

Adult Protection Act

CHAPTER 2 OF THE REVISED STATUTES, 1989

as amended by

2014, c. 27, s. 7



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amended 2014, c. 27, s. 7

**An Act to Provide for Protection
of Adults from Abuse and Neglect**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Adult Protection Act*. R.S., c. 2, s. 1.

Purpose of Act

2 The purpose of this Act is to provide a means whereby adults who lack the ability to care and fend adequately for themselves can be protected from abuse and neglect by providing them with access to services which will enhance their ability to care and fend for themselves or which will protect them from abuse or neglect. R.S., c. 2, s. 2.

Interpretation

3 In this Act,

- (a) "adult" means a person who is or is apparently sixteen years of age or older;
- (b) "adult in need of protection" means an adult who, in the premises where he resides,

(i) is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting himself therefrom by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom, or

(ii) is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his adequate care and attention;

(c) "Co-ordinator" means the Co-ordinator of Adult Protection Services appointed pursuant to this Act;

(d) "court" means the Family Court;

(e) "Minister" means the Minister of Community Services;

(f) "prescribed" means prescribed by the regulations. R.S., c. 2, s. 3.

Administration of Act and appointment of Co-ordinator

4 (1) The Minister is charged with the general administration of this Act and may from time to time designate in writing the Co-ordinator or any other person to have, perform and exercise any of the powers, privileges, duties and functions of the Minister or the Co-ordinator under this Act, and shall, when so designating, specify the powers, privileges, duties and functions to be had, performed and exercised by the person so designated.

(2) Where a designation is made pursuant to subsection (1) and the person designated signs or executes a document pursuant to the designation, he shall refer to the name of his office together with the words "Authorized pursuant to Section 4 of the *Adult Protection Act*" and where a document contains such reference, the document

(a) shall be received in evidence without further proof of the authority of the person who signs or executes the same; and

(b) may be relied upon by the person to whom the document is directed or given and by all other persons as an effective exercise of the power or function to which the document relates.

(3) A Co-ordinator of Adult Protection Services may be appointed in accordance with the *Civil Service Act*. R.S., c. 2, s. 4.

Duty to report information

5 (1) Every person who has information, whether or not it is confidential or privileged, indicating that an adult is in need of protection shall report that information to the Minister.

(2) No action lies against a person who gives information under subsection (1) unless the giving of the information is done maliciously or without reasonable and probable cause. R.S., c. 2, s. 5.

Inquiry and assessment by Minister

6 Where the Minister receives a report that a person is an adult in need of protection, he shall

- (a) make inquiries with respect to the matter; and
- (b) if he finds there are reasonable and probable grounds to believe the adult is in need of protection, cause an assessment to be made,

and the Minister may, if he deems it advisable, request a qualified medical practitioner to assess the adult, the care and attention the adult is receiving and whether the adult has been abused. R.S., c. 2, s. 6.

Assistance by Minister

7 Where, after an assessment, the Minister is satisfied that a person is an adult in need of protection, the Minister shall assist the person, if the person is willing to accept the assistance, in obtaining services which will enhance the ability of the person to care and fend adequately for himself or will protect the person from abuse or neglect. R.S., c. 2, s. 7.

Order for entry

8 (1) In this Section, "court" includes a judge of the provincial court.

(2) Where the adult who is being assessed refuses to consent to the assessment or a member of the family of the adult or any person having care or control of the adult interferes with or obstructs the assessment in any way, the Minister may apply to the court for an order authorizing the entry into any building or place by a peace officer, the Minister, a qualified medical practitioner or any person named in the order for the purpose of making the assessment, and where

- (a) the Minister has given at least four days notice of the hearing to the adult or the person having care or control of the adult; or
- (b) the Minister has applied *ex parte* and the court is satisfied there are reasonable and probable grounds to believe that the person who is being assessed is in danger,

the court may grant the order after making due inquiry and being satisfied that there are reasonable and probable grounds to believe that the person who is being assessed is an adult in need of protection. R.S., c. 2, s. 8.

Application for court order

9 (1) Where on the basis of an assessment made pursuant to this Act the Minister is satisfied that there are reasonable and probable grounds to

believe a person is an adult in need of protection, he may apply to a court for an order declaring the person to be an adult in need of protection and, where applicable, a protective intervention order.

(2) The Minister shall give at least ten days notice of the application in the prescribed form to the person in respect of whom the application is made or some person having custody or control of that person and, where applicable, the person against whom a protective intervention order may be made.

(3) Where the court finds, upon the hearing of the application, that a person is an adult in need of protection and either

(a) is not mentally competent to decide whether or not to accept the assistance of the Minister; or

(b) is refusing the assistance by reason of duress,

the court shall so declare and may, where it appears to the court to be in the best interest of that person,

(c) make an order authorizing the Minister to provide the adult with services, including placement in a facility approved by the Minister, which will enhance the ability of the adult to care and fend adequately for himself or which will protect the adult from abuse or neglect;

(d) make a protective intervention order directed to any person who, in the opinion of the court, is a source of danger to the adult in need of protection

(i) requiring that person to leave the premises where the adult in need of protection resides unless that person is the owner or lessee of the premises,

(ii) prohibiting or limiting that person from contact or association with the adult in need of protection,

(iii) requiring that person to pay maintenance for the adult in need of protection in the same manner and to the same extent as that person could be required to pay pursuant to the *Family Maintenance Act*.

(4) Where a court makes an order pursuant to clause (c) or (d) of subsection (3), it may advise the Public Trustee that there appears to be no guardian to act on behalf of the adult in need of protection or that it appears that there is a guardian or a person acting pursuant to a power of attorney who is neglecting or dealing with the estate contrary to the best interests of the adult in need of protection.

