

Protection for Persons in Care Act

CHAPTER 33 OF THE ACTS OF 2004

as amended by

2013, c. 26



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An Act for the Protection of Persons in Care

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Short title

1 This Act may be cited as the *Protection for Persons in Care Act*. 2004, c. 33, s. 1.

Interpretation

2 In this Act,

- (a) “health facility” means
 - (i) a hospital under the *Hospitals Act*,
 - (ii) a residential care facility, nursing home or home for the aged or disabled persons under the *Homes for Special Care Act*, or
 - (iii) an institution or organization designated as a health facility by the regulations;
- (b) “investigator” means an investigator appointed pursuant to this Act;

- (c) “Minister” means the member of the Executive Council assigned responsibility for the administration of this Act by the Governor in Council;
- (d) “patient” means a patient as defined in the *Hospitals Act*;
- (e) “resident” means a resident under the *Homes for Special Care Act* or a resident in a health facility designated pursuant to clause (a)(iii);
- (f) “service provider” means a person who provides services to a patient or resident and is employed by, or provides the services on behalf of, a health facility. 2004, c. 33, s. 2.

Act binds Crown

- 3 This Act binds Her Majesty in right of the Province. 2004, c. 33, s. 3.

Duties of administrator of health facility

4 (1) The administrator of a health facility has a duty to protect the patients or residents of the facility from abuse and to maintain a reasonable level of safety for the patients or residents.

(2) The administrator of a health facility shall report to the Minister all allegations of abuse against a patient or resident that come to the knowledge of the administrator. 2004, c. 33, s. 4.

Duty of service provider

5 (1) A service provider who has a reasonable basis to believe that a patient or resident is, or is likely to be, abused shall promptly report the belief, and the information on which it is based, to the Minister or the Minister’s delegate.

(2) The duty to report applies even if the information on which the person’s belief is based is confidential and its disclosure is restricted by legislation or otherwise, but it does not apply to information that is privileged because of a solicitor-client relationship.

(3) A service provider shall take all reasonable steps to provide for the safety and well-being of patients and residents. 2004, c. 33, s. 5; 2013, c. 26, s. 1.

Duty to report abuse or likely abuse

6 (1) Any person who has a reasonable basis to believe that a patient or resident is or likely to be, abused may report the belief, and the information on which it is based, to the Minister or the Minister’s delegate.

(2) A person may report under subsection (1) even if the information on which the person’s belief is based is confidential and its disclosure is restricted by legislation or otherwise, but it does not apply to information that is privileged because of a solicitor-client relationship. 2004, c. 33, s. 6.

Patient or resident may report abuse

7 A patient or resident may report abuse against himself or herself to the Minister or the Minister's delegate. 2004, c. 33, s. 7.

Minister shall inquire and may appoint investigator

8 (1) On receiving a report of abuse under this Act, the Minister shall inquire into the matter and shall consider whether a more extensive investigation is warranted.

(2) Where, after inquiry, the Minister finds there are reasonable grounds to believe that a patient or resident is being abused or is likely to be abused, the Minister shall appoint an investigator to carry out a more extensive investigation.

(3) As soon as practicable after appointing an investigator, the Minister shall notify the patient or resident that a report of abuse has been made and that an investigation is to be conducted.

(4) Notwithstanding subsection (3), where a patient or resident has

- (a) a person to whom the patient or resident has given authorization under the *Medical Consent Act*;
- (b) a guardian under the *Incompetent Persons Act*;
- (c) a delegate or a statutory decision-maker under the *Personal Directives Act*; or
- (d) an attorney under the *Powers of Attorney Act*,

to make decisions on the patient's or resident's behalf, the notice referred to in subsection (3) is to be given instead to the guardian, delegate, statutory decision-maker or attorney, as the case may be, unless the Minister determines it is inappropriate to do so based on the nature of the allegations. 2004, c. 33, s. 8; 2013, c. 26, s. 2.

Investigation

9 (1) For the purpose of investigating a report of abuse under this Act, an investigator may enter a health facility at any reasonable time, on presenting identification when requested to do so.

(2) An investigator may require any person who is able, in the investigator's opinion, to give information about a matter being investigated to

- (a) give the information to the investigator; and
- (b) produce for examination or copying any record or other thing, including information that is personal health information under the *Personal Health Information Act* or personal information under the *Freedom of Information and Protection of Privacy Act* or any other enactment that, in the investigator's opinion, relates to the

matter being investigated and that may be in that person's possession or control.

(3) The administrator of a health facility and any person required to give information or produce a record or other thing shall give the investigator all reasonable assistance and all information that the investigator reasonably requires.

(4) A justice of the peace who is satisfied by information on oath that an investigator has been prevented from exercising the investigator's powers under this Section may at any time issue a warrant authorizing the investigator, and any other person named in the warrant, to exercise those powers.

