

2012 Bill 208

First Session, 28th Legislature, 61 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 208

SENIORS' ADVOCATE ACT

MRS. TOWLE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 208

2012

SENIORS' ADVOCATE ACT

(Assented to _____, 2012)

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

Definitions

1 In this Act,

- (a) “action” means action as defined in the *Alberta Evidence Act*;
- (b) “Advocate” means the Seniors’ Advocate appointed under section 2(1);
- (c) “health information” means health information as defined in the *Health Information Act*;
- (d) “lodge accommodation” means lodge accommodation as defined in the *Alberta Housing Act*;
- (e) “long-term care” means medical or personal care provided to seniors in
 - (i) an auxiliary hospital as defined in the *Hospitals Act*,
or
 - (ii) a nursing home as defined in the *Nursing Homes Act*;
- (f) “personal information” means personal information as defined in the regulations;
- (g) “residential care” means medical or personal care provided to seniors and includes care provided to seniors in their own

residences, lodge accommodations, supportive living accommodations licensed under the *Supportive Living Accommodation Licensing Act*, or any type of assisted living facility;

- (h) “senior” means a person who is 65 years of age or older;
- (i) “serious injury”, in respect of a senior, means
 - (i) a life-threatening injury to the senior, or
 - (ii) an injury that may cause significant impairment of the senior’s health;
- (j) “service provider” means the operator of a facility that provides long-term care or residential care or, in the case of residential care provided to seniors in their own residences, the operator of the entity, or the individual if there is no entity, that provides that care;
- (k) “Standing Committee” means the Standing Committee on Legislative Offices.

Part 1

Office of the Seniors’ Advocate

Appointment of Seniors’ Advocate

2(1) The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint a Seniors’ Advocate to carry out the duties and functions set out in this Act.

(2) The Advocate is an officer of the Legislature.

(3) The Advocate may not be a member of the Legislative Assembly.

Term of office

3(1) Except as provided for in section 4, the Advocate holds office for a term not exceeding 5 years.

(2) A person holding office as Advocate 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 Advocate.

Resignation, removal or suspension of Advocate

4(1) The Advocate may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from Alberta, by notifying the Clerk of the Legislative Assembly.

(2) The Lieutenant Governor in Council must remove the Advocate from office or suspend the Advocate for cause or incapacity on the recommendation of the Legislative Assembly.

(3) If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the Advocate for cause or incapacity on the recommendation of the Standing Committee.

Acting Advocate

5(1) The Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an acting Advocate if

- (a) the office of Advocate is or becomes vacant when the Legislative Assembly is not sitting,
- (b) the Advocate is suspended when the Legislative Assembly is not sitting, or
- (c) the Advocate is removed or suspended or the office of the Advocate becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Assembly under section 2 before the end of the sitting.

(2) The Lieutenant Governor in Council may appoint an acting Advocate if the Advocate is temporarily absent because of illness or for another reason.

(3) An acting Advocate holds office until

- (a) a person is appointed as Advocate under section 2(1),
- (b) the suspension of the Advocate ends, or
- (c) the Advocate returns to office after a temporary absence.

Remuneration

6 The Advocate must be remunerated as determined by the Standing Committee, and it must review that remuneration at least once a year.

Oath

- 7(1)** Before beginning the duties and functions of office, the Advocate must take an oath to faithfully and impartially perform the duties and functions of the office and not to disclose any information received by the Office of the Seniors' Advocate under this Act except as provided in this Act.
- (2)** The oath must be administered by the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly.

Office of the Seniors' Advocate

8(1) There may be a part of the public service of Alberta called the Office of the Seniors' Advocate consisting of the Advocate and those persons employed pursuant to the *Public Service Act* that are necessary to assist the Advocate in carrying out the Advocate's duties and functions under this or any other enactment.

(2) The Advocate may engage the services of any persons necessary to assist the Advocate in carrying out the Advocate's duties and functions.

