

2009 Bill 41

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 41

PROTECTION FOR PERSONS IN CARE ACT

DR. BROWN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 41
Dr. Brown

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PROTECTION FOR PERSONS IN CARE ACT

(Assented to , 2009)

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

Interpretation

1(1) In this Act,

- (a) “care or support services” means any services that relate to a client’s health or physical or psychological well-being;
- (b) “client” means an adult who receives care or support services from a service provider;
- (c) “complainant” means an individual who reports abuse under section 7;
- (d) “complaints officer” means an individual designated as a complaints officer under section 5;
- (e) “Court” means the Court of Queen’s Bench;
- (f) “Director” means the Director designated under section 4;
- (g) “financial information” means information about the property or financial matters of an identifiable individual;
- (h) “health information” means health information about an identifiable individual within the meaning of the *Health Information Act*;
- (i) “individual involved” means a person who allegedly abused a client or who allegedly failed to prevent abuse of a client;

- (j) “investigator” means an investigator designated under section 6 or 19;
- (k) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (l) “personal information” means information about an identifiable individual;
- (m) “service provider” means
 - (i) a lodge accommodation as defined in the *Alberta Housing Act*,
 - (ii) an approved hospital as defined in the *Hospitals Act*,
 - (iii) a facility designated under the *Mental Health Act*,
 - (iv) a nursing home as defined in the *Nursing Homes Act*,
 - (v) a social care facility as defined in the *Social Care Facilities Licensing Act*,
 - (vi) a facility as defined in the *Social Care Facilities Review Committee Act*, or
 - (vii) any person designated by the regulations as a service provider.

(2) In this Act, “abuse” means an act or an omission with respect to a client receiving care or support services from a service provider that

- (a) causes serious bodily harm,
- (b) causes serious emotional harm,
- (c) results in the administration, withholding or prescribing of medication for an inappropriate purpose, resulting in serious bodily harm,
- (d) subjects an individual to non-consensual sexual contact, activity or behaviour,

- (e) involves misappropriating or improperly or illegally converting a significant amount of money or other valuable possessions, or
- (f) results in failing to provide adequate nutrition, adequate medical attention or another necessity of life without a valid consent, resulting in serious bodily harm.

(3) Notwithstanding subsection (2), an act or omission does not constitute abuse

- (a) if a service provider carries out the service provider's duties in accordance with professional standards or practices or any standards established by or adopted pursuant to another enactment,
 - (b) if the care or support services provided by the service provider are reasonably necessary in the circumstances,
 - (c) where the act or omission is the result of, or is attributable to, a client's refusing care or support services,
 - (d) when the act or omission is based on a decision made on behalf of a client
 - (i) by an agent under the *Personal Directives Act*, or
 - (ii) by an attorney under the *Powers of Attorney Act*,
- or
- (e) in the circumstances prescribed in the regulations.

(4) In sections 7, 11 and 22, a reference to "a committee, body or person authorized under another enactment" means a committee, body or person under any of the following enactments:

- (a) *Health Professions Act*;
- (b) *Mental Health Act*;
- (c) any other enactment prescribed in the regulations.

Purpose

2 The purpose of this Act is

- (a) to require the reporting of abuse involving clients,
- (b) to provide for an independent review of reports of abuse involving clients, and
- (c) to promote the prevention of abuse involving clients.

Crown bound

3 This Act binds the Crown.

Designation of Director

4(1) The Minister may designate a Director for the purposes of this Act.

(2) The Director has all the powers of a complaints officer and an investigator under this Act.

Complaints officers

5 The Minister may designate one or more individuals as complaints officers for the purposes of this Act.

Investigators

6 The Minister may designate one or more individuals as investigators for the purposes of this Act.

Report of abuse

7(1) Subject to subsection (6), every individual who has reasonable grounds to believe that there is or has been abuse involving a client shall report that abuse within the time period referred to in section 8(1)

- (a) to a complaints officer,
- (b) to a police service, or
- (c) to a committee, body or person authorized under another enactment to investigate such abuse.