(5) An order made pursuant to subsection (3) expires six months after it is made.

(6) An application to vary, renew or terminate an order made pursuant to subsection (3) may be made by the Minister, the adult in need of protection or an interested person on his behalf, or a person named in a protective intervention order upon notice of at least ten days to the parties affected which notice may not be given in respect of a protective intervention order earlier than three months after the date of the order.

(7) An order made pursuant to subsection (3) may be varied, renewed or terminated by the court where the court is satisfied that it is in the best interests of the adult in need of protection.

(8) A renewal order expires six months after it is made.

(9) The determination of all matters by a court pursuant to this Section shall be made on the balance of probabilities.

(10) An order made pursuant to this Section may be appealed in accordance with the *Summary Proceedings Act* and on appeal the order may be confirmed, with or without modification, terminated or remitted with direction to the court appealed from, or another order authorized by this Act may be substituted. R.S., c. 2, s. 9.

Removal for protection

10 (1) Where on the basis of an assessment made pursuant to this Act the Minister is satisfied that there are reasonable and probable grounds to believe that

- (a) the life of a person is in danger;
- (b) the person is an adult in need of protection; and
- (c) the person is not mentally competent to decide whether or not to accept the assistance of the Minister or is refusing the assistance by reason of duress,

the Minister may authorize the immediate removal of the person to such place as the Minister considers fit and proper for the protection of the person and the preservation of his life, and a person so authorized may take reasonable measures to remove the person whose life is in danger.

(2) Within five days after a person is removed pursuant to subsection (1), the Minister shall apply to the court for an order declaring that the person is an adult in need of protection unless the person is sooner returned.

(3) Prior to the hearing of an application pursuant to subsection (2), the Minister shall give notice of the application in the prescribed form to the person in respect of whom the application is made or some person having custody or control of that person.

(4) The court shall proceed forthwith to hear the application of the Minister.

- (5) Upon the completion of the hearing, the court may
- (a) dismiss the application and direct the return of the person removed; or
 - (b) make an order in accordance with subsection (3) of Section 9.

(6) Subsections (4) to (10) of Section 9 apply *mutatis mutandis* to an order made pursuant to this Section. R.S., c. 2, s. 10.

Costs

11 Costs may be awarded against the Minister in the discretion of the court dismissing an application by the Minister pursuant to this Act and the amount shall be determined in accordance with the rules of the court. R.S., c. 2, s. 11.

Welfare of adult is paramount consideration

12 In any proceeding taken pursuant to this Act the court or judge shall apply the principle that the welfare of the adult in need of protection is the paramount consideration. R.S., c. 2, s. 12.

Role of Public Trustee on removal of adult

13 (1) Where an adult is removed from the premises where he resides to another place pursuant to this Act and it appears to the Minister that there is an immediate danger of loss of, or damage to, any property of his by reason of his temporary or permanent inability to deal with the property, and that no other suitable arrangements have been made or are being made for the purpose, the Minister shall inform the Public Trustee.

(2) Subject to Section 14A of the *Public Trustee Act*, where the Public Trustee receives information pursuant to subsection (1) and where he is of the opinion that his intervention is appropriate, the Public Trustee may assume immediate management of the estate of that person and may take possession of the property of that person and shall safely keep, preserve and protect the same until

- (a) the Public Trustee determines that it is no longer necessary to manage the estate of the person;
- (b) the Supreme Court or a judge thereof has appointed the Public Trustee or another person to be guardian of the estate of the adult in need of protection;
- (c) a court finds that the person is not an adult in need of protection; or
- (d) the order that a person is an adult in need of protection expires, terminates or is rescinded. R.S., c. 2, s. 13; 2014, c. 27, s. 7.

Other remedy or right of action unaffected

14 (1) Nothing in this Act limits a remedy available or affects an action that may be taken pursuant to another enactment.

(2) Nothing in this Act limits or affects the responsibility of a municipal unit pursuant to the provisions of the *Social Assistance Act* or the obligation of a person to provide maintenance. R.S., c. 2, s. 14.

Assistance by peace officer

15 A peace officer shall assist with the execution of an order issued pursuant to this Act or with the conveyance of an adult in need of protection to a place directed in accordance with this Act when requested to do so by a person acting for the Minister or pursuant to an order of the court. R.S., c. 2, s. 15.

Failure to report information is offence

16 (1) Every person who has information, whether or not it is confidential or privileged, indicating that an adult is in need of protection and who fails to report that information to the Minister is guilty of an offence under this Act.

(2) A prosecution for an offence referred to in this Section shall be commenced within one year after the day on which the offence was committed and not thereafter. R.S., c. 2, s. 16.

Contravention of Act or order

17 Every person who violates this Act or a protective intervention order is guilty of an offence punishable on summary conviction and is liable to a fine of not more than one thousand dollars or to imprisonment for not more than one year, or both. R.S., c. 2, s. 17.

Jurisdiction of Family Court

18 The Family Court has exclusive original jurisdiction over offences against this Act. R.S., c. 2, s. 18.

Regulations

- 19 (1)** The Governor in Council may make regulations
- (a) respecting the provision of services for adults in need of protection;
 - (b) respecting the procedure for an assessment pursuant to this Act;
 - (c) respecting forms to be used pursuant to this Act;
 - (d) respecting the contents and service of documents to be used pursuant to this Act;
 - (e) defining any word or expression used in this Act and not defined herein;

(f) respecting any matter necessary or advisable to carry out effectively the intent and purposes of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 2, s. 19.
