



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

ADULT PROTECTION ACT

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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ADULT PROTECTION ACT

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ADULT PROTECTION ACT

CHAPTER A-5

1. Interpretation

In this Act

- (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;
- (b) “**adult**” means a person who has attained the age of majority;
- (c) repealed by 2013, c.1, s.1;
- (d) “**assistance**” means assistance described in section 10;
- (e) “**case plan**” means a plan of proposed assistance or protective intervention made in accordance with section 8;
- (f) “**court**” means the Family Section of the Supreme Court;
- (g) “**guardian**” means a guardian of the person or of the estate or of both;
- (h) “**in need of assistance**” means, in relation to an adult, requiring assistance to
 - (i) provide or arrange for adequate care for oneself or one’s estate, or
 - (ii) protect oneself against abuse or neglect,due to infirmity, disability or other incapacity, whether physical or mental;
- (i) “**in need of protection**” means, in relation to an adult, requiring protective intervention to maintain the safety and well-being of the adult or preserve the adult’s estate, because
 - (i) due to mental incapacity, the adult is unable to make a reasonable decision respecting assistance offered by the Minister,
 - (ii) a person with supervisory responsibility for the adult refuses to consent to, or interferes with, the provision or arrangement of assistance for the adult by the Minister, or
 - (iii) due to infirmity, disability or other incapacity, whether physical or mental, the adult
 - (A) is unable to provide or arrange for adequate care for himself or herself or his or her estate, or
 - (B) is experiencing, and is unable to protect himself or herself against, abuse or neglect;
- (i.1) “**investigation**” means an investigation carried out by the Minister, in accordance with section 5, to determine whether an adult is in need of assistance or protection;
- (j) “**Minister**” means the Minister of Health and Wellness;

- (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;
- (l) “**Official Guardian**” means the person appointed as the Official Guardian pursuant to the subsection 33(1) of the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1;
- (m) repealed by *1994,c.52,s.79*;
- (n) “**protective intervention**” means protective intervention ordered by a court under section 12;
- (n.1) “**Public Trustee**” means the person appointed as Public Trustee under the *Public Trustee Act* R.S.P.E.I. 1988, Cap. P-32.2;
- (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; 2008,c.20,s.73(2); 2010,c.31,s.3; 2013,c.1,s.1.*

2. Purpose

The purposes of this Act are

- (a) to provide or arrange for assistance for an adult who is in need of assistance; and
- (b) to provide protective intervention for an adult who is in need of protection. *1988,c.6,s.2; 2013,c.1,s.2.*

2.1 Minister responsible for administration

- (1) The Minister is responsible for the administration of this Act and any regulations made pursuant to this Act.

Delegation of powers and duties

- (2) The Minister may, in writing, delegate to any person the powers and duties of the Minister under this Act or the regulations.

Minister includes delegate

- (3) A reference in this Act or the regulations to a power or duty of the Minister shall, unless otherwise specified, include a reference to a power or duty of a person to whom the power or duty has been delegated in accordance with subsection (2). *2013,c.1,s.3.*

3. Guiding principles

This Act is to be administered in accordance with the following guiding principles:

- (a) an adult is entitled to live in the manner he or she wishes and to accept or decline assistance offered by the Minister, provided the adult has the capacity to make reasonable decisions respecting those matters and does not cause harm to others;
- (b) an adult who is in need of assistance or protection should receive the most effective but least restrictive or intrusive assistance or protective intervention, as the case may be;
- (c) in relation to the provision of assistance or protective intervention to an adult who is in need of assistance or protection, as the case may be, the paramount consideration shall be the best interests of that adult;



- (d) an adult who is in need of assistance or protection should be involved to the fullest practicable extent in decisions relating to that adult;
- (e) assistance or protective intervention provided to an adult who is in need of assistance or protection, as the case may be, should address the specific needs of the adult and be reviewed and revised as the adult's needs or circumstances change. *1988,c.6,s.3; 2013,c.1,s.4.*

REPORT AND INVESTIGATION

4. Opportunity to report

- (1) Any person who has reasonable grounds for believing that an adult is in need of assistance or protection may report the circumstances to the Minister.

