you are protecting in this legislation.

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Not only is the US not kowtowing to the industry, in fact, the state Attorney General of Massachusetts, on September 28, filed criminal charges against leaders of a nursing home in which 76 residents had died due to the spread of COVID-19 in the home. And the US Department of Justice, this summer, released an announcement that it will use every available tool to pursue nursing homes that provide substandard care to their residents. The contrast with what the Ontario government is doing could not be more stark.

As members of provincial Parliament, your conduct today and in the coming days will be written in the annals of our province’s history. The care of the elderly through this pandemic, people who were precious, who in the main could not speak for themselves, who needed us to care for them in their time of vulnerability—this is the measure of our humanity. It is too late for more than 2,000 people who have died in long-term-care and retirement homes and who left loved ones behind who are damaged forever with grief and guilt.

As legislators, you have the power to do the right thing. We’re asking you now to search your own conscience. The very least you could do is not to make their journey to justice, and hopefully a little bit of closure, harder than it already is.

**The Chair (Mr. Roman Baber):** Thank you, Ms. Mehra.

I’d like to invite Howard Simmons of the Ontario Fencing Association. Mr. Simmons, please commence your seven minutes of testimony, beginning with stating your name for the record.

**Mr. Howard Simmons:** Howard Simmons.

**The Chair (Mr. Roman Baber):** Thank you.

**Mr. Howard Simmons:** This is a fencing association—obviously very different than the terrible experience just expressed in nursing homes and retirement homes.

I am a practising lawyer; I’ve been a lawyer for 50 years. I’m also the vice-president of the Ontario Fencing Association, and I am also a fencer. I took up fencing about 16 years ago, three years before my first grandchild was born.

As you may have heard, the joke with fencing now is that we already wear a mask, we already have a glove, and if you come within six feet of us, we stab you. Personally, for me, just in fencing—because I’m not here speaking as a lawyer, which would be a terrible thing. I’m speaking as the vice-president of the fencing association, which has about 2,000 members, and I assume you can extrapolate that to all kinds of other athletic activities throughout Ontario run by volunteers.

I compete now in fencing because I got into it—they now have something called “veteran fencing,” which is

40-plus, which sounds like it’s older, but if my two sons fenced, they would qualify as veterans; I don’t look on that as a great big advantage, mind you. Fencing—let me just explain and get in—is compared to running a hundred-metre dash and playing chess at the same time. In other words, your mind is always active, and my active mind says that this legislation is very good as far as athletic organizations are concerned.

In other words, they rely on volunteers. I’m a volunteer, and I bet many of you at some point have had some child who does dancing or swimming or baseball or basketball—who knows all the various many activities and sports there are throughout Ontario—and you volunteered, doing something as a coach or something or other. They have to be protected. They are not a business, which is something else, and not a terrible situation as in retirement or nursing homes. They are volunteers, and they have to be protected—because at this point, if you ask me, “How’s your fencing going, Howard?” I would say, “What fencing? I haven’t fenced since March.” Of course, a problem with all kinds of sports throughout Ontario is knowing—obviously, it’s a moving target because of COVID-19. What the rule is today changes tomorrow, and every organization is saying, “What do I do here?” Fencing is one where there’s [*inaudible*].

So in brief, let me just say, in terms of volunteer athletic organizations, their groups should be protected, and I thank you for trying to do that.

**The Chair (Mr. Roman Baber):** Thank you, Mr. Simmons.

I now invite Laura Wilson of the Ontario Para Network Association to make her seven minutes’ worth of initial submissions.

Ms. Wilson, please begin by stating your name for the record.

**Ms. Laura Wilson:** Thanks very much. I’m Laura Wilson, and I’m representing the Ontario Para Network.

Our association represents Ontario’s para sport athletes. We differ from Special Olympics in that our members are athletes with physical disabilities, not intellectual impairments. We’re the governing body for the sports of wheelchair basketball, wheelchair rugby and wheelchair tennis, but we partner with other provincial sport organizations in the awareness and first-involvement stages of para athlete development to increase participation in adaptive sports.

We have over 30 clubs and programs across Ontario, and our high-performance athletes train at the Wheelchair Basketball national training academy and within the wheelchair rugby national training group at the Toronto Pan Am Sports Centre and Canadian Sport Institute Ontario. Although our community is small, 68 of our athletes from Ontario have been selected to represent Canada at Paralympic Games, world championships and other international competitions.

We work closely with the health and education sectors, with our para athletes making regular visits to rehabilitation hospitals and schools to talk about the importance of inclusion, diversity and accessibility, and to dispel myths

about the ability of people with disabilities. We have reached over 135,000 Ontario students across 16 school boards, and prior to COVID-19, we were not able to keep up with demand for our school program.

On March 13, all of our programs came to a grinding halt. Some of our athletes lost access to their adaptive equipment, as it was stored in locked facilities. We've done our best to provide basketball chairs, racing chairs and/or hand cycles to athletes in need, but adaptive equipment is large and bulky, and many simply don't have the space in their homes to utilize them. The lack of outdoor accessible sport courts with accessible washrooms, and a reluctance to take public transit, have resulted in a lack of engagement with physical activity for many in our community.

For an at-risk population who often struggle with feelings of isolation, the loss of programming has amplified their struggles. Some of our athletes have complex health conditions that could make them more at risk of contracting COVID-19. However, it's the mental health of our athletes that is our primary concern. Participation in adaptive sports provides the obvious physical benefits, but participation in sports also provides so many psychological and social benefits for our members, including identifying as an athlete and not as a person with a disability. Ours is a close-knit community of individuals who may compete on fields of play, but they also encourage and support each other both on and off the fields of play. They've struggled to find ways to do so since March, and we've struggled to find ways to take care of the mental health of our athletes and our coaches.

We've surveyed our members to assess their level of comfort in returning to sport. The survey had a 37% response rate and showed that 74% of our respondents were ready to return to play in an indoor group setting as long as health and safety protocols were in place. For an at-risk population, those numbers show how important participation in physical activity is for our para athletes. We've developed a return-to-play plan, which includes access to a private sport court for our athletes, to minimize exposure to others. We'll be following public health guidelines, and we've received training and PPE from Red Cross, so we're ready to go.

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As mentioned, our community is small. Our clubs don't have sophisticated board structures, and all are run by volunteers, many of them family members of our para athletes. Without protection from liability, our volunteers would be at risk if we were to resume programming.

Although it could be difficult to prove that someone contracted COVID-19 through one of our club activities, a potential lawsuit could financially destroy one of our clubs or perhaps even our association. Unlike other PSOs, we don't have huge membership numbers, so we do not generate a large portion of our operating budget through our membership fees. We rely heavily on grant funding to fund our programming, so we simply don't have deep reserves.

I'd like to respectfully ask this committee to please support the passing of Bill 218. I'd like to thank Minister

MacLeod and Minister Downey and their teams for putting together this bill to help get our athletes back on the field of play so they can once again benefit from the physical, psychological and social benefits of participation in sport. Thank you.

**The Chair (Mr. Roman Baber):** Thank you very much.

We'll now proceed with questioning. I believe it's now the turn of the official opposition to begin first. I recognize MPP Armstrong.

**Ms. Teresa J. Armstrong:** I want to thank the presenters, Natalie Mehra, Howard Simmons and Laura Wilson, for coming today.

I want to direct my question to Natalie, please. You mentioned Margaret and her story, and thank you for sharing that, because as we're talking about negligence and intentions, I think we forget that there have been over 2,000 people who have died in long-term care and that people are seeking justice. Their family members want to have their day in order to really do right by their loved ones in long-term care.

The two presenters from the Ontario Fencing Association and the Ontario Para Network—of course, those are volunteer organizations. We agree that there need to be protections there.

Can you speak to why you think the government would have lumped in long-term care, which is a different category than volunteering organizations, into this kind of legislation in order to avoid accountability for long-term-care providers?

**Ms. Natalie Mehra:** I don't know why the government would have lumped in long-term-care and retirement homes in this legislation. They are fundamentally different organizations than voluntary sports organizations or local charitable organizations.

The majority of the long-term-care homes are for-profit in Ontario, many of them chain-owned. The chain-owned for-profits are the subject of most of the lawsuits, if not all of the lawsuits. There are 24 or so lawsuits that I know of in Ontario. These are not lawsuits against a small local fencing club; these are lawsuits against large multi-nationals, in lots of cases, or national chain organizations that operate on a profit-seeking basis, and they have been paying out tens of millions of dollars to their shareholders in dividends through the entire pandemic, even as they did not staff the homes, even as people died in conditions that are just unspeakable, squalid and unacceptable.

At this point, the families have not gotten any justice in any other way. No licences have been pulled. There have been no fines. There just has been no access to justice. This was the last resort, really, for families. It's not easy to engage in a lawsuit in the first case. People in this province and this country are not litigious in that way, as a general rule. But it is the only access to justice and accountability that they have. Now, to see that that hill has been made steeper for them to climb at this time, after all the suffering, after the torrent of grief we've seen, is indefensible in our view.

**Ms. Teresa J. Armstrong:** The fact that the government is using this legislation in order to make it very, very

difficult, if at all possible, for families to go to court and hold them accountable—what are some of the things the government could have done so that we wouldn't be putting families in these kinds of positions with regard to long-term care? What are some of the things they should be working on so that we're not in positions where families are filing class action lawsuits during COVID-19?

**Ms. Natalie Mehra:** The fact that the actual care levels are lower than we've ever seen, that the homes have less resilience to deal with the second wave, that 97 long-term-care homes alone are in outbreak, and retirement homes on top of that bring the total to well over 100, more than 1,000 people are infected—in the last month alone, more than 175 have died.

The staffing is worse than it ever was. Without staff, there is no care. In the summer, four months ago, the Quebec government launched a recruitment strategy and recruited 10,000 PSWs, trained them, paid them for training, did the training over a period of months, and is now deploying them into the homes. There is no reason why Ontario could not have done the same thing. The fact that Ontario has not done the same thing is just inexplicable to us.

There are many, many connections between the for-profit industry and government. It is actually shocking when you look at the list. We're extremely worried that the lobby has disproportionate influence over government, and we're hoping in this hearing that we can call to the consciences of the government members. There are times when you have to do the right thing regardless of who is lobbying for what. This is one of those times. These families need access to justice. That is the last-ditch line of any kind of justice that they could seek.

Going forward, we need the staffing levels up. We need accountability for the homes. We need the management taken over in the homes where COVID-19 is spreading, because they are not following appropriate infection-control measures, because they don't have the capacity. They're either incompetent or they're negligent. That is happening in about 33 homes across the province right now, and it continues to happen.

It can be stopped. The government has the power to do it. They can take over the homes. There are all kinds of enforcement measures. There are all kinds of tools available, but they are not being used. The only explanation that we can find is that the industry is exerting disproportionate influence that is not in the public interest over government decisions. That is not acceptable.

**Ms. Teresa J. Armstrong:** Like you said, Quebec and BC took different, proactive, measures in order to help with the second wave. But this government, the fact is, chose to use legislation to manage the second wave and let those big long-term-care corporations—for-profit corporations, at that—off the hook.

Thank you so much for your presentation.

Mr. Simmons, do you think that there is a problem categorizing health care along with volunteers, and setting the bar so low for accountability when it comes to the health care piece?

**The Chair (Mr. Roman Baber):** Just about a minute left.

**Mr. Howard Simmons:** I can't comment on the health care one; that's an entirely different issue. I'm here just talking about volunteer athletic organizations.

**Ms. Teresa J. Armstrong:** I think you said it when—you can't comment because it's an entirely different issue. That's the whole point we're trying to express. Health care and volunteer organizations are so different in what they do, and putting them together in legislation is not correct. This government needs to exempt long-term care out of this legislation so that families can find justice in the losses of their loved ones.

I don't necessarily want a comment, but just on generalities, I'm asking presenters, do they think the category of long-term care is the same level as somebody volunteering, and should those accountability pieces like good intentions be the same category as long-term care and volunteer—

**The Chair (Mr. Roman Baber):** Unfortunately, Mr. Simmons, I'm unable to grant you time right now.

Back to the government: Mr. Bouma.

**Mr. Will Bouma:** Thank you, Mr. Chair. Through you, I would like to begin with Mr. Simmons.

It was fascinating testimony this afternoon. It was good to hear that you are supportive of what we're trying to do in this bill.

In fact, I've heard from many organizations in athletics in my riding that this is something that they really need in order to move forward—to have protection that if they are trying to keep their people safe, in good faith, on the COVID-19 issue, they don't have to worry about being sued if someone does get COVID-19.

For many, this is the only way that they will be able to get into their sporting activity. In fact, it was many of the sporting associations that immediately brought to our government's attention that the NDP government in British Columbia introduced ministerial orders and then eventually legislation that protects individuals and businesses from liability for transmission of COVID-19, provided they can prove they followed, or reasonably believe they followed, emergency and public health guidance.

**1450**

I was wondering if you could expand a little bit on the practical effects for your organization's numbers if this legislation had not been introduced—I think you said earlier that you wouldn't be fencing, and you're not fencing not right now—and ultimately what that will mean for Ontario's fencing clubs, athletes, coaches, school teams and sports facilities.

**Mr. Howard Simmons:** First of all, they're very careful, the way it is now. We have a health and medical committee that set out protocols on what to do—hand-washing, no parents allowed in etc. So we're extremely careful anyway, but still, people are very concerned if something were to happen—as I've said, nothing has happened, and I doubt if anything will—some small club gets devastated and ended because of somebody claiming

something happened while at the club. So the purpose there is to protect individual sport clubs that are doing their best now to be as careful as possible.

**Mr. Will Bouma:** Have you heard from any of your members or coaches or parents who, because of concerns about possible liability, have actually not been enjoying the sports specifically for that reason?

**Mr. Howard Simmons:** Well, it's not the parents or the children; it's the clubs themselves that have the concern about the liability. If they could come and the parent thought it was safe, they would bring their child—in my case, unfortunately, I have no parent to bring me—where a club would do it. But clubs really aren't.

**Mr. Will Bouma:** It's our government's opinion that time is of the essence when it comes to getting this bill passed.

Can you explain or do you have any examples of why the timing of this legislation is critical for your organization and for the thousands of coaches and players and parents, arenas and affiliated organizations in the province of Ontario?

**Mr. Howard Simmons:** Well, I don't want to say timing—I'm just saying that it's needed. I assume there was some period where people had to figure out what was happening. All I can say is, the earlier the better.

**Mr. Will Bouma:** We completely agree on that too. That's why I'm also glad that it's retroactive back to March.

As you know, the Supporting Ontario's Recovery Act provides greater legal protection for those who make honest or good-faith efforts to follow the rules.

Could you please share with me more about your organization and its members and what they've done to adapt during these unprecedented circumstances of COVID-19?

**Mr. Howard Simmons:** Well, there were 2,000 members before. This year, because of what's happening, there are less than that, with about 50 clubs throughout Ontario. As I say, they did the protocols—meaning, if you go, parents are not allowed in, the dressing rooms are not used, it's limited people there. Actual fencing is limited, because you're, as I say, six feet apart, but you can come close some of the time. So people, with clubs and some of the parents—it's a club. If a club isn't open or the club restricts it, then they won't. But clubs themselves have the sanitizing equipment. When you fence, you hook up all that is—sanitizers, sprays etc., cleaning washrooms on a regular basis. They're doing whatever they can. I mentioned our medical and health committee. One of them on it is a doctor of respirology who is at a hospital treating COVID-19 patients. So we're very conscious of keeping safe.

**Mr. Will Bouma:** I'm no lawyer, but it seems to me that bringing in the good-faith provision is very appropriate for something like COVID-19. It seems to me, without a legal background, that people across Ontario are trying to do the best they can during this pandemic—and with the information changing on such a constant basis, I find that “reasonable” can change so quickly, but with

“good faith,” you're required to prove that you did the best that you could at the time.

Even though I know you're here speaking about fencing, not necessarily with your legal background, I was wondering if you could answer: This legislation increases the legal standard for cases involving only exposure to COVID-19 from “reasonableness” to “good faith.” We've heard lots of other things today. In your estimation, and based on what your members are advising you, what would happen if one of your members or affiliated organizations were sued due to inadvertently exposing someone to COVID-19 under the current legal standard of reasonableness and not with the liability protection provided by Bill 218?

**Mr. Howard Simmons:** Well, the problem we've got is, of course, insurance may not cover it, and as a practical matter, as a lawyer—if anyone is involved in a court case, you know how time-consuming, how aggravating, how upsetting and how costly it is. Separate from the fact that the club may win at the end, it could be wiped out in the process.

**Mr. Will Bouma:** Very true.

How much time do I have left, Mr. Chair?

**The Chair (Mr. Roman Baber):** About 25 seconds, so I invite you to conclude.

**Mr. Will Bouma:** I will just close by saying, Mr. Simmons, thank you for coming here. I really appreciate your testimony—in fact, to all of our deputations here today. I wish you all the best. Hopefully, we can get this done for you to give some peace of mind.

