

Terms of Reference

Ontario's Long-Term Care COVID-19 Commission

MANDATE

1. Having regard to s. 78 of the *Health Protection and Promotion Act*, the Commissioners shall investigate and provide a report of findings and recommendations respecting:
 - (a) how the pre-COVID-19 state of the long-term care homes system, including the relationship to other aspects of the health care 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;
 - (b) 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;
 - (c) 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;
 - (d) all other relevant matters that the Commissioners consider necessary to investigate the cause of the spread of COVID-19 within long-term care homes;
 - (e) 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.
2. The Commissioners shall ensure that the investigation be conducted in a manner that does not impede ongoing efforts to isolate and contain COVID-19.
3. The Commissioners shall conduct the investigation faithfully, honestly and impartially in accordance with these terms of reference, and shall ensure that the investigation is conducted effectively, expeditiously, and in accordance with the principle of proportionality.

4. The Commissioners shall conduct the investigation and make the report without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization. The Commissioners shall further 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, and without making any findings of fact with respect to civil or criminal responsibility of any person or organization.
5. The Commissioners shall, as much as practicable and appropriate, refer to and rely on the matters set out in section 33 of the *Public Inquiries Act, 2009*. In particular, the Commissioners may request and review and consider any existing records or reports relevant to the mandate, including the Final Report and Recommendations from the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System dated July 30, 2019, and other medical, professional and business records. Further, the Commissioners may consider such reports and records in lieu of requiring persons to provide evidence and documents to the Commissioners through interviews or otherwise.
6. The Commissioners shall take into account any current government initiatives and reforms in the long-term care homes system, including responses to COVID-19 and any work underway in response to the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System in making any recommendations.
7. The Commissioners shall hold such public and private (in person or virtual, as appropriate) meetings as they deem advisable in the course of investigation.
8. In accordance with section 33 of the *Public Inquiries Act, 2009*, the Commissioners may by summons require any person to give evidence or produce in evidence such documents and things as the Commissioners may specify that is relevant to the investigation in order to fulfill their mandate in a timely manner.
9. The Commissioners, through the support Secretariat, shall be provided with such resources as are required, and may request the retention of lawyers, experts, research and other staff as the Commissioners deem appropriate and may request the acquisition of external research.
10. Upon completion of their investigation, the Commissioners shall deliver their final report containing their findings, conclusions and recommendations to the Minister of Long-Term Care who shall make such report available to the public as soon as practicable after receiving it.

11. The Commissioners shall conclude the investigation and deliver a final report to the Minister of Long-Term Care no later than April 30, 2021. The Commissioners may provide an interim report setting out any information or recommendations they believe should be considered by the government prior to the submission of their final report.
12. The Commissioners shall also ensure that the final report is delivered in both English and French at the same time; however, if, in the opinion of the Commissioners, the health and safety of the public would not be served by delaying the delivery of the report and only one language version is ready, the Commissioners may deliver the report in only one language. If the report is delivered in only one language, the other language version shall be delivered as soon as possible.
13. The Commissioners shall ensure that the final report is prepared in a form appropriate for release to the public, pursuant to the *Freedom of Information and Protection of Privacy Act*, the *Personal Health Information Protection Act, 2004* and other applicable legislation. In so far as practicable, the Commissioners shall work to maintain and ensure the confidentiality of personal information and personal health information.
14. The Commissioners shall ensure that the investigation is conducted in a manner consistent with the limits of the constitutional jurisdiction of the Province of Ontario.
15. The Commissioners shall act in accordance with the Terms of Reference, which may be amended by the Minister of Long-Term Care as required.
16. In the event that the Commissioners are unable to carry out any individual term of the mandate, the remainder of these provisions shall continue to operate, it being the intention of the Minister of Long-Term Care that the provisions operate independently.

AUTHORITY AND APPOINTMENT OF COMMISSIONERS

The Commissioners will be appointed by the Minister of Long-Term Care under section 78 of the *Health Protection and Promotion Act* and in accordance with directives outlined in Treasury Board/Management Board of Cabinet's *Agencies and Appointment Directive*.

This process will include meeting eligibility criteria and completing personal and conflict of interest disclosures and a police record check.

The Commissioners will be tasked with acting in the interest of Ontario and will need to demonstrate impartiality.

The appointment as a Commissioner does not confer the status of a public servant under the *Public Service of Ontario Act, 2006*. Further, as an appointee, the Commissioners are not, and shall not be deemed to be an employee, agent or partner of Her Majesty the Queen in right of Ontario or the Ministry of Long-Term Care.

The Commissioners shall comply with the Treasury Board/Management Board of Cabinet's *Agencies and Appointment Directive* and all other applicable government directives.