Duty to report

- (2) Notwithstanding subsection (1), any person who, by virtue of his or her professional employment or occupation in health care, social services, education, law enforcement, counselling, residential services or any other field where the person has a duty of care to vulnerable adults, has reasonable grounds for believing that an adult is in need of assistance or protection shall report the circumstances to the Minister.

Confidentiality

- (3) No person shall disclose or be compelled to disclose the identity of a person who makes a report under subsection (1) or (2).

Liability protection

- (4) Any person who, in good faith, makes a report under subsection (1) or (2) or assists in an investigation is not liable to any civil action with respect to making the report or assisting in the investigation. *1988,c.6,s.4; 2013,c.1,s.5.*

5. Investigation

- (1) Where the Minister receives a report under subsection 4(1) or (2), or otherwise has reasonable grounds to believe that an adult may be in need of assistance or protection, the Minister may carry out an investigation to determine whether the adult is in need of assistance or protection.

Idem

- (2) An investigation may include an analysis of the adult's condition, circumstances and needs, taking into consideration medical, health, social, residential, financial, vocational, educational and other factors affecting the ability of the adult to make reasonable judgments, provide for his or her safety and well-being and protect his or her estate.

Powers of Minister – investigation

- (3) In conducting an investigation respecting an adult, the Minister may
 - (a) communicate with and assess the adult, with or without the presence or consent of any other persons;
 - (b) request that the adult participate in a capacity assessment;
 - (c) interview persons who may have information that is relevant to the investigation;
 - (d) solicit, accept and review reports and information from

- (i) a health care provider or other person who, or agency that, has provided services to the adult, or
- (ii) a person who manages the adult's financial affairs, business or other assets;
- (e) require a person or agency, including a law enforcement agency, to provide information or produce records or documents in that person's or agency's possession or control which, in the opinion of the Minister, may be relevant to the investigation;
- (f) require the production of medical, financial or other records respecting the adult.

Right to information

- (4) For the purpose of subsection (3), the Minister's right to information overrides
 - (a) a claim of confidentiality or privilege, except solicitor-client privilege; and
 - (b) a restriction in an enactment or the common law about the disclosure or confidentiality of information.

Duty to provide information

- (5) Any person who, or agency that, has custody or control of information that the Minister is entitled to under subsection (3) shall provide that information to the Minister on request. *1988, c.6, s.5; 2013, c.1, s.5.*

6. Application

- (1) Where, during the course of an investigation respecting an adult, the Minister believes it is necessary for the purposes of the investigation, the Minister may apply to the court for an order described in subsection (2).

Court order re investigation

- (2) On hearing an application made under subsection (1), the court may make any order the court considers necessary for the purposes of the investigation, including an order
 - (a) allowing the Minister access to the adult and entry to a premises to facilitate that access;
 - (b) requiring the adult to participate in a capacity assessment;
 - (c) allowing a person conducting an assessment under clause (b), access to the adult and entry to a premises to facilitate that access;
 - (d) prohibiting any person from being present while the Minister communicates with or assesses the adult, or during a capacity assessment; or
 - (e) requiring a person to provide information referred to in subsection 5(3). *1988, c.6, s.6; 2013, c.1, s.5.*

7. Cooperation

- (1) Repealed by *2013, c.1, s.6.*

Order for assessment

- (2) Repealed by *2013, c.1, s.6. 1988, c.6, s.7; 2013, c.1, s.6.*

8. Determination of status and case plan

- (1) The Minister shall, on the basis of an investigation respecting an adult,
 - (a) determine whether, in the opinion of the Minister, the adult is in need of assistance or protection; and



- (b) where, in the opinion of the Minister, the adult is in need of assistance or protection, develop a case plan for the assistance or protective intervention, as the case may be, that appears to best serve the needs and interests of the adult.

