

2003 Bill 224

Third Session, 25th Legislature, 52 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 224

LONG-TERM CARE OMBUDSPERSON ACT

MS CARLSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 224

2003

LONG-TERM CARE OMBUDSPERSON ACT

(Assented to _____, 2003)

Preamble

WHEREAS persons receiving long-term or residential care deserve to be treated with dignity and maintain the greatest control possible over how they live their lives;

WHEREAS persons in long-term or residential care are among the most vulnerable members of society and their interests and opinions, and those of their families, are too often disregarded; and

WHEREAS there is a need for accessible long-term and residential care with consistent standards throughout Alberta;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “lodge accommodation” means lodge accommodation as defined in the *Alberta Housing Act*;
- (b) “long-term care” means medical or general care provided to persons in the following facilities:
 - (i) auxiliary hospitals;
 - (ii) nursing homes;
 - (iii) residential facilities, including group homes or shelters, for

- (A) seniors,
 - (B) physically or mentally handicapped persons, or
 - (C) children in custody or under the guardianship of a director under the *Child Welfare Act*;
- (c) “nursing home” means a nursing home as defined in the *Nursing Homes Act*;
- (d) “residential care” means general care and living assistance provided for a fee and includes care provided to persons in their own residences, lodge accommodations, group homes or any type of assisted living facility;
- (e) “Standing Committee” means the Standing Committee on Legislative Offices.

Appointment of Long-Term Care Ombudsperson

- 2(1)** The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint a Long-Term Care Ombudsperson to carry out the duties and functions set out in this Act.
- (2)** The Long-Term Care Ombudsperson is an officer of the Legislature.
- (3)** The Long-Term Care Ombudsperson must be selected from among individuals with expertise and experience in the fields of long-term care or advocacy.
- (4)** The Long-Term Care Ombudsperson must be a Canadian citizen.
- (5)** The Long-Term Care Ombudsperson may not be a member of the Legislative Assembly and shall not hold any office of trust or profit, other than the office as Long-Term Care Ombudsperson, or engage in any occupation for reward outside the duties of that office.

Duties and powers

- 3(1)** The duties of the Long-Term Care Ombudsperson are
- (a) to receive, review and investigate complaints regarding the health, safety or well-being of persons receiving long-term or residential care;
 - (b) to review and investigate any decision or recommendation made, or any act done or omitted, relating to the

administration of the facilities providing long-term or residential care;

- (c) where appropriate, to attempt to resolve the matters referred to in clauses (a) and (b);
- (d) where appropriate, to make recommendations to the Legislature on any of the matters referred to in clauses (a) and (b);
- (e) to report to the Legislature on the exercise of his or her functions under this Act; and
- (f) to review rates for long-term care on an annual basis.

(2) The Legislative Assembly or any of its committees may at any time refer a matter to the Long-Term Care Ombudsperson for investigation and report.

(3) A Minister may at any time by order refer any matter to the Long-Term Care Ombudsperson for investigation and report.

(4) An order made by a Minister under subsection (3) must be published in The Alberta Gazette.

(5) The Long-Term Care Ombudsperson may commence an investigation either on a complaint made by any person or on the Long-Term Care Ombudsperson's own motion, and he or she may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission as mentioned in subsection (1).

(6) The powers and duties conferred on the Long-Term Care Ombudsperson by this Act may be exercised notwithstanding any provision in any Act to the effect that

- (a) any decision, recommendation, act or omission mentioned in subsection (1) is final,
- (b) no appeal lies in respect of it, or
- (c) no proceeding or decision of the person or facility whose decision, recommendation, act or omission it is may be challenged, reviewed, quashed or called in question.

(7) The Long-Term Care Ombudsperson may

- (a) conduct research on matters relating to long-term health care, and
- (b) publish reports relating to the exercise of his or her functions under this Act, or to any particular case that has been investigated, that are in the public interest whether or not the matters to be dealt with in any such report have been the subject of a report to the Legislature.

Term of office

4(1) Except as provided in subsection (2) and section 6, the Long-Term Care Ombudsperson holds office for a term of 5 years.

(2) A person holding office as Long-Term Care Ombudsperson continues to hold office after the expiry of that person's term of office until that person is reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first.

(3) A person is eligible for reappointment as Long-Term Care Ombudsperson.

Oath

5(1) Before commencing the duties of office, the Long-Term Care Ombudsperson must take an oath to faithfully and impartially perform the duties of the office and not, except as provided in this Act, divulge any information received by him or her under this Act.

(2) The oath shall be administered by the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly.

Resignation, removal or suspension

6(1) The Long-Term Care Ombudsperson may resign at any time by notifying the Speaker of the Legislative Assembly in writing or, if there is no Speaker or the Speaker is absent from Alberta, by notifying the Clerk of the Legislative Assembly in writing.

