

2007 Bill 40

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Third Session, 26th Legislature, 56 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 40**

**PERSONAL DIRECTIVES  
AMENDMENT ACT, 2007**

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MRS. ADY

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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*Bill 40*  
*Mrs. Ady*

## **BILL 40**

2007

### **PERSONAL DIRECTIVES AMENDMENT ACT, 2007**

*(Assented to , 2007)*

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

#### **Amends RSA 2000 cP-6**

**1 The *Personal Directives Act* is amended by this Act.**

**2 The preamble is amended by adding “may only be made voluntarily and” after “such instructions”.**

#### **3 Section 1 is amended**

**(a) by adding the following after clause (b):**

(b.1) “complaint” means a complaint made under section 24.2;

**(b) in clause (e) by adding “, except in section 7(1)(e),” after “means”;**

**(c) by adding the following after clause (f):**

(f.1) “health information” means health information within the meaning of the *Health Information Act*;

## Explanatory Notes

**1** Amends chapter P-6 of the Revised Statutes of Alberta 2000.

**2** The preamble presently reads:

*WHEREAS Albertans should be able to provide advance personal instructions regarding their own personal matters while recognizing that such instructions cannot include instructions relating to aided suicide, euthanasia or other instructions prohibited by law;*

**3** Section 1 presently reads in part:

*1 In this Act,*

*(e) “guardian” means a guardian under the Dependent Adults Act;*

**(d) by adding the following after clause (k):**

- (k.1) “personal information” means information, including health information, about an identifiable individual;

**(e) by adding the following after clause (m):**

- (m.1) “Public Guardian” means the Public Guardian appointed under the *Dependent Adults Act*;

**(f) by adding the following after clause (n):**

- (o) “significant change” means an observable and sustained improvement that does not appear to be temporary.

**4 The following is added after section 6:**

**Form of personal directive**

**6.1** The Minister may, by regulation, establish a form for personal directives, but the use of that form is not mandatory.

**5 Section 7 is amended**

**(a) in subsection (1) by adding the following after clause (d):**

- (e) if the maker is a guardian of a minor, designating an agent to take over the care and education of the minor until
  - (i) another guardian of the minor takes over the care and education of the minor,
  - (ii) a guardian is appointed to take over the care and education of the minor under the *Family Law Act* or the *Child, Youth and Family Enhancement Act*, or
  - (iii) a determination is made under section 10.1 that the maker has regained capacity.

**(b) by adding the following after subsection (3):**

**4** Forms of personal directive.

**5** Section 7 presently reads in part:

*7(1) A personal directive may contain information and instructions respecting any personal matter, including, without limitation, the following:*

- (a) respecting the designation of agents and their authority;*
- (b) designating one or more persons to determine the maker's capacity under section 9;*
- (c) naming the persons who are and the persons who are not to be notified of the coming into effect of the personal directive;*
- (d) providing instructions with respect to access to confidential information about the maker.*

- (4) A personal directive may designate the Public Guardian as agent if
- (a) the Public Guardian is the only agent designated in the personal directive,
  - (b) the maker satisfies the Public Guardian that no other person is able and willing to act as agent, and
  - (c) the Public Guardian consents to being designated as agent.

**6 The following is added after section 7:**

**Public Guardian as agent**

**7.1** If a maker designates the Public Guardian as agent in a personal directive, the maker must provide the Public Guardian with the information required under the regulations.

**Registration of information**

**7.2(1)** The maker of a personal directive may register the information prescribed in the regulations in accordance with the regulations.

**(2)** The information referred to in subsection (1) may be accessed, used and disclosed in accordance with the regulations.

**Directive made outside Alberta**

**7.3** A directive made outside Alberta that complies with the requirements of Part 2 has the same effect as if it were made pursuant to this Act.