**The Chair (Mr. Roman Baber):** Next, I invite the independent member for four and a half minutes. I now recognize MPP Hunter.

**Ms. Mitzie Hunter:** I want to thank all of the witnesses who have come forward today to this committee. Thank you, Ms. Wilson, Mr. Simmons and Ms. Mehra.

I want to start with Ms. Mehra. I was very moved by your sharing and the clarity in which you expressed the context for long-term-care homes. I'm the member for Scarborough–Guildwood, and Extencicare Guildwood is in my riding. There were dozens of COVID-19 deaths in that one facility, that eventually had to be helped by the Scarborough Health Network, in terms of donating extra medical resources and standards of care.

I wondered if you could share with the committee the risk that this bill would provide. I think of the families—I've met many of them—and the burden that this now puts on them in terms of meeting a higher legal threshold, and whether or not it would discourage them from seeking fair access to justice because of that additional burden. And whatever else there is that you wanted to share with the committee—if you could please go ahead, Ms. Mehra.

**Ms. Natalie Mehra:** Thank you very much for the question.

Respectfully, to the last speaker, MPP Bouma: The bill makes the bar higher for the plaintiffs, for people who are trying to sue to seek justice, because it raises it from simple negligence to “gross negligence.” Courts will have to determine, then, what that exactly means. I know some of

the lawyers today are bringing testimony about what that means in legal terms, but it is unquestionably a higher bar. But at the same time, it actually lowers the bar. It does not raise the bar for good-faith effort for the defendants; it lowers the bar and redefines a good-faith effort from an effort which is reasonable and competent, which is the bar that courts use now, to say that it just has to be an honest effort, which is not defined anywhere in law and would have to be determined by the courts, and that that effort can be reasonable or not.

So it means not only for those seeking justice now that it's easier for the defence and harder for the plaintiffs—it makes it retroactive to when long-term-care outbreaks started, March 17. It also means, going forward, that the industry doesn't have to worry about negligence claims, only gross negligence, and that they don't have to make good-faith efforts that are reasonable and competent, only whatever an honest effort might mean—and the court would somehow have to determine that, whether it's reasonable or not. I just don't think that fits the values and the priorities of our society and our community. I think this legislation fits neither our values and our priorities, nor the interests of fundamental justice, nor the public interest.

I think the case of the other two presenters who are presenting about sports organizations is fundamentally different than long-term care—and, for MPP Fife, we are also including retirement homes in this, which we think should be excluded from this legislation, respectfully.

1500

The other thing about moving it so quickly: There were 58 people who applied for standing for these hearings, and only 15 are being heard. There are a number of families I know who spent all of Monday night trying to write their submissions, reliving the horrors that their families have gone through, and were not able to present. I don't know why this committee couldn't meet for one more day and hear from those people. The legislation is retroactive, after all.

**The Chair (Mr. Roman Baber):** With about seven seconds remaining, Ms. Hunter.

**Ms. Mitzie Hunter:** Thank you to everyone today.

I agree with you that we should extend our hearing so that more people could be heard.

**The Chair (Mr. Roman Baber):** We now return to the official opposition. I recognize MPP Singh.

**Mr. Gurratan Singh:** I'll continue with that point, Natalie. My understanding is that there were 58 people who applied here to depute today and 15 were allowed. Are you aware of that, as well?

**Ms. Natalie Mehra:** Yes.

**Mr. Gurratan Singh:** Also, it's my understanding that there are a lot of folks who want to watch this online or have some sort of streaming webcast, and they have no way of watching these deputations today. Are you aware of that? Are you aware of people who want to see it?

**Ms. Natalie Mehra:** Yes, this just feels like injustice upon injustice being heaped on these families. These hearings were vitally important to them. These are people

who have suffered now for months. They watched their loved ones die.

In one Extencicare home, Pierrette died on September 26. She was covered in excrement. There was excrement on the walls. Her tongue was bone-dry. She was dehydrated. There was no staff. The drinks were left on a table. She had dementia and COVID-19. She couldn't open them. She died ultimately of complications related to COVID-19, but she was also severely dehydrated and malnourished.

I have never heard from so many families whose loved ones have died of starvation—starvation—in our long-term-care homes.

These families are seeking some kind of accountability. At any level, they've been denied accountability so far. They wanted to present to the hearings. They put all kinds of work in to try to be heard by this committee, and they're not being heard. They're devastated by that news. The families wanted to watch these hearings today. They can't watch the hearings. For them, it just feels like the system is so stacked against them, and I have to say that I agree. How is this justifiable? Surely, this committee could extend the hearings and could make it available for people to see. There should be accountability for these decisions. They are decisions that impact hundreds of thousands of people in this province.

**Mr. Gurratan Singh:** I'm going to come back to you, Natalie, but I want to quickly go to you first, Laura.

No one has a problem with providing protection to sports groups and stuff like that. The problem is that this legislation includes protections so billion-dollar long-term-care facilities that have been at the root, at the core of a provincial crisis that has involved the death of so many seniors who built our province—the problem is that the government side is going to say, “Oh, look, these sports groups support this legislation.”

Would you be open to something that would take long-term-care homes and retirement homes out of this legislation? Do you agree that they shouldn't be included in this legislation, Laura?

**Ms. Laura Wilson:** I don't think I can answer that question. I'm here to speak on behalf of our para athletes. I'm concerned about our athletes. I want to see them back on the fields of play. That is what I'm anxious to do—to be able to allow them to resume programming without fear for our volunteers. I'm here to speak on behalf of our athletes who are really struggling with their mental health right now, and that is my priority. I don't have any political experience. I don't have any legal experience. I really just am here to speak on behalf of my athletes.

**Mr. Gurratan Singh:** To you, Mr. Simmons: the same question.

We've identified that no one has an issue with sports groups or front-line workers. The problem is that these billion-dollar corporations, these long-term-care facilities, are being grouped in alongside of you. A not-for-profit association is being grouped alongside for-profit, billion-dollar long-term-care facilities that have blood on their hands, frankly.

Would you agree just to separate those long-term-care facilities out of this kind of legislation?

**Mr. Howard Simmons:** Like Laura Wilson, I really can't comment on that. I'm here just to talk about athletic associations.

**Mr. Gurratan Singh:** Back to you, Natalie: This is pretty unprecedented, would you say—these kinds of protections that are being provided to these long-term-care facilities?

**Ms. Natalie Mehra:** It's unprecedented here in Ontario—and I just want to reiterate, it isn't the fact that other jurisdictions have bowed to the lobby of the industry in this way. In the United States, where they're much more used to for-profit health care and where legislators are used to the endless call for more and more money with no strings attached and more protection for the companies against their risk and so on, even in Republican states, they have blocked the lobby of the industry for tort reform to try to indemnify themselves from litigation for their negligence. So I really wanted to bring out that this is not a political necessity. Other jurisdictions are not doing this. In fact, they're actually pursuing criminal charges in addition to allowing negligence lawsuits to go forward in other jurisdictions. This is a political choice that's being made.

At some point, people need to search their consciences. How can you sleep at night and do this? At some point, they should have to justify why they would even countenance doing this at this point.

**Mr. Gurratan Singh:** Just to add to your point: How do you think this kind of legislation will impact those folks who are trying to access justice right now?

**Ms. Natalie Mehra:** I think the problem is that it's very unclear. Courts are going to have to decide what "gross negligence" means, practically speaking, in these cases, and what an "honest effort" means and all of these things. This kind of turns on its head the case law that has existed to date in Ontario.

I think people will move forward, but unquestionably, the hill to climb for these families has become much higher. It's going to be more expensive. It's going to be more time-consuming. It's going to be more difficult for them. I think they've suffered enough. Why do this?

**Mr. Gurratan Singh:** Just to continue with—

**The Chair (Mr. Roman Baber):** There are 30 seconds, Mr. Singh.

**Mr. Gurratan Singh:** With 30 seconds remaining, just continue expressing how dissatisfied you are with this legislation, Natalie.

**Ms. Natalie Mehra:** We are extremely upset about it. On a very personal note, I have to say that there are dozens of families who have called me, crying, about this. People are devastated that the government would do this at this point. This is not a partisan thing; this is just human. People have suffered, and you're making them suffer more by doing this. I think it's wrong. As a coalition, we think it's wrong, and we will push as hard as we can to ensure that the government does the right thing here.

**The Chair (Mr. Roman Baber):** Back to the government: I recognize MPP Park.

**Ms. Lindsey Park:** I want to direct my questions to Ms. Wilson. I don't think we've had a chance to chat with you from the government's perspective on this committee.

First of all, you highlighted a number of times throughout your remarks and then in responses to some of the other members' questions that time is of the essence on this bill.

I want to reiterate that this really should be a non-partisan discussion, and I appreciate that you come from a non-partisan background.

In fact, on August 20—and I'll quote from this letter that the Attorney General received from a member of the NDP caucus. It asks the Attorney General to "support MPP Miller's call for the government to encourage the insurance industry to act in good faith in this regard, and to set up proper guidelines and liability protections. It's my understanding that the government of British Columbia has successfully done so through a ministerial order. Many of the leagues in my riding"—and he's the member for Humber River–Black Creek—"are comprised of youth with disabilities, who are eager to return to the ice after months of isolation, which has inevitably taken a toll on them and their families. As I'm sure you would agree, our sports leagues play an important role in maintaining good physical and mental health across the province, and they are in need of help from our government."

1510

You mentioned the importance to your athletes' mental health that participation has. I was an athlete myself. I was a hockey player, and I know how important it is in contributing to the whole person when you're involved and active in sports.

Can you explain why the timing of the passage of this bill, from your perspective and your organization's perspective and for your athletes, is so critical?

**Ms. Laura Wilson:** It's so important to us to move on this as quickly as possible. Our leagues typically start in October, on October 1; usually our wheelchair basketball and wheelchair rugby leagues. We have an indoor provincial wheelchair tennis league that also starts in the fall. Our clubs are applying for permits. They're seeing an increase in fees because of cleaning. Many of our clubs actually received Jumpstart relief funding for sport.

I think what's really important here is that our community, in particular—they are all at-risk athletes. We go into rehab centres and introduce people to the healing power of sport. Participation in sport has become so much more than just going and playing an activity, participating in an activity or being active. We will support by giving a new participant adaptive equipment. We'll set them up with an athlete mentor. We go out to the program, and we make sure that their transition into sport—that that community of support is there. We see them coming out of rehab, and it's their first time participating in sport. Many of them did suffer a life-changing injury or illness participating in sport, and maybe in an extreme sport, and they think that their life may not ever be the same again.

So for them to be able to get in a sport chair—we see the joy on their face, but we also see the way the other athletes support them.

This is a very close community and a very tight-knit group. We have had some tragedies in our community—and I don't want to bring up the tragedies in our community, but mental health is a real concern. We've lost two young athletes to suicide over the course of this summer, and I can't tell you how much it means to us to be able to get our community back together and united, not just in a virtual environment. There's no replacement for in-person contact and support and the community experience that our athletes feel.

**Ms. Lindsey Park:** You put it quite eloquently, speaking about the healing power of sport. I think that's important for people of all abilities.

**Ms. Laura Wilson:** And it's so important in our community. We see it first-hand.

**Ms. Lindsey Park:** For sure. Actually, you may be familiar—I represent Durham, and in the east end of Durham we have the Abilities Centre, so I [*inaudible*] first-hand visiting there how important this is to, like you say, the whole person and all aspects of their development and their healing, when they've had some sort of accident or something that's happened in their life that has caused them to have to change the way they do things.

The Ontario Hockey Federation also expressed how important this was to get young people up and running, and we know, again, that that's contributing to their mental health and well-being. They said they represent about 230,000 athletes across Ontario. I know your organization would obviously be a bit smaller than that, but it's good to get a sense of the numbers and how many athletes you represent.

**Ms. Laura Wilson:** Participating within our leagues, we have just over 300 athletes. Our athletes are just specific to wheelchair basketball, wheelchair rugby and wheelchair tennis. There are many, many more para athletes who participate in sledge hockey or para ice hockey, in sitting volleyball, goalball. We do work with a lot of other disability sport groups, but specifically with our organization we represent just over 300 athletes.

**The Chair (Mr. Roman Baber):** Just under a minute, Ms. Park.

**Ms. Lindsey Park:** Laura, I just wanted to see if you had anything else to add about what you have heard from coaches or volunteers who might be worried about getting sued—particularly what your organization is worried about, which is bearing the legal cost—and just get your perspective on that.

**Ms. Laura Wilson:** Unlike the OHF, which probably has much deeper pockets than we do, we rely on grant funding to fund our programs, so we don't have the reserves to really defend against a potential lawsuit.

We've received so many calls from our volunteer coaches. They want to get back on the field of play, because they're worried about the mental health of our athletes, but they understand the decisions to hold off until we have some protection in place. In the meantime, they

are spending money preparing return-to-play kits for every athlete, with wipes and everything else that they could possibly need, PPE, to just ensure that when we're finally ready to go, there aren't any other barriers to getting our athletes back on the field of play.

**The Chair (Mr. Roman Baber):** We'll now conclude with the independent members for four and a half minutes. I recognize Madame Collard.

**M<sup>me</sup> Lucille Collard:** Thank you, Mr. Simmons, Ms. Wilson and Ms. Mehra, for being here and sharing your views and perspectives. It's very interesting that the presenters before this committee so far have grouped representatives of two different groups—sports associations and long-term-care homes—which highlights the obvious distinctions that this bill doesn't make. Nobody disputes the fact that hockey or other sports associations should be protected from lawsuits; this is not the case for long-term care.

Ms. Mehra, you've raised, with a lot of compassion, the examples of Margaret and Pierrette—which is the exact fear that we have that we raised during debate that will happen if this bill comes to pass. It will become just about impossible to seek accountability and justice for those like the ones you've expressed, who paid businesses for proper care. Those businesses have failed to meet their obligations. While those businesses are there to make a profit, they have a primary responsibility to care properly for those who are paying for those services. And now we're raising the bar, for those who are trying to seek justice, to try to prove gross negligence. For them to be hiding behind “best effort” and that it doesn't have to be “reasonable”—clearly, there is an imbalance here that needs to be addressed, and I do hope, like you mentioned, that people will find in their conscience that we need to address this in this bill.

You also spoke to the effect that this bill is retroactive.

I want to hear from you as to whether you've seen any kind of improvement between the first wave and the second wave. You would think that there would have been something learned there, that there would have been some modification. Generally, did you see any kind of improvement?

**Ms. Natalie Mehra:** No, we haven't. This is the problem. There are a number of homes that are good—that have good management, that are competent, that have acted in good faith and in a competent and a reasonable manner through the pandemic. There are a majority of homes that have done that. But the problem is that the history of long-term care shows us that the for-profit homes do what they can get away with and that there really is a competence issue with the management, and there really is a negligence issue with the management of a number of the homes.

**1520**

The example of Pierrette that you talk about, at Extendicare West End Villa in Ottawa—there was almost no care left in that home at all. Pierrette died on a Saturday. It was September 26. There was no PSW, no nurse available to even get to her room before noon that day. She

was dying of COVID-19. That death is a person gasping for air, who cannot do anything for themselves, who has multiple conditions and dementia, who can't feed themselves, who cannot bathe themselves. There were not even any comfort measures left in the home for people who were dying. That is the condition for the vast majority of people with COVID-19 in long-term-care homes. Families described the home: People were left in double rooms, shared rooms, with COVID-19-positive residents for days before they were even tested, with four people sharing that bathroom.

This is happening right now. This week, I heard from a family—there were four people in a room. Each of the other three got sick day after day after day, until finally, their father got sick and, ultimately, died. This is what's happening, and with almost no care.

So have things improved? No. The ministry says that they contacted the home, they reported to the media; the public health unit says that they reported to the media that the home said that they had PPE, that the home said that they had enough staff. That is belied by all of the evidence from the families and the staff.

There is a real problem here. There's a problem of negligence. There's a problem of incompetence. There's a problem of gross disregard for human life. These people should be held accountable. So why would anyone make the bar higher for people trying to hold them accountable and make the bar lower for those homes, in their defence? Going forward, I think it's very frightening, because the long-term-care industry does what it can get away with. It has done that all across North America. There is now a 20- or 30-year history of this. The lessons—

**The Chair (Mr. Roman Baber):** I apologize, Ms. Mehra. I did not ask to mute you. I think that was done by technical services. Nonetheless, your time has expired. I thank you for your testimony.

I'd like to thank all the members of the present panel for their testimony. Mr. Simmons, Ms. Wilson and Ms. Mehra, thank you very much. I bid you a good day.

