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## OVERVIEW OF RHRA INSPECTIONS

By **Lad Kucis**

The *Retirement Homes Act, 2010* (the “**Act**”) and its corresponding General Regulation (the “**Regulation**”), mandate that all licensed retirement homes in Ontario (“**Homes**”) are subject to various types of inspections for the purposes of ensuring compliance with legislative requirements. These inspections are conducted by inspectors appointed by the Registrar of the Retirement Home Regulatory Authority (the “**RHRA**”), pursuant to a certificate of appointment.

The most common types of inspections contemplated under the Act<sup>1</sup>, as well as the legislative authority for each, are as follows:

- (1) General Inspections (s.77(1) and (2));
- (2) Routine Inspections (s.77(3) and s.58.1 of the Regulation);
- (3) Mandatory Reporting Inspections (s.75); and
- (4) Complaint-Triggered Inspections (s.84 and s.85).

Before we provide a description of the foregoing inspections, it is important to note that the Act confers upon inspectors a broad range of powers in conducting an inspection, which include, but are not limited to, the following:

- Inspecting the premises – with the exception of entering the living quarters of a resident, unless the inspector obtains the consent of the resident or a warrant;
- Inspecting the operations of the Home;
- Photographing, filming and making any other kind of recording of anything or anyone, with certain limitations;
- Demanding production of records and other things – including such documentation and records that are located off the premises. A demand in writing, outlining the nature of the records or other things being demanded and the timeframe for production, must be provided to the Home;
- Questioning of individuals – including the power to exclude other persons during the questioning of an individual, with the exception of legal counsel;
- Inspecting and copying records and other documents;
- Conducting examinations and tests; Using data storage, processing and retrieval devices and systems in order to produce a record in readable form;
- Taking specimens and removing samples, records and other things; and
- Calling on experts for assistance in carrying out an inspection.

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**Lad Kucis**  
T 416.864.3114  
[lkucis@gardiner-roberts.com](mailto:lkucis@gardiner-roberts.com)

<sup>1</sup> This Legal Bulletin will not include a review of pre-licensing inspections, as contemplated by section 37(1) of the Act.



In terms of protocol, an inspector is required to prepare a draft inspection report at the conclusion of an inspection and provide a copy to the licensee of the Home (the “Operator”). In addition, the inspector is required to provide a written notice stating that the Operator is entitled to make written comments within a specified period. Thereafter, after considering the comments made by the Operator, if any, the inspector is to prepare a final inspection report and provide a copy to the Operator, the Registrar of the RHRA and the Residents’ Council of the Home. The final inspection report is then to be placed on the register maintained by the RHRA, which is also available to the public on the RHRA website.<sup>2</sup>

We will now review the various types of inspections contemplated under the Act, as referenced above:

## 1. General Inspections

### (a) Licensed Homes

Section 77(1) of the Act provides inspectors with the general authority to enter a Home, without a warrant or prior notice, to determine whether the Home complies with the requirements of the Act. Pursuant to this section, an inspector is not limited to only conducting an inspection of the Home itself, but rather has the authority to inspect any place that is operated in connection with the Home and from which services are provided to the Home. This general inspection authority also applies, with certain modifications, to most of the other inspections contemplated by the Act.

### (b) Unlicensed Residential Complexes

Pursuant to section 77(2) of the Act, if an inspector has “reasonable and probable grounds” to believe that a residential complex, or part thereof, meets the definition of a “retirement home” and is being operated

without appropriate licensure, an inspector may enter and conduct an inspection. Upon completing an inspection under section 77(2), an inspector is to prepare an inspection report setting out whether the residential complex, or part thereof, meets the definition of a “retirement home”. Thereafter, the report is to be provided to the Registrar of the RHRA.

## 2. Routine Inspections

Section 58.1 of the Regulation mandates that every Home is to be the subject of a routine inspection at least once every three (3) years, for the purposes of monitoring compliance with the requirements under the Act.

In order to pass a routine inspection, Operators should be aware of the following:

- Homes are expected to be in compliance with all aspects of the Act and the Regulation. As such, Operators should review the legislation as well as the information posted on the RHRA website, to ensure that its policies, procedures and practices are fully compliant;
- The RHRA has posted a “Routine Inspections” Fact Sheet on its website, which contains useful information for Operators with respect to this type of inspection;
- Operators will be notified about a routine inspection one day in advance of the inspection;
- The RHRA has advised that inspectors will not investigate compliance with all aspects of the Act and the Regulation. Rather, inspectors will focus on a critical, short-list of requirements that involve resident safety and protection. These critical elements include, but are not limited to, the following:
  - fire and emergency plans;

<sup>2</sup>The provisions set out in this paragraph only apply to inspections of a licensed Home.



- infection prevention and control;
- assessment of residents;
- behaviour management, specifically with respect to residents with dementia;
- staff training programs;
- abuse and neglect avoidance;
- administration and storage of drugs; and
- the Home's complaint procedures;

In this regard, the RHRA has recommended that Homes concentrate their efforts in these areas of concern for their first routine inspection. Notwithstanding, Operators should be reminded that inspectors have the discretion to extend their inspections beyond the foregoing areas, and as such, compliance with all aspects of the legislation is strongly encouraged;

- A debriefing session is to occur at the conclusion of the inspection, where the inspector will advise as to all areas of non-compliance;
- A finding of compliance during a routine inspection does not guarantee a similar finding during a subsequent routine inspection, especially since not all policies and procedures can be reviewed during a single inspection; and
- Where an inspector finds that an item requires corrective measures, the Registrar of the RHRA may initiate a follow-up inspection, pursuant to the general inspection authority in section 77(1), of the Act, as described above. Failure to take corrective measures may result in a finding of non-compliance under the Act.

### 3. Mandatory Reporting Inspections

Under section 75(1) of the Act, all persons (with the exception of residents) are

mandated to immediately file a report with the Registrar of the RHRA if they have reasonable grounds to believe that any of the following have occurred:

- Improper or incompetent treatment or care of a resident that resulted in harm or risk of harm to the resident;
- Abuse of a resident by anyone or neglect of a resident by the licensee or staff of the Home that resulted in harm or a risk of harm to the resident;
- Unlawful conduct that resulted in harm or a risk of harm to a resident; or
- Misuse or misappropriation of a resident's money.

Upon receiving a mandatory report, the Registrar of the RHRA is required to order that an inspector conduct an immediate inspection of the Home in question.

### 4. Complaint-Triggered Inspections

#### *(a) Discretionary*

Section 84 of the Act provides that any person may submit a complaint to the Registrar of the RHRA alleging that a Home is in contravention of a requirement under the Act. Upon receiving such a complaint, the Registrar must promptly review the complaint and thereafter has the "discretion" to take one or more various actions, including conducting an inspection of the Home. As such, upon receipt of a complaint, the Registrar will assess the facts to determine whether or not to order an inspection.

#### *(b) Mandatory*

In the event a complaint involves subject matter that would necessitate a mandatory report for the purposes of section 75(1) of the Act, as described above, section 85



requires the Registrar of the RHRA to order an immediate inspection of the Home.

**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@gardiner-roberts.com](mailto:lkucis@gardiner-roberts.com).**

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*\*\* Alexandra Aversa, student-at-law, assisted in the preparation of this Legal Bulletin.*