**7 Section 10(a) is repealed and the following is substituted:**

- (a) with respect to a personal matter, when a determination that the maker has regained capacity to make decisions with respect to that matter is made under section 10.1;

**8 The following is added after section 10:**

**6** Public guardian as agent; registration of information; directive made outside Alberta.

**7** Section 10 presently reads in part:

*10 A personal directive ceases to have effect in the following circumstances:*

*(a) in respect of a personal matter, during any period in which the maker regains and has capacity;*

**8** Determination of regained capacity.

**Determination of regained capacity**

**10.1(1)** When a personal directive is in effect with respect to a personal matter, if it appears to an agent who has authority to make personal decisions with respect to that matter that there has been a significant change in the maker's capacity, the agent must

- (a) consult with a service provider who provides health care services and assess the maker's capacity in accordance with the regulations, and
- (b) if the agent and service provider agree that the maker has regained capacity to make decisions with respect to that or other personal matters, make a determination in the prescribed form.

**(2)** When a personal directive is in effect with respect to a personal matter, if it appears to a service provider who provides or who intends to provide health care services to the maker that there has been a significant change in the maker's capacity, the service provider must

- (a) consult with any agent who has authority to make personal decisions with respect to that matter and assess the maker's capacity in accordance with the regulations, and
- (b) if the service provider believes, or if there is an agent as described in clause (a), the service provider and the agent agree, that the maker has regained capacity to make decisions with respect to that or other personal matters, make a determination in the prescribed form.

**(3)** A maker may request that the maker's agent or a service provider who provides health care services assess the maker's capacity under subsection (1) or (2), as the case may be, but the agent or service provider may refuse the request if it does not appear to the agent or service provider that there has been a significant change in the maker's capacity to make personal decisions.





(4) If an assessment has been done under subsection (1) or (2) and the agent and the service provider do not agree as to whether the maker has regained capacity, the agent must arrange to have the maker's capacity assessed under subsection (5), and if the agent does not make arrangements as soon as is practicable, any service provider may do so.

(5) Where subsection (4) applies, 2 service providers, at least one of whom is a physician or a psychologist, may assess a maker's capacity and make a determination in accordance with the regulations that the maker has regained capacity to make decisions with respect to one or more personal matters.

(6) When a determination has been made under this section, the person making the determination must provide a copy of the determination to the maker, to the maker's physician and agent, if applicable, and to the operator of a residential facility that provides accommodation to the maker, if applicable.

**9 Section 22 is repealed.**

**10 The following is added after section 24:**

**Part 4.1  
Public Guardian**

**Delegation by Public Guardian**

**24.1** Where the Public Guardian is given any power or duty under this Act or by an order of the Court, the Public Guardian

**9** Section 22 presently reads:

*22(1) A service provider who believes that a maker has regained capacity to make a personal decision with respect to a personal matter must, before acting on the maker's personal decisions, notify the agent, if any, that in the opinion of the service provider the maker has regained capacity.*

*(2) The service provider may act on the maker's personal decisions if the agent does not object.*

*(3) If the agent objects to the service provider's acting on the maker's personal decisions, the service provider must not so act unless the Court determines that the maker has capacity.*

**10** Part 4.1 - Public Guardian.

may authorize in writing one or more persons to exercise or perform that power or duty on any conditions or in any circumstances that the Public Guardian prescribes, and afterwards that power or duty may be exercised or performed by the person or persons in accordance with the authorization in addition to the Public Guardian.

#### **Complaints to Public Guardian**

**24.2(1)** Any interested person may make a complaint to the Public Guardian if a personal directive is in effect and there is reason to believe that

- (a) an agent of the maker is failing to comply with the personal directive or the duties of an agent, and
- (b) the failure is likely to cause harm to the physical or mental health of the maker.

**(2)** A complaint must be in writing and signed by the complainant, and may be in a form provided for in the regulations.

**(3)** No complaint may be made under subsection (1) in respect of anything done or omitted to be done by an agent before this section came into force.

#### **Investigation by Public Guardian**

**24.3(1)** The Public Guardian must review a complaint to decide whether an investigation of the complaint is necessary and must notify the complainant of the decision.