The Commissioners will be collectively referred to as "Ontario's Long-Term Care COVID-19 Commission."

TERM OF APPOINTMENT

Each appointment is at pleasure and will be for a term not exceeding May 31, 2021, unless the appointment is revoked, or the Commissioner terminates his or her participation by providing 30 days' prior written notice.

REIMBURSEMENT AND REMUNERATION

The Commissioners will be compensated with a *per diem* as set out in the Order in Council approved by the Lieutenant Governor in Council.

The Commissioners will be reimbursed for eligible expenses in accordance with Treasury Board/Management Board of Cabinet's *Travel, Meals and Hospitality Directive*.

COMMISSION APPOINTEES

Chair:

One Commissioner will be designated to act as a Chair and will:

- Set the direction of the Commission's investigation and may make recommendations to the Minister of Long-Term Care on amendments to the Terms of Reference;
- Determine the structure and staffing needs of the Commission in order to fulfil its mandate and make recommendations to the Executive Lead – subject to applicable guidelines and directives;
- Liaise between the Commission and the Minister of Long-Term Care;

- Ensure the fulfillment of the Commission's mandate without prejudice; and,
- Be the public face of the Commission and be the official person of record for the Commission.

Commissioners

The other Commissioner(s) will:

- Be representatives of the Commission that may preside over hearings and interviews;
- Be a strategic advisor to the Chair and the government;
- Fulfil the mandate of the Commission without prejudice; and,
- Be responsible for the duties of the Chair if he is unable to fulfil those duties.

SECRETARIAT STAFF

The Commission will be supported by a secretariat of approximately 12 FTEs to provide a variety of support functions including administration, communications, research, project management and legal services.

The Ontario Public Service will provide an Executive Lead who will oversee the secretariat. The Executive Lead will be responsible for staffing the secretariat and ensuring the Commissioners are supported in their mandate. This secretariat will be housed within the Ministry of the Attorney General.

BUDGET

The Commission will have an operating budget to support activities related to their mandate. The Commission may recommend to the Executive Lead such counsel, staff, or expertise or other services as the Commission considers necessary in the performance of their duties, subject to the operating budget, and applicable directives and guidelines, including those pertaining to the retention of outside counsel.

CONFLICT OF INTEREST

Each Commissioner is required to fulfill the duties of his or her appointment in a professional, ethical and competent manner and avoid any real or perceived conflict of interest. In particular, and without limiting the generality of the foregoing obligations, each Commissioner shall:

1. not use or attempt to use his or her appointment to benefit himself or herself or any person or entity;
2. not participate in or attempt to influence decision-making as an appointee if he or she could benefit from the decision;
3. not accept a gift that could influence, or that could be seen to influence, the appointee in carrying out the duties of the appointment;
4. not use or disclose any confidential information, either during or after the appointment, obtained as a result of his or her appointment for any purpose unrelated to the duties of the appointment, except if required to do so by law or authorized to do so by the Minister of Long-Term Care;
5. not use government premises, equipment or supplies for purposes unrelated to his or her appointment;
6. comply with all applicable government directives; and
7. comply with such additional requirements, if any, established by the Minister of Long-Term Care.

For the purposes of the above “confidential information” means information that is not available to the public.

CONFIDENTIALITY AND RECORDS

Records of the Government of Ontario

Any disclosure of records by the Government of Ontario to the Commission, either voluntarily or in response to a request or summons, is not intended to waive any confidentiality, privilege or immunity that may exist over those records whether or not the government has specifically asserted the confidentiality, privilege or immunity.

Subject to any order made by the Lieutenant Governor in Council respecting the records of the Executive Council or any agreement entered into between the Commissioners and the Government of Ontario:

1. the Commissioners shall hold in confidence and treat as confidential all information provided by the Government of Ontario that is identified at the time of disclosure or subsequent to disclosure as subject to a legal confidentiality, privilege or immunity;
2. the Commissioners shall take all reasonable measure to avoid the disclosure, directly or indirectly, of such information without the further consent of the Government of Ontario.

Records Provided by Parties Other than the Government of Ontario

The Commissioners may in their sole discretion determine what information provided by parties other than the Government of Ontario shall be maintained as confidential and may enter into agreements or undertakings to maintain such confidence and otherwise regulate the maintenance and use of that information.

Maintenance of Records

The records of the Commission during the course of its work are to be maintained within the custody and control of the Commission and are not considered to be the records of the Ministry of Long-Term Care.

At the conclusion of the investigation, subject to the confidentiality provisions above, all records and information supplied to or obtained by the Commissioners shall be transferred to Archives Ontario for the purposes of archiving in accordance with the *Archives and Recordkeeping Act, 2006*.

October 2020

This version of the Terms of Reference amends and replaces any previous version