#### ONTARIO CHAMBER OF COMMERCE

#### RETAIL COUNCIL OF CANADA

#### ADVOCACY CENTRE FOR THE ELDERLY

**The Chair (Mr. Roman Baber):** We'll now proceed to our 3 o'clock panel. First, I'd like to apologize to you for the delay in the hearing today. I'd like to welcome, first, from the Ontario Chamber of Commerce, Rocco Rossi, president and CEO; Ashley Challinor, VP, policy; and Michelle Eaton, VP, public affairs. I'd also like to welcome, from the Retail Council of Canada, Sebastian Prins, director of government relations. And from the Advocacy Centre for the Elderly, we have Graham Webb, who is the executive director, and Jane Meadus. I believe everyone has joined.

I'd like to invite each organization to make their initial submission of seven minutes—followed by questions from all parties.

We'll start with the Ontario Chamber of Commerce. Please state your name for the record and begin.

**Mr. Rocco Rossi:** My sincere thanks, Mr. Chairman, and to the committee for this opportunity. My name is Rocco Rossi. I have the great pleasure and privilege of being the president and CEO of the Ontario Chamber of Commerce, representing some 140 chambers and boards of trade across every corner and sector of the Ontario economy. We're delighted to be here, and we really want to congratulate the government and all parties for truly listening.

This is an unprecedented crisis, and there is no set playbook. What's important is listening, great teamwork and great players through it and great levels of collaboration that we've not seen. It's really in that spirit that we come before you today. We're very pleased to see that the Ontario government has introduced legislation to provide liability protection for businesses, non-profits and charities that are making an honest effort to follow public health guidelines and laws related to exposure to COVID-19. They want to step up and collaborate and co-operate. They've responded to requests that the government has made for products and services and are doing this in good faith. We know that Bill 218 is an omnibus bill so it includes provisions not related to COVID-19 or liability. We're here to speak to the liability protection outlined in schedule 1, Supporting Ontario's Recovery Act, and are not here to comment on other sections of the act.

COVID-19 inspired countless Ontario companies to turn their resources towards offering services and producing products that support the fight against the virus, including personal protective equipment, ventilators, testing kits. These companies are answering the government's call and demonstrating Ontario's spirit. Given that the need for such products and services arose quite suddenly, there was little time to assess any potential legal risks.

Unfortunately, these good Samaritan firms are now, and in the future could be, exposed to litigation imperilling their businesses in an already challenging environment, so the OCC has been calling for liability protection for businesses, not-for-profits and charities since April. We've heard loud and clear from Ontario businesses about this issue.

In the letter we sent to the government in April, we noted that the government of BC had already taken action to protect such firms with a ministerial order. That order, however, was limited to businesses offering services. We expressed our support and encouragement for a similar order to be enacted in Ontario, but one that also protects any business, not-for-profit or charity that provides products, as well, to deal with the pandemic emergency effort and support.

Specifically, immunity should be extended to those operations that are either transitioning their operations or adapting them for COVID-19-related products. The goal of such an order should be to protect these companies and ensure their good work is neither discouraged nor punished at a time when they're absolutely crucial.

It is important—and I want to underline this and can't stress this enough—that the liability protection will only apply to those organizations that follow public health guidelines and operate in good faith. Clearly, negligence, abuse, bad actors will not be protected by this liability coverage, nor do we want it to. That would give a bad reputation to everyone making their best efforts. This liability protection only covers the inadvertent transmission of COVID-19, and no other issues.

Again, thanks for the opportunity to present. Thank you, again, to the government and the opposition for your leadership, collaboration and co-operation throughout the crisis. This is crucial, it is much appreciated, and we hope that the collaboration of businesses, not-for-profits and charities that are making these best efforts is rewarded by having this liability protection put in place. Thank you.

**The Chair (Mr. Roman Baber):** Thank you very much. Any further submissions by the OCC in its opening statement?

**Mr. Rocco Rossi:** We will make copies of this statement available.

**The Chair (Mr. Roman Baber):** Thank you very much.

We'll proceed with the Retail Council of Canada. I invite Sebastian Prins for seven minutes of initial submissions. Please commence by stating your name for the record.

**Mr. Sebastian Prins:** I'm Sebastian Prins. I'm the director of government relations for Ontario for the Retail Council of Canada. We really appreciate standing before the MPPs on the justice policy committee to share our support for Bill 218. I think the OCC did a good job, so I'll try not to repeat any elements here, because I know Rocco Rossi, so to speak—very elegantly delivered.

Before we get to some of our support for Bill 218, I want to take a moment to highlight who the Retail Council of Canada represents, and just how important the retail landscape is as a part of the Canadian and Ontario economies. In Canada, retail represents the largest private sector employer. In Ontario, we know from Stats Canada data that 11.2% of the workforce is employed by retail. That's about 814,000 Ontarians. For every job in retail, there are significant impacts on a vast number of other private sectors, including warehousing, transportation, IT, commercial property management. Our data shows that for every job in retail there are about four other supporting jobs in adjacent sectors that are touched.

1530

At RCC, we're proud to represent 45,000 storefronts across Canada. Our combined membership sales represent over 60% of sales recorded in StatsCan retail trade. In some subsectors, we're even higher as a percentage—our membership. For example, we boast over 95% of grocery sales as being by members.

With that kind of context, we know that, of course, the COVID-19 pandemic continues to have a ripple impact on all aspects of the world and the global economy. We know we've felt this in front-facing ways. Everyone, I'm sure, is

aware that we've seen the workforce shrink and sales shrink. From February 2020 to May 2020, we know that there were 390,000 fewer retail jobs nationally—that's a loss of 17%—due to the COVID-19 crisis.

I want to thank Ontario for helping our sector recover. We know that there are a number of great bills in the Legislature right now. The Retail Council of Canada is going to be speaking to several more of those—the Main Street Recovery Act and several others—to continue to express our thanks to Ontario for your leadership in helping us survive and come through the pandemic.

This legislation addresses a behind-the-scenes issue that we know will lead to additional costs for business. I know a number of members are probably aware that across the United States and Canada, there is already a series of class action lawsuits related to the pandemic. Today's legislation is important because, while none of the allegations that have been filed to date have been proven in court, there are lots of ramifications once some of those start going through.

Specific to the Canadian context, the Retail Council of Canada research indicates that as of April 28, there were 17 COVID-19-related class actions in Canada. We know that there have been an additional eight that our membership has raised since that research paper that we conducted.

I want to express to the committee that this is really timely and important legislation. For our large members, these class actions have a direct impact, consuming legal staff time and internal resources, and potential damages. For small and medium-sized members, we know that these costs can result in higher insurance premiums. I'm sure that's a common thing that you've been hearing through the committee.

RCC knows that consumer protection and tort claims are very popular with consumers seeking compensation for financial and personal loss. We know that today's legislation will protect retailers who have been adhering to public health guidelines from claims that may allege a failure to protect [*inaudible*]. Again, this is a good-faith measure. For those who are negligent, there is no protection awarded in this legislation, nor would our sector ever call for that.

Some extra context of what this does: Today's legislation would allow a retailer or business owner to defend themselves by referencing best practices at the time that a claim occurred. For example, if an Ontarian caught COVID-19 from a retailer, today's legislation recognizes and acknowledges that advice has changed to our sector throughout the pandemic a number of times. At one point during the crisis, the federal government was discouraging mask use. We now know that that is an accepted industry norm in most parts of Canada.

For business owners who have done their best to adapt to the evolving situation, RCC believes that a good-faith standard to mitigate liability associated with COVID-19 will help our members prevent further lawsuits and, for our small business members, will help keep insurance premiums down.

Today's legislation, if passed, would protect our membership from frivolous claims and help to keep costs down for business.

Thank you for the time.

**The Chair (Mr. Roman Baber):** Thank you very much.

I now invite the Advocacy Centre for the Elderly. Please make your initial seven minutes of submissions, and begin by stating your name for the record.

**Mr. Graham Webb:** Good afternoon, Mr. Chair and honourable members. I am Graham Webb, a lawyer and the executive director of the Advocacy Centre for the Elderly, a legal clinic serving low-income seniors.

**Ms. Jane Meadus:** My name is Jane Meadus. I'm a staff lawyer and institutional advocate at the Advocacy Centre for the Elderly.

**The Chair (Mr. Roman Baber):** Thank you.

**Mr. Graham Webb:** We are a small law office, a legal clinic, with six lawyers, three paralegals and an administrative coordinator. We've been in existence since 1984. Our mission is to improve the lives of low-income seniors through advocacy, legal advice and representation, and other means.

Ms. Meadus and I have been with the Advocacy Centre for the Elderly—we call it ACE—since 1995, for 25 years now. During that time, we have received countless complaints of poor-quality care from residents of Ontario long-term-care and retirement homes and their families. In many of these cases, we don't touch on civil liabilities; we deal instead with other problem-solving techniques.

Presently, if we receive a complaint that looks like it should be a lawsuit, we refer the caller to the personal injury bar, because they are now able to provide representation. That wasn't always the case; 25 years ago it was very difficult to get a lawyer to take on a negligence case against a long-term-care home or a retirement home. We have advised many older adults on these matters.

We have provided an 11-page written submission that I will make reference to, and I would like to point out one particular case we dealt with, outlined on pages 3 and 4 of our submission. This case involved an elderly Italian widower. He lived with his son, his daughter-in-law and their children at their family home. He was admitted to a long-term-care home for respite care, just for a few weeks, and while he was in the long-term-care home, his daughter-in-law, who spoke Italian and English—he only spoke Italian—came to see him every day.

One day he complained of pain in his leg, and his daughter reported that immediately to the nursing staff. Then she reported it the next day. Then she reported it the next day too, and the staff seemed completely unaware of her father-in-law's situation, so while she was at the nursing home, she called 911. The emergency responders came, they cut his trousers off of him and that exposed his broken femur. It was protruding through his skin.

In that case, we offered representation in a lawsuit against the long-term-care home, but as part of the litigation procedure—the elderly gentleman was mentally incapable; he couldn't instruct a lawyer. This meant that

his son and daughter-in-law would have to act as his litigation guardians, and to do so they had to swear an affidavit saying that they were aware that they would be responsible for costs against if costs were awarded against them or their father-in-law. These were parents of young children, who had a mortgage, car loans and other financial obligations, and they simply weren't able to take on the financial stress of a potential liability from a lawsuit; they declined legal action for that reason.

This brings us today to you with our concerns about Bill 218, which we think would increase the barriers for access to justice by Ontario families who have suffered from the negligent action of long-term-care and retirement home operators. Here I would ask you to please glance at pages 5 and 6 of our written submissions. We think that Bill 218 should not apply to retirement homes and long-term-care homes for these reasons:

Firstly, the ordinary standard of negligence is sufficient to protect long-term-care home and retirement home operators from civil liability for COVID-19-related claims. The standard is already high enough.

Secondly, Bill 218 would protect long-term-care and retirement home operators whose negligent acts or admissions led to otherwise-actionable COVID-19-related claims. Bill 218 does nothing but protect negligent long-term-care and retirement home operators whose negligence simply does not rise to the level of gross negligence.

Thirdly, the legal interpretation of "gross negligence" in the long-term-care and retirement home context is vague and uncertain. There are no case precedents to rely on. It's not yet known how courts will interpret the standard of gross negligence, and this gives rise to additional litigation risks and uncertainty for plaintiffs seeking civil regress against negligent and/or grossly negligent long-term-care and retirement home operators.

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Fourthly, there are already significant power imbalances between long-term-care and retirement home operators and their residents. These power imbalances create barriers to access to justice for vulnerable long-term-care and retirement home residents that would only be exacerbated by invoking a good-faith defence and a standard of gross negligence for civil liability.

Fifthly, long-term-care home and retirement home operators are in the business of providing high-quality care to their residents. Good public policy demands that they should be held accountable in damages when they cause harm or injury to their residents through their acts or omissions that amount to negligence or gross negligence.

Those are the points we wish to make, and if I may amplify them briefly—

**The Chair (Mr. Roman Baber):** Fifteen seconds, Mr. Webb.

**Mr. Graham Webb:** —the full text of which is set out in the rest of our paper.

Am I out of time, Mr. Chair?

**The Chair (Mr. Roman Baber):** You have about 10 seconds.

**Mr. Graham Webb:** Thank you for your attention. We look forward to answering your questions.

**The Chair (Mr. Roman Baber):** Thank you very much, Mr. Webb.

We'll now proceed, commencing with the government, with seven and a half minutes of questions. I recognize Ms. Kusendova.

**Ms. Natalia Kusendova:** I'd like to thank all of our presenters for their very valuable testimonies today.

I would like to begin my questions today with Sebastian from the Retail Council of Canada.

Two weeks ago was Small Business Week in Ontario. I took the opportunity to do a mini tour of my riding to say hello to the local businesses that have been working extremely hard to keep open and to follow the public health protocols and the guidelines set out by our Chief Medical Officer of Health. What I have seen has touched me profoundly. These businesses have worked extremely hard to put in modifications such as Plexiglas and other ways to keep their employees safe.

We are truly fortunate to have such a great small, medium and large business community here in Ontario. They have all pitched in, whether it's through donations to the local hospitals or by purchasing personal protective equipment. Especially during this time of the pandemic, businesses have really stepped up to the plate to help the government and the health care providers in the fight against COVID-19.

What I've been hearing is that small businesses need support from the government, and our government has come up with many initiatives to support small businesses.

I want to thank you for your support of this bill, because this is yet another step our government is taking to ensure additional protection for small business operators and medium-sized businesses—to ensure that when they're putting their best foot forward to protect the public and their employees, they are also protected from a legal point of view.

I have heard in my tour of the riding from many small, medium and large retailers and workers that providing no protection to Ontario workers and businesses simply needs to change. We know that grocery, in particular, had to stay open from the outset of the pandemic, and people had to go to work each and every day despite the uncertainty and the fear.

I know that back in April, there was a letter provided to our government from your organization, which has brought to our attention the work of the NDP government in British Columbia and how they introduced ministerial orders and eventually legislation to protect individuals and businesses from liability for transmission of COVID-19.

Can you please expand on the practical effects for your organization and its members and its employees of the legislation that we are introducing today and how it will benefit your members?

**Mr. Sebastian Prins:** Certainly. Thanks for taking that tour of the riding. I'm sure many of the small businesses appreciated seeing you.

Like you said, a lot of the key supports that your government has been providing, be it through deferring those 10 provincial taxes early on in the crisis—I know a lot of our members were very appreciative of that. It gave

necessary cash flow at a time they needed it the most—be it the most recent set of bills from Minister Sarkaria's office, giving PPE grants, and the Digital Main Street initiatives to help folks to sell products to consumers digitally. And then, of course, there's today's bill—and you've referenced BC. British Columbia was the genesis, the first group that moved on this, and they've even kind of gone further, so to speak, than what we see here in Bill 218.

We've continued to ask Ontario for a good-faith standard, which is what we see here today. British Columbia did go further than that; they also encapsulate employees as well as customers, whereas this bill focuses more on the customer side of things. So for us, this certainly mitigates the costs of those frivolous lawsuits that our industry is very worried about being brought forth and that we have already started to see get filed against a number of different folks. This does go a long way to mitigating those costs. Even just the interim costs of fighting these things in court amount to a lot of staff time. As everyone on this committee knows, lawyers—internal lawyers, as well—don't come cheap. Those are resources that would be doing other tasks, and there has been a lot of complexity.

I mentioned that grocers have been open since day one. I've had grocers that many folks have publicly declared as leaders, who have gone out and provided free masks to customers well before there was a standard or a duty of care that would have required that. They have come to us and said, "We know that we're incurring liability just by opening our doors every single day. We really need a good-faith duty-of-care standard here to protect us against"—it's the frivolous lawsuits that I'll come back to. It's not even a legitimate gross negligence claim—that's still going to get through. This is those frivolous cases that are going to tie up time in the courts and tie up costs. That's what this bill comes out and prevents, and it will be saving a lot of our members' costs.

**Ms. Natalia Kusendova:** Thank you for speaking to the cost of mitigation. I know that at least in my riding of Mississauga Centre, behind every small business is a hard-working family, and so it's really important to keep those costs at a minimum and protect everyone.

I would like to ask the same question to Mr. Rossi from the Ontario Chamber of Commerce—just to speak a little bit more about how this legislation will provide more protections for both employers and workers.

**Mr. Rocco Rossi:** Thank you very much for the question, but first off, let me also thank you for the fact that you are taking nursing shifts and being an MPP and sitting on committees. Everyone is doing their utmost in this time, but it's really, really remarkable leadership by example, so my hat is off to you—if I had a hat.