(2) Subsection (1) applies notwithstanding that the information on which the belief is founded is confidential and its disclosure is prohibited under any other Act.

(3) This section does not apply to information that is privileged as a result of a solicitor-client relationship.

(4) Notwithstanding and in addition to any other penalty provided by this Act, if the complaints officer has reasonable grounds to believe that an individual has not complied with subsection (1) and that individual is registered under an Act regulating a profession or occupation prescribed in the regulations, the complaints officer shall advise the appropriate governing body of that profession or occupation of the failure to comply.

(5) An individual who fails to comply with subsection (1) is guilty of an offence.

(6) A client is not required to report abuse against himself or herself unless the client chooses to do so.

(7) If a client chooses to report abuse against himself or herself, the client must report the abuse to a complaints officer within the time period referred to in section 8(2).

Limitation period

8(1) A report of abuse made by an individual under section 7(1) must be made as soon as reasonably practicable.

(2) A report of abuse made by a client under section 7(7) must be made no later than 2 years from the date the alleged abuse occurred.

Form of report of abuse

9(1) A report of abuse made under section 7 must include the name and contact information of the complainant and reasonable particulars of the incident.

(2) A report of abuse may be made orally, in writing or in any other manner acceptable to the complaints officer.

Duties of persons who provide care or support services

10(1) Every service provider or individual employed by or engaged for services by a service provider who provides care or support services to a client has a duty

- (a) to take reasonable steps to protect the client from abuse while providing care or support services, and
- (b) to maintain a reasonable level of safety for the client.

(2) Every service provider and individual employed by or engaged for services by a service provider shall take all reasonable steps to provide for the immediate safety, security and well-being of a client in respect of whom a report of abuse is made and any other clients who may be at risk of abuse when the service provider is notified that a report of abuse has been made under this Act.

(3) Every service provider shall make the provisions of this Act available to its clients, volunteers and persons employed or engaged for services by the service provider.

(4) Every service provider shall require every successful applicant for employment, every new volunteer and every person to be engaged for services by the service provider to provide care or support services to undergo a criminal records check.

(5) A person who fails to comply with this section is guilty of an offence.

Duties of a complaints officer

11(1) On receipt of a report of abuse under section 7, a complaints officer shall acknowledge to the complainant receipt of the report of abuse in writing within 30 days and, where the complaints officer considers it appropriate, shall notify the service provider and the individual involved that a report of abuse has been made.

(2) Subject to subsection (3), a complaints officer shall review any report of abuse received under section 7 and decide whether an investigation of the report of abuse is necessary and may

- (a) make inquiries, and
- (b) take any other action the complaints officer considers appropriate in the circumstances.

(3) A complaints officer may refuse to review or may discontinue the review of a report of abuse if, in the complaints officer's opinion,

- (a) the report of abuse is frivolous, vexatious or made in bad faith,
 - (b) the report of abuse was made more than 2 years from the date the alleged abuse occurred, or
 - (c) having regard to all of the circumstances, no investigation is necessary.
- (4)** The complaints officer shall notify the complainant, and any other person as the complaints officer considers appropriate, in writing, of
- (a) the complaints officer's decision under subsection (3) and the reasons for the decision, and
 - (b) the right of the complainant to have the complaints officer's decision under subsection (3) reviewed by the Director in accordance with the regulations.
- (5)** If a complaints officer decides that an investigation of the report of abuse is necessary, the complaints officer shall
- (a) refer the report of abuse to an investigator, or
 - (b) in accordance with section 22, refer the report of abuse to a committee, body or person authorized under another enactment.
- (6)** The complaints officer shall notify the following persons of the complaints officer's decision under subsection (5):
- (a) the complainant;
 - (b) the client who is alleged to have been abused, if appropriate in the circumstances;
 - (c) the client's legal representative, if known;
 - (d) the individual involved or the individual's legal representative, if known;
 - (e) the client's service provider;
 - (f) any other person as the complaints officer considers appropriate.