(5) Nothing in this Section abrogates a privilege that may exist because of a solicitor-client relationship. 2004, c. 33, s. 9; 2013, c. 26, s. 3.

Report and records

10 (1) On completing an investigation, the investigator shall set out the investigator's conclusions and the reasons for them in a report and give it to the Minister.

(2) When making a report, the investigator shall try, to the fullest practical extent, to involve the patient or resident and to determine and accommodate the patient's or resident's wishes.

(3) The Minister shall retain all records related to an investigation. 2004, c. 33, s. 10.

Directives by Minister

11 (1) On receiving an investigator's report under Section 9, the Minister may issue any directives to the administrator of the health facility involved requiring operational and other measures that the Minister considers necessary to protect all patients or residents from abuse, regardless of whether the investigation has determined that abuse occurred.

(2) The Minister shall give a copy of the directives to

(a) the patient or resident about whom the investigation was conducted or, where subsection 8(4) applies, to the guardian, delegate, statutory decision-maker or attorney referred to in that subsection, as the case may be, unless the Minister determines it is inappropriate to do so based on the nature of the allegations; and

(b) any other person the Minister considers should be notified, having regard to the nature of the abuse reported and the need to protect the patient's or resident's privacy.

(3) Within the time the Minister specifies, the administrator of the health facility shall comply with the Minister's directives and give the Minister a

written report describing what action has been taken or will be taken to comply. 2004, c. 33, s. 11; 2013, c. 26, s. 4.

Referral by Minister to professional body

12 (1) Where the Minister believes on reasonable grounds that a person has abused a patient or resident or has failed to comply with the duty to report under Section 5, the Minister may refer the matter to the body or person that governs the person's professional status or that certifies, licenses or otherwise authorizes or permits the person to carry on the person's work, profession or occupation.

(1A) The Minister's referral under subsection (1) shall include a written summary of the matter being investigated.

(2) A body or person that receives a referral under subsection (1) shall

(a) investigate the matter to determine whether a professional status review or disciplinary proceedings should be commenced against the person; and

(b) on conclusion of the investigation and any review or proceedings, advise the Minister of the determination under clause (a), the reasons for the determination, and, where applicable, the results of any professional status review or disciplinary proceedings.

(3) Where a referral is made under this Section to a body or person that the Minister considers can deal appropriately with the matter, the Minister may decide not to appoint an investigator under Section 8, or may defer doing so. 2004, c. 33, s. 12; 2013, c. 26, s. 5.

No action lies

13 No action or other proceeding may be brought against a person for making a report of abuse under this Act in good faith. 2004, c. 33, s. 13.

Prohibition of retaliation

14 (1) No administrator of a health facility shall take adverse employment action against a service provider of the facility because that person made a report of abuse in good faith under this Act.

(2) No administrator of a health facility or other person shall alter, interrupt or discontinue, or threaten to alter, interrupt or discontinue, service to a patient or resident or to a person who has made a report of abuse under this Act, or to a relative of either of them who receives services from the facility, because a report of abuse has been made under this Act in good faith. 2004, c. 33, s. 14.

Delegation by Minister

15 The Minister may delegate to any person any power conferred or duty imposed on the Minister by this Act. 2004, c. 33, s. 15.

No action lies

16 No action for damages or other proceeding may be brought against the Minister, an investigator or any other person acting under the authority of this Act or engaged in administering it for

- (a) anything done in good faith in performing or intending to perform a duty or in exercising or intending to exercise a power under this Act; or
- (b) any neglect or default in performing a duty or exercising a power in good faith under this Act. 2004, c. 33, s. 16.

Offences, penalties and limitation

17 (1) A person who contravenes this Act is guilty of an offence and is liable on summary conviction to

- (a) in the case of an individual, a fine of not more than two thousand dollars; and
- (b) in the case of a corporation, a fine of not more than thirty thousand dollars.

(2) A person who makes a report of abuse under this Act, knowing it to be false, is guilty of an offence and is liable on summary conviction to a fine of not more than two thousand dollars.

(3) A prosecution under this Act may not be commenced more than two years after the alleged offence is committed. 2004, c. 33, s. 17.

Regulations

18 (1) The Governor in Council may make regulations

- (a) designating institutions or organizations as health facilities for the purpose of this Act;
- (b) respecting any other matter the Governor in Council considers necessary or advisable to carry out effectively the purpose of this Act.;
- (c) defining any word or expression used but not defined in this Act;
- (d) deemed necessary or advisable by the Governor in Council to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2004, c. 33, s. 18.

Proclamation

19 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2004, c. 33, s. 19.

Proclaimed - August 17, 2007
In force - October 1, 2007