In terms of how this would be helpful, let's go back in the time machine to the middle of March: suddenly, massive shortages of masks, of PPE, of hand sanitizer, and businesses, in good faith, going and converting capacity—in a small distillery in Beamsville, over to producing hand sanitizer, or the Original Bug Shirt Co. in Powassan, Ontario, going over and making masks. That wasn't their

initial expertise, but the call went out because of this desperate need. The creativity, the pivoting of these businesses to things that you need in a crisis—for them now, suddenly, people looking back and putting them at risk of litigation, when they had taken every single step they could in good faith to be helping the community, I think would send a chilling effect to entrepreneurship and creativity through this whole process. We are not done with this, so—

**The Chair (Mr. Roman Baber):** Sorry, Mr. Rossi, I—

**Mr. Rocco Rossi:**—we really encourage all parties to support it.

**The Chair (Mr. Roman Baber):** I apologize, Mr. Rossi. I'm sure you will have another opportunity in subsequent questions.

Moving back to the official opposition: I recognize MPP Armstrong.

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**Ms. Teresa J. Armstrong:** I want to thank the Ontario Chamber of Commerce, the Retail Council of Canada and the Advocacy Centre for the Elderly for coming here and presenting today.

I don't know about anybody else, but I feel like I'm in two different worlds. One world is small business and volunteer organizations and sports clubs, which we all believe need that protection. Then in the other world, we get into health care—where people's lives are at stake; people have died; people aren't getting the care that they were supposed to—and trying to hold them accountable. So it's very foreign that we're jumping from one topic, when we're talking about people's lives, not holding them accountable for that or setting the bar a little lower, and then looking at businesses and volunteers and making sure that we know that they do things with good intentions and good faith, and not to impede their continuing economic recovery and operations and the good work they do in their communities.

I want to direct my questions to the Advocacy Centre for the Elderly. Do you have concerns regarding the broader meaning of “good faith” in this legislation and the impacts it will have?

**Mr. Graham Webb:** Yes, we do have concerns about that. We think that it will complicate the legal definition of gross negligence. We think that many of the claims that have been commenced will be amended to plead gross negligence rather than negligence. The courts will be called on to interpret what gross negligence means, and the provisions of the act that deal with the good-faith defence will make it unpredictable as to what is gross negligence for people who are both prosecuting and defending claims against long-term-care homes and retirement homes.

**Ms. Teresa J. Armstrong:** You mentioned that you're a lawyer. So how would the scales of justice tilt? Would they tilt towards the plaintiff or the defendant?

**Mr. Graham Webb:** We only act for plaintiffs who are low-income seniors. I can tell you that it is not a level playing field between an older adult who's a resident of a long-term-care home or a retirement home bringing legal action against a corporation that operates a multi-million

dollar business and has assets in the policy of liability insurance to fund their legal defences.

It's an uphill battle from the start for a plaintiff. They must have genuinely felt very aggrieved. They must have suffered injury. They have significant legal tests to prove to a balance of probabilities, and the cards are against them to begin with. This legislation would only make it more difficult for those individuals to have access to justice.

**Ms. Teresa J. Armstrong:** The story you told really bothered me, about the gentleman who was in pain, and then finally 911 was called, and his femur was broken, protruding, and of course, he couldn't speak for himself. That is probably a common thing that happens in long-term care. Can you talk about how that impacts families and how they see the expectation—someone said that you don't put your children into a sports league or someplace where it's safe, but when we put our grandmothers into a long-term-care home, we think there's an expectation of a level of care and that they're going to be safe. What are some of the families saying to you when these things—for example, the father-in-law who spoke Italian—what did they say when this all came to be?

**Mr. Graham Webb:** I'd like to ask Ms. Meadus to speak to that, because she has been on the front lines of that every day for the past 25 years.

**Ms. Jane Meadus:** Thank you, Graham.

Families are very frustrated. We get calls every day of a similar nature—whether it's broken bones, unexplained bruises, issues that are not being dealt with by the long-term-care homes. The inspection process has been another failure, frankly, in long-term care, so they're not getting satisfaction there.

The issue of trying to sue: Families are very afraid of suing, plus it's probably not going to do the elderly person any good anyway. The litigation gets drawn out, and they probably will die before the end of the litigation. In most cases, as Graham said, the bar is so high. In fact, we get calls from lawyers all the time asking whether or not we have any case law with respect to lawsuits against long-term-care homes. Frankly, that body of work just doesn't exist because people are so afraid and so unable, historically, to sue long-term-care homes, even where there are egregious cases. This legislation will make it almost impossible.

These places are not retail stores. They're health care facilities. They should be able to protect people from infectious diseases. They have infectious diseases all the time in them. So I think we're talking about a very different thing than retail, sports teams etc. Families and residents themselves are very frustrated about the system as it is.

**Ms. Teresa J. Armstrong:** The government, when it introduced this bill, really moved it through the Legislature very quickly and, of course, time-allocated it. There was only one day of presentations.

Were you consulted at all, as a seniors' advocacy group, on what this legislation would mean to families and residents?

**Mr. Graham Webb:** No, we were not consulted on this bill.

**Ms. Teresa J. Armstrong:** If you were consulted, what would you tell the government?

**Mr. Graham Webb:** I think we would have advised the government of the concerns laid out in our written submissions and also, I think, the concerns that the Ontario Trial Lawyers Association and others have advised the committee of—of the impact on the access to justice and the administration of justice. We adopt the Ontario Trial Lawyers Association's position on clogging up the courts. This will not help to unclog courts. It will only help to make the litigation more complex, more expensive and more unpredictable.

**The Chair (Mr. Roman Baber):** Thirty seconds.

**Ms. Teresa J. Armstrong:** I know that you're lawyers. I just wanted to make a comment that as a lawyer and a reasonable person—I think most people think that when you're going to create legislation like this, you would consult the people it affects in order to understand the impacts of the legislation. When you create laws, there are unintended consequences, and I think these unintended consequences are going to negatively impact families for a very, very long time. I'm quite disappointed that it has been lumped in with businesses and sports groups and volunteer agencies, and not removed from this legislation.

**The Chair (Mr. Roman Baber):** I'm going to move on to the independents. I recognize Madame Collard.

**M<sup>me</sup> Lucille Collard:** Thank you to the presenters this afternoon for committing your time to share your perspective. We're seeing, again, the great distinction between businesses and long-term care—a great distinction that is not addressed by this bill, setting a standard by which actions or inactions by different types of business settings will be judged upon.

My question to the Ontario Chamber of Commerce and the Retail Council of Canada: I would just like to know if you understand the legal distinction for someone to have to prove negligence as opposed to gross negligence. I just want to understand whether you grasp this distinction.

**Mr. Sebastian Prins:** I'll jump in here first—if Rocco wants to go next.

We've been pushing this with the Ontario government, from a retail standpoint, since the introduction of that NDP-led bill out of BC. We work very, very closely with the general counsels of a lot of our members. Often, there isn't a PR team at many of the largest retailers in Canada, so it's actually the general counsels who we work most closely with. We've had a whole series of very large companies review versions of this legislation and have a lot of conversations with us, and we've had conversations with the Ontario government, about what the ramifications are for Ontario-based businesses as it stands, with that ever-changing pandemic landscape that we've been seeing here in Ontario, and how Bill 218 basically assists and supports our retailers with respect to those frivolous claims that could be filed against them. So, yes, we have a very good understanding of what that means.

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**M<sup>me</sup> Lucille Collard:** You understand business. Do you believe that a business such as a big for-profit long-

term-care home, whose mandate and principal line of business is to provide health care, should be exempted from being sued for negligence? Do you think they should be in the same category as—if your business line is to provide goods and services, if you don't provide the goods and services you're supposed to, there is some liability. The long-term-care homes, especially the for-profit—their line of business is to provide care. Should they benefit from the same exemptions that will be afforded to businesses, in your view?

**Mr. Sebastian Prins:** At the Retail Council of Canada, we primarily focus our advocacy on retailers and store-fronts and on retailers within the NAICS 44-45 category. We don't represent some of those types of service providers.

Maybe I can share a bit more about what this means for our members. I referenced earlier that a number of class action lawsuits have already started to be filed. For our membership, that's a material impact, and that's a hidden cost of COVID-19. I'm sure we've all seen the Toronto Star articles, the newspaper articles, speaking to small businesses that are renegotiating their small business insurance. Time and time again, our members are seeing large spikes in those costs. That's, for us, what Bill 218—we've been so passionate on this topic because it prevents a lot of those insurance claim increases for small businesses. For our largest members, it prevents some of those frivolous lawsuits and really mitigates the costs associated with operating a business throughout the turbulence of the pandemic so far.

**The Chair (Mr. Roman Baber):** Madame Collard, with 10 seconds remaining, I propose to go back to the government for seven and a half minutes.

**M<sup>me</sup> Lucille Collard:** Agreed.

**The Chair (Mr. Roman Baber):** MPP Tangri.

**Mrs. Nina Tangri:** I really want to thank all of the presenters for coming out today.

I'll begin my questions with the Ontario Chamber of Commerce, with Mr. Rossi. It's our government's view that time is of the essence in getting this bill passed. I know that many companies that you represent were asked to stay open at the outset of this pandemic to develop PPE, ventilators, testing kits and more, with little or no time to assess their legal risk. On top of that, it has certainly been a challenging economic environment to operate in, as well.

Can you explain to me why the timing of the passage of this bill is so critical for hundreds of Ontario businesses and workers?

**Mr. Rocco Rossi:** Again, it's the notion of the potential chill on continuing to co-operate, continuing to collaborate, continuing to try to meet the requests being made by the government and by society at large for services, for goods that are being offered on an absolutely best-efforts basis. To continue to go forward with no protection on that front I think is an incredibly unfair thing to be asking of our members. I think that will have an impact on what they will invest in and what projects and products they will offer up to the government and to society at large during this. I don't think we want that to be happening at a time

when we know this crisis is going to last longer and we need everyone rowing together to provide the solutions to get us to the other side.

**Mrs. Nina Tangri:** My next question is for Mr. Prins.

As you also know, Supporting Ontario's Recovery Act provides greater legal protection for those who make honest or good-faith efforts to follow the rules.

Can you please share with me more about what your members have done to adapt to the unprecedented circumstances that COVID-19 presents, and what they're doing to try to protect their clients, their staff and our communities from the inadvertent spread of COVID-19?

**Mr. Sebastian Prins:** Certainly. I think the best way to codify some of this—I'm sure we have all eaten groceries throughout the pandemic. A lot has changed in your grocery shopping experience. Plexiglas is the first item that comes to my mind. We've invested a lot of money—small business and large business—in new PPE. That's a huge ongoing cost to all my members. Our largest members who are publicly traded have still shown, even in spite of revenue increases, that their profits are down because a lot of those significant investments in PPE. And a continued thank you to the Ontario government—the latest round of grants for the smallest businesses to help them to cover the costs of that PPE is so critically important to those members. I know tomorrow is the big day with the budget. We're crossing our fingers for even more supports and protections, particularly in the PPE space, since that's such a big cost.

Some of the other items: I'm sure you've seen increased sanitization in stores or changes to occupancy. Traffic flow has been something a lot of our stores have had to redo, and map out the whole store. That has varied by jurisdiction in terms of the level of enforcement requirements there.

Masks: Not only have we gone through procuring masks, but there are also moments in time when some of the retailers who are leaders in this space went out and procured face shields prior to the new mask changes—and to then re-procure a whole set of PPE. I know we have swaths of members in that category, as well.

Then, of course, there's a series of retailers who have gone above and beyond and provided a lot of free masks to members of the public who have come into the store to, again, continue to keep those consumers protected.

Of course, all of these policies have not only been changing from a federal and provincial perspective, but there are 34 different health units in Ontario, which each operate with autonomy and can issue section 22 orders or guidance that we have to comply with. At times, there have been moments during the pandemic when we're playing catch-up. There are new rules every day, and our members are doing the very best that they can to keep those customers and employees safe and investing money to do so.

Today's legislation, if passed, will really go a long way to help ensure that as we hit that best-effort standard and meet those public health requirements, we're covered off from any liability of changing decisions or rapid change

throughout the pandemic. So we're very appreciative of today's bill.

**Mrs. Nina Tangri:** Back to Rocco: As you also know, this legislation increases the legal standard for cases involving only exposure to COVID-19 from "reasonableness" to "good faith."

In your estimation and based on what your members are advising you, what would happen if one of your members was sued due to inadvertently exposing someone to COVID-19, under the current legal standard of "reasonableness" and not with the liability protection provided by Bill 218?

**Mr. Rocco Rossi:** We've lost thousands of businesses across Canada already. We are continuing to see so many of our members really hanging on by fingernails to get to the other side of this. An avalanche of frivolous suits that come after people who have been making best efforts to operate in very difficult and changing circumstances would just be seen as the last straw and really would have incredibly damaging impact on the survival of many businesses, and I don't think that's to anyone's benefit.

**Mrs. Nina Tangri:** What would happen if an employee was sued? Would your members bear that legal cost, or would the employee have to defend the lawsuit on their own?

**Mr. Rocco Rossi:** I think that's a case-by-case situation. Obviously, it can have incredible impact on the individual employee and/or the company. Typically, as you know, in these cases, people will put the action against everybody and his brother in order to cover their bases. So I don't think anyone will be—

**The Acting Chair (Mr. Parm Gill):** Mr. Rossi, thank you. Unfortunately, we've run out of time.

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We're going to move back to the NDP. MPP Singh, go ahead, please.

**Mr. Gurratan Singh:** My question is for Mr. Graham Webb. Would you say that this legislation, Bill 218, reduces access to justice for seniors?

**Mr. Graham Webb:** Oh, yes, I would definitely say so. There are no frivolous lawsuits against long-term-care and retirement homes, much less an avalanche of frivolous lawsuits against them. These are very hard decisions that people make, when they decide to sue—only in the most egregious cases. And if it turns out that the long-term-care home that is paid to provide care to a vulnerable adult does not provide the care without negligence, then they should bear civil responsibility. That is good public policy.

**Mr. Gurratan Singh:** During the COVID-19 crisis, in its initial part when long-term-care homes were being devastated and the army had to come in, Premier Ford stated that he would do anything to help hold long-term-care homes accountable. Would you agree that this legislation is in direct contradiction?

**Mr. Graham Webb:** Yes, it is a direct contradiction to the principle of accountability. When the army went into long-term-care homes in Ontario and gave a report that shocked everyone, including the Premier and the Prime Minister, it did not shock the Advocacy Centre for the

Elderly. We were deeply saddened by it, because we saw in that report things that we had seen for 25 years and more.

We have seen homes that have had poor infection protection and control procedures and poor caregiving methods for years, and those things have simply been exposed by the coronavirus. If those homes that have been operating negligently for years now have their negligence exposed, there is every reason that they should retrospectively continue to have their liability held accountable.

**Mr. Gurratan Singh:** We've been told by a lot of folks that they actually want to watch today's committee hearing and that this committee hearing is not being broadcasted. Are you aware of people associated with your organization who would want to watch today's hearing and hear what the government has to say with respect to this bill?

**Mr. Graham Webb:** Absolutely. There are many interested persons following Bill 218, and I think there would be a huge response to these proceedings today.

**Mr. Gurratan Singh:** Are you aware that there were 58 organizations that applied to be heard and only 15 were allowed to depute today?

**Mr. Graham Webb:** No, I'm sorry, I had not known that. I expected there would be a high demand, and I'm grateful to the committee for allowing us to speak.

**Mr. Gurratan Singh:** Let's go through the law a little bit. First off, we have a change from "negligence," which is a term which is defined in the law, to "gross negligence," which has a lot of ambiguity around it. Is that fair to say?

**Mr. Graham Webb:** Yes, "gross negligence" is a finding of fact. The courts have found authoritatively that "gross negligence" simply means "a very great negligence," and what is "a very great negligence" depends on the factual context.

In the long-term-care and retirement home setting, we have no case precedents to go by. If we were suing the city of Toronto over ice and snow on the sidewalk, there would be many decisions where courts have found gross negligence or not, and there would be something to go by. We have no indication as to what it is that an individual judge or a jury would find constitutes "gross negligence." That creates a greater litigation risk and a higher barrier for access to justice.

**Mr. Gurratan Singh:** In addition, we see that there's a change from an objective system of analysis, like the reasonable person test, to a subjective good-faith test. Would you agree that one is objective and one is subjective?

**Mr. Graham Webb:** Oh, I would, and I think the Ontario Trial Lawyers Association has written about that in their submissions. It's a very complex area of law, because "reasonableness" comes back into several elements of the multiple tests of negligence. Proving negligence is not just one legal standard; it's a whole host, a collection of legal standards that come and go, and "reasonableness" goes in many ways.

With the ordinary standard of negligence, if someone is acting reasonably, if they're doing what a reasonable long-term-care home or retirement home operator is doing, then that person is not negligent because they have met the standard of care—or a reasonable long-term-care or retirement home operator. When we remove the "reasonable" standard and put in "belief" or "good faith," it's rhetoric and we don't know what we're dealing with.

**Mr. Gurratan Singh:** Is it fair to say that one could describe this piece of legislation as something that's actually going to protect billion-dollar long-term-care facilities from liability?