(7) If a complaints officer reasonably believes that the subject-matter of a report of abuse could constitute

- (a) an offence under the *Criminal Code* (Canada), the complaints officer shall refer the report of abuse to a police service, or
- (b) an offence under an enactment of Alberta, the complaints officer shall refer the report of abuse to the Minister of Justice and Attorney General.

(8) The complaints officer shall notify the complainant and any other person as the complaints officer considers appropriate in writing of the complaints officer's referral under subsection (7) and the reasons for the referral.

Powers of an investigator

12(1) If a report of abuse is referred to an investigator by a complaints officer under section 11(5) or by the Director after a review referred to in section 11(4)(b), for the purpose of conducting an investigation an investigator may, subject to subsection (2), enter the premises of a service provider, with the permission of the person in charge of the premises, at any reasonable hour, and may

- (a) interview the client or any person who can provide any information relevant to the investigation,
- (b) access all records that could be relevant to the investigation that are under the custody or control of the service provider or any other person, including records containing personal information, health information or financial information, for the purpose of inspecting them, making copies of them or taking extracts from them,
- (c) require the production for examination of any equipment and temporarily remove the equipment for the purpose of examining or testing the equipment, and
- (d) photograph or otherwise record anything in the premises that the investigator considers would be of assistance.

(2) Before entering a private dwelling or a part of premises used as a private dwelling to carry out the powers described in subsection (1), an investigator shall

- (a) obtain the consent of the occupant or the legal representative of the occupant of the private dwelling or the part of the premises used as a private dwelling, or
- (b) obtain an order from the Court.

Application to Court

13(1) An investigator may apply to the Court for an order if

- (a) permission is refused or cannot be reasonably obtained under section 12(1),
- (b) the occupant or legal representative referred to in section 12(2)(a) refuses to permit the investigator to enter the private dwelling or the part of the premises used as a private dwelling,
- (c) after permitting the investigator to enter the premises under section 12(1) or the private dwelling or the part of the premises used as a private dwelling under section 12(2), the person in charge or the occupant or legal representative of the occupant, as the case may be, obstructs the investigator in the exercising of the investigator's powers described in section 12(1), or
- (d) the investigator is of the opinion that requesting permission to enter the premises from the person in charge under section 12(1), or consent to enter the private dwelling or the part of the premises used as a private dwelling from the occupant or legal representative of the occupant under section 12(2)(a), might compromise the purpose of the investigation.

(2) On being satisfied that there are reasonable grounds to believe that a client has been abused or is being abused, the Court may make an order

- (a) directing the person in charge to permit the investigator to enter the premises to carry out the powers referred to in section 12(1),
- (b) directing the occupant or legal representative of the occupant to permit the investigator to enter the private dwelling or the part of the premises used as a private

dwelling to carry out the powers referred to in section 12(1),

- (c) directing a person to produce to the investigator any records or other documents relevant to the investigation,
- (d) directing any peace officer to assist the investigator in enforcing the order, and
- (e) addressing any other matter as the Court considers appropriate for the purpose of carrying out the investigation.

(3) An application under subsection (1) may be made ex parte if the Court considers it appropriate.

Investigator's report

14(1) The investigator shall prepare a report for the Director on the progress of the investigation

- (a) within 30 days after the report of abuse is referred to the investigator, and
- (b) every 30 days afterwards until the investigation has been completed.

(2) After completing an investigation, the investigator shall prepare and submit a final report to the Director and state whether the report of abuse was founded or not founded and may make any recommendations that the investigator considers appropriate in connection with the matter, with reasons for the recommendations.

Director's decision

15(1) After reviewing a report submitted under section 14(2), the Director shall

- (a) make any decision the Director considers appropriate respecting the report of abuse, including steps or measures the service provider or the individual involved must take to prevent the abuse of clients, and in the decision may approve or reject the recommendations contained in the report,

- (b) take any other action the Director considers appropriate in the circumstances,
- (c) provide a copy of the decision, with reasons, to the complainant, the service provider, the client, the individual involved and any other person as the Director considers appropriate, and
- (d) notify the complainant, the service provider, the client and the individual involved of the right to appeal the decision.

