



BILL NO. 76

Government Bill

*5th Session, 61st General Assembly
Nova Scotia
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An Act to Amend Chapter 2 of the Revised Statutes, 1989, the Adult Protection Act

CHAPTER 13
ACTS OF 2013

**AS ASSENTED TO BY THE ADMINISTRATOR OF THE PROVINCE
MAY 10, 2013**

The Honourable David A. Wilson
Minister of Health and Wellness

*Halifax, Nova Scotia
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**An Act to Amend Chapter 2
of the Revised Statutes, 1989,
the Adult Protection Act**

Be it enacted by the Governor and Assembly as follows:

1 Section 3 of Chapter 2 of the Revised Statutes, 1989, the *Adult Protection Act*, is amended by

(a) relettering clause (a) as (aa) and adding immediately before that clause the following clause:

(a) “abuse” means one or more of the following:

- (i) physical abuse,
- (ii) sexual abuse,
- (iii) emotional abuse, or
- (iv) where the victim of the abuse is sixty-five years of age or more and has a permanent mental incapacity, financial abuse;

(b) striking out clause (b) and substituting the following clause:

(b) “adult in need of protection” means an adult who, in the premises where the adult resides,

(i) is a victim of abuse, does not have the capacity to protect himself or herself from abuse by reason of permanent physical incapacity or permanent mental incapacity and refuses or is unable to provide for his or her protection from abuse, or

(ii) is not receiving adequate care and attention, is incapable of caring adequately for himself or herself by reason of permanent physical incapacity or permanent mental incapacity and refuses or is unable to provide for his or her adequate care and attention;

(c) adding immediately after clause (d) the following clause:

(da) “estate” means real and personal property and includes choses in action;

(db) “financial abuse” means the misappropriation or improper or illegal conversion of all or part of a person’s estate;

(d) striking out the period at the end of clause (f); and

(e) adding immediately after clause (f) the following clauses:

(g) “record” means a book, paper, document or thing, whether in electronic form or otherwise, that may contain information relevant to the administration or enforcement of this Act;

(h) “substitute decision-maker” means a person who is legally authorized to act on behalf of an adult, including under the *Incompetent Persons Act*, the *Personal Directives Act* or the *Powers of Attorney Act*.

2 Subsection 4(2) of Chapter 2 is amended by

- (a) striking out “he” in the third line and substituting “the person”; and**
- (b) striking out “his” in the fourth line and substituting “the person’s”.**

3 (1) Section 5 of Chapter 2 is amended by adding immediately after subsection (1) the following subsections:

(1A) Subsection (1) does not apply to a person who has information indicating that an adult is in need of protection if the adult is in need of protection by reason only of being the victim of financial abuse.

(1B) Every person who has information, whether or not it is confidential or privileged, indicating that an adult is in need of protection by reason only of being the victim of financial abuse may report that information to the Minister.

(2) Subsection 5(2) of Chapter 2 is amended by adding “or (1B)” immediately after “(1)” in the second line.

4 Section 6 of Chapter 2 is amended by striking out “he” in the second, in the fifth and in the eighth lines and substituting in each case “the Minister”.

5 Section 7 of Chapter 2 is amended by

- (a) adding “or the person’s substitute decision-maker” immediately after “person” the second time it appears in the third line;**
- (b) striking out “in obtaining” in the fourth line and substituting “by referring the person to”; and**
- (c) adding “or herself” immediately after “himself” in the sixth line.**

6 Subsection 8(2) of Chapter 2 is amended by striking out “a member of the family of the adult” in the second and third lines and substituting “the person’s substitute decision-maker”.

7 (1) Subsection 9(1) of Chapter 2 is amended by striking out “he” in the fourth line and substituting “the Minister”.

(2) Subsection 9(3) of Chapter 2 is repealed and the following subsections substituted:

(3) Where the court finds, upon the hearing of the application, that a person is an adult in need of protection and does not have the mental capacity to decide whether to accept the assistance of the Minister, the court shall so declare and may, where it appears to the court to be in the best interest of that person, issue one or more of the following orders:

- (a) an order authorizing the Minister to refer the adult in need of protection to services, including placement in a facility approved by the Minister, that will enhance the ability of the adult to care and fend ade-**

quately for himself or herself or that will protect the adult from abuse or neglect;

(b) 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 *Maintenance and Custody Act*;

(c) a temporary custody order appointing a person to be temporary guardian for one or both of the adult in need of protection or that adult's estate for no more than thirty days, renewable upon application to the court, for the purpose of supervising the protection of the adult, managing the adult's protection needs or both;

(d) a supervision order directed to the substitute decision-maker of or any person having care or control of the adult in need of protection, which order may include terms and conditions related to the adult's residence or estate.

(3A) An order made under clause (c) or (d) of subsection (3) may contain terms and conditions that apply to the person with whom the adult is placed, but must not contain terms and conditions that apply to the Minister, the Co-ordinator or Adult Protection Services personnel acting on behalf of the Minister or the Co-ordinator.

