

2021 Bill 215

Second Session, 30th Legislature, 70 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 215

SENIORS ADVOCATE ACT

MS SIGURDSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 215

2021

SENIORS ADVOCATE ACT

(Assented to _____, 2021)

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

Part 1 **Interpretation**

Definitions

1 In this Act,

- (a) “action” has the same meaning as in the *Alberta Evidence Act*;
- (b) “Advocate” means either of the following:
 - (i) the individual appointed under section 9(1) as the Seniors Advocate;
 - (ii) an acting Advocate appointed under section 13;
- (c) “health information” has the same meaning as in the *Health Information Act*;
- (d) “lodge accommodation” has the same meaning as in the *Alberta Housing Act*;
- (e) “long-term care service” means a service provided to an individual in
 - (i) an auxiliary hospital as defined in the *Hospitals Act*, or

- (ii) a nursing home as defined in the *Nursing Homes Act*;
- (f) “Minister” means the Minister designated under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (g) “non-residential care service” means a service provided to an individual outside their residence in relation to any of the following:
 - (i) health care and supports;
 - (ii) housing and home supports;
 - (iii) social supports;
 - (iv) income or financial supports;
 - (v) transportation;
 - (vi) personal care;
- (h) “Office of the Seniors Advocate” means the Office of the Seniors Advocate established under section 8;
- (i) “personal information” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;
- (j) “prescribe” means to prescribe by regulation;
- (k) “residential care service” means
 - (i) a long-term care service,
 - (ii) lodge accommodation,
 - (iii) supportive living accommodation, or
 - (iv) a care or support service provided to an individual, in the individual’s own residence, in respect to their physical or mental health;
- (l) “senior” means an individual who is 65 years of age or older;
- (m) “seniors service”, in respect of a senior, means any of the following that are provided to the senior:
 - (i) a residential care service;
 - (ii) a non-residential care service;

- (n) “supporting living accommodation” means a supportive living accommodation licensed under the *Supportive Living Accommodation Licensing Act*;
- (o) “Standing Committee” means the Standing Committee on Legislative Offices.

Part 2

Seniors Advocate’s Responsibilities, Duties and Powers

Responsibilities of Advocate

2(1) The Advocate is responsible for the following:

- (a) monitoring and collecting, including through interviews and surveys, information respecting seniors services, and analyzing the availability, affordability, effectiveness, responsiveness and relevance of those services to seniors;
- (b) providing recommendations, based on the information and analysis referred to in clause (a), to the Minister, Government, public agencies and communities respecting access to and the provision of seniors services;
- (c) assisting seniors in accessing seniors services by providing information about, and connecting seniors to, Government, public agency and community support services;
- (d) assisting seniors in having their complaints about seniors services heard in an appropriate forum or by the relevant decision-maker;
- (e) reviewing systemic deficiencies in the provision of seniors services as provided for under this Act;
- (f) reporting to the public on systemic issues relating to the welfare of seniors;
- (g) promoting the rights, interests and well-being of seniors through public education.

(2) In carrying out the responsibilities referred to in subsection (1), the Advocate may do any of the following:

- (a) subject to the regulations, if any, collect, use or disclose any information, including personal information or health

information, if necessary for the exercise of the Advocate's powers or performance of duties under this Act;

- (b) subject to subsection (3) and on the Advocate's own motion or at the request of a senior, assist a senior, or a guardian or other person who represents a senior, in appealing or reviewing a decision relating to
 - (i) the provision of a seniors service, or
 - (ii) the representation of the senior in respect of any matter under the *Adult Guardianship and Trusteeship Act*;
- (c) appoint, or cause to be appointed, a lawyer to represent a senior with respect to a matter referred to in clause (b);
- (d) communicate and meet with the senior in private and without interference by another person;
- (e) exercise a prescribed power.

(3) In carrying out their responsibilities under this Act, the Advocate must not act, or be considered to be acting, as legal counsel for a senior.

Review of systemic issues

3 The Advocate may, on their own motion, conduct a review of a matter if the Advocate

- (a) has reasonable grounds to believe that the matter relates to a deficiency of a systemic nature in the provision of a seniors service, and
- (b) is of the opinion that the review of the systemic deficiency is in the public interest.