(2) A service provider or an individual involved who fails to comply with the Director's decision is guilty of an offence.

Appeal

16 A decision of the Director under section 15 may be appealed to an appeal panel.

Appeal panel

17(1) A complainant, service provider, client or individual involved may appeal the Director's decision by serving the Minister with a notice of appeal within 15 days after being notified of the decision.

(2) The Minister shall, within 30 days after being served with the notice of appeal, appoint an appeal panel consisting of 3 individuals to hear the appeal.

(3) The Minister shall designate one of the members of the appeal panel as chair.

(4) Members of the appeal panel who are not employees of the Government may be paid remuneration, and may receive reasonable travelling and living expenses while away from their ordinary places of residence in the course of their duties as members of the appeal panel, at the rates prescribed by the Minister.

(5) The Minister may set the time within which the appeal panel is to hear an appeal and render a decision and the Minister may extend that time.

(6) An appeal panel that hears an appeal under this section may confirm, reverse or vary the Director's decision.

(7) A decision of the appeal panel is final.

(8) A service provider or an individual involved who fails to comply with a Director's decision confirmed or varied by an appeal panel is guilty of an offence.

Protection in respect of reporting abuse or assisting an investigation

18(1) No service provider or individual employed by or engaged for services by a service provider shall take adverse action against an individual because that individual is a complainant.

(2) No service provider or individual employed by or engaged for services by a service provider shall, because the client is a complainant or is alleged to have been abused, alter, interrupt, discontinue or threaten to alter, interrupt or discontinue care or support services to the client, or to the client's legal representative or the client's family members who also receive care or support services from the service provider.

(3) No service provider or individual employed by or engaged for services by a service provider shall take adverse action against an individual because that individual has complied with inquiries made by a complaints officer or has assisted an investigator in conducting an investigation.

(4) A person who contravenes this section is guilty of an offence.

Investigation by Minister

19(1) If, in the Minister's opinion,

- (a) a significant number of reports of abuse have been made about a service provider or a class of service providers, or
- (b) a report of serious abuse has been made about a service provider,

whether or not the report or reports of abuse have been dismissed, the Minister may, on the Minister's own initiative, designate an investigator to conduct an investigation with respect to the report or reports of abuse.

(2) An investigator designated under this section has the powers of an investigator under sections 12 and 13.

(3) The investigator shall report as required to the Minister.

(4) On completion of the investigation, the Minister may take any action the Minister considers appropriate, including issuing an order that directs the service provider, or a class of service providers, to take the steps or measures specified in the order within the time limits specified in the order.

(5) A service provider who fails to comply with the Minister's order is guilty of an offence.

Minister's powers

20 For the purposes of administering this Act, the Minister may

- (a) establish or promote programs respecting the prevention of abuse involving clients, or
- (b) establish advisory committees respecting the prevention of abuse involving clients.

Collection, use and disclosure of information

21(1) The Minister, the Director, a complaints officer, an investigator or an appeal panel

- (a) may collect personal information, health information and financial information for the purposes of reviewing a report of abuse or conducting an investigation with respect to a report of abuse, and
- (b) may use or disclose personal information, health information or financial information if the use or disclosure is necessary for the administration of this Act, and specifically,
 - (i) if the use or disclosure is necessary for the purposes of making an inquiry under section 11(2), conducting an investigation under section 12 or 19, making a decision under section 15 or conducting an appeal under section 17, or
 - (ii) if the disclosure is for the purposes of section 11(7).

(2) A custodian within the meaning of the *Health Information Act* may disclose health information to a complaints officer under

section 11, to an investigator under section 12 or 19 or to the Minister under section 19 for the purposes of an investigation under this Act.

(3) The Minister, the Director, a complaints officer, an investigator or an appeal panel may access, collect or obtain from any person personal information, health information or financial information about a client who is the subject of a report of abuse for the purposes of making an inquiry under section 11(2), conducting an investigation under section 12 or 19, making an application to the Court under section 13, making a decision under section 15 or conducting an appeal under section 17.

