



## **PLEASE NOTE**

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the [Table of Public Acts](#).

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## CHAPTER A-5

### ADULT PROTECTION ACT

| 1. In this Act  | Interpretation        |
|---|-----------------------|
| (a) “abuse” means offensive mistreatment, whether physical, sexual, mental, emotional, material or any combination thereof, that causes or is reasonably likely to cause the victim severe physical or psychological harm or significant material loss to his estate;   | abuse                 |
| (b) “adult” means a person who has attained the age of majority;  | adult                 |
| (c) “assessment” means an assessment of a person's condition, circumstances and needs as described in section 6;  | assessment            |
| (d) “assistance” means any service or arrangement that may be provided, on a voluntarily received basis, by the Minister in order to enhance the ability of a person in need of assistance to fend for himself or protect himself against abuse or neglect;   | assistance            |
| (e) “case plan” means a plan of proposed assistance or protective action made in accordance with section 8;   | case plan             |
| (f) “court” means the Family Section of the Supreme Court;  | court                 |
| (g) “guardian” means a guardian of the person or of the estate or of both;  | guardian              |
| (h) “in need of assistance” in relation to a person, means requiring assistance because of a serious risk of falling into need of protection;   | in need of assistance |
| (i) “in need of protection” in relation to a person, means requiring legally authorized protective intervention in order to preserve essential security and well-being, the necessity for which arises because, owing to physical or mental infirmity or disability or other incapacity to remedy the situation himself, the person in need, being an adult, continually or repeatedly<br>(i) is a victim of abuse or neglect by, or otherwise put in danger by the behaviour or way of life of, someone having recognized supervisory responsibility for the person's well-being,<br>(ii) is incapable of fending for himself and is unable to make provision for necessary care, aid or attention, or<br>(iii) refuses, delays or fails to arrange for or comply with necessary care, aid or attention; | in need of protection |
| (j) “Minister” means the Minister of Health;  | Minister              |

|                            |  |
|----------------------------|--|
| neglect                    | (k) “neglect” means a lack of or failure to provide necessary care, aid, guidance or attention which causes or is reasonably likely to cause the victim severe physical or psychological harm or significant material loss to his estate;  |
| Official Guardian          | (l) “Official Guardian” means the person appointed as the Official Guardian pursuant to the section 23 of the <i>Supreme Court Act</i> R.S.P.E.I. 1988, Cap. S-10;   |
| Public Trustee             | (m) repealed by 1994,c.52,s.79;  |
| protective intervention    | (n) “protective intervention” means an intervention, on the authority of a court order under this Act, to assist or protect a person found to be in need of assistance or protection;  |
| Public Trustee             | (n.1) “Public Trustee” means the person appointed as Public Trustee under the <i>Public Trustee Act</i> R.S.P.E.I. 1988, Cap. P-32.2;  |
| supervisory responsibility | (o) “supervisory responsibility” means a duty, whether legal, contractual or otherwise established by mutual understanding, to provide or exercise some form of care, aid, management, guidance or other attention necessary to help a person having diminished capacities with routine requirements of daily living and affairs. 1988,c.6,s.1; 1994,c.52,s.79; 2005,c.40,s.1.   |
| Intent                     | <b>2.</b> The purpose of this Act is to provide for provincial government assistance or intervention to protect an adult, who is unable to protect himself, against neglect or abuse that could otherwise cause serious harm to that adult. 1988, c.6, s.2.  |
| Principles                 | <b>3.</b> This Act is to be administered with respect for the following guiding principles:<br>(a) society has an obligation to afford its members, regardless of individual abilities or conditions, the opportunity to have security and the necessities of life;<br>(b) persons afflicted with disability that impairs their capacity to care for themselves deserve that quality of necessary treatment, care and attention that is most effective and yet least intrusive or restrictive in nature;<br>(c) although the capacity to express it may be diminished by disability, adults have a need for self-determination and to have their person, estate and civil rights protected;<br>(d) an adult is entitled to live in the manner he wishes and to accept assistance or not, provided it is by his conscious choice and does not cause harm to others; |

- (e) any intervention to assist or protect a person should be designed for the specific needs of the individual, limited in scope, and subject to review and revision as the person's condition and needs change;
- (f) in relation to any intervention to assist or protect a person the paramount consideration shall be the best interests of that person. 1988, c.6, s.3.