(3) On the recommendation of the Advocate, the Standing Committee may order that

- (a) any regulation, order or directive made under the *Financial Administration Act*, or
- (b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*,

does not apply to, or is varied in respect of, the Office of the Seniors' Advocate or any particular employee or class of employees in that Office.

(4) An order made under subsection (3)(a) operates despite section 2 of the *Financial Administration Act*.

(5) The *Regulations Act* does not apply to orders made under subsection (3).

(6) The chair of the Standing Committee must lay a copy of each order made under subsection (3) before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the start of the next sitting.

(7) Every person employed or engaged under subsection (1) or (2) must, before beginning to perform duties under this Act, take an oath, to be administered by the Advocate, not to disclose any information received by that person under this Act except as provided in this Act.

Part 2

Advocate's Role, Functions and General Powers

Role and functions of Advocate

9(1) The role of the Advocate is to represent the rights, interests and viewpoints of seniors.

(2) In carrying out the role of the Advocate under subsection (1), the Advocate may

- (a) communicate and visit with a senior, or with a guardian or other person who represents a senior;
- (b) on the Advocate's own initiative, or at the request of a senior, assist in appealing or reviewing a decision relating to
 - (i) long-term care or residential care,
 - (ii) the representation of a senior under the *Adult Guardianship and Trusteeship Act*, or
 - (iii) any other matter prescribed by regulation;
- (c) appoint, or cause to be appointed, lawyers to represent seniors with respect to any matter or proceeding prescribed by regulation;
- (d) investigate systemic issues arising from a serious injury to or the death other than from natural causes of a senior who was receiving long-term care or residential care at the time of the injury or death if, in the opinion of the Advocate, the investigation is warranted or in the public interest;
- (e) participate in processes in which decisions are made about seniors;
- (f) promote the rights, interests and well-being of seniors through public education;

- (g) undertake or collaborate in research related to improving long-term care or residential care or addressing the needs of seniors receiving that care;
- (h) provide information and advice to the Government with respect to any matter relating to the rights, interests and well-being of seniors;
- (i) perform any other function prescribed in the regulations.

Delegation by Advocate

10(1) The Advocate may delegate to any person any power, duty or function of the Advocate under this Act except the power

- (a) to delegate under this section, and
- (b) to make a report under this Act.

(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the Advocate considers appropriate.

No power to act as legal counsel

11 The Advocate may not act as legal counsel in person or by agent.

Duty to report

12 When a senior is seriously injured or dies other than from natural causes while receiving long-term care or residential care, the service provider shall report the incident to the Advocate as soon as practicable.

Right to information

13 The Advocate, subject to the regulations, is entitled to any information, including personal information and health information, necessary to enable the Advocate to exercise the Advocate's powers or perform the Advocate's duties or functions under this Act.

Powers relating to investigations

14 In conducting an investigation under section 9(2)(d), the Advocate has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*.

Report after investigation

15(1) Where the Advocate conducts an investigation under section 9(2)(d), the Advocate must, after completing the investigation, make a report

- (a) containing recommendations for any service provider or other person as the Advocate considers appropriate, and
- (b) addressing any other matters the Advocate considers appropriate.

(2) The findings of the Advocate shall not contain any findings of legal responsibility or any conclusions of law.

(3) A report made under subsection (1) must not disclose the name of, or any identifying information about, the senior to whom the investigation relates or a guardian or other person who represents the senior.

(4) The Advocate must provide a copy of a report made under subsection (1) to a service provider or other person that is directly or indirectly a subject of the investigation.

(5) The Advocate must make a report made under subsection (1) available to the public at a time and in a form and manner that the Advocate considers appropriate.

Part 3 Administrative and General Provisions

Financing of operations

16(1) The Advocate must submit to the Standing Committee in respect of each fiscal year an estimate of the public money that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Seniors' Advocate in that fiscal year.