(3) Subsection 9(4) of Chapter 2 is amended by

(a) striking out “(c) or (d)” in the second line and substituting “(a) or (b)”; and

(b) striking out “person acting pursuant to a power of attorney” in the fifth and sixth lines and substituting “substitute decision-maker”.

(4) Subsection 9(5) of Chapter 2 is amended by adding “or (3A)” immediately after “(3)” in the first line.

(5) Subsection 9(6) of Chapter 2 is amended by

(a) adding “or (3A)” immediately after “(3)” in the second line; and

(b) striking out “his” in the fourth line and substituting “the adult’s”.

(6) Subsection 9(7) of Chapter 2 is amended by adding “or (3A)” immediately after “(3)” in the first line.

8 Subsection 10(1) of Chapter 2 is amended by

(a) striking out clause (c) and substituting the following clause:

(c) the person does not have the mental capacity to decide whether to accept the assistance of the Minister,

(b) striking out “his” in the thirteenth line and substituting “the person’s”.

9 Chapter 2 is further amended by adding immediately after Section 10 the following Sections:

10A (1) Where it appears to the Minister that a person is sixty-five years of age or more, has a permanent mental incapacity and may be a victim of financial abuse, the Minister may apply to a court for an order under subsection (3).

(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 another person who has custody or control of that person or that person’s property.

(3) Where the court is satisfied, upon the hearing of the application, that there are reasonable and probable grounds to believe that a person is sixty-five years of age or more, has a permanent mental incapacity and is a victim of financial abuse, the court may order that an audit of the financial records of the person and of any person who it is alleged may have subjected the person to financial abuse be conducted by a chartered accountant or any other person the Minister considers advisable and that the accountant or other person issue a report of findings to the Minister within thirty days of completion of the audit.

(4) Subsections (4) to (10) of Section 9 apply *mutatis mutandis* to a forensic accounting order made pursuant to this Section.

10B (1) The Minister may conduct an investigation with respect to an allegation that a person is sixty-five years of age or more, has a permanent mental incapacity and is the victim of financial abuse.

(2) For the purpose of an investigation pursuant to this Section, the Minister may, at any reasonable time,

(a) subject to subsection (3), enter and inspect any premises that the Minister believes on reasonable grounds contain evidence relevant to the allegation of financial abuse; and

(b) require any person to produce for inspection and copying any record that the Minister believes on reasonable grounds contains any information relevant to the allegation of financial abuse.

(3) The Minister may only enter a dwelling

(a) with the owner or occupant’s consent; or

(b) pursuant to the authority of a warrant issued under Section 10C.

10C (1) Where the Minister, pursuant to Section 10B, requires entry to premises and the owner or occupant of the premises refuses or neglects to permit

investigation, the Minister may apply *ex parte* to a justice for an order authorizing a person named in the order to

(a) enter and inspect any premises, including a dwelling, named in the order for the purpose of investigating an allegation of financial abuse; and

(b) take possession of any record that the Minister believes on reasonable grounds contains any information relevant to the allegation of financial abuse.

(2) A justice may issue an order authorizing the Minister and any other person named in the warrant to enter and inspect premises, including a dwelling, and to take possession of any record if the justice is satisfied on oath of the Minister that there are reasonable grounds to believe that

(a) entry to the premises is necessary for the purpose of investigating an allegation of financial abuse; and

(b) entry to the premises has not been provided or there are reasonable grounds to believe that entry will not be provided.

10D (1) The Minister may apply to the court for a property-freezing order if the Minister believes the order is advisable for the protection of a person who it is alleged is sixty-five years of age or more, has a permanent mental incapacity and is the victim of financial abuse.

(2) The court may issue a property-freezing order if the court is satisfied on oath of the Minister that there are reasonable grounds to believe that

(a) a person is sixty-five years of age or more, has a permanent mental incapacity and is a victim of financial abuse; and

(b) there has been or is likely to be substantial damage to the estate of the person or substantial loss of the person's estate.

(3) A property-freezing order issued by the court pursuant to subsection (2) may require that

(a) a person who is sixty-five years of age or more, has a permanent mental incapacity and is a victim of financial abuse, or any other person purporting to act on the person's behalf,

(i) not take any of the person's estate from the possession of another person named in the order who has the property on deposit, under control or for safekeeping, and

(ii) not dispose of the person's property or otherwise deal with the person's property in a way that reduces the value of the property, whether the property is acquired by the person before, on or after the date of the order;

(b) a person to whom the order is directed hold property in trust, if the person has, in the Province, on deposit, under control or for safekeeping any property of the person who is a victim of financial abuse;

(c) a debtor of the person who is a victim of financial abuse

(i) hold in trust property that is payable or transferable in satisfaction of the debt, or

(ii) transfer to a receiver property that is payable or transferable in satisfaction of the debt;

(d) a lessor, to whom the order is directed, of safety deposit boxes, safes or compartments in safes, not permit the opening or removal of a safety deposit box, safe or compartment in a safe leased to the person who is a victim of financial abuse; and

(e) a person to whom the order is directed hold the property affected by the order in that person's possession, safekeeping or control in trust for the person who is the victim of financial abuse.

