

The Adult Protection Act,

R.S.N.S. 1989, c.2

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1. What is the purpose of the *Act*?

- 1.1 The purpose of the *Act* is to protect adults who cannot care for themselves. Sometimes, these adults are in the care of other people. As a result, they may be vulnerable to mistreatment by those who care for them. This *Act* seeks to protect these vulnerable people from abuse and neglect. It also seeks to protect those who cannot care adequately for themselves because of a physical disability or mental infirmity (s.2).

2. Who exactly does the *Act* protect?

- 2.1 The *Act* only applies to people who are 16 years of age or older who are in need of protection. "In need of protection" means that the adult, in the place where he lives, is a victim of any of the following things:

- 2.1.1 physical abuse;
- 2.1.2 sexual abuse;
- 2.1.3 mental cruelty; or
- 2.1.4 a combination of physical abuse, sexual abuse, or mental cruelty.

Additionally, the person must not be able to protect himself from the abuse by reason of physical disability or mental infirmity. The *Act* also applies where the individual in need of protection refuses to accept protection from the abuse(s.3(b)(i)).

- 2.2 The *Act* also protects those who are being neglected. This includes anyone (over the age of 16) who is neglected by those who are responsible for caring for them, or anyone who is unable to care adequately for himself by reason of physical disability or mental infirmity. The person might also be refusing or delaying getting protection from the neglect, and is unable to make arrangements for his own care (s.3(b)(ii)).

3. How does the *Act* protect adults in need of protection?

- 3.1 To achieve its purpose, the *Act* provides the Minister of Community Services with the power to order an assessment of an individual who appears to be an adult in need of protection (s.6). It also gives the Minister the power to remove those who are in need of protection from dangerous living conditions (s.10), to offer them assistance through the provision of various services (ss. 7, 9), and to protect their property if they must be removed from their home (s.13). The *Act* also requires

the Minister to seek appropriate orders for dealing with the adult in need of protection (ss. 8, 9, 10).

3.2 The *Act* also provides for Protective Intervention Orders. These are court orders against people who may be a source of danger to the adult in need of protection. Generally, they limit the contact such a person can have with the adult in need of protection (s.9 (3) (d)).

4. Who decides if an adult is in need of protection?

4.1 The Minister of Community Services is responsible for the *Act*. The individual who acts with the authority of the Minister has the title “Coordinator of Adult Protection Services” (s.4 (1)). Sometimes, after an assessment, it is the Minister (or her delegate, the Coordinator) who makes the decision that an adult is in need of protection. Other times, it is necessary for the Minister to apply to court to have an individual declared an “adult in need of protection”. This is discussed in greater detail under question 7.

4.2 The Minister relies on reports from individual members of the public to determine whether or not an adult may be in need of protection. If an individual has information that an adult is in need of protection, he must report it to the Minister (s.5 (1)).

4.3 In fact, any person who has such information and who fails to report it is guilty of an offence under the *Act* (s.16 (1)). The duty to report applies even if the information is confidential or privileged (ss. 5, 16). The individual who makes

the report is protected from being sued as long as he does not make the report maliciously, and as long as there is reasonable and probable cause to do so (s.5(2)).

5. What happens once a report is made to the Minister that an adult is in need of protection?

5.1 When the Minister receives a report that an adult is in need of protection, she must make an inquiry into the matter. If it is found that there are reasonable and probable grounds to believe the adult is in need of protection, the Minister will order that an assessment be made of the person's circumstances. She may also request that a qualified medical practitioner assess the adult, examine the care the adult is receiving, and report as to whether the adult has been abused (s.6).

6. What if there is resistance to the assessment ordered by the Minister of Community Services?

6.1 Sometimes, the individual requiring an assessment refuses to cooperate. Other times, the people who are caring for the vulnerable adult refuse to allow the assessment to happen. In those cases, the Minister can apply to court for an order authorizing entry into the premises where the adult is located. The court will grant the order if there are reasonable and probable grounds to believe that the person being assessed is an adult in need of protection. (s.8(2)).

7. If the assessment shows there is abuse or neglect, what happens next?

- 7.1 If the assessment shows that the person is an adult in need of protection, the Minister will assist the adult in obtaining appropriate services. These services usually include things like home care assistance, or admission to rehabilitation programs, residential care facilities, or group homes. The types of services recommended will depend on the specific circumstances of the adult in need of protection. The services are aimed at enhancing that person's ability to care and provide for himself, or to protect himself from abuse or neglect. If the person is willing to accept this assistance, the matter ends there (s.7).
- 7.2 Sometimes the Minister must take things a step further and apply to the court to have the person declared an "adult in need of protection". This happens when the individual refuses to accept the Minister's assistance because he is not mentally competent enough to accept the assistance, or he is under duress. The court will rule on the issue of whether or not the individual is mentally competent or is under duress (s.9).
- 7.3 If the court declares that the adult is in need of protection, it may do any or all of the following things (s.9 (3)):
- 7.3.1 authorize the Minister to provide the adult with services that will enhance his ability to care for himself, or to protect himself from abuse or neglect.
 - 7.3.2 authorize the Minister to place the individual in a facility approved by the Minister; or

7.3.3 issue a Protective Intervention Order against someone posing a danger to the adult in need of protection. These orders are discussed below, under question 9.

8. What happens if the assessment reveals the adult is in immediate danger?

8.1 Sometimes the assessment reveals that the individual faces immediate danger, and there is not enough time to apply to court to have the person declared an “adult in need of protection”. Where the person’s life is in danger, and he is refusing the Minister’s assistance by reason of mental incompetence or duress, the Minister can herself authorize the immediate removal of the adult in need of protection (s.10(1)). When this happens, the Minister must apply to court within 5 days of the removal. It is at that time that the Minister asks the court to officially declare the person an “adult in need of protection” (s.10 (2)). Notice of the hearing must be given to the affected person or to the individual who has custody or control of that individual (s.10 (3)). Once the hearing takes place, the court may order any of the three remedies mentioned in section 7.3.

9. What is a Protective Intervention Order?

9.1 This is a court order that protects an adult in need of protection from a person who is a source of danger. It can require the dangerous person to leave the premises where the vulnerable adult resides, or prohibit or limit any contact between the dangerous person and the adult in need of protection. The order can also require the individual to pay maintenance for the adult in need of protection, if there is a pre-existing legal obligation of support (s.9 (3) (d)).

10. What role does the Public Trustee play under the Act?

10.1 Where a court makes an order authorizing an adult's placement in a facility, or where a Protective Intervention Order is issued, the court may also advise the Public Trustee that the adult in need of protection has no guardian, or has a guardian that is not acting in his best interests (s. 9(4)). The Public Trustee is a provincial official who ensures that those individuals who have no one to care for them have some form of assistance.

10.2 Additionally, where an adult in need of protection is removed from his home, and the Minister perceives that there is a danger to that person's property, the Public Trustee is informed (s.13 (1)). The Public Trustee may assume immediate management of the individual's estate (*e.g.*, their bank account, their home, their car). The Trustee is then charged with preserving that property for the adult in need of protection until the person can resume control on his own behalf (s.13(2)).

11. What factors influence a court's decision on all matters falling under the Act?

11.1 In any proceeding under the *Act*, the court must apply the principle that the welfare of the adult in need of protection is the most important consideration.

12. DISCLAIMER - PLEASE READ!

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**Throughout this summary, the male pronoun was used to limit the length of the sentences. Its use is intended to also include the feminine pronoun.