(2) The Standing Committee must review each estimate submitted pursuant to subsection (1) and, on the completion of the review, the chair of the Committee must transmit the estimate to the Minister of Finance for presentation to the Legislative Assembly.

(3) If at any time that the Legislative Assembly is not in session the Standing Committee, or if there is no Standing Committee, the Minister of Finance,

- (a) reports that the Advocate has certified that, in the public interest, an expenditure of public money is urgently required in respect of any matter pertaining to the Office of the Seniors' Advocate, and
- (b) reports that either
 - (i) there is no supply vote under which an expenditure with respect to that matter may be made, or
 - (ii) there is a supply vote under which an expenditure with respect to that matter may be made but the authority available under the supply vote is insufficient,

the Lieutenant Governor in Council may order a special warrant to be prepared to be signed by the Lieutenant Governor authorizing the expenditure of the amount estimated to be required.

(4) When the Legislative Assembly is adjourned for a period of more than 14 days, for the purposes of subsection (3), the Assembly is deemed not to be in session during the period of the adjournment.

(5) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(i), the authority to spend the amount of money specified in the special warrant for the purpose specified in the special warrant is deemed to be a supply vote for the purposes of the *Financial Administration Act* for the fiscal year in which the special warrant is signed.

(6) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(ii), the authority to spend the amount of money specified in the special warrant is, for the purposes of the *Financial Administration Act*, added to and deemed to be part of the supply vote to which the report relates.

(7) When a special warrant has been prepared and signed pursuant to this section, the amounts authorized by it are deemed to be included in, and not to be in addition to, the amounts authorized by the Act, not being an Act for interim supply, enacted next after it for granting to Her Majesty sums of money to defray certain expenditures of the Public Service of Alberta.

Advocate not compellable as witness

17 The Advocate and a person employed or engaged under section 8(1) or (2) must not give or be compelled to give evidence in an action in respect of any matter coming to their knowledge in the

exercise of powers and the performance of duties and functions under this Act, except

- (a) to enforce the Advocate's powers of investigation,
- (b) to enforce compliance with this Act, or
- (c) in a prosecution for perjury.

Communications privileged

18 The following information, records and reports are privileged and not admissible in evidence in an action, except in a prosecution for perjury:

- (a) anything said, any information supplied or any record produced during an investigation under section 9(2)(d);
- (b) any report made under section 15(1).

Protection of Advocate and others

19(1) Subject to subsection (2), no action lies or may be commenced or maintained against

- (a) the Advocate, or
- (b) a person employed or engaged under section 8(1) or (2)

in respect of anything done or omitted to be done in the exercise or intended exercise of any power under this Act or in the performance or intended performance of any duty or function under this Act.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted to be done by that person in bad faith.

Communications by senior

20(1) All information provided by a senior to the Advocate in confidence and all documents and records created as a result of confidential communications between a senior and the Advocate are the privileged information, documents and records of the senior and are not admissible in evidence in any action without the consent of the senior.

(2) The Advocate is not required to report abuse or to disclose the information, documents or records described in subsection (1) under the *Protection for Persons in Care Act*.

Annual report

21(1) The Advocate must report annually to the Speaker of the Legislative Assembly on the work of the Office of the Seniors' Advocate.

(2) The Speaker must lay each annual report before the Legislative Assembly as soon as possible.

Regulations

22 The Lieutenant Governor in Council may make regulations

- (a) defining personal information for the purposes of section 1(f);
- (b) prescribing other functions of the Advocate;
- (c) prescribing matters for the purposes of section 9(2)(b)(iii);
- (d) prescribing matters or proceedings for the purposes of section 9(2)(c);
- (e) respecting the collection, use and disclosure of information under section 13;
- (f) defining any word or expression used but not defined in this Act;
- (g) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary for carrying out the intent of this Act.

Review of Act

23 A committee of the Legislative Assembly must begin a comprehensive review of this Act within 4 years after this Act comes into force and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

Record of Debate

[illegible]