#### INVESTIGATION AND DETERMINATION OF NEED

- 4.** (1) Any person who has reasonable grounds for believing that a person is, or is at serious risk of being, in need of assistance or protection may report the circumstances in such manner and to such authority or person as may be designated by the Minister. Report
- (2) No person shall reveal or be compelled to reveal the identity of a person who reports a case of suspected need of assistance or protection. Confidentiality
- (3) A person who makes a report under subsection (1) or who does any thing to assist in any related investigation or assessment is not liable to any civil action with respect to making the report or rendering the assistance unless it was done maliciously or without reasonable and probable cause. 1988, c.6, s.4. Liability protection
- 5.** Where the Minister receives a report under section 4, or himself has reasonable grounds for believing that a person is, or is at serious risk of being, in need of assistance or protection, he may make or cause to be made a preliminary investigation and shall consider whether a more extensive investigation is warranted. 1988, c.6, s.5. Preliminary investigation
- 6.** (1) If a preliminary investigation indicates strong reason for believing that a person is in need of assistance or protection, the Minister may cause to be made an in-depth assessment to determine whether the person is in need of assistance or protection, and if so of what nature. Assessment
- (2) An assessment pursuant to subsection (1) shall be a comprehensive investigation of the person's condition, circumstances and needs, including such factors as health, social, residential, economic, vocational, educational and other conditions, related to the person's functional abilities to cope with the circumstances, to make reasonable judgments and to provide or make arrangements for his security and the meeting of his needs. 1988, c.6, s.6. *Idem*
- 7.** (1) Any person involved, including a person having supervisory responsibility, shall cooperate with an assessment under section 6. Cooperation
- (2) If the person to be assessed or a person apparently exercising supervisory responsibility for him does not cooperate adequately in or Order for assessment

does not give consent to the assessment, or if the person to be assessed is evidently unable to make a reasonable judgment about giving consent, the Minister may apply for and the court may grant, if it is satisfied that there are reasonable and probable grounds for believing that the person is in need of assistance or protection, an order that the assessment be carried out. 1988, c.6, s.7.

Determination of status and case plan

**8.** (1) The Minister shall, on the basis of the assessment carried out under section 6,

- (a) determine whether the person supposed to be in need is in need of assistance or protection and if so, of what nature; and
- (b) if need is determined, formulate a general case plan of services and interventions that appear best to serve the needs and interests of the person.

*Idem*, involvement

(2) In making the determination and any case plan, the Minister shall try to the fullest practical extent to involve the assessed person himself and anyone apparently exercising supervisory responsibility, and such involvement shall include

- (a) sharing the results of the assessment;
- (b) attempting to determine and accommodate the assessed person's own wishes, including any previous expression of them;
- (c) taking advice into account in making the determination and in making the case plan;
- (d) giving advance notice of and explaining any actions about to be taken such as for providing assistance or seeking an authorization from the court. 1988, c.6, s.8.

#### ASSISTANCE

Conditions for assistance

**9.** The Minister may provide or arrange for assistance where

- (a) the person who is to be the object of it has been determined to be in need of assistance;
- (b) it is in accordance with a case plan;
- (c) the person, evidently being able to make reasonable judgments in such matters, gives his informed consent; and
- (d) any person apparently exercising supervisory responsibility does not object. 1988, c.6, s.9.

Types of assistance

**10.** Without limiting the generality of section 9, assistance may include provision of, arrangement of, payment for or referral to such services as

- (a) assessment and case planning;
- (b) counselling and other social work;
- (c) speech and hearing therapy;
- (d) occupational therapy and physiotherapy;
- (e) respite care and day care;

- (f) socio-recreational activity and vocational training;
  - (g) homemaker, nutrition, friendly contact;
  - (h) legal counsel and financial management;
  - (i) application for trustee or guardianship functions;
  - (j) residential accommodation and personal or nursing care,
- and any other health, social or other type of service that may be determined necessary for the person's welfare. 1988, c.6, s.10.

PROTECTIVE INTERVENTION

**11.** If Assistance where consent lacking

- (a) a person has been determined by assessment to be in need of assistance; and
- (b) (i) he refuses or evidently is unable to give informed consent to assistance, or
  - (ii) the person exercising supervisory responsibility objects to the proposed assistance,

the Minister may apply for and the court may, if satisfied that it is in the best interests of the person in need of assistance, issue an order that the assistance be given as protective intervention. 1988, c.6, s.11.