Powers relating to review

4 In conducting a review under section 3, the Advocate has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*.

Report after review

5(1) On conclusion of a review under section 3, the Advocate must complete a report setting out the following:

- (a) subject to subsection (2) and section 6, the findings of the review;
- (b) the Advocate's recommendations, if any;

- (c) any other matter the Advocate considers appropriate.
- (2) The report must not disclose the name of, or any identifying information about, an individual.
- (3) The Advocate must within 30 days of completing the report
 - (a) make publicly available a copy of the report, and
 - (b) provide a copy of the report to the Speaker of the Legislative Assembly.
- (4) On receiving a copy of the report, the Speaker must, as soon as practicable, lay a copy of the report before the Legislative Assembly.

No findings in law

6 A review referred to in section 3 and a report referred to in section 5 must not include a finding of law.

Quarterly reports to Minister

7 At least once every 3 months, the Advocate and Minister must meet for the purpose of discussing any matter for which the Advocate is responsible and as the Advocate considers appropriate.

Part 3

Appointment and Office of the Seniors Advocate

Office of the Seniors Advocate

8 The Office of the Seniors Advocate is established.

Appointment of Seniors Advocate

9(1) On the Legislative Assembly's recommendation that an individual be appointed as the Seniors Advocate, the Lieutenant Governor in Council must appoint that individual as the Seniors Advocate for a term not exceeding 5 years.

- (2) The Advocate is an officer of the Legislature.
- (3) An individual who is a Member of the Legislative Assembly is not eligible for appointment as the Advocate.
- (4) An individual who has been appointed as the Advocate may be re-appointed as the Advocate.

(5) The Advocate continues in the role of the Advocate on the day immediately following the day on which the Advocate's term expires until one of the following occurs:

- (a) that individual is re-appointed as the Advocate;
- (b) a successor is appointed as the Advocate;
- (c) a period of 6 months, commencing on the day immediately following the day on which the Advocate's term expires, lapses.

Remuneration

10 The Standing Committee must

- (a) determine the Advocate's remuneration, and
- (b) review that remuneration at least once a year.

Resignation of Advocate

11(1) The Advocate may, at any time, resign from their position by providing written notice to the Speaker or Clerk of the Legislative Assembly.

(2) On receiving the Advocate's resignation, the Speaker or Clerk, as the case may be, must immediately advise the Lieutenant Governor in Council of the Advocate's resignation.

Removal or suspension of Advocate

12(1) If two-thirds of the Members of the Legislative Assembly recommend the removal of an individual who is appointed as the Advocate from that position, the Lieutenant Governor in Council must, as soon as practicable, take the necessary steps to revoke that individual's appointment as the Advocate.

(2) The Lieutenant Governor in Council may, on the recommendation of the Standing Committee, suspend the Advocate for cause or incapacity.

(3) A suspension under subsection (2) terminates on

- (a) the last day of the sitting of the Legislative Assembly during which the suspension took place, or
- (b) if the Legislative Assembly is not sitting at the time of the suspension, the last day of the sitting that immediately follows the suspension.

Acting Advocate

13(1) Subject to subsection (2), the Lieutenant Governor in Council may appoint an individual as an acting Advocate if

- (a) no individual holds the position of the Advocate,
- (b) the Advocate is suspended, or
- (c) the Advocate is temporarily unable to perform their responsibilities under this Act due to illness.

(2) An individual is eligible for appointment as an acting Advocate only if the Standing Committee recommends that individual for the appointment.

(3) An individual appointed as an acting Advocate holds that position until

- (a) an individual is appointed as the Advocate under section 9(1),
- (b) in the case of a suspension of the Advocate, the suspension ends, or
- (c) the Advocate returns to the position after a temporary inability to perform their responsibilities under this Act.

Oath of Advocate

14(1) Before performing duties or exercising powers of the Advocate under this Act, the Advocate must take an oath to faithfully and impartially perform those duties and powers and to not disclose, except as provided in this Act, any information received by the Advocate under this Act.

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

Office of the Seniors Advocate

15(1) The Office of the Seniors Advocate is part of the public service of Alberta and consists of the following:

- (a) the Advocate;
- (b) those individuals employed under the *Public Service Act* to assist the Advocate in carrying out their responsibilities under this Act.

