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BACKGROUND SCREENING AND OFFENCE DECLARATIONS: An Overview For Retirement Home Operators

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The *Retirement Homes Act, 2010* (the “RHA”) places a number of requirements on retirement home operators (“Operators”) with respect to the background screening of prospective staff and volunteers, as well as ensuring that all staff and volunteers are aware of their ongoing responsibility to declare certain types of offences, convictions and orders.¹

This Legal Bulletin will provide Operators with an overview of their legislative responsibilities, as well as some practical considerations to help facilitate compliance.

Background Screening

Operators must obtain a “Police Background Check” from each prospective staff member² or volunteer³ prior to that person being hired or accepted by the home, as the case may be.

As retirement homes are part of the vulnerable sector, the RHA also requires the “Police

Background Check” to include a “Vulnerable Sector Screen”.

The “Police Background Check” must be performed by a police force and must have been conducted no longer than 6 months prior to the hiring of the staff member or the acceptance the volunteer.

In addition, Operators are also required to obtain a signed declaration from each prospective staff member or volunteer, to confirm whether any of the following have occurred since the date of their “Police Background Check”:

1. they have been charged with an offence under the *Criminal Code*, the *Controlled Drugs and Substances Act* or the *Food and Drugs Act* – and the outcome of the charge;
2. an order of a judge or justice of the peace has been made against them in respect of an offence under the *Criminal Code*, the

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1. The relevant provisions regarding staff and volunteer background screening and the declaration of offences, convictions and orders are set out in section 64 of the RHA and section 13 of the RHA General Regulation.
 - (a) as an employee of the licensee; in the home.
 - (b) pursuant to a contract or agreement with the licensee; or
 - (c) pursuant to a contract or agreement between the licensee and an employment agency or other third party.
2. Under the RHA, “staff” in relation to a retirement home, means every person who works or provides services at the home,
 - (a) as an employee of the licensee; in the home.
 - (b) pursuant to a contract or agreement with the licensee; or
3. Under the RHA, “volunteer” in relation to a retirement home, means a person who works or supplies services to the home, but who is not part of the staff of the home and who does not receive a wage or salary for the services or work that the person provides in the home.



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Controlled Drugs and Substances Act or the *Food and Drugs Act*, including a peace bond, probation order, prohibition order or warrant;

3. they have been convicted of an offence under the *Criminal Code*, the *Controlled Drugs and Substances Act* or the *Food and Drugs Act*; or

4. a restraining order has been made against them under the *Family Law Act* or the *Children's Law Reform Act*.

Ongoing Declaration Requirements

Operators are also required to ensure that all staff and volunteers are aware of their ongoing responsibility to promptly provide the home with the above described, signed declaration, each time they become the subject of any of the above described charges, convictions or orders.

Exemptions

The above described background screening and declaration requirements apply to all staff and volunteers working in the home, with the exception of the following three categories of persons, namely persons who:

1. are under 18 years of age;
2. are members of the College of Physicians and Surgeons of Ontario, the College of Nurses of Ontario or the Ontario College of Pharmacists; or
3. work at the home pursuant to a contract or agreement with the home or pursuant to a contract or agreement between the home and an employment agency or other party, and:
 - a. only provide occasional maintenance or repair services to the home;

b. do not provide direct care to residents; and

c. are to be monitored and supervised by the home in accordance with written policies that the home has prepared to monitor and supervise persons who provide occasional maintenance or repair services.

Practical Considerations for Operators

In order to satisfy their legislative obligations, Operators should consider taking the following steps:

1. obtain a "Police Background Check" from all prospective staff members and volunteers, prior to their commencement of work;
2. prepare a form that sets out the offences, convictions and orders that must be declared by all staff and volunteers, as described above (an "Offence Declaration") and provide a copy to all prospective staff members and volunteers for execution, as soon as their "Police Background Checks" have been returned and prior to their commencement of work;
3. carefully review the "Police Background Check" and "Offence Declaration" prior to hiring a prospective staff member or accepting a prospective volunteer;
4. ensure that all offers of employment or offers of a volunteer position are conditional on the prospective staff member or volunteer providing a satisfactory "Police Background Check" and "Offence Declaration", as determined by the home, at its sole discretion;
5. have existing staff and volunteers execute an "Offence Declaration" on an annual basis, to ensure that they are aware of their ongoing disclosure responsibilities



and to demonstrate the home's due diligence with respect to this important issue; and

6. establish a policy for the home that sets out the requirements regarding background screening and the requirement to declare certain types of offences, convictions and orders.

Lad Kucis is the Co-Chair of the Health Law Group at Gardiner Roberts LLP and provides advice and representation to retirement home operators with respect to regulatory compliance, complaints and risk management. He can be reached by telephone at 416.864.3114 or by email at lkucis@grllp.com.

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