(2) On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Long-Term Care Ombudsperson from office for cause or incapacity.

(3) If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend or remove the Long-Term Care Ombudsperson for cause or incapacity on the recommendation of the Standing Committee.

Vacancy in office

7(1) If the Long-Term Care Ombudsperson dies, retires, resigns or is removed from office, the vacancy created shall be filled in accordance with this section.

(2) If a vacancy occurs while the Legislature is sitting, but no recommendation is made by the Legislative Assembly before the close of that sitting, subsection (3) applies as if the vacancy had occurred while the Legislature was not sitting.

(3) If a vacancy occurs while the Legislature is not sitting, the Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint a Long-Term Care Ombudsperson to fill the vacancy and unless the office sooner becomes vacant, the person so appointed holds office until the person's appointment is confirmed by the Legislative Assembly.

(4) If an appointment under subsection (3) is not confirmed within 30 days after the commencement of the next regular sitting, the appointment lapses and there is deemed to be another vacancy in the office of Long-Term Care Ombudsperson.

Remuneration

8 Provided that funds are allocated by the Legislative Assembly for the purpose, the Long-Term Care Ombudsperson shall receive

- (a) remuneration prescribed by the Standing Committee for his or her services,
- (b) reasonable travelling and living expenses incurred while away from his or her ordinary place of residence in the course of fulfilling his or her duties as Long-Term Care Ombudsperson.

Office of the Long-Term Care Ombudsperson

9 The Office of the Long-Term Care Ombudsperson shall be established, consisting of the Long-Term Care Ombudsperson and, provided that funds are allocated by the Legislative Assembly, those employees appointed pursuant to the *Public Service Act* to assist the Long-Term Care Ombudsperson in carrying out his or her duties and functions under this Act.

Complaint to Long-Term Care Ombudsperson

10 Every complaint to the Long-Term Care Ombudsperson must be made in writing.

Maintenance of secrecy

11(1) The Long-Term Care Ombudsperson and every person holding an office or appointment under the Long-Term Care Ombudsperson shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

(2) Notwithstanding subsection (1), the Long-Term Care Ombudsperson may disclose in any report made under this Act any matters that in the Long-Term Care Ombudsperson's opinion ought to be disclosed in order to establish grounds for the conclusions and recommendations in the report.

Refusal to investigate

12(1) If in the course of an investigation of any complaint it appears to the Long-Term Care Ombudsperson

- (a) that under the law or existing administrative practice there is an adequate remedy, other than the right to petition the Legislature, for the complainant, whether or not the complainant has availed himself or herself of it, or
- (b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

the Long-Term Care Ombudsperson may in his or her discretion refuse to investigate the matter further.

(2) The Long-Term Care Ombudsperson may in his or her discretion refuse to investigate or cease to investigate any complaint

- (a) if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Long-Term Care Ombudsperson, or
- (b) if in the Long-Term Care Ombudsperson's opinion,
 - (i) the subject matter of the complaint is trivial,
 - (ii) the complaint is frivolous or vexatious or is not made in good faith, or
 - (iii) the complainant has not a sufficient personal interest in the subject matter of the complaint.

(3) When the Long-Term Care Ombudsperson decides not to investigate or to cease to investigate a complaint, the Long-Term Care Ombudsperson shall inform the complainant of that decision

in writing and the Long-Term Care Ombudsperson may, if he or she thinks fit, state the reason for that decision.

Notice of investigation

13(1) Before investigating any matter under this Act, the Long-Term Care Ombudsperson shall inform the operator of the facility providing long-term care or the person providing residential care of the Long-Term Care Ombudsperson's intention to commence the investigation.

(2) The Long-Term Care Ombudsperson may, in his or her discretion, at any time during or after an investigation, consult any Minister or administrative head who is concerned in the matter of the investigation.

Conduct at investigation

14(1) Every investigation by the Long-Term Care Ombudsperson under this Act shall be conducted in private.

(2) The Long-Term Care Ombudsperson may hear or obtain information from any persons the Long-Term Care Ombudsperson thinks fit and may make inquiries that he or she thinks fit.

Evidence at investigation

15 Subject to this section, the Long-Term Care Ombudsperson may require any person who in the Long-Term Care Ombudsperson's opinion is able to give any information relating to any matter being investigated by the Long-Term Care Ombudsperson,

- (a)** to furnish the information to the Long-Term Care Ombudsperson, and
- (b)** to produce any document, paper or thing that in the Long-Term Care Ombudsperson's opinion relates to the matter being investigated and that may be in the possession or under the control of that person.

Entry of premises

16(1) For the purposes of this Act, the Long-Term Care Ombudsperson may at any time enter on any premises that are the subject matter of a complaint within the Long-Term Care Ombudsperson's jurisdiction.