**Mr. Graham Webb:** I would say that it will protect negligent, billion-dollar long-term-care-home operators from liability. Many of them are wonderful operators; they run their homes well and they are not negligent and do not need the protection of this act, because they are already operating in a non-negligent fashion. The only people this act protects in the long-term-care and retirement industry are the negligent operators whose conduct needs a good-faith defence and an enhanced legal test of gross negligence.

**Mr. Gurratan Singh:** Are you aware of the fact that there is a huge disparity between the treatment of for-profit homes versus public homes, and that for-profit homes actually issued, from a Toronto Star report, as much as \$1.5 billion in dividends during the COVID-19 crisis to shareholders?

**Mr. Graham Webb:** That particular fact I am not aware of, but I am aware of the differences between for-profit and non-profit homes generally, yes.

**Mr. Gurratan Singh:** And it's fair to say, then, that these folks who have made excessive profits are now [inaudible]. Often, they made profits on the backs of their [inaudible] by having negligent care, reusing, as we all read in the army report, [inaudible] saving costs etc. On the back of these savings and on the back of seniors and putting them into deplorable situations, now they're going to retroactively be protected from any legal recourse. Is that fair to say?

**Mr. Graham Webb:** What most concerns me about this particular legislation, Mr. Singh, is that there is a crisis in long-term care dealing with the cost of liability insurance, the availability of liability insurance, and it appears that crisis is being solved on the backs of long-term-care-home residents who have been injured through the negligent conduct of long-term-care-home operators. Giving them immunity from liability for their past actions does not serve public policy, and it is unfair and unjust that those who have been injured by negligent long-term-care-home operators should not have civil redress.

**The Chair (Mr. Roman Baber):** We now conclude with four and a half minutes for the independents. I recognize Madame Collard.

**M<sup>me</sup> Lucille Collard:** Ms. Meadus alluded to the fact that victims of insufficient or negligent care are already in a position of vulnerability because they have to cope with loss, with grief, with frustration. For the few cases that would muster the courage to seek accountability and

justice, can you point to the increased imbalance of power that this bill will create? This is to Ms. Meadus or Mr. Webb.

**Ms. Jane Meadus:** I think that we already have an imbalanced system. The inspection system doesn't listen to people. It isn't able to find non-compliances or to properly go after homes and get them to correct. They're not making fines; they're not giving charges.

This is just going to go ahead and increase the problems for residents in long-term care, many of whom still have to live in those homes and can't move.

It does take a huge amount of courage to bring a lawsuit. It's the same with the families—the families are very afraid of bringing lawsuits because their family members may live there. It's often only after the person dies that they actually bring an action, which is also somewhat problematic with respect to damages—because you lose the damages for that person.

The system is already unfair, as was alluded to by Mr. Singh. There are profits going out. The system is claiming that they can't afford these lawsuits. They are covered by insurance right now. There may be issues around that. But to move forward and say that we're going to correct this by just allowing them to go on as they are is going to have no justice. You will have no justice for the residents in long-term care.

1620

**M<sup>me</sup> Lucille Collard:** Given your experience, are you of the view that the situation that has already been allowed to go on will be encouraged to continue given that practically no one will be able to hold them accountable? I'm talking about the long-term-care homes and even negligent retirement homes.

**Mr. Graham Webb:** Yes, we're absolutely concerned about that. This is where the rubber has hit the road. Long-term-care homes and retirement homes that have been operating well for decades have no liability problems. Long-term-care homes and retirement homes that have been sloppily run, that have been negligent in their operations, have now been exposed, and they are getting the get-out-of-jail-free card. They are hiding behind this legislation.

**M<sup>me</sup> Lucille Collard:** So the bill won't fix anything; it will actually make it worse.

I don't have any more questions.

**The Chair (Mr. Roman Baber):** Ms. Hunter, with about a minute and a half remaining.

**Ms. Mitzie Hunter:** I want to thank all of our presenters today—really, telling two very different tales in terms of how this bill will affect your members and the constituents that you represent. It's unfortunate that this is happening. We certainly see the need to support small businesses, non-profits, sports organizations, making sure that the ability to acquire insurance to continue to operate is there. But there is definitely a concern around long-term care and that duty of care that has been the tragedy of this pandemic.

I'm just wondering if we could continue, Ms. Meadus, on the families and how the threshold changes their access to justice.

**Ms. Jane Meadus:** Well, it will change because there's this higher level. Cases that were started in good faith by them may be dismissed. They are going to be looking at potential other issues that come up during the litigation, whether or not it's going to be gross negligence—and if it doesn't hit that, there's a question of their own liability, as Graham discussed at the beginning, as to costs against if they don't meet that higher bar.

Again, we're talking about a sector that provides care.

**The Chair (Mr. Roman Baber):** I apologize, Ms. Meadus and Ms. Hunter. That concludes the time allocated for this panel.

I'd like to thank the Retail Council of Canada, ACE and the Ontario Chamber of Commerce for their testimony and bid them a good day.

## ONTARIO NONPROFIT NETWORK

WILL DAVIDSON LLP

CITY OF LONDON

**The Chair (Mr. Roman Baber):** Good afternoon, we will now proceed to our 4 o'clock panel. I'd like to apologize to our panellists in advance; the committee is running late today.

First, I'd like to welcome Cathy Taylor and Liz Sutherland from the Ontario Nonprofit Network; from Will Davidson LLP, Gary Will, Michael Reid, Sylvia Lyon and Greg McVeigh; and finally, from the city of London, welcome, Mayor Ed Holder.

I would invite the Ontario Nonprofit Network to begin their seven minutes of submissions by stating your name for the record.

**Ms. Cathy Taylor:** I'm Cathy Taylor, executive director of the Ontario Nonprofit Network.

**Ms. Liz Sutherland:** This is Liz Sutherland here, director of policy at the Ontario Nonprofit Network.

**The Chair (Mr. Roman Baber):** Welcome. Go ahead, Ms. Taylor.

**Ms. Cathy Taylor:** Good afternoon, Chair and committee members. My name is Cathy Taylor, and I'm here with ONN's director of policy, Liz Sutherland.

I'm joining from the town of Erin, Ontario, on the traditional territory of the Anishinaabe and the Haudenosaunee, and part of Ajetance Purchase on Treaty 19 here. This land is home to many First Nations, Inuit and other global Indigenous people today, and we're really grateful to work on this territory.

Let me tell you a bit about what we're hearing from the non-profit sector and the issue of insurance, which is covered in Bill 218. We are the independent network for 58,000 non-profits and charities in Ontario, and we focus on policy, advocacy and services to strengthen Ontario's non-profit sector as a key pillar of our society and economy. Many of you, I know, are connected to our sector through your own work and volunteer time, such as contributing to minor hockey, women's shelters, nursing, children's services, international development and so much more, so you know how vital non-profits and

charities are to your communities and the public benefit that they generate. Our communities could not function without the supportive web of non-profits that contribute to their quality of life.

Aside from the positive impacts they make, non-profits are also a part of our economy. They employ a million people in Ontario, contribute \$50 billion to Ontario's GDP and, as a sector as a whole, we receive less than half of our funding from all three levels of government combined, which means we leverage government investment through business activities, donations and volunteer contributions into services directly for Ontarians. Non-profits also manage five million volunteers who contribute the equivalent of 400,000 jobs, on top of our million workers in the sector—80% of whom are women, by the way.

So what has been happening with COVID-19? Members of this committee have no doubt heard about the challenges non-profits are facing in your ridings as they struggle to reopen their services and continue to operate during the COVID-19 crisis. We have surveyed non-profits twice during the pandemic, and I can tell you, they are struggling under the triple whammy of increased demand for services, decreased revenue from fundraising and donations, and increased costs related to pivoting to digital services or adapting their spaces for physical distancing. We have spoken to many Ontario government representatives, including some of you, about this overwhelming need for the sector and the need for stabilization funding to ensure that they survive, and we're looking forward to hearing the budget this week.

On top of that already difficult context, non-profits were faced with another emergency: liability insurance. Some of you will have heard about this, specifically, in your ridings—what non-profits started to face back in early spring when they were trying to secure or renew their liability insurance. All of a sudden at ONN, we were hearing from dozens and dozens and dozens of organizations—non-profit housing, home care, community mental health services and, most of all, sport organizations—about this issue. All around the province, non-profits were being told by their insurance providers that they would not provide coverage for anything COVID-19-related; they were adding waivers and exclusions to their insurance so that nothing related to COVID-19 would be covered. These COVID-19-related exclusions became the norm. In addition, some were being turned down outright for renewal of coverage, even though they had no history of claims, or were being told their premiums were going up, and most of them were more than doubled.

Imagine for a moment you are a non-profit board member, a volunteer. Your organization was following all public health guidelines to the best of your ability and in good faith, yet you cannot find a single insurance provider to cover COVID-19-related transmissions or costs during this time. You would have no choice but to stop providing services and programs, or you would put the organization at risk. A single complaint or risk of a lawsuit without adequate insurance coverage would sink your organization.

These insurance challenges were also having ripple effects, including challenges with recruiting volunteer

board members and delays in flowing emergency funding because funders require proof of insurance. Non-profits needed immediate liability protection so that they could support the health and well-being of their community members and their workers during the pandemic.

Since June, we have been engaging with the Ontario government, calling around to secure what we were calling “good Samaritan liability protection,” and we were really relieved to hear that our sector's request had been granted when Bill 218 was tabled on October 20. We're here today to express our support for schedule 1 of Bill 218, which, if passed, would provide Ontario non-profits with protection from COVID-19-related liability claims retroactive to March 17.

In our view, this legislation provides the protection that non-profits urgently need to support the recovery and continue to serve our communities. We are satisfied that the liability protection only applies to those organizations that follow all emergency orders and public health guidelines and operate in good faith. We would absolutely not wish to see protection extended to any corporation whose behaviour constitutes gross negligence or wilful misconduct.

**1630**

We have been reassured by the Ministry of the Attorney General that non-profit workers will continue to have access to the usual routes for redress, such as through WSIB, the Ministry of Labour's compliance program for health and safety and the courts for claims related to COVID-19 exposure in the workplace.

In conclusion, non-profits have played a critical role in supporting Ontario communities during the first few months of the pandemic, and they will continue to do so. Providing these organizations with the supportive policy environment they need is paramount so that they can help Ontario communities recover and to flourish.

Schedule 1 of Bill 218 is an important building block, and we are pleased to be here today to speak in favour of this provision. We know that there are similar protections in BC, and we hope to see COVID-19 liability protection for non-profits across the country before long, so we applaud you for taking a stand on this issue.

We look forward to working with you, the government of Ontario, and all parties as all sectors continue to collaborate on a safe and full recovery from COVID-19 for all of us. Thank you.

**The Chair (Mr. Roman Baber):** Thank you very much, Ms. Taylor.

I now invite Will Davidson LLP for their initial seven minutes' worth of submissions, commencing with stating your names for the record, please.

**Mr. Gary Will:** Gary Will. Sylvia Lyon is muted, and Greg McVeigh is here. We will all be speaking.

**The Chair (Mr. Roman Baber):** Thank you. Please commence.

**Mr. Gary Will:** Good afternoon. I'm very pleased to have been invited to address this committee. My name is Gary Will. I'm the managing partner of Will Davidson. I'm here with Michael Reid, a senior law clerk; Greg

McVeigh, the representative plaintiff in the Seven Oaks class action claim; and Sylvia Lyon, the representative plaintiff in the Orchard Villa class action.

Our ultimate submission is that long-term-care homes and retirement homes should be exempted from this legislation. We explain how you can do that with a simple amendment to the current legislation at page 3, paragraph 2 of our submissions.

First and foremost, my firm acknowledges that there are many very well-run long-term-care and retirement homes in Ontario. Over half of the long-term-care homes have had zero infections and zero deaths. These homes, and their managers and their workers, should be applauded.

At the other end of the spectrum, there is a small group of long-term-care homes that have accounted for the majority of infections and the majority of deaths. Those bad actors should not be shielded from liability—which is what this legislation does.

Long-term-care homes and retirement homes are meant to provide care to the most vulnerable members of our society. Many of these individuals are significantly disabled, mentally and physically. They are entirely dependent for their care on their caregivers, they can't speak for themselves, in many cases, and their families are often unaware of their circumstances.

The impact of this pandemic has been devastating to residents of long-term-care facilities. Over 65% of the deaths in Ontario—around 2,000 people—are in long-term-care homes. Many of those deaths were preventable. We currently represent over 2,000 residents and families in nine long-term-care homes—of those, 711 residents who were infected with COVID-19, and 261 died.

What do these families want? First thing, they want to know what happened to their loved ones. They want there to be accountability and responsibility taken for what has occurred. Finally, they want to ensure that this never happens to any other family in the future.

What does this legislation do? Well, there will be no responsibility and accountability for negligent conduct. Long-term-care homes can act unreasonably provided they make an honest effort, and a long-term-care corporation that earns over \$1 billion in revenues can act negligently and there will be zero consequences.

Bill 218 bars claims for negligence, and all existing claims are deemed dismissed without cause. For those individuals who are unable to prove gross negligence, there will be no accountability, no responsibility, no answers and no compensation.

What will this mean for future residents in long-term-care facilities? We are now in the second wave, and there are likely going to be further waves in 2021. The care of these residents will not be any better; it will likely be worse. Extendicare, which has earned \$1 billion in revenue for the last three years each year, can cut back its care that it's providing to increase its profits. They can act negligently and they can act unreasonably, and there will be zero consequences to them. The decisions that they make, which will affect the quality of life for residents, will never be accountable in any court of law.

Again, our elderly, vulnerable population will bear the brunt of the consequences of this legislation. There will be more infections, not less; there will be more deaths, not less.

No one in Ontario wants this. If we want to improve the quality of care in our long-term-care homes, Bill 218 should exempt them from application of this legislation.

I'm going to pass it over to Greg McVeigh, who is going to speak about his personal circumstances, and then Sylvia Lyon, and finally, Michael Reid.

**The Chair (Mr. Roman Baber):** You have about two minutes, 10 seconds remaining for all three, but if you don't manage to conclude, you'll have an opportunity during questions. Please proceed.

**Mr. Greg McVeigh:** Good day. I'm the son of Joseph and Joan McVeigh, who were residents at Seven Oaks long-term care in Scarborough. Both of my parents are deceased. They died, nine days apart, from COVID-19. My parents both served their communities with honour. My father was a Toronto police detective, and my mother was a program director with the Peel Lunch and After School Program. Our family lost them both within nine days. Both deaths were preventable. The hurt is immeasurable. Taking away rights from their estate only amplifies this pain.

Throughout this pandemic, hard-working people like my parents, due to their age and disability, were treated like second-class citizens. They were an afterthought, expendable, not as important to keep alive.

Now, through political expediency, if it wasn't bad enough that their rights were diminished while alive, the province wants to remove the rights away from their estates. Bill 218 prevents families like ours from finding some form of justice and, ultimately, closure on their preventable deaths.

In closing, I ask you to picture this: A week before the pandemic was declared, my mother was dancing to live music, and my father was reading the Toronto Star and watching action movies. Please refer to my submission on page 9 of the written submissions. Thank you.

**Mr. Gary Will:** Go ahead, Sylvia.

**Ms. Sylvia Lyon:** My name is Sylvia Lyon. I'm the representative plaintiff for the Orchard Villa lawsuit. My mother died there of COVID-19. In 1974, she survived brain cancer. The treatments had a long-term effect, and she became completely deaf, partially blind and wheelchair-bound.

At Orchard Villa, she had a private room. She was immobile and she was fed in her room, so the only way that she could have gotten the virus was because it was brought to her on contaminated items or through staff contact. It's not right that a person who coped so valiantly for so many years was betrayed by the very place that should have kept her safe.

I'm asking that care homes be excluded from this bill so that families can hold them accountable. Thank you.

**Mr. Michael Reid:** Please see Sylvia's submission on page 10 of the written submissions.

I've talked to over—

**The Chair (Mr. Roman Baber):** I apologize, Mr. Reid, but we will give you an opportunity to speak again, I'm sure, through one of the questions. Thank you for that.

With that, I'll invite Mayor Ed Holder for his seven minutes of submissions.

**Hon. Ed Holder:** I'd like to thank the committee for the opportunity to share London's perspective on Bill 218, Supporting Ontario's Recovery and Municipal Elections Act, 2020.

Let me start by saying the city of London strongly encourages reconsideration of the move to eliminate municipalities' authority to determine how to conduct elections. Broadly speaking, London does support a focus on the priority of delivering critical services, as well as support for the communities, as we continue the fight against COVID-19. Unfortunately, this legislation actually compromises that goal in London and in many other cities across the province.

**1640**

In 2018, London became the first city in all of Canada to conduct a municipal election through the use of ranked ballots. The cost of transitioning from first past the post to a ranked ballot system was in excess of \$500,000, although the vast majority of those costs were one-time and would not be incurred again in future elections.