(4) A public body, a custodian or an organization may disclose personal information, health information or financial information about a client to a complaints officer for the purposes of responding to an inquiry under section 11(2), to an investigator for the purposes of an investigation under section 12 or 19, to the Director for the purposes of making a decision under section 15, to an appeal panel for the purposes of conducting an appeal under section 17 or to the Minister for the purposes of an investigation under section 19.

Referral to another body

22(1) A complaints officer may refer a report of abuse to a committee, body or person authorized under another enactment to investigate the report of abuse if the matter falls within the jurisdiction of that committee, body or person.

(2) When a report of abuse is referred under this section to a committee, body or person authorized under another enactment, that committee, body or person has the powers of an investigator under sections 12 and 13 in addition to any other powers, duties and responsibilities the committee, body or person has.

(3) After a committee, body or person authorized under another enactment has completed its investigation of a report of abuse, the committee, body or person shall provide a copy of the results of its investigation to the Director.

Liability

23 No action lies against the Minister, the Director, a complaints officer or an investigator or any person acting under the authority of the Minister, the Director, a complaints officer, an investigator

or a committee, body or person to whom a report of abuse is referred under section 22, or a member or former member of or person employed or engaged by the committee, body or person, for anything done or omitted to be done in good faith in exercising powers or authority or carrying out duties, responsibilities or functions under this Act.

Offence

24(1) An individual who makes a report of abuse under this Act

- (a) knowing it to be false, or
- (b) maliciously or without reasonable grounds for the belief,

is guilty of an offence and liable to a fine of not more than \$10 000.

(2) A person who is guilty of an offence under section 7(5), 10(5), 15(2), 17(8), 18(4) or 19(5) is liable

- (a) in the case of an individual, to a fine of not more than \$10 000, or
- (b) in the case of a service provider, to a fine of not more than \$100 000.

Prosecutions

25(1) A prosecution under section 7(5) may not be commenced more than one year after the date on which evidence of the offence first came to the attention of the complaints officer, an investigator or the Director.

(2) A prosecution under section 24(1) may not be commenced more than one year after the date the report of abuse is made.

(3) A prosecution under section 10(5), 15(2), 17(8), 18(4) or 19(5) may not be commenced more than one year after the date on which the offence was committed.

Lieutenant Governor in Council regulations

26 The Lieutenant Governor in Council may make regulations

- (a) designating a person or classes of persons as service providers under this Act;

- (b) prescribing, for the purposes of section 1(3)(e), circumstances in which an act or omission is not abuse;
- (c) prescribing enactments for the purposes of section 1(4)(c);
- (d) prescribing the professions and occupations to which section 7(4) applies.

Ministerial regulations

27 The Minister may make regulations

- (a) respecting the Director's review under section 11(4) of a decision made by a complaints officer;
- (b) respecting the contents of a notice of appeal under section 17;
- (c) respecting the collection, use and disclosure of information for the purposes of administering this Act;
- (d) defining terms used in this Act but not defined in this Act.

Transitional

28(1) In this section, "former Act" means the *Protection for Persons in Care Act*, RSA 2000 cP-29.

(2) Where an individual has reported an abuse under the former Act before this Act comes into force and a decision by the appropriate Minister has not been made by the time this Act comes into force, the reported abuse shall be dealt with under this Act.

Consequential amendment

29(1) Section 1(3)(d) is amended by renumbering subclause (i) as subclause (i.1) and by adding the following before subclause (i.1):

- (i) by a co-decision-maker or a specific decision maker under the *Adult Guardianship and Trusteeship Act*,

(2) This section comes into force on the coming into force of section 1(h) and (mm) of the *Adult Guardianship and Trusteeship Act*.

Repeal

30 The *Protection for Persons in Care Act*, RSA 2000 cP-29, is repealed.

Coming into force

31 This Act comes into force on Proclamation.