(2) Before entering on any premises pursuant to subsection (1), the Long-Term Care Ombudsperson must notify, as the case may require, the owner of the premises or the operator of the facility of the Long-Term Care Ombudsperson's intention to do so.

Procedure after investigation

17(1) This section applies when, after making an investigation under this Act, the Long-Term Care Ombudsperson is of the opinion that the decision, recommendation, act or omission that was the subject matter of the investigation

- (a) appears to have been contrary to law,
- (b) was unreasonable, unjust, oppressive or improperly discriminatory or was in accordance with a rule of law, a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,
- (c) was based wholly or partly on a mistake of law or fact, or
- (d) was wrong.

(2) This section also applies when the Long-Term Care Ombudsperson is of the opinion that

- (a) in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power was exercised
 - (i) for an improper purpose,
 - (ii) on irrelevant grounds, or
 - (iii) on the taking into account of irrelevant considerations,

or

- (b) in the case of a decision made in the exercise of a discretionary power, reasons should have been given for the decision.

(3) If, when this section applies, the Long-Term Care Ombudsperson is of the opinion that

- (a) the matter should be referred to the appropriate authority for further consideration,
- (b) the omission should be rectified,
- (c) the decision should be cancelled or varied,
- (d) any practice on which the decision, recommendation, act or omission was based should be altered,

- (e) any law on which the decision, recommendation, act or omission was based should be reconsidered,
- (f) reasons should have been given for the decision,
- (g) the matter should be reheard or reconsidered by the appropriate authority, or
- (h) any other steps should be taken,

the Long-Term Care Ombudsperson shall report that opinion and the reasons for it to the appropriate Minister, any administrative head that is involved in the matter and the operator of the facility concerned, and may make any recommendations that he or she thinks fit, and in that case the Long-Term Care Ombudsperson may request the operator to provide notification within a specified time of the steps, if any, that it proposes to take to give effect to the Long-Term Care Ombudsperson's recommendations.

(4) The Long-Term Care Ombudsperson shall inform the complainant, in the manner and at the time the Long-Term Care Ombudsperson thinks proper, of the results of the investigation.

(5) If within a reasonable time after the report is made under subsection (3) no action is taken that seems to the Long-Term Care Ombudsperson to be adequate and appropriate, the Long-Term Care Ombudsperson may, after considering the comments, if any, made by or on behalf of the operator, send a copy of the report to the appropriate Minister.

(6) If, within a reasonable time after the report is made to the appropriate Minister and to the operator, no action is taken that seems to the Long-Term Care Ombudsperson to be adequate and appropriate, the Long-Term Care Ombudsperson may make any report to the Legislature on the matter that the Long-Term Care Ombudsperson thinks fit.

(7) The Long-Term Care Ombudsperson shall attach to every report sent or made under subsections (5) or (6) a copy of any comments made by or on behalf of the facility concerned.

Proceedings not subject to review

18 No proceedings of the Long-Term Care Ombudsperson shall be held bad for want of form and, except on the ground of lack of jurisdiction, no proceedings or decision of the Long-Term Care Ombudsperson shall be challenged, reviewed, quashed or called in question in any court.

Proceedings privileged

19(1) No proceedings lie against the Long-Term Care Ombudsperson, or against a person acting for or under the direction of the Long-Term Care Ombudsperson, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a power, duty or function under this Act.

(2) Neither the Long-Term Care Ombudsperson nor any person holding an office or appointment under the Long-Term Care Ombudsperson shall be called on to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to the Long-Term Care Ombudsperson's or person's knowledge in the exercise of the Long-Term Care Ombudsperson's or person's functions under this Act.

(3) Any thing said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Long-Term Care Ombudsperson under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

(4) For the purposes of the *Defamation Act*, any report made by the Long-Term Care Ombudsperson under this Act is deemed to be privileged and a fair and accurate report on it in a newspaper or a broadcast is deemed to be privileged.

Offences and penalties

20 Any person who,

- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Long-Term Care Ombudsperson or any other person in the exercise of the Long-Term Care Ombudsperson's or other person's powers under this Act,
- (b) without lawful justification or excuse, evicts, discharges, suspends, expels, intimidates, coerces, imposes a financial or other penalty on or otherwise discriminates against a person because that person has, in good faith,
 - (i) made or attempted to make a complaint under this Act,
 - (ii) assisted another person in making or attempting to make a complaint under this Act, or
 - (iii) given evidence or otherwise co-operated in an investigation under this Act,

- (c) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Long-Term Care Ombudsperson or any other person under this Act, or
- (d) wilfully makes a false statement to or misleads or attempts to mislead the Long-Term Care Ombudsperson or any other person in the exercise of the Long-Term Care Ombudsperson's or other person's powers under this Act,

is guilty of an offence and liable to a fine of not more than \$5000 and in default of payment to imprisonment for a term not exceeding 3 months.

Coming into force

21 This Act comes into force on January 1, 2005.