For London, returning to first past the post would waste public resources on both ends: first, by undoing the work done for the 2018 election, including one-time sunk costs; second, by generating additional expenses for the next election, reverting to the first past the post system and undertaking additional public awareness, and ultimately, increasing voter confusion. It is my firm belief that, consistent with your direction as the government, these funds would be better spent on supporting the health and safety of Londoners, as well as local businesses, especially while the COVID-19 pandemic persists.

Our city clerk, who received accolades and international interest for her leadership on London's transition to ranked ballots, has also raised numerous concerns on the ability of our election system here in London to function smoothly on the new timelines proposed in Bill 218. These timelines provide less time for clerks to verify nominations for each office, provide a shorter turnaround time to produce final candidates lists and ballots and ultimately test voting technology.

More broadly, there is a question of respect for municipal autonomy and local decision-making. We can all agree that the working co-operation between all levels of government to weather this pandemic has been nothing short of extraordinary and has undoubtedly contributed to Ontario's success in preventing the most serious potential consequences. You see, municipalities are the front line and the bottom line, both when it comes to community needs and as local government. We are the closest to the ground when it comes to community decisions and knowing what our community is looking for. Regardless of whether a community is interested in undertaking ranked ballot, the decision to take away the element of local autonomy is taken very seriously. We are always

willing to discuss any initiative the province is considering to focus on recovery, reduce red tape or otherwise provide greater value to taxpayers, but these decisions must be made in consultation with cities and municipalities across the province.

I would encourage the government to give second thought to this legislation, to allow cities more time to work with the government to evaluate potential impacts and concerns.

I also recognize London's position, in that we already made the move to ranked ballots, and that it is unique. I am asking you to consider our circumstances and certainly exempt London from the proposed changes while respecting the autonomy of municipalities in this great province.

Thank you, Chair.

**The Chair (Mr. Roman Baber):** Thank you very much, Mayor Holder. We'll now proceed with seven and a half minutes of questioning by the official opposition. I recognize MPP Sattler.

**Ms. Peggy Sattler:** Thank you, Mayor Holder, for appearing before the committee, as well as the other panellists. Unfortunately, there were 58 requests to present, but there were only 15 delegations that were allowed.

Mayor Holder, you are the only delegation that's speaking to ranked ballots, so I'm going to be directing most of my questions to you.

The first question is, was there any consultation between the province and the city of London prior to Bill 218 being introduced?

**Hon. Ed Holder:** No.

**Ms. Peggy Sattler:** Are you aware of any other municipalities that had any consultation with the province prior to Bill 218 being introduced?

**Hon. Ed Holder:** Those municipalities, MPP Sattler, would not necessarily dialogue with me. I'm not aware of any that have brought that specifically to my attention one way or the other.

I will say that the minister responsible for municipal affairs and housing did communicate with me the morning of the announcement that it would be included and incorporated in Bill 218, but beyond that, no prior consultation.

**Ms. Peggy Sattler:** Do you feel that there is an obligation for the province to engage with municipalities before implementing such a consequential change to the municipal act?

**Hon. Ed Holder:** Well, appreciating that at this stage the ranked ballot impacts specifically one municipality, London, because we had already made that decision in a prior term—before my time, to be fair, but still, council in its wisdom made that decision to proceed. It would have been logical to me, as the municipality most directly affected, that we would have been consulted.

I am aware that there are some municipalities that had considered putting it on the ballot for their next election cycle, and in addition there may well have been some that would have considered the ranked ballot for what would be, then, the 2022 election, but I cannot comment because

I don't know whether those municipalities had any direct communication with the government.

**Ms. Peggy Sattler:** One of the reasons the government has given for introducing schedule 2 is its desire to save municipalities money that should be spent on COVID-19.

You have indicated that, in fact, it's going to cost London an additional \$51 million to switch back to first past the post, and there's the sunk cost that London will not be able to recoup through that initial investment in moving to ranked ballots.

I wonder what your thoughts are about the province interfering in decisions about how municipalities like London choose to spend municipal dollars in implementing something like ranked ballots, when there was a democratic decision of council to move forward with that.

**Hon. Ed Holder:** That almost feels like a three-part, so let me be brief.

Firstly, as I indicated in my formal comments, I really do appreciate the focus on municipalities and the province, working together, to do whatever we can do to limit the impact of the pandemic. It's critically important. We certainly have gotten support from that. I think I've made it clear that, from our standpoint, those funds would be better spent on supporting the health and safety of Londoners, but I don't think it's a zero-sum game.

In terms of the second part of that, let me just correct something: It's not a \$51-million increase; it's \$51,000 more that it will cost us for this election, just to be clear. And the second part of that is that we have sunk costs north of \$500,000, because we lawfully proceeded with the ranked ballot when we were in a position to do so, as provided for by provincial legislation in force at the time. Certainly, London took the initiative and I think showed not just gusto, but truly great leadership, in providing the ranked ballot system, and did so in 2018.

The final comment I would add is to do with the issue of local autonomy. Again, not to speak for all municipalities across the province—but since I am the mayor of one of the major cities in this province and one of the few speakers at the municipal level, I will say that I have heard from a number of municipalities that expressed a similar disappointment that autonomy, which should be better left in the hands of municipalities, has been taken away, in terms of making this decision.

By the way, there may well be some who would choose to remain at first past the post. London had already made that decision. As the first city in Canada to do this, we felt that it was quite exciting. While the result did not change—whoever wanted first past the post, in our system in 2018, ultimately, won if their name was on the ballot with the ranked ballot system.

I look at my own votes, and I publicly received in the high 30% on the first ballot; in the ultimate ballot, I received over 60%. I'm not sure that gives me more moral authority to be mayor of the city—but it includes the opportunity for individuals to participate more fully in the electoral process, which I think is a very positive thing.

**Ms. Peggy Sattler:** Another reason that the government has given for proceeding with this change is that ranked ballot voting systems are confusing for voters.

My understanding is that 68% of London voters took the opportunity to rank their choices when they cast their votes in the last municipal election.

What are your thoughts about how confusing this system is for voters in London, given that they've actually experienced it in 2018?

1650

**The Chair (Mr. Roman Baber):** Forty seconds, Mayor.

**Hon. Ed Holder:** Thank you for the question.

I would state, first, it's anyone's first effort in the country to—this was our first cycle. Actually, our percentage of popular vote went down, from 43.2% in 2014 to 39.4% in 2018. That's concerning. But I would tell you that, from the first cycle, we were looking forward to, with additional promotion of the ranked ballot—and also with the fact that people did, as you suggest, vote in the high 60s in terms of more than one choice. We think it was intriguing for voters, and they certainly felt that they had more say in who their candidates were.

**The Chair (Mr. Roman Baber):** We'll now move back to the government side for seven and a half minutes. I recognize MPP Kusendova.

**Ms. Natalia Kusendova:** Thank you to all of our presenters today.

I want to start by expressing my deep condolences to the family members of loved ones who are present here today. I think I speak for all members of the House when I say that our hearts go out for every single death. Every single death is tragic. As a front-line service provider, I've had the very heartbreaking privilege of working with patients at their end-of-life journey and with their families, so I profoundly understand the pain that you are going through. My heart truly goes out to all of you.

Today, I would like to address my questions to Cathy and Liz from the Ontario Nonprofit Network. Cathy and Liz are no strangers to the members of the government—in a different committee. You have presented to the finance committee in the past, and you have produced a very informative survey which has helped inform some of our government policies, so thank you for that.

Your members are great advocates. Many of your member organizations have been sending submissions to my office, including the Canadian Cancer Society, the Canadian Mental Health Association etc. I know that together you are doing incredible work.

Based on the survey that you have provided, I understand that you are estimating that about one in five of Ontario's 58,000 not-for-profits or charities that have been making an honest effort to follow public health guidelines and laws may be forced to shut down if no action is taken. That is a shocking statistic. We know that some of these organizations provide vital services, such as transportation for cancer patients to their appointments. We simply cannot allow that to happen.

Our government recognizes the important role that not-for-profits play in our province, and we want to ensure that your sector has the utmost confidence when it comes to providing critical services to Ontarians across the province.

Can you please expand on what the practical effects are for your organization and its 58,000 members if this legislation was not introduced, and ultimately what it would mean for critical services that Ontarians have become accustomed to relying on?

**Ms. Cathy Taylor:** Thank you so much, MPP Kusendova. It's a pleasure to see you again.

What we are hearing from our sector—we've surveyed them a couple of times; we hear from hundreds of organizations every week, from small grassroots organizations in rural Ontario to bigger organizations like Canadian Cancer Society and Canadian Mental Health Association—is that they are struggling with the increased demand for their services. Demand for food banks, for mental health services, for sport and recreation services is going through the roof at this time. At the same time, there have been reductions in fundraising—no events, no golf tournaments, no galas. Individual donors—obviously, the public is struggling, and there have been layoffs as well. And then you top that off with the changes they've had to do for their services going digital or fixing their office space.

The insurance issue in this particular legislation was on top of all of that. So not only were they struggling already—our first survey, before we heard about the insurance issue, was almost the same: one in five. The second survey that we did in the summer, when insurance became a huge issue for the sector, was almost like, "On top of everything, now we have to battle with insurance companies, and now our boards are going to quit on us because we don't have protection for our organizations." It was, if you will, the nail in the coffin. We heard from many organizations that actually stopped delivering services—even when their communities were reopening, as the province did reopen at that time back in the summer—and we heard of many organizations, particularly sport, as well as mental health providers, that stopped providing services this fall. The Toronto hockey association stopped providing minor hockey, at a time when our kids need the physical activity more than ever.

So not only has it been a challenge for our organizations to continue providing the services that the communities want, but it's having a direct impact on the communities, because those services, those programs are not there for the parents, the children, the seniors who count on them. That's the biggest risk. It's not about our insurance costs going up 50% more; that's a problem, and we don't have enough resources right now to pay for it, but that's not the biggest risk.

This legislation fills that gap for us in terms of providing that liability protection for non-profits and charities in that period.

**Ms. Natalia Kusendova:** You mentioned that it's not just your employees; it's also your five million volunteers who provide great services to Ontarians.

Can you tell us why it is so critical, the timing of Bill 218—why it's so critical that this bill gets passed to protect not-for-profits?

**Ms. Cathy Taylor:** In fact, your government will know we were hoping it would be even sooner than now. This has been something that has been at the top of our list for a few months now. It's critical, because as organizations provide services to our communities—a lot of organizations provide services sort of in a semester format: They start in September, whether they're sports or arts organizations, and then throughout the year, similar to the school system. So organizations were struggling with whether they started in September or not. Now they're planning for January and are recruiting participants and volunteers to assist them. So the sooner we know that there is this protection for them, the sooner they will be able to go out and provide the services that they're doing.

I will underline again that bad actors should be held accountable for not following public health guidelines. "In good faith" is really important to our sector, and so we've been sharing all of the public health information with all of our members and networks to make sure that everybody is doing the right thing, and that's an important threshold for us, as well.

**Ms. Natalia Kusendova:** As you know, this legislation increases the legal standard for cases involving only exposure to COVID-19 from "reasonableness" to "good faith."

In your estimation, and based on what you are hearing from your members, what would happen if one of your organizations was sued due to inadvertently exposing someone to COVID-19 under current legal standards of reasonableness and not with the liability protection provided by Bill 218?

**The Chair (Mr. Roman Baber):** Twenty-five seconds.

**Ms. Cathy Taylor:** There's no doubt that they would go bankrupt and that their board members—in our sector, board members are volunteers—would be held personally liable for those organizations, even if they followed all public health guidelines. For non-profits and charities, it's an enormous risk that boards of directors and senior staff just won't take.

**Ms. Natalia Kusendova:** Thank you for your support of this bill.

**The Chair (Mr. Roman Baber):** We'll now proceed with the independent members. I recognize MPP Hunter.

**Ms. Mitzie Hunter:** I want to thank all the presenters. The presence of Mayor Holder here, on ranked ballots, Liz and Cathy from the non-profit sector, and the long-term-care families shows how this bill is inadequate to address the three areas that it is trying to cover and the difficulty in doing so.

I have to go back to Mr. Reid, to give him a chance to complete his thought.

I have to say to Mr. McVeigh and to Ms. Lyon, my absolute condolences to you, to your family and to all the families.

I am the MPP for Scarborough–Guildwood, so Seven Oaks is in my community. I've been to the facility before COVID-19 and during. It's extremely heartbreaking. I've also been to Orchard Villa. It's very, very challenging. That's why the government needs to deal properly with long-term care and not shy away from the challenges that are before us, based on what has happened in the past.

1700

Mr. Reid, over to you.

**Mr. Michael Reid:** As I was indicating, I've had the pleasure—or not pleasure—of speaking to about 125 separate families in our various actions, and I've heard about all of the appalling conditions during the outbreaks.

I want to draw your attention to a few comments in our submissions. I encourage you to read the submission of Trung Do on page 13. He states: "It wasn't his time and someone has to be responsible. COVID is the swimming pool, the child was my dad, and the ones watching my dad is ultimately responsible for his death."

The next one is on page 14. Vivian Davidson states: "I try to carry on without Mamma but I feel dead inside. Not only did Lundy Manor take Mamma away from me, they also took me away from me."

The last one is from Annie Whyton, on page 34. She simply poses a question: "Please ask yourself one question. 'What if it was my parent who died of COVID in one of these facilities?'"

As I said, there are a bunch of examples, but I just want to encourage you to read the families' submissions that have been submitted. They are also attached to the written submissions from Will Davidson.

Thank you for listening.

**Ms. Mitzie Hunter:** I would just go back to Mr. Will and ask about the retroactive nature of this bill. What challenges does that pose—and also raising that threshold to gross negligence?

**Mr. Gary Will:** The retroactive nature of this legislation is particularly troubling, because normally, when we're talking about regulating rights, we always do it in future events, so we could change the rules of the game, giving everybody appropriate notice of a change in the law in the future, and then people can make their own decisions. For example, with the long-term-care homes, if you want to change the standard that negligent conduct will not be compensable, if you do that in the future, then people can decide for themselves and for their families whether they want to remain in a home where negligent conduct is irrelevant—you can't be compensated in circumstances where there is negligent conduct.

Going backwards is a whole different situation, because people should have the opportunity to make decisions in a way that's beneficial for their families. When you go back and you take away rights that have been part of our law for the past 100 years—the concept of negligence has been a part of our law for the last 100 years. For a government to say that negligence is no longer compensable and you can't bring an action on the basis of negligence is extremely troubling.

**The Chair (Mr. Roman Baber):** We now go back to the official opposition for seven and a half minutes. Ms. Sattler.

**Ms. Peggy Sattler:** I want to move on to Mr. Will.

I'm not sure if you were aware, Mr. Will, but these hearings are being held in a closed building. There is no way for anyone other than those who are on this Zoom to hear what is being said.

I want to thank Mr. McVeigh and Ms. Lyon for coming forward, as two of the families you have represented. But I wonder if you had other families who would have been interested in participating in these hearings in some way—sharing their stories, or at least watching what is being said about their right to seek justice for the death or harm that was done to a loved one in a for-profit long-term-care corporation?

**Mr. Gary Will:** Thank you for that question.

We could have brought hundreds of people to this hearing. Hundreds of families did want to participate. They filed their statements and asked for standing to make submissions. There were 58 groups who applied for standing, and I understand that only 15 were granted, so many families were excluded from this process.

I indicated to the families—I thought the process was going to be open and public, and I was searching for a way to invite them to at least see what was happening here at this committee hearing. Now I've had to tell them that there is no public access. That's very troubling to me. In a democratic country, we should have access. There were many, many people who were excluded from this process.

I would ask this committee to consider extending the hearings and having more days devoted, because there are literally hundreds of people who want to participate and have an important message to convey. So I would ask for that, and I would ask that there be an effort made to at least allow these families to see what is going on, even if they're not speaking and presenting at these hearings.

That is a very important question, yes. Thank you for that.

**Ms. Peggy Sattler:** I want to ask Ms. Lyon and Mr. McVeigh if you each want to talk about how you felt when you learned that the government was moving forward with this liability protection. You were in a legal process to seek justice. How did it feel to have that ripped from you and have these protections put in place for the for-profit long-term-care-home operators that your loved ones were paying to reside in?

Ms. Lyon?

**Ms. Sylvia Lyon:** It was just like being punched while you were down, really. I was quite shocked, because it seemed to me that the government was very supportive and very sympathetic about what happened at the long-term-care homes. So it surprised me and disappointed me very much.

**Ms. Peggy Sattler:** Mr. McVeigh?

**Mr. Greg McVeigh:** It has been a nightmare since the beginning. I asked for my mother to be moved in to eat with my father and not in the dining hall, and that wasn't done for me. I've been communicating with all levels of

government since March—and the media—in regard to this situation, and my voice has fallen on deaf ears for several months now. The only justice I've got at all is being able to get my voice and our family's voice heard through the media, and this opportunity I'm being given today. So it just hasn't ended. It seems like there's no closure, and it's appalling.