**(2)** If the Public Guardian conducts an investigation, the Public Guardian must, as soon as is practicable in the circumstances, make a reasonable effort to notify the following persons that the Public Guardian is conducting the investigation:

- (a) the maker;
- (b) the agent who is the subject of the complaint;
- (c) any other agents designated in the personal directive;
- (d) any service providers named in the complaint.



(3) For the purpose of conducting an investigation the Public Guardian may interview any person who may assist in the investigation, and is entitled to access to all records that may be relevant to the investigation that are held by the agent who is the subject of the complaint or a service provider, including records containing personal information and health information, for the purpose of inspecting them, making copies of them or taking extracts from them.

(4) If the Public Guardian is refused access to records referred to in subsection (3), the Public Guardian may apply to the Court by originating notice for an order, and the Court may grant an order, permitting the Public Guardian to require the production of any records that may be relevant to the investigation.

#### **Powers of Public Guardian after investigation**

**24.4** If, after conducting an investigation, the Public Guardian is satisfied that there are reasonable grounds to believe that the grounds for complaint set out in section 24.2(1) apply to the agent who is the subject of the complaint, the Public Guardian may do one or more of the following:

- (a) attempt to resolve any matter relating to the complaint;
- (b) refer the complainant, the agent who is the subject of the complaint and any other persons the Public Guardian considers appropriate to an alternative dispute resolution process acceptable to the Public Guardian or provided for in the regulations;
- (c) apply to the Court under section 25 for one or more orders referred to in section 27.

#### **Collection and disclosure of information**

**24.5(1)** The Public Guardian and anyone acting for or under the direction of the Public Guardian

- (a) may collect and use personal information for the purposes of conducting an investigation or resolving a complaint under this Part, and
- (b) must not disclose any personal information obtained under this Part, except as provided in this section.



(2) The Public Guardian may use or disclose, or may authorize anyone acting for or under the direction of the Public Guardian to use or disclose, personal information

- (a) if the use or disclosure is necessary for the purposes of conducting an investigation or making an application to the Court,
- (b) if the disclosure is for the purposes of section 24.6, or
- (c) if the disclosure is authorized or required under the *Freedom of Information and Protection of Privacy Act* or another enactment.

**Notification of authorities**

**24.6(1)** If the Public Guardian or a person acting for or under the direction of the Public Guardian reasonably believes that the subject-matter of a complaint could constitute

- (a) an offence under the *Criminal Code* (Canada), the Public Guardian or person must, as soon as possible, refer the complaint to a police service;
- (b) abuse against a client under the *Protection for Persons in Care Act*, the Public Guardian or person must, as soon as possible, refer the complaint to the Department under that Act;
- (c) an offence under a statute or regulation of Alberta, the Public Guardian or person must, as soon as possible, refer the complaint to the Minister of Justice and Attorney General.

(2) The Public Guardian or a person acting for or under the direction of the Public Guardian may, when referring a complaint under subsection (1), disclose information that the Public Guardian or person reasonably believes relates to the possible offence or abuse.

**11 Section 25 is amended by adding “, the Public Guardian” after “personal directive”.**



**11** Section 25 presently reads:

**12 Section 27(1) is amended by adding the following after clause (d):**

- (d.1) revoke the authority of an agent referred to in section 24.4, in whole or in part, if the agent is failing to comply with the personal directive or the duties of an agent and the Court considers that the failure is likely to cause serious harm to the physical or mental health of the maker;

**13 Section 28 is amended by adding the following after subsection (3):**

- (4) No action lies against the Public Guardian, or against a person acting for or under the direction of the Public Guardian, 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.