(2) Before performing duties or exercising powers under this Act, each delegate and individual employed by the Advocate must take an oath,

administered by the Advocate, to not disclose, except as provided in this Act, any information received by the delegate or individual under this Act.

(3) The Office of the Seniors Advocate has all the powers of a natural person and may, in that capacity, engage any service necessary to support the carrying out of the Advocate's powers and duties under this Act.

(4) On the recommendation of the Advocate, the Standing Committee may order that any of the following do not apply, or apply with modifications, to the Advocate, the Office of the Seniors Advocate or any particular employee or class of employees of that office:

- (a) despite section 2 of the *Financial Administration Act*, a regulation, order or directive made under that Act;
- (b) a regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*;
- (c) despite the *Public Sector Compensation Transparency Act*, a regulation, order, determination, direction or other decision under that Act.

(5) *The Regulations Act* does not apply to orders made under subsection (4).

(6) On the making of an order under subsection (4), the chair of the Standing Committee must lay a copy of the order before the Legislative Assembly as follows:

- (a) if the Legislative Assembly is sitting at the time the order is made, as soon as practicable;
- (b) if the Legislative Assembly is not sitting at the time the order is made, within 15 days after the first day of the sitting that immediately follows the day on which the order is made.

Delegation of power or duty

16(1) The Advocate may delegate to an individual a power or duty of the Advocate under this Act except the power to delegate under this section.

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

Financing of operations

17(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 the estimate submitted under 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) At any time that the Legislative Assembly is not in session, the Standing Committee, or if there is no Standing Committee the Lieutenant Governor in Council, may order a special warrant to be issued authorizing an expenditure in respect of any matter pertaining to the Office of the Seniors Advocate if the Minister of Finance reports the following to the Standing Committee or Lieutenant Governor in Council, as the case may be:

(a) that the Advocate has certified that the expenditure of public money is urgently required and is in the public interest;

(b) that

(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.

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

(5) If a special warrant is issued 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 considered 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 issued 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 considered to be part of the supply vote to which the report relates.

(7) If a special warrant is issued pursuant to this section, the amount authorized by the warrant is considered to be included in the amount authorized by the Act, other than an Act for interim supply, next enacted after the warrant that grants to Her Majesty sums of money to defray certain expenditures of the public service of Alberta.

Communications privileged

18 Except in the case of a prosecution for perjury, anything said, any information supplied or any record produced during a review under section 3 is not admissible in evidence in an action.

Restricted authority to disclose information

19(1) All information provided by a senior, or an agent of the 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, without the consent of the senior, admissible in evidence in an action.

(2) The Advocate is not required under the *Protection for Persons in Care Act* to

- (a) report abuse discovered as a result of information or a document or record having been provided to the Advocate in relation to the Advocate's duties and powers under this Act, or
- (b) disclose the information, document or record in accordance with a requirement to do so under that Act.

Advocate, delegates not compellable as witness

20 The Advocate, a delegate of the Advocate or any other individual acting under the direction of the Advocate is not compellable as a witness in an action in respect of any matter of which the Advocate, delegate or other individual becomes aware as a result of performing a duty or a power under this Act.

Advocate, delegates protect from liability

21 No action may be commenced or maintained against the Advocate, a delegate of the Advocate or an individual acting under the direction of the Advocate in respect of anything done or omitted to be done in good faith

- (a) in the performance, or intended performance, of a duty under this Act, or
- (b) in the exercise, or intended exercise, of a power under this Act.

Annual report

22(1) As soon as possible after the end of each year, the Advocate must submit to the Speaker of the Legislative Assembly a report summarizing the work of the Office of the Seniors Advocate in respect of that year.

(2) On receiving a report under subsection (1), the Speaker must, as soon as practicable, lay the report before the Legislative Assembly.

Regulations

23 The Lieutenant Governor in Council may make regulations

- (a) respecting the collection, use and disclosure of information under section 2(2)(a),
- (b) prescribing a power for the purpose of section 2(2)(e), and
- (c) defining any word or expression used but not defined in this Act.

Review of Act by Standing Committee

24 The Standing Committee must

- (a) commence a comprehensive review of this Act within 4 years of the day on which the Act comes into force, and
- (b) within 1 year following the day on which the Standing Committee commences the review, submit a report to the Legislative Assembly that includes the Standing Committee's recommendations, if any, for amendments to the Act.

