



Novel Coronavirus (COVID-19)

Health Law

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Ontario's Long-Term Care COVID-19 Commission Launched Today

By Lisa Corrente and David M. Golden

Today, the Provincial Government launched an independent commission to investigate the spread of COVID-19 within long-term care homes, including how residents, staff and families were impacted and the adequacy of measures taken by the province and other parties to prevent, isolate and contain the spread.

Ontario's Long-Term Care COVID-19 Commission (the "Commission") is not set up as a formal public inquiry. Instead, it is established under s.78 of the *Health Protection and Promotion Act* ("HPPA"), which authorizes the Minister to appoint a person to investigate the causes of any disease and mortality in Ontario. The Ministry has appointed three Commissioners to lead the investigation, namely Associate Chief Justice Frank N. Marrocco (who will chair the Commission), Angela Coke (a former senior executive with the Ontario Public Service) and Dr. Jack Kitts (former President and CEO of The Ottawa Hospital).

The Commissioners have been given the mandate to (amongst other things) investigate and provide a public report of findings and recommendations respecting:

1. how the pre-COVID-19 state of the long-term care homes system contributed to the COVID-19 virus spread within long-term care homes and how residents, staff, volunteers, visitors, family members and others were impacted;
2. the adequacy of measures taken by parties (including the province, long-term care homes and other parties) to prevent, isolate and contain the spread of COVID-19, including the adequacy of existing legislative and regulatory provisions, policies, practices and specifications on infection prevention and control of infectious diseases in long-term care homes;
3. the impact of existing physical infrastructure, staffing approaches, labour relations, clinical oversight and other features of the long-term care system on the spread of COVID-19 in the long-term care homes;

4. all other relevant matters that the Commissioners consider necessary to investigate the cause of the spread of COVID-19 within long-term care homes; and
5. in considering the current government initiatives and reforms in the long-term care homes system, any further areas that should be the subject matter of future action by government to help prevent the future spread of disease in long-term care homes.

The Commissioners will have considerable powers for the purpose of conducting their investigation, including the power to summons any person to give evidence under oath, hold public and private (in person or virtual) meetings, and require the production of existing records or reports (e.g. medical, professional and business records) relevant to the mandate. The Commissioners may also consider the Final Report and Recommendations from the Gillese Inquiry and will have the authority to retain experts and other staff as they deem appropriate.

Upon completion of the investigation, the Commissioners must deliver their final report containing their findings, conclusions and recommendations to the Minister of Long-Term Care, who will make the report publicly available. The Commissioners will only have until April 30, 2021 to deliver their final report, which means that they will need to work practically and efficiently to complete their mandate on time.

Neither the investigation nor the final report can express any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization. Further, the Commissioners must ensure that the conduct of the investigation does not in any way interfere or conflict with any ongoing criminal, civil or other legal proceedings or investigation. The Commission's Terms of Reference, including that the investigation is to be conducted in accordance with the principle of proportionality, suggest that anyone involved in the investigation will not be able to steer the process in order to support civil claims or promote other agendas which are outside of the scope of the mandate.

At this early stage, it is not known which individuals or organizations will be asked or permitted to participate in the investigation, whether public hearings will be held or where the Commission will be located. We do know that the Provincial Government has promised an impartial, transparent and expeditious investigation with a resident-centered approach. With this framework, it appears to us that the Commission will not be a forum for blaming, shaming or finger pointing. Rather, it should be a constructive process intended to provide guidance to the system in order to better protect long-term care home residents and staff from ongoing and future COVID-19 (and other infectious disease) outbreaks. We are optimistic that the process of getting to a final report by next April will be flexible and fluid, and that the Commissioners will set the tone for and design a transparent and efficient process.

If you have any questions about Ontario's Long-Term Care COVID-19 Commission, please contact Lisa Corrente or David Golden. For more information about dealing with COVID-19, please visit our COVID-19 Resource Centre.

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