**12.** (1) If a person has been determined by assessment to be in need of protection, the Minister may apply for and the court may, if satisfied that the person is in need of protection and that the proposed intervention is in the best interests of the person, issue a protective intervention order. Protective intervention order

(2) The court may, by protective intervention order, direct that the person in need of protection become subject to supervision by the Minister in accordance with any conditions prescribed by the order. Supervision

(3) The court may, by protective intervention order, direct that the person in need of protection be removed from his current circumstances and placed elsewhere and under other supervisory or care arrangements in accordance with any conditions prescribed by the order. Removal

(4) The court may, by protective intervention order, direct that a person who is determined to be a source of harm or danger to the person in need of protection comply with one or more of the following requirements: Restraint of other person

- (a) stop residing at and stay away from the premises where the person in need of protection lives, if the person found to be the source of harm or danger is not the owner or lessee of the premises;
- (b) do not visit, communicate with, harass or interfere with the person in need of protection;
- (c) do not have any contact or association with the person in need of protection or that person's affairs;

- (d) pay for or contribute toward the maintenance and support of the person in need of protection, if the person so ordered has a legal obligation to do so;
- (e) comply with any other restriction of relations with the person in need of protection. 1988, c.6, s.12.

Order for health care

**13.** The court may at any time, regardless of the status of an application for a protective intervention order, order that a person evidently in need of protection be moved to a hospital or other place and given care if the court is satisfied that it is essential to do so to protect the person's health. 1988, c.6, s.13.

Authorization of health care

**14.** Where a person for whom the Minister has been assigned supervisory responsibility requires health care and is, in the opinion of the Minister and of the attending physician, unable to make the judgments required,

- (a) if the Minister and the physician believe the proposed care minor, having no more than a routine sort of risk, the Minister may authorize it;
- (b) if the Minister and physician believe that the proposed care is serious, such as involving surgery or intensive psychotherapy, and that time and circumstances permit, the Minister shall apply for and the court may issue an order authorizing the care;
- (c) if the Minister, the physician and one other physician believe that the proposed care is serious and that time and circumstances do not permit application to the court, they may jointly decide on the treatment to be given the person. 1988, c.6, s.14.

Application for guardian

**15.** Where a person in need of assistance or protection is evidently unable to make reasonable judgments necessary for his personal welfare or affairs or provision therefor, and it seems likely that the incapacity will remain for a period of time beyond the time when decisions should in the person's best interests be made, the Minister may make application for, or the Minister or the court may advise the Public Trustee or other person of the apparent need for guardianship and may promote an application for, appointment of a guardian for the person in need of assistance or protection. 1988, c.6, s.15; 1994, c.52, s.79.

Appointment of guardian

**16.** (1) Upon application the court may, if satisfied that there is real need, appoint a guardian of the person or a guardian of the estate or both.

*Idem*, partial

(2) The appointment may be for full or partial guardianship, limited to certain functions in accordance with the actual needs of the person as indicated by the assessment.

*Idem*, alternate

(3) The court may further appoint an alternate guardian to serve in the absence or incapacity of the guardian. 1988, c.6, s.16.

**17.** (1) Where a person who is or is believed to be in need of assistance or protection is evidently unable to make reasonable judgments necessary for his personal welfare or affairs or provision therefor, and the inability is causing considerable risk of serious harm to his person or estate, the Minister may apply for and the court may issue an order, subject to subsection (2), appointing a temporary guardian for the purpose of providing protection of the person's welfare and affairs while further investigation or arrangements are made regarding the person's needs.

Temporary guardianship

(2) Appointment of a temporary guardian shall be for a maximum of thirty days, renewable by the court upon application, and shall be limited in scope to matters of accommodation, health care and supervision of routine daily living requirements such as food, clothing, social contact and financial management for purposes only of immediate need and to prevent loss to the estate. 1988, c.6, s.17.

*Idem*

**18.** The court may in connection with any order authorize or direct that compensation or coverage of the costs of services provided to a person be paid from the person's estate. 1988, c.6, s.18.

Costs

**19.** Where a child in care under the *Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1 has become or is about to become an adult and is incapable of caring properly for himself and where there is no adult member of his immediate family or other person appropriately capable of assuming responsibility for care or supervision, the Minister may apply for and the court may issue an order for such intervention as may be considered necessary in the best interests of the person. 1988,c.6,s.19; 2000(2nd),c.3,s.62.

Child in care

**20.** (1) Whenever the Minister applies for a court order for any sort of intervention under this Act, he shall give prior notice of at least fourteen days, except in a case under section 23 or 24, as to intent and the time and place of hearing, to the person with respect to whom the order is to be sought and to the person, if any, apparently exercising supervisory responsibility for the person.

Notice

(2) The person with respect to whom an order is sought is entitled to be heard, with legal counsel, at any proceeding.

Right to be heard

(3) The court may arrange for the person to be represented by legal counsel or the Official Guardian or other responsible spokesperson, provided at the expense of the Minister if it is established that the expense would be beyond the means of the person. 1988, c.6, s.20.