I want to add one more thing: My father was a police officer, which doesn't make him any better than anybody else, and he would tell you that. But my father stood up for justice and he risked his life for justice for his whole career, and I'd like to see people stand up for him.

**Ms. Peggy Sattler:** I want to ask Ms. Taylor a question on behalf of the thousands of non-profit organizations that the ONN represents.

Would you still be supportive of this legislation, of schedule 1, if there were an exemption for for-profit long-term-care-home operators and retirement homes?

**Ms. Cathy Taylor:** Yes, we would still be supportive if that exemption was in there.

**Ms. Peggy Sattler:** Do you feel that it's appropriate that the volunteers who work in food banks and women's shelters and all of those great community services are treated the same as a for-profit long-term-care facility in this legislation?

1710

**Ms. Cathy Taylor:** I think we would have preferred if the legislation provided liability immunity for non-profits and charities and not all corporations. I think it would have been an easier stand-alone piece. So that was what our ask was, and that would be our preference.

**Ms. Peggy Sattler:** Finally, Mayor Holder, I'm not sure if you're aware, but London is not the only municipality to formally pass a motion opposing schedule 2. Prince Edward county, Barrie, Burlington, Cambridge, Cobourg, Kingston, Mono, Peterborough and Thunder Bay have all passed motions at their municipal councils in opposition to schedule 2.

To your awareness, was there an urgency for the province to move forward in making this change? You talked about the all-consuming focus of London and municipalities around the province in dealing with COVID-19. Was there an urgency in bringing this legislation forward at this time? Were municipalities risking not focusing enough on COVID-19?

**The Chair (Mr. Roman Baber):** Thirty seconds, Mr. Mayor.

**Hon. Ed Holder:** I can't presume to know what the government's motivation or thought process was in including ranked ballots in Bill 218. I can't comment on that, nor can I comment about other municipalities, who didn't advise me as to their intentions—not that they had to, by the way. But I still come back to our perspective that it certainly seemed confusing to me that this was in Bill 218 and that it seemed to be directed beyond just London and to those who were considering it for a future time. It impacts us most directly.

**The Chair (Mr. Roman Baber):** Back to the government: I recognize MPP Gill.

**Mr. Parm Gill:** I also want to take the opportunity to thank all the presenters for taking the time and appearing before the committee.

I'm going to direct most of my questions to my former colleague Ed Holder. I also want to say that it was a pleasure serving with you, Ed, in Ottawa. Obviously, both of us are in different roles right now. Thank you for appearing before the committee.

As you pointed out, obviously, London was the only city out of the 444 municipalities to use ranked ballots in the last election. Would you not agree that consistency and predictability are important? First past the post is a system that is used federally. It is a system that is also used provincially. I know it is under the same system that you were elected twice to serve federally.

I also believe that everyone who was leading on the first ballot in London's election in 2018 ended up winning once the ranked voting was completed, so this means that the exact same result would have been achieved under first past the post.

So my question is, do you think spending an additional \$515,000 to achieve the same result provides value for taxpayers' dollars?

**Hon. Ed Holder:** First, MPP Gill, thanks very much for speaking with me. It feels like it has been some time since we've had a chance to chat.

The broader issue, to me, comes down to local decision-making. When the city of London took advantage of the legitimate opportunity to participate in this—again, prior to my time; it was a prior council that made this decision—I think part of it was very much with the intention of being able to make, firstly, their own decision. And secondly, it's hard to respond thoughtfully to your question when that was only the first election cycle where we have experienced a ranked ballot.

What I would tell you, though, is that we had almost 70% of those who cast ballots vote for more than one individual; in other words, the first and/or second and/or third choice, as the case may be. It's my sense that those electors felt that they had a broader participation and more stake in the outcome.

From my standpoint—we had already invested that cost. I can't comment about other municipalities' costs. We had already made that decision legitimately to spend that \$515,000 in a prior council. The reality now is that we're going to have to spend an additional \$51,000 in excess to bring us back to first past the post, when we already have a system in place that's working, because the other part of this is that we have some contractual commitments that go beyond one election cycle that will continue on and that we will be responsible for.

But I still think the broader issue, MPP Gill, is the one of local decision-making. I note that the Premier was elected on a ranked ballot. The current leader of the federal government—and for your party, previously mine—was elected on a ranked ballot. That seems to be the order of the day for those, and so it's not unheard of.

What's interesting is, I think the electors at various leadership contests like the idea of having more than one

choice. I can tell you in broad terms, we had done, I'm told, extensive consultation with Londoners and within our council. While the outcome would not have changed this time, could it change in the future? I suspect it would.

**Mr. Parm Gill:** I agree with you; I'm definitely not blaming you. The decision was made, obviously, prior to you getting elected at the municipal level.

You also mentioned the cost to be roughly \$51,000 to revert back to the first-past-the-post system. There are other municipalities, as pointed out, that are looking at potentially exploring the opportunity of using a ranked ballot. Some have allocated in excess of over \$1 million in their budget just for consultation purposes. You mentioned that even \$51,000, and going through a current pandemic, is a lot of money. The municipality can use that money for other items that are important currently in the situation that we're dealing with.

Would you agree or disagree that spending millions of dollars on, say, a consultation, only, at this point in time to see whether that will or will not change the results of an election in the future—nobody really knows, as you mentioned; only time will tell. Is that a good use of money?

**Hon. Ed Holder:** I've had but one municipality reach out to me on my opinion as it relates to them considering the ranked ballot election process, so I certainly would not be the expert to comment on value.

But to the point that you made, MPP Gill—that \$51,000 that we would have to spend in addition to first past the post, given the opportunity, I'll spend it on COVID-19-related requirements. Let London, who made the decision in a prior election cycle, proceed. Let them go ahead with it.

As far as the question—I look at it as local autonomy and local decision-making. I would be confident in saying that there will be some who will not want to move to a ranked ballot. But having said it, I think that ultimately becomes, if they had the flexibility, the choice of the community.

From our standpoint—give us the \$51,000 that we can spend on COVID-19-related issues. I'd be happy to take that and remain with our ranked ballot system.

**Mr. Parm Gill:** Absolutely, and I would say I would agree with you.

My municipality, the town of Milton, has also looked at it. They actually turned it down. I'm sure that's not the only municipality.

My other question—

**The Chair (Mr. Roman Baber):** Fifteen seconds, Mr. Gill.

**Mr. Parm Gill:** Thank you very much.

It's good to see you again, Ed. I look forward to seeing you again in the near future. Thank you.

**Hon. Ed Holder:** MPP Gill, it's a genuine pleasure. Thank you.

**The Chair (Mr. Roman Baber):** We'll conclude with the independents. I recognize MPP Hunter. Four and a half minutes.

**Ms. Mitzie Hunter:** I want to say to Cathy and to Liz, I wish you all the best in tomorrow's budget. I know that

you have pitched the government for the sector. I heard so many members on the government side saying what wonderful work you do. But your sector, because of COVID-19, is very stressed and needs that funding. I think it was \$640 million that you have requested so that you can continue the great service that you provide.

**1720**

I also want to thank you for your letter that you sent to my office in September about the insurance issues and the risks. Many, many times that was brought forward to the government, and we're looking for a solution. So I'm happy to hear that this is going to give you that continuity ability by reducing the liability for your sector. I think that's a good result.

I do want to say to Mayor Holder that I'm sorry you are the only person of the 58 who applied who got to speak about ranked ballots, because as you know, there is a really wonderful grassroots community of people, many of them who have been working on ranked ballots for many years—and we're so proud of London for being the first in Canada. I just saw a report called Unlock Your Democracy for—I think it was Western University that put that together. It really showed how successful you were as the first, particularly on the engagement and education of members of the community—to explain it so that they would have a good voter experience. And from what you're saying, 70% of those who cast ballots being able to choose their multiple choices is evidence of that.

I'm wondering about your comment in your opening remarks about now being asked to revert back to the old system that they have actually moved beyond, and how that is going to affect residents in their understanding of their local elections.

**Hon. Ed Holder:** MPP Hunter, thank you for that question and that take on it.

I do feel some responsibility as being the lone municipality. I would say that London is proud to have been the first community in the province to go to ranked ballot.

It seems to me, anecdotally, that voters liked the concept of ranked ballots, and I would argue that the high 60s percentage of participation in choosing more than one individual on that ballot was testament to that. We didn't see voter turnout increase; in fact, I indicated the decrease in 2018 over 2014. Again, it's really hard to judge from a single cycle, but the sense I have—and I would be honest with you that because as many as voted took advantage of being able to vote for more than one individual—again, in my own turn, to have the mid-high 30s and 60% in the final ballot, while I don't think it gives me more legitimacy as mayor, I would tell you that it tells me that voters wanted that choice, wanted that opportunity, and it was the smallest number who voted for a single candidate. So I would say that's all, to me, confirmation that voters in London did appreciate it.

Now we're going to be in a position where we're going to have to go back and we're going to have take what we had, if this legislation goes through as it stands, and say to folks, "Never mind. What you did before isn't so critical,

and we're going to go back to first past the post." It's my hope that certainly, selfishly, for London—we've already made those investments. That's really, truly sunk cost, so it's my sincere hope that the government will say, "Do you know what, London? You've already made the biggest expense factors. We do not want you to spend more money to go back to first past the post. We'd rather if you had that \$51,000"—and that's our minimum number. We'll be able to use that for COVID-19-related expenses. That makes some good sense.

We even have one of our own councillors, Councillor Arielle Kayabaga, who said that she would not have run under first past the post. So in a sense, it did change the result, in that Councillor Kayabaga did run and was elected. That's just an observation on my part.

**Ms. Mitzie Hunter:** For the record, Arielle Kayabaga is the first Black woman to be a councillor in the municipality of London, which is a wonderful result and something that we should all celebrate.

Mayor, I want you to know that you're not alone—

**The Chair (Mr. Roman Baber):** I apologize, MPP Hunter. The time expired about 30 seconds ago.

Thank you very much to the panel. Before we conclude, I want to thank all the presenters today, and I want to extend the committee's sincere regrets and well wishes to the McVeigh family and to the Lyon family. Your families are in our hearts, and I appreciate you sharing your stories with us today.

I'll now bid the 4 o'clock panel goodbye and ask to address the committee before the next panel.

Members, as I've stated earlier today, we have a very tight window, being that this is a time-allocated hearing. The hearing must end at 6 p.m. We have 32 minutes remaining. We cannot abridge the time allotted for initial presentations, so initial presentations will proceed as scheduled: seven minutes each, subject to however long they're going to last.

That will leave us with a determinate amount of time. Let's call it X. I will then permit one round of questioning, and I will allocate it respectively by the percentage that is currently allotted, being seven and a half, seven and a half and four and a half minutes each. That will land me at 38.5% for each of the recognized parties and 23% of the remaining time for the independents. I believe that that is the fairest way to resolve the present conundrum. Subject to your objections, I would propose that we proceed as quickly as we can.

Seeing none, I invite the last panel. I will alert you to the time available for the rounds of questioning once the initial submissions are finished.

MS. CATHY PARKES  
SWIM ONTARIO  
CUPE ONTARIO

**The Chair (Mr. Roman Baber):** I believe the 5 o'clock panel is here. I would like to thank all of you for attending today, and I would like to begin by apologizing for the committee running approximately half an hour late.

I'd like to welcome Cathy Parkes; Dean Boles, CEO of Swim Ontario; and finally, Fred Hahn, president of the Canadian Union of Public Employees, Ontario. Welcome to all of you, and thank you.

I now invite Cathy Parkes to make her initial submission in the amount of seven minutes. Please begin by stating your name for the record.

**Ms. Cathy Parkes:** My name is Cathy Parkes.

**The Chair (Mr. Roman Baber):** Thank you.

**Ms. Cathy Parkes:** Good evening, and thank you for having me here as a delegate. I am aware that I am the only family member connected to long-term care speaking today, which is unfortunate, as there are so many family members who have important things to say regarding Bill 218. As it is, I will try to speak for myself and for those I have come to know in recent months.

I know that many who are present tonight are familiar with my father's story. I'll be honest: It's difficult for me to talk about the last week of his life repeatedly, when all I really want to do is focus on the four decades I shared with him before his death. But his story is important to this bill, as is every other family member's story in Ontario.

Three days before my father died, I began to write government officials, asking for help. Those pleas went unanswered. It was like a terror nightmare, when you know something dark is about to happen and you open your mouth to scream but no sound comes out. That's how the last seven months have felt. No matter how loudly I speak, those making and changing the rules don't seem to be listening.

My father died on April 15 in Orchard Villa long-term-care home in Pickering, Ontario. That name may sound familiar, as it's one of the long-term-care homes that had the military step in when they were in dire need.

During the week following my father's death, my family and I were feeling our grief deeply, but at the same time we were receiving information surrounding his death that was very hard to hear. Three days after his death, my family had a funeral viewing where only 10 of us were allowed to gather together, and even then, we were prevented from approaching my father's coffin. What I want to tell you about that day is the shock my family and I felt—the shock of seeing my father so emaciated, a shadow of the man I had seen only weeks before.

1730

One week after my father's death, we held his burial—again, with only 10 in attendance. As I prepared for a last goodbye, thoughts of other families weighed heavily on my mind. While I kept myself silent, I had been reading descriptions of what others were going through, and it mirrored what my family had just lived, so I decided to speak. But the nightmare continued. It would seem that family members' voices have been deemed maybe unnecessary, or at best, listened to with only polite indifference.

In the months of April and May, we were often kept from our loved ones, denied the right to help them or, at the worst, to be with them when they died, as I was not allowed to do in my father's case. You can imagine the

feelings of sadness, frustration, pain and loss of faith in those we trusted to protect our loved ones that have happened. When it seemed that our hands were tied and our voices unheard, we continued to search for anything that we could do. The only answer left to us was legal justice. In moments of darkness, it was the only ray of light. I knew at least the tragedy surrounding my father's death wouldn't go unanswered.

But then, now we have Bill 218. As this bill relates to long-term-care homes and because of public comments in recent weeks, let me first say that my family and the families I am connected with have never had the desire to sue a PSW, a nurse or any front-line worker connected with long-term care. It is a travesty that this idea is pushed forward. Make no mistake: The front-line staff have been our lifeline in recent months, often our only means of correct information and often the only ones who were there as our loved ones were dying.

Deciding whether to file a lawsuit was a very difficult decision. While the option presented itself as a way to seek justice, the idea of placing a dollar amount to my father's death was and is abhorrent. After many discussions, my family and I posed one question to each other: What would Dad want? We each know him very well, and we were able to answer readily. He would want the home that he lived in to be held to account for the way he died. I feel that it's safe to say all families who have endured the loss of a loved one due to neglect this year would say the same. If the neglect that occurred in long-term care had happened in a daycare, no one would question the need for legal action or what description should be higher than neglect.

Our current legal system has standards already in place—standards that have to be met before a lawsuit can be initiated. We have to prove there was neglect. With Bill 218 and its need to prove gross negligence, the only thing this has done is to place more burden on families whose grief has already been unbearable since April.

I have no doubt that the five homes detailed in the military reports will have little trouble proving negligence or gross negligence, but I do worry for the homes that weren't featured prominently in the news. My concern is for the families connected to homes where the numbers of deaths were much lower, but the evidence of neglect was still present. I'm concerned that with Bill 218, we're saying that long-term-care homes that neglect their residents get a pass, as long as they can say, "We did our best."

After hearing about trained military personnel who were held back for a month, pleas for help that were ignored, the fact that long-term care was not brought to the pandemic discussion table early in the year and that infection protocols weren't followed, it seems that, along with this bill, it's following the idea that our most vulnerable residents are the lowest common denominator in Ontario.

I have no doubt that there is a need to protect small businesses and individuals working in the public sector who did the best that they could; I absolutely support that. But I do not feel that long-term care has any place in this piece of legislation.

My request today is that long-term care be exempt from Bill 218. My request is that the term "negligence" stands on its own, without any additional requirements for "gross negligence." My request is that we leave long-term-care negligence lawsuits in the hands of the courts, which are capable of deciding who is at fault.

There are five stages of grief: denial, anger, bargaining, depression and acceptance. These stages come in waves and in no particular order, but as the nightmare of the past seven months continues to play out, I feel it's nearly impossible to reach the final stage of acceptance. One way to reach that goal is to have justice for the way my father died. I fear that without justice, families across Ontario will continue to relive their heartbreak and grief.

Like others, I wear many hats throughout my life, and one of them is that I am and will continue to be Paul William Russel Parkes's daughter. I am requesting the end of a nightmare, where all families connected to long-term care are given the right to seek justice for the horrific ways their loved ones have died.

Please exclude long-term care from Bill 218.

**The Chair (Mr. Roman Baber):** Thank you, Ms. Parkes.

We'll now proceed with Dean Boles from Swim Ontario. Welcome, sir.