Idem, involvement

- (2) In making the determination and any case plan under subsection (1), the Minister shall, to the fullest practicable extent, involve the adult who is or may be in need of assistance or protection and any person who has supervisory responsibility for the adult, and such involvement shall include
 - (a) sharing the results of the investigation; and
 - (b) attempting to determine and accommodate the adult's own wishes. *1988,c.6,s.8; 2013,c.1,s.7.*

ASSISTANCE

9. Conditions for assistance

The Minister may provide or arrange for assistance for an adult where

- (a) the Minister believes on the basis of an investigation that the adult is in need of assistance;
- (b) the assistance is provided or arranged in accordance with a case plan; and
- (c) either
 - (i) the adult has capacity to consent and does consent, or
 - (ii) where the adult has a guardian, the adult's guardian consents. *1988,c.6,s.9; 2013,c.1,s.8.*

10. Types of assistance

Assistance may include

- (a) further 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) homemaking, nutritional and social support services;
- (h) legal counsel and financial management services;
- (i) application for trustee or guardianship functions;
- (j) residential accommodation and personal or nursing care; and
- (k) any other service that may support the adult's safety and well-being. *1988,c.6,s.10; 2013,c.1,s.8.*

PROTECTIVE INTERVENTION

11. Application for protective intervention

- (1) Where the Minister has reasonable grounds to believe that an adult is in need of protection, the Minister may apply to the court for a protective intervention order for the adult.

Protective intervention order

- (2) Where, upon hearing an application made under subsection (1), the court finds that an adult is in need of protection, the court may make an order under section 12 for the protective intervention that, in the opinion of the court, is in the best interests of the adult. *1988,c.6,s.11; 2013,c.1,s.9.*

12. Protective interventions

- (1) The court may, with respect to an adult who is in need of protection, make a protective intervention order that does one or more of the following:
- (a) directs the provision or arrangement of assistance for the adult;
 - (b) places the adult under the supervision of the Minister, in accordance with any conditions set out in the order; or
 - (c) directs that the adult be relocated and, if necessary, placed under appropriate supervision or care, in accordance with any conditions set out in the order.

Source of harm or danger

- (2) The court may, with respect to a person who is determined to be a source of harm or danger to an adult who is in need of protection, make a protective intervention order directing such person to do one or more of the following:
- (a) limit the person's contact, communication or involvement with the adult or the adult's estate as directed by the court;
 - (b) cease residing at and stay away from the premises where the adult resides, provided the person is not the owner or lessee of the premises;
 - (c) refrain from visiting, communicating with, harassing or interfering with the adult;
 - (d) refrain from having any involvement in or interfering with the adult's estate;
 - (e) provide financially for the maintenance and support of the adult, if the person has a legal obligation to do so. *1988,c.6,s.12; 2013,c.1,s.9.*

13. Order for health care

The court may at any time, regardless of the status of an application for a protective intervention order, order that an adult who is or may be 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 adult's health. *1988,c.6,s.13; 2013,c.1,s.10.*

14. Consent to treatment

Notwithstanding section 11 of the *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2, where the court has, by protective intervention order, directed that an adult who is in need of protection be subject to supervision by the Minister, the Minister is solely responsible to make treatment decisions on behalf of the adult, unless otherwise specified in the order, where the adult is incapable of doing so in accordance with that Act. *1988,c.6,s.14; 2013,c.1,s.11.*



15. Application for guardianship, committee

- (1) Where the Minister has reasonable grounds to believe that an adult who is or may be in need of assistance or protection is unable to make reasonable judgments with respect to the adult's personal welfare or estate, the Minister may make an application to the court
- (a) under Part III of the *Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1, for an order appointing a guardian for the adult; or
 - (b) under the *Public Trustee Act* R.S.P.E.I. 1988, Cap. P-32.2, for the appointment of a committee for the adult.