Right to representation

**21.** In any application for an order for protective intervention, there is an onus on the Minister to show that the person is in need of assistance or

Onus



protection, that a remedy is unlikely to be achieved by methods other than an application for an order, and that the protective intervention proposed is in the best interests of that person, and to show that the least intrusive and restrictive option practical is being sought. 1988, c.6, s.21.

Time limit and review

**22.** Any order for protective intervention shall be for a maximum of six months, at or before which time the Minister shall ensure a review of conditions and need and the court on that basis shall determine whether to renew, revoke or vary the order. 1988, c.6, s.22.

#### EMERGENCY INTERVENTION

Emergency protection

**23.** (1) Subject to subsection (2), where normally a person's consent or a court order would be required and yet the Minister is convinced that there exists an emergency condition posing immediate danger of death or the threat of extreme harm to the physical or mental health of a person evidently in need of assistance or protection, the Minister may, without court order, intervene in such way and to such degree as may be demonstrably necessary to remove the person from the danger or the source of danger from the person and so protect him from the harm.

*Idem*

(2) Where action is taken under subsection (1), the Minister may continue the intervention only if within 120 hours of its beginning he applies for such court order as would normally be required, in which case the court shall proceed forthwith to hear the application. 1988, c.6, s.23.

Emergency trusteeship

**24.** (1) Subject to subsection (2), where the Minister is convinced that there exists an emergency in which a person evidently in need of assistance or protection is unable to manage his affairs or protect his estate interests and there is immediate danger of loss or serious damage to the estate, the Public Trustee may, at the Minister's request, intervene in such a way and to such degree as may be demonstrably necessary temporarily to prevent or contain such loss or damage.

*Idem*

(2) Where action is taken under subsection (1), the intervention may be continued only if within 120 hours of its beginning the Minister or the Public Trustee applies for such court order or appointment as would normally be required. 1988, c.6, s.24; 1994, c.52, s.79.

#### REVIEW AND APPEAL

Inform client

**25.** The Minister shall keep informed the person in respect of whom assistance or protection is rendered and also such person as exercises supervisory responsibility for him, in writing and in a manner readily understandable to a layperson, concerning any actions of assistance or

protective intervention being planned or carried out for the person. 1988, c.6, s.25.

**26.** (1) Any case plan and any assistance or protective intervention shall be reviewed in accordance with a schedule included as an element of the case plan or order, and in no case less frequently than every six months. Scheduled review

(2) The Minister shall carry out a review if a significant change in conditions or need becomes apparent, or if the person being assisted or protected or such person as exercises supervisory responsibility for him requests a review, providing apparently substantial reason for the request. Unscheduled review

(3) If a review demonstrates that the person's conditions or needs have altered significantly, the Minister is responsible to have the case plan and assistance, and to apply to have the protective intervention, adjusted accordingly. 1988, c.6, s.26. Adjustment

**27.** Any person who is the subject of a protective intervention order or a person exercising or willing to assume supervisory responsibility for that person may at any time apply, with apparently substantial reason, to the court to have the order revoked, extended, renewed or varied, and the court may so order. 1988, c.6, s.27. Change of order

**28.** An applicant for a protective intervention order to be revoked, extended, renewed or varied shall give at least fourteen days notice of the application to any other party directly involved, including the Minister, the person who is the subject of an order, or a person exercising supervisory responsibility in the matter. 1988, c.6, s.28. Notice

**29.** No action lies against a health-care professional or institution or its staff for rendering necessary treatment in good faith and without negligence in an evidently urgent situation to a person who appears to be in need of assistance or protection. 1988, c.6, s.29. Liability

**30.** Any person employed in the administration of this Act shall preserve secrecy with respect to all matters of a confidential nature that come to his knowledge in the course of his duties, and shall not communicate information of such nature except in accordance with this Act or with the consent of the person or persons to whom the information pertains, or where Confidentiality

- (a) required for the appropriate performance of his duties;
- (b) authorized by the Minister or by regulations; or
- (c) giving evidence in any proceedings under this Act or in connection with an application for guardianship. 1988, c.6, s.30.

**31.** Any person who Offence

- (a) obstructs or hinders any person who is conducting an inquiry, investigation or assessment pursuant to this Act;
- (b) fails to comply with the requirements of a protective intervention order;
- (c) otherwise contravenes a provision of this Act or the regulations, is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000 or imprisonment for a term not exceeding six months, or both. 1988,c.6,s.31.

## Regulations

**32.** The Lieutenant Governor in Council may make regulations. 1988,c.6,s.32.