*25 A person who makes a personal directive or any other interested person may apply to the Court by way of originating notice for any one or more orders referred to in section 27.*

**12** Section 27(1) presently reads:

*27(1) The Court may, on hearing an application under section 25, do any one or more of the following:*

- (a) make a determination of capacity of the maker or agent after considering a report made under subsection (2)(b);*
- (b) determine the validity of a personal directive or any part of it;*
- (c) based on instructions contained in a personal directive, vary, confirm or rescind a personal decision, in whole or in part, made by an agent;*
- (d) determine the authority of an agent;*
- (e) provide advice and directions;*
- (f) make a decision where a majority cannot agree under section 16(2);*
- (g) stay a decision of an agent;*
- (h) make any other order that the Court considers appropriate that is not inconsistent with a personal directive.*

**13** Section 28 presently reads:

*28(1) No action lies against an agent for anything done or omitted to be done in good faith while carrying out the authority of the agent in accordance with this Act.*

*(2) No action lies against a service provider for anything done or omitted to be done in good faith in acting or purporting to act in accordance with this Act.*

*(3) No action lies against an agent or service provider for anything done or omitted to be done in good faith in reliance on a personal directive if the maker of a personal directive has*

- (a) changed or revoked the personal directive, or*
- (b) revoked the authority of the agent*

**14 Section 30 is repealed and the following is substituted:**

**Information**

**30(1)** Subject to any limitation set out in a personal directive, when a personal directive is in effect with respect to a personal matter, an agent who has authority to make decisions with respect to that matter has the same right as the maker to access, obtain or collect from any person personal information respecting the maker that is relevant to the personal decision to be made.

**(2)** Subject to any limitation set out in a personal directive, the following persons may collect, use or disclose the personal information respecting the maker that is relevant to a determination of the maker's capacity:

- (a) a person referred to in section 9(2);
- (b) a service provider, physician or psychologist referred to in section 9 or 10.1;
- (c) an agent referred to in section 10.1.

**(3)** A public body within the meaning of the *Freedom of Information and Protection of Privacy Act*, a custodian within the meaning of the *Health Information Act* and an organization within the meaning of the *Personal Information Protection Act* may disclose personal information respecting a maker, with or without consent to the disclosure of that information, to

- (a) an agent who has the authority to access, obtain or collect the information under subsection (1), and
- (b) a person who has the authority to collect the information under subsection (2).

**(4)** An agent or person referred to in subsection (2) may use the personal information described in this section only to carry out the authority of the agent or to assess and determine the maker's capacity, as the case may be.

**15 Section 33(a) is repealed.**

*without the knowledge of the agent or service provider, as the case may be.*

**14** Section 30 presently reads:

*30(1) Despite any other enactment respecting the disclosure of confidential personal information, but subject to any limitation set out in a personal directive, an agent or a person referred to in section 9(2) has the right to be provided with the information and records respecting the maker that are relevant to the personal decision to be made or the determination of the maker's capacity, as the case may be.*

*(2) An agent or a person referred to in section 9(2) may use the information and records described in subsection (1) only to carry out the authority of the agent or to determine the maker's capacity, as the case may be.*

**15** Section 33(a) presently reads:

*33 The Minister may make regulations*

**16 The following is added after section 33:**

**Lieutenant Governor in Council regulations**

**34** The Lieutenant Governor in Council may make regulations

- (a) defining words or expressions used but not defined in this Act;
- (b) respecting the information that a maker must provide the Public Guardian under section 7.1;
- (c) for the purposes of section 7.2, respecting the establishment of a registry, respecting the registration of information, including personal information, in the registry and respecting access to, disclosure of and use of that information;
- (d) respecting the making of written declarations or determinations under sections 9 and 10.1, including the assessments that may be done by a person designated in the personal directive, by an agent, by a service provider and by a psychologist or physician;
- (e) respecting the establishment of an alternative dispute resolution process for the purpose of resolving complaints under Part 4.1;
- (f) respecting investigations under Part 4.1.

**17 This Act comes into force on Proclamation.**

*(a) defining words or expressions used in this Act;*

**16** Lieutenant Governor in Council regulations.

**17** Coming into force.