(4) A property-freezing order must be served on each person to whom it is directed and on each person who is named in the order as being a victim of financial abuse.

(5) A property-freezing order takes effect in respect of a person at the time the property-freezing order is served on the person or at a later time specified by the court in the order.

(6) Any property affected by a property-freezing order continues to be affected by the order and remains so affected under it until the court

(a) rescinds the order, or

(b) orders the release of that property.

10 (1) Subsection 13(1) of Chapter 2 is amended by

(a) striking out "he" in the second line and substituting "the adult";

(b) adding "or hers" immediately after "his" in the fourth line; and

(c) adding "or her" immediately after "his" in the fifth line.

(2) Subsection 13(2) of Chapter 2 is amended by

(a) striking out "he" in the second line and substituting "the Public Trustee"; and

(b) adding "or her" immediately after "his" in the third line.

11 Chapter 2 is further amended by adding immediately after Section 14 the following Sections:

14A (1) For the purpose of carrying out an investigation into an allegation that a person is sixty-five years of age or more, has a permanent mental incapacity and is the victim of financial abuse, the Minister may

(a) obtain information from a public body, as defined in the *Freedom of Information and Protection of Privacy Act*, or a person about the person who is the subject of the investigation, including

(i) the person's name and address,

- (ii) the whereabouts of the person,
- (iii) the name and address of anyone who is alleged to be financially abusing the person, and
- (iv) the whereabouts of anyone who is alleged to be financially abusing the person;

(b) obtain information from any other source about the estate of a person who is the subject of the investigation;

(c) obtain information from any source about the occurrence of activities that are the subject-matter of the investigation;

(d) make and maintain written, recorded or videotaped records of any information received under clause (a), (b) or (c) or of the occurrence of activities that are the subject-matter of the investigation; or

(e) in the Minister's discretion, disclose information obtained under clause (a), (b) or (c), and records made under clause (d), to a person, court, tribunal, government department, government agency, local government body or law enforcement agency.

(2) Where the Minister requests information under clause (a), (b) or (c) of subsection (1)

- (a) from a person carrying on a business; or
- (b) from a public body,

the person or public body shall provide the information, if the person or public body has custody, possession or control of the information, and give the Minister a copy of the record in which the information is contained, if applicable.

(3) The Minister may disclose information obtained under clause (a), (b) or (c) of subsection (1), or records made under clause (d) of subsection (1), to a person or peace officer to assist in the resolution of the investigation.

(4) Nothing in this Section abrogates a privilege that may exist because of a solicitor-client relationship.

14B (1) The Minister may make copies of a record that has been inspected pursuant to this Act.

(2) A copy of a record certified by the Minister to be a copy made pursuant to this Section

- (a) is admissible in evidence without proof of the office or signature of the person purporting to have signed the certificate; and
- (b) has the same probative force as the original record.

(3) The Minister shall ensure that, after copies of any records inspected pursuant to this Act are made, the originals are promptly returned to

- (a) the place from which they were removed; or
- (b) any other place that may be agreed to by the Minister and the person who had custody, possession or control of the record.

12 Section 15 of Chapter 2 is amended by

- (a) adding “(1)” immediately after the Section number; and**
- (b) adding the following subsection:**

(2) Where requested to do so by the Minister, a peace officer shall

- (a) provide any assistance required by; and
- (b) do anything that may be necessary to assist,

the Minister in the performance of the Minister’s duties pursuant to this Act.

13 Chapter 2 is further amended by adding immediately after Section 15 the following Section:

15A Upon the conclusion of an investigation into an allegation of financial abuse, the Minister may refer the results of the investigation and make the investigative file of the Minister available to an agency within the meaning of the *Police Act* and the agency may determine whether a charge is to be laid in respect of the allegation.

14 Section 16 of Chapter 2 is amended by adding immediately after subsection (1) the following subsection:

(1A) Notwithstanding subsection (1), it is not an offence to fail to report information indicating that an adult is in need of protection if the adult is in need of protection by reason only of being the victim of financial abuse.

15 Subsection 19(1) of Chapter 2 is amended by

(a) striking out “the procedure for an assessment” in the first and second lines of clause (b) and substituting “assessments conducted”.

(b) adding immediately after clause (b) the following clauses:

(ba) respecting the conduct of an investigation of an allegation of abuse, including an allegation that a person is sixty-five years of age or more, has a permanent mental incapacity and is the victim of financial abuse;

(bb) respecting actions that the Minister may take to stop financial abuse from continuing;

and

(c) adding immediately after clause (e) the following clause:

(ea) further defining any word or expression defined in this Act;

16 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.