

Who is the Ontario Patient Ombudsman?

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Established in 2016, the Ontario Patient Ombudsman¹ receives and resolves complaints related to Ontario's public hospitals, long-term care homes, and home and community care coordinated by the Local Health Integration Networks.

The Patient Ombudsman has no jurisdiction in matters involving a regulated healthcare professional, private retirement home or where the complaint is the subject of court or other proceedings.

The Patient Ombudsman deals with a myriad of complaints related to patient care and health care experience, and operates as an impartial mediator between the complainant and applicable health care organization to reach an early and mutually agreeable resolution.

Failing a mutually agreeable resolution, and on notice to the involved health care organization, the Patient Ombudsman has the power to conduct a formal investigation. This type of investigation can also be initiated by the Patient Ombudsman of its own accord where there is concern of a systemic issue or other serious problem of wider public interest relevant to patient care or health care experience provided by an organization.

The *Excellent Care For All Act*² ("ECFAA") prescribes broad powers to the Patient Ombudsman to seek information and question individuals from the involved health care organization, and can, for example, request medical records, patient charts and issue a summons to take information under oath.

The Patient Ombudsman may also enter upon any premises of a health sector organization and inspect the premises, either on consent and or by warrant.

¹ <https://www.patientombudsman.ca/>

² *Excellent Care for All Act*, 2010, S.O. 2010, c. 14

The *ECFAA* requires that every investigation be conducted in private. Further, and save for certain criminal proceedings, the *ECFAA* prohibits evidence in respect of proceedings before the Patient Ombudsman to be given against any person in any court or at any inquiry or in any other proceedings.

This process set out by the *ECFAA* is not dissimilar to the complaints review process under the *Regulated Health Professions Act*³ where the investigative powers are similarly broad and those involved are similarly protected in future civil proceedings given the evidence is inadmissible.

That said, the findings of any Patient Ombudsman investigation are communicated to the patient or caregiver and the health care organization. Further, the Patient Ombudsman may also provide information to another person or body where relevant and within its jurisdiction.

Notably, the Patient Ombudsman may choose to report publicly any recommendations.

If it appears that any report or recommendation may adversely affect any person or entity however, the Patient Ombudsman is required to give that person or entity the opportunity to be heard and to make representations respecting the adverse report or recommendation, either personally or by counsel.

The Covid-19 pandemic, in particular, has catapulted the number of complaints received by the Patient Ombudsman, who has recently declared a crisis in Ontario's long-term care homes.

In response to this crisis, the Patient Ombudsman has put all licensees within the meaning of the *Long-Term Care Homes Act*⁴ on notice of its intent to initiate an investigation on purported systemic failings in responding to the novel Coronavirus outbreak. Individual licensees can expect to receive specific Notices of Investigation in advance of specific investigative activities towards individual long-term care homes.

Given the nature of the investigative powers afforded to the Patient Ombudsman under the *ECFAA* and the potential for any outcome to result in a public report, and despite the legislated protections against use in future proceedings, it would seem sensible to consult

³ *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18

⁴ *Long-Term Care Homes Act*, 2007, S.O. 2007, c. 8

with counsel where your organization is the subject of a Patient Ombudsman complaint and/or has received a Notice of Investigation.