

Ontario's new Patient Ombudsman

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On December 10, 2015, #Ontario announced Christine Elliott as the province's first Patient Ombudsman. It is anticipated her appointment will come into effect on July 1, 2016, concurrently with amendments to the *Excellent Care for All Act* setting out the role's functions and powers.

Many stakeholders are concerned, however, that the amendments to the Act fall short, because the Patient Ombudsman will not be as independent or empowered as the Ontario Ombudsman. While Health Minister Eric Hoskins has stated that the Patient Ombudsman will be free to criticize the government "as she sees fit," she will be an employee of the Ontario Health Quality Council (OHQC) who can be terminated for cause, and will report to Minister Hoskins (whereas the Ontario Ombudsman is an officer of, and reports to, the Legislative Assembly).

Stakeholders are also concerned that the Act does not empower the Patient Ombudsman to investigate for-profit health sector organizations, such as retirement homes or private clinics that receive public funds, nor does it allow expressly her to investigate systemic issues affecting the industry.

Regardless of these concerns, health sector organizations need to amend their existing complaint policies before July 1, 2016 to address possible Patient Ombudsman investigations, and to ensure that those policies are robust and effective to help avoid investigations in the first place and demonstrate that adequate investigations occurred where complaints to the Patient Ombudsman are (inevitably) made.

The Patient Ombudsman will be responsible for responding to complaints from patients, substitute decision-makers, and caregivers regarding care provided by public hospitals, community care access centres (CCACs), and long-term care facilities. Other organizations that receive public funds will not fall within the Patient Ombudsman's jurisdiction (unless and until prescribed by the Minister).

The Patient Ombudsman will work with all parties to resolve the complaint, unless (a) the complaint relates to a matter that is ***within the jurisdiction of another person or body or is the subject of a proceeding***, (b) the subject matter of the complaint is trivial, (c) the complaint is frivolous or vexatious, (d) the complaint is not made in good faith, (e) the patient, former patient, caregiver or other prescribed person ***has not sought to resolve the complaint directly with the health sector organization***; or (f) the patient, former patient, caregiver or other prescribed person does not have a sufficient personal interest in the subject matter of the complaint.

These exemptions will shield a wide swath of matters from investigation, and underscores why hospitals must have robust and effective complaint resolution mechanisms in place. Under the Act, "proceeding" includes a proceeding held in, before or under the rules of a

court, a tribunal (including a hospital's board of directors, when sitting as a tribunal under the *Statutory Powers Procedure Act*), a commission, a justice of the peace, a coroner, a specified regulatory committee, or an arbitrator or a mediator. This exemption also bars any investigation of matters falling within the jurisdiction of the Health Professions Appeal and Review Board or the Health Services Appeal and Review Board, or existing labour and employment dispute resolution mechanisms.

In resolving complaints, the Patient Ombudsman will have the power to investigate, including investigations undertaken on her own initiative. Any caregiver, patient or former patient, or officer, employee, director, shareholder or members of health care organization may be summoned by the Patient Ombudsman to provide information under oath or produce documents relating to the investigation. The Patient Ombudsman will also have the power to enter any health sector organization, but only with the organization's consent or a search warrant.

Following an investigation, the Patient Ombudsman will be able to make recommendations to the health sector organization. The Patient Ombudsman will also report to the Minister on her activities and recommendations at least annually, will provide periodic reports to local health integration networks (LHINs) on her activities and recommendations, and will make all reports publicly available.

While there is little doubt that the creation of the Patient Ombudsman is an improvement from Ontario being the only province in Canada not to have a patient ombudsman, it remains to be seen whether she will have the ability to effect meaningful change to Ontario's healthcare industry, or whether she will meet Ontarians' expectations.

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