Temporary guardian

- (2) Notwithstanding subsection (1), where, in the circumstances described in subsection (1), the Minister has reasonable grounds to believe that there is considerable risk of immediate, serious harm to the adult or the adult's estate, the Minister may make an application for, and the court may make, an order appointing a temporary guardian for the adult while an investigation is ongoing or other actions are taken pursuant to this Act.

Idem

- (3) An order appointing a temporary guardian shall
- (a) be in force for a period of not more than 180 days and subject to renewal only once; and
 - (b) limit the authority of the temporary guardian to matters necessary for the immediate protection of the adult and preservation of the adult's estate. *1988,c.6,s.15; 1994,c.52,s.79; 2013,c.1,s.11.*

16. Appointment of guardian

- (1) - (3) Repealed by *2013,c.1,s.12. 1988,c.6,s.16; 2013,c.1,s.12.*

17. Temporary guardianship

- (1) Repealed by *2013,c.1,s.12.*

Idem

- (2) Repealed by *2013,c.1,s.12. 1988,c.6,s.17; 2013,c.1,s.12.*

18. Costs

The court may in connection with any order authorize or direct that compensation or coverage of the costs of services provided to an adult be paid from the adult's estate. *1988,c.6,s.18; 2013,c.1,s.13.*

19. Child in care

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.*

20. Notice

- (1) Where the Minister applies for an order under this Act, except under section 23 or 24, the Minister shall give at least fourteen days' notice of the application to the following:
- (a) the adult who is or may be in need of protection, to whom the application relates;
 - (b) any person who has supervisory responsibility for that adult;
 - (c) any person, other than the adult, who is the subject of the application.

Exception

- (2) Notwithstanding clause (1)(a), the Minister may, with leave of the court, refrain from giving notice of an application to an adult who is or may be in need of protection if the adult is incompetent or the court determines it is in the best interests of the adult not to do so.

Right to be heard

- (3) An adult who is or may be in need of protection and any other person who is the subject of an application for an order under this Act is entitled to be heard at any proceeding related to that application.

Right to representation

- (4) The court may order that an adult who is or may be in need of protection, to whom an application for an order under this Act relates, shall, at the expense of the Minister, be represented by legal counsel, the Official Guardian or another public official at any proceedings related to the application if it is established that the expense would be beyond the means of the adult.

Private proceedings

- (5) No person shall be present at a proceeding related to an application for an order under this Act except
- (a) the adult who is or may be in need of protection, to whom the application relates;
 - (b) any person with supervisory responsibility for that adult;
 - (c) the Official Guardian or other public official who is representing that adult in accordance with subsection (4);
 - (d) any person, other than the adult, who is the subject of the application;
 - (e) the Minister;
 - (f) legal counsel; and
 - (g) any other person permitted by the court. *1988,c.6,s.20; 2013,c.1,s.14.*

21. Onus

In any application for an order for protective intervention, there is an onus on the Minister to establish that

- (a) the adult who is the subject of the application is in need of protection;
- (b) an adequate remedy is unlikely to be achieved other than by an order; and
- (c) the protective intervention proposed is the least intrusive or restrictive of the practicable remedies available and is in the best interests of that adult. *1988,c.6,s.21; 2013,c.1,s.14.*



22. Time limit and review

Any order for protective intervention shall be for a maximum of twelve 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; 2013,c.1,s.15.*

EMERGENCY INTERVENTION

23. Removal of adult or source of harm

- (1) Where the Minister has reasonable grounds to believe that there is considerable risk of immediate, serious harm to an adult who is or may be in need of protection, the Minister may
- (a) cause the adult to be removed from the source of the potential harm to such place as the Minister considers appropriate for the protection of the adult; or
 - (b) cause the source of the potential harm to be removed from proximity to the adult.