**Mr. Dean Boles:** Hello. I'm going to share a screen, and hopefully, it works.

**The Chair (Mr. Roman Baber):** Just state your name for the record.

**Mr. Dean Boles:** Dean Boles, Swim Ontario.

**The Chair (Mr. Roman Baber):** Thank you.

**Mr. Dean Boles:** Hopefully, you can see this.

**The Chair (Mr. Roman Baber):** Yes, we can.

**Mr. Dean Boles:** Okay. My name is Dean Boles. I'm the chief executive officer for Swim Ontario. I appreciate the time to be able to speak on behalf of our sport and our members, but also sport in general, pertaining to this Bill 218. You'll see that we are a not-for-profit, and you'll see that we've been celebrating 97 years of developing good swimmers, and also great people.

Who we are: We're a world leader in swimming excellence at all levels. We're a best-in-class provincial sport organization that supports performance and participation for life. You'll see our core values there, and I'll let you scan over those. Those are the same core values that I believe all my sport colleagues, the 70-plus sport organizations, hold on to. We exercise these every day, and we try to instill them into all our swimming programs.

The cause and effect: Pre-COVID-19, we had 30,000 registrants, from grassroots to youth and age-group swimming; university swimming; our Swim for Life, which is our masters adult swimming, ages all the way up to 90-plus years of age; and including our very successful Olympic and Paralympic swimmers. We had 160 clubs across the province, including all regions and jurisdictions, supported by 8,000 volunteer officials, 1,100 coaches and thousands of parent volunteers who operate the clubs.

Today: 12,000 registrants and 110 clubs, approximately at 50% to 60% of the pool capacity. The most affected

group is our grassroots, our six- to 11-year-olds. We know that will have a lasting impact over the years to come. And our Swim for Life group, our masters, our Paralympic swimmers—with the constraints that they have on trying to get accessibility to some of the facilities with some of the protocols in place—and our university swimmers. You can see quite a drop in our volunteer base—only 300 officials registered right now in 600 clubs. Some facilities have yet to reopen, delaying to 2021—or not—and dealing with the struggle to mitigate the risk.

We're fortunate in our sport and we're quite grateful for our sport partners, including the Minister of Heritage, Sport, Tourism and Culture Industries, through these challenging times. Our return-to-swimming plan included a thorough vetting of measures and means by Swim Ontario, working with the clubs, facilities and local public health units.

I want to pause for a second to say that my staff worked tirelessly at reviewing and establishing these plans, these protocols, in detail, following the lead from our national sport organizations, our local health authorities and from the ministry. They utilized so much of their time to go through the 110 clubs—hours and hours and hours—to make sure that everything was to standard, above—I call it a gold standard, compared to maybe other sectors across the country. We held the public health in a very high regard, and we wanted to instill that into our clubs. We understand it will be a long road to recover and rebuild.

Here, I have a slide—and hopefully, it works. It's a quick, 30-second video on a combined effort with Swimming Canada to show what we've been able to do.

*Video presentation.*

**The Chair (Mr. Roman Baber):** Two minutes, 45 seconds remaining.

**Mr. Dean Boles:** So this Bill 218, in some people's minds—maybe some of my colleagues in sport—is just lessening the fear about being sued, as long as you're taking the correct actions. My group, and I, personally, see this as a protection for volunteers, coaches, participants, and employees of the provincial sport organizations. It provides confidence to clubs, coaches, participants and volunteers to have the belief that they can move forward through a recovery-and-rebuild process, for sport at all levels, to return and grow for a healthy community, physically, mentally and economically. It provides motivation for sport organizations to continue their vigilance to safeguard their participants from COVID-19 through thorough and comprehensive safety protocols that are in place and challenge sport to be better.

1740

This Bill 218, and understanding law as it has been explained to me, to the justice system, to the judge looking at it in good faith—this puts the onus and the responsibility on us as sport leaders to make sure that we have a safe environment, and we will hold all our people accountable to this. It's not a release. It also will provide trust within the system, as well as the faith within the organizations that have yet to return or have shuttered—as their only result, perhaps, now a positive notion to safeguard some

fragile organizations, positive outlook for sport, and peace of mind allowing sport to focus to do its part to heal a community, a province, a country, from the impact of this pandemic.

I want to thank the standing committee for this opportunity.

I particularly want to thank Minister MacLeod and Mr. Downey for seeing us through from the time we asked to inquire and to work towards it back in March, all the way through to this moment. I really appreciate it.

And my condolences to the previous speaker.

Thank you.

**The Chair (Mr. Roman Baber):** Thank you very much, Mr. Boles.

I'd like to invite Fred Hahn of the Canadian Union of Public Employees. Welcome, sir. Please begin by stating your name for the record.

**Mr. Fred Hahn:** Thank you. My name is Fred Hahn. I want to thank the committee for the opportunity to speak to you about Bill 218, Supporting Ontario's Recovery and Municipal Elections Act. I'm the president of CUPE Ontario. We're the largest union in the province, with 280,000 members.

CUPE members work in health care, municipalities, school boards, social service agencies, post-secondary education. In 2020, our members have been on the front line helping to fight COVID-19. They provide care in hospitals and long-term-care facilities, and deliver home care to patients. They work to keep our schools open. They're caring for our youngest children in child care centres. They make life better for adults with disabilities in developmental services. They are paramedics and first responders.

On behalf of our members, I'm here to express our serious concerns with the legislation that's before us. Bill 218 attempts to meld two completely unrelated legislative goals together. The first schedule is about liability for people and for organizations, and the second one repeals sections of the Municipal Elections Act, so we're going to talk about each of them separately.

From our perspective, the most alarming element of Bill 218 occurs in schedule 1, which is called Supporting Ontario's Recovery Act, although, ironically, it has nothing to do with supporting the recovery of Ontarians from the health or economic ravages of COVID-19. Instead, it provides a legislative shield to organizations and individuals from liability and accountability for actions they took or failed to take to protect those in their care from COVID-19.

Under the act, Ontarians would be prohibited from suing organizations for negligence which resulted in exposure or contracting COVID-19. The act raises the threshold against defendants from negligence to gross negligence. It also, alarmingly, provides a definition of "good-faith efforts" which falls outside the normal legal definition of that phrase. Under Bill 218, "good-faith efforts" do not need to be "reasonable" efforts. The act expressly waives any test of reasonableness concerning actions taken by organizations or individuals to protect

those in their care from COVID-19. In short, the act contaminates the definition of “good faith” to the point where it has no real meaning.

Another key area of concern with Bill 218 for our members in CUPE is the impact on the public’s ability to hold certain long-term-care facilities accountable for their actions this spring. It is well known that some long-term-care facilities failed miserably to protect residents from contracting and, in some cases, from dying, from COVID-19. They didn’t take appropriate actions to protect seniors; other long-term-care facilities did so, and they fared much better.

Currently, there are a number of legal cases against some of these worst offenders. These legal cases are now in jeopardy, not because they lack merit, but because of the extraordinary protection provided by Bill 218. The problems in long-term care existed long before the pandemic, but it shone a light on those problems in such a way that we couldn’t ignore them. On receiving a report from the Canadian Armed Forces on the conditions in long-term-care facilities in May, Premier Ford promised that those bad actors would be held accountable. However, this legislation does the exact opposite, creating a statutory shield protecting negligent facilities from litigation.

Certainly, responsibility also rests with the Ontario government, who failed to address repeated warnings about the pandemic and the poor state of long-term care, who failed to act quickly enough to define public health pandemic protocols specifically designed to address operations in long-term-care and retirement homes.

We’re disappointed that your government granted itself immunity from any actions in 2019, when you passed Bill 100, as the crown, we believe, also should accept liability when it’s negligent.

In the press release about Bill 218, Attorney General Doug Downey was quoted as saying that the legislation was to protect hard-working men and women—volunteers at food banks, front-line health care workers. If it’s the intent of the bill to protect individuals, then it needs to be rewritten and the scope needs to be narrowed to specifically target individuals.

Schedule 2 of Bill 218 is a completely unrelated matter, and it has to do with the Municipal Elections Act and revoking the options currently available to Ontario municipalities to use a ranked ballot. We’re not certain why the government is proposing to eliminate ranked ballot voting. There has been no widespread movement or call for this to be revoked. We don’t have a formal position on the merits or the deficiencies of ranked ballot voting, but we are concerned with this government’s tendency to interfere in the operations of municipalities and to curtail the authority of duly elected municipal officials. If a municipality wants to explore this option and their constituents are amenable, why are you legislating against it?

Neither schedule 1 nor schedule 2 of Bill 218 merits passage by your government. It’s not in the public interest to remove accountability for negligent actions of organizations such as some long-term-care facilities. It is antithetical to the promise made by the government to hold such bad actors accountable. And schedule 2, frankly, isn’t

merited at this time. There’s no widespread call for municipal election reform. Accordingly, we submit to you and the government that you should refrain from any further proceedings. You should simply withdraw Bill 218.

**The Chair (Mr. Roman Baber):** Thank you very much, Mr. Hahn.

With just over 10 minutes remaining, we have time for one round: four minutes for the government, four minutes for the official opposition and two minutes for the independents.

I recognize the government. We’ll go to MPP Bouma, with four minutes.

**Mr. Will Bouma:** Thank you, Mr. Chair. Through you, I would like to ask Mr. Boles a couple of questions.

I really appreciate your testimony, and I have to say that I also appreciate the support from Swim Ontario for the legislation that’s before us today. I’ve heard from so many organizations within my communities that they—while you have a long history of being a great partner with the province of Ontario, also with the ministry, that you needed our help in order to be able to continue to provide the service that you do for all the citizens in Ontario.

So getting back to your kids in the water—it has been so important, and I really appreciated the video.

What I’ve seen is the absolutely stunning ability of so many organizations within the province to be able to adapt. Indeed, it was sports organizations that brought to our attention the changes that had happened through the NDP government in the province of British Columbia, moving forward.

I was wondering if you could expand just a little bit more on by being able to have the safety protection of immunity through this, what that will mean for Swim Ontario.

**Mr. Dean Boles:** It’s difficult to put into words exactly what it can do. I think what it does is, it gives a sense of confidence to pursue forward—to allow a sense of belief that we can keep managing forward through the harder times towards some brighter times down the road. We do see the sport being the one that can help heal.

**Mr. Will Bouma:** I was just wondering if you could comment on the sense of urgency to be able to provide that peace of mind to everyone involved in Swim Ontario—that we get this bill passed quickly.

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**Mr. Dean Boles:** You can see that we’re at 50% capacity, and we don’t see that changing in the near future because of all the conditions and everything else. There’s a lot of hesitation. A great example is our volunteer base of officials—a wide range of ages and everything else. They’re quite concerned about putting themselves out there.

**Mr. Will Bouma:** Would you say that we’ve lost good volunteers and people involved in sport because of worries about liability?

**Mr. Dean Boles:** Absolutely. That has been the biggest concern from that aspect since we started these discussions at the start of the pandemic.

**Mr. Will Bouma:** Time left, Mr. Chair?

**The Chair (Mr. Roman Baber):** A minute and 15 seconds.

**Mr. Will Bouma:** Very good.

I will just wrap up by asking if you have anything else that you'd like to add to your testimony, and then give the rest of my time to whoever's next.

**Mr. Dean Boles:** We feel we worked hard at trying to move this along. As I said, we were quite pleased and appreciative of the efforts of Minister MacLeod and Minister Downey to bring it to the level where it is right now. It gives us a bit of a lift to keep moving.

**Mr. Will Bouma:** With that in mind, I'd like to thank you, on behalf of the government of Ontario, for everything that you do for the province.

**The Chair (Mr. Roman Baber):** We now move on to the official opposition for four minutes. I recognize MPP Armstrong.

**Ms. Teresa J. Armstrong:** I just want to illustrate the example we had right now.

Mr. Boles, I thank you for everything you do at Swim Ontario to keep kids active and engaged in our community. I feel this legislation is appropriate for your agency.

However, the example that I want to illustrate is how awkward this moment is. We just went from Cathy, who shared a very, very intimate family moment about the emptiness of losing her father, and we jumped to Swim Ontario. I don't know about anybody else, but it was pretty awkward for me. That's why we need to move long-term care out of this legislation. It has no place in what this government is proposing.

We all agree that small businesses and agencies and volunteers can be protected from that liability, but not long-term care. This ending, this whole presentation clearly illustrates that—and if MPPs can't understand that, then I have to ask you to ask yourselves that question.

I want to say thank you very much, Cathy, for sharing your story over and over again. I'm sure it's not easy.

I want to combine my question to Fred—thank you, Fred, for your presentation—with Cathy's, because you're both on the same idea, the same trajectory.

Cathy, could you please speak to how important it is to you and other family members to hold long-term-care homes accountable for their actions so that your father and other fathers and mothers and loved ones haven't perished in vain? How important is it that you get justice and hold these profitable corporations accountable in court?

**Ms. Cathy Parkes:** Thank you for the question.

I think it's of the utmost importance, and that can be seen alone in that, in the midst of grieving, that's the action that we took, a lot of us took. It would have been easy to just walk away and let it go, but the incidents surrounding these deaths need accountability and transparency. There has to be a way—sometimes the only way that these for-profit homes will understand is through money. That's unfortunate, but that's how it happens.

If we have to make a change for the future for the aging population—and people will either have to be in a home themselves or will be touched by someone being in a home—we've got to make a better situation. We need

accountability. We have to answer for what has been done before we can completely fix it. It's so important to families, too, and even for our personal sense of—my dad is gone, but I'm still fighting for him. That's how I feel.

**Ms. Teresa J. Armstrong:** It's true. And not to give you that opportunity or any family member the opportunity to get the story out of how their loved one died and to make sure that everyone knows that that is not how we operate—those are the most vulnerable people in our society, and you pointed out that if this were happening to children, it wouldn't be stood for. It's like we keep repeating the mistakes of history over and over again for our most vulnerable. We do not look after them. We do not hold ourselves to a higher standard and take responsibility for how they're being treated in long-term care.

I want to end by thanking CUPE, Fred Hahn and all the PSWs, all the workers who serve in long-term care and look after our loved ones and our residents. Cathy pointed out that it's not about the workers not doing their job; it's about the corporations that aren't providing the tools for them to do their work.

So I implore this government once again: Put yourself in other people's shoes. Put yourself in Cathy's situation. This is not a place for long-term care. You can't take a sledgehammer to long-term care. Take it out of this legislation.

**The Chair (Mr. Roman Baber):** I recognize MPP Collard for two minutes.

**M<sup>me</sup> Lucille Collard:** Thank you to the presenters today.

My sincere sympathies to Ms. Parkes for the loss of your father. Unfortunately, we've heard too many of those stories, and we definitely need to do something to fix this problem of negligence in the long-term-care homes. They need accountability. They need to be held responsible. Their line of business is to take care of our loved ones, and where they fail, it cannot go unpunished.

If we don't do anything and the bill passes, do you believe that will encourage long-term-care homes to continue the same practice that is currently occurring?

**Ms. Cathy Parkes:** Yes, I think that both the phrases “gross negligence” and “reasonable measures” are a free pass for long-term-care homes to say, “We tried our best.” “Gross negligence”—I had to look it up, and the level that you have to meet in order to be charged with gross negligence is so high. It's saying that if you're negligent, maybe you're okay, and that makes such a poor living environment for seniors—or for not even seniors, just anyone who needs to be in long-term care.

**M<sup>me</sup> Lucille Collard:** It took you a lot just to get the courage to continue the fight on behalf of your father. With that change, are you worried that you may not be successful in your fight, even though the conditions your father was left to die in were so horrible?

**Ms. Cathy Parkes:** There is a chance. I think in my case, because it's Orchard Villa—it was the hardest-hit home in Ontario, with the military presence, and you can even see in the military report that there are issues that absolutely work in favour of a lawsuit. But when you look at homes that didn't have the military in them and maybe

had five deaths but there was still negligence—that puts a lot of pressure on those families, and they’re grieving just as much as I am. So it’s not an even playing field.

**M<sup>me</sup> Lucille Collard:** Yes, thank you. I—

**The Chair (Mr. Roman Baber):** I apologize, Madame Collard.

Ms. Parkes, the committee is sincerely grateful for your attendance today, and we extend our sincerest regrets for your loss. Thank you for attending today.

I would also like to thank Mr. Boles and Mr. Hahn. Thank you for your testimony. And with that, I wish you a good day.

**Mr. Dean Boles:** Thank you.

**Mr. Fred Hahn:** Thank you.

**The Chair (Mr. Roman Baber):** Committee members, thank you very much. It was a long day.

By way of a reminder: The deadline for written submissions is 7 p.m. today. The deadline for amendments is 5 p.m. tomorrow. Clause-by-clause is this coming Monday, November 9, 2020, at 9 a.m.

Any further business or questions? Seeing none, the committee is adjourned until Monday at 9 a.m.

*The committee adjourned at 1759.*

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