Removal includes limiting, preventing interaction

- (1.1) Where the source of potential harm is a person, the Minister's authority under subsection (1) to cause the removal of the adult or the source of the potential harm includes the authority to limit or prevent contact or communication between the person and the adult following the removal.

Application for order required

- (2) Within five clear days after an adult or a source of potential harm is removed pursuant to subsection (1), the Minister shall apply for a protective intervention order for the adult under section 11, unless the Minister has sooner reversed the actions taken under subsection (1). *1988,c.6,s.23; 2013,c.1,s.16; 2016,c.33,s.1.*

24. Report to Public Trustee

Where the Minister has reasonable grounds to believe that there is considerable risk of immediate, serious harm to the estate of an adult who is or may be in need of protection, the Minister may inform the Public Trustee, who may take such action as is authorized under the *Public Trustee Act*. *1988,c.6,s.24; 1994,c.52,s.79; 2013,c.1,s.16.*

REVIEW

25. Inform adult

The Minister shall continue to inform an adult who is in need of, and is receiving, assistance or an adult who is in need of protection and is the subject of a protective intervention order, and any person who has supervisory responsibility for the adult, in writing and in a manner readily understandable by the adult, of any actions planned or taken under this Act in relation to the adult. *1988,c.6,s.25; 2013,c.1,s.17.*

26. Scheduled review

- (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.

Unscheduled review

- (2) The Minister shall carry out a review of a case plan and any assistance or protective intervention being provided to an adult who is in need of assistance or protection, as the case may be, if
- (a) there appears to have been a material change in the needs or circumstances of the adult; or
 - (b) the adult or a person who has supervisory responsibility for the adult requests a review based on reasonable grounds.

Material change

- (3) Where, based on a review under subsection (1) or (2), the Minister believes that there has been a material change in the needs or circumstances of the adult, the Minister shall adjust the case plan accordingly and may apply to the court to have any protective intervention order respecting the adult varied, renewed or revoked. *1988,c.6,s.26; 2013,c.1,s.18.*

27. Change of order

An adult who is in need of protection and is the subject of a protective intervention order, or a person who has, or is willing to assume, supervisory responsibility for that adult, may, at any time based on a material change in the needs or circumstances of the adult, apply to have the order varied, renewed or revoked. *1988,c.6,s.27; 2013,c.1,s.19.*

28. Notice

An applicant under section 27 shall give at least fourteen days' notice of the application to any other person directly involved or affected, including the Minister. *1988,c.6,s.28; 2013,c.1,s.19.*

GENERAL

29. Liability

No action lies against a health-care professional or institution or its staff for rendering necessary treatment in good faith and without negligence to an adult who is or may be in need of assistance or protection. *1988,c.6,s.29; 2013,c.1,s.21.*

30. Confidentiality

No person employed in the administration of this Act shall disclose confidential information collected in the administration of this Act except, subject to subsection 4(3),

- (a) where authorized by the Minister;
- (b) with the consent of the person or persons to whom the information pertains;
- (c) where required for the administration of this Act;
- (d) in the course of judicial proceedings under this Act, the *Mental Health Act* or the *Public Trustee Act*; or
- (e) otherwise in accordance with this Act or the regulations. *1988,c.6,s.30; 2013,c.1,s.22.*

30.1 Assistance of peace officer

The Minister may request from a peace officer, and the peace officer shall provide, assistance to

- (a) conduct an investigation under section 5;
- (b) enforce a court order made pursuant to this Act;
- (c) take action under section 23; or
- (d) conduct a review under section 26. *2016,c.33,s.2.*

31. Offence

Any person who

- (a) obstructs or hinders any person who is conducting an investigation pursuant to this Act;
- (b) fails to comply with the requirements of a protective intervention order; or
- (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 \$10,000 or imprisonment for a term not exceeding six months, or both. *1988,c.6,s.31; 2013,c.1,s.23.*

32. Regulations

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