

BILL

No. 205 of 2002

An Act respecting the Protection of Persons in Care

(Assented to _____, 2002)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Protection of Persons in Care Act*.

Interpretation

2(1) In this Act:

(a) “**abuse**” means:

- (i) intentionally causing bodily harm;
- (ii) intentionally causing emotional harm that includes but is not limited to, threatening, intimidating, humiliating, harassing, coercing or restricting appropriate social contact;
- (iii) intentionally administering or prescribing medication for an inappropriate purpose;
- (iv) non-consensual sexual contact, activity or behavior;
- (v) intentionally misappropriating or improperly or illegally converting money or other valuable possessions; or
- (vi) intentionally failing to provide adequate nutrition, adequate medical attention or any other necessity of life without a valid consent refusing medical attention;

(b) “**agency**” means:

- (i) a hospital as defined in *The Health Districts Act* or *The Regional Health Services Act*, as the case may require;
- (ii) a facility or place operated by a district health board or an affiliate as defined in *The Health Districts Act*, or a regional health authority or an affiliate as defined in *The Regional Health Services Act*, as the case may require;
- (iii) a special-care home as defined in *The Housing and Special-care Homes Act*, or a facility designated as a special-care home pursuant to *The Regional Health Services Act*, as the case may require;
- (iv) a personal-care home as defined in *The Personal-care Homes Act*, or designated as a personal-care home pursuant to *The Regional Health Services Act*, as the case may require;

(v) a facility as defined in *The Mental Health Services Act*, or a facility designated pursuant to *The Regional Health Services Act*, as the case may require; or

(vi) any institution or organization prescribed in the regulations as an agency;

(c) **“appropriate minister”** means:

(i) if the complaint involves an agency referred to in subclause (b)(i), or (b)(ii), or (b)(v) or a service provider at or an employee of the agency, the Minister of Health; or

(ii) if the complaint involves an agency referred to in subclause (b)(iii) or (b)(iv), or a service provider at or an employee of the agency, the Minister of Social Services;

(d) **“client”** means an adult who receives services from an agency;

(e) **“complainant”** means an individual, client or service provider who reports abuse of a client pursuant to subsection 3(1) or section 4;

(f) **“investigator”** means an investigator appointed pursuant to subsection 6(2) and includes a committee, body or person to whom a complaint is referred pursuant to section 9;

(g) **“service provider”** means a person who provides services to a client and is employed by or provides the services on behalf of an agency.

Duty to report abuse

3(1) Every individual or service provider who has reasonable grounds to believe and believes that there is or has been abuse against a client shall report that abuse to the appropriate minister or a police service or a committee, body or person authorized pursuant to another enactment to investigate the abuse.

(2) Subsection (1) applies notwithstanding that the information on which the belief is founded is confidential and its disclosure is prohibited pursuant to any other Act.

(3) This section does not apply to information that is privileged as a result of a solicitor-client relationship.

(4) Notwithstanding and in addition to any other penalty provided for by this Act, if the appropriate minister has reasonable grounds to believe that a person has not complied with subsection (1) and that person is registered pursuant to an Act regulating a profession or occupation prescribed in the regulations, the appropriate minister shall advise the appropriate governing body of that profession or occupation of the failure to comply.

(5) Any person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000 and, in default of payment, to imprisonment for a term of not more than 6 months.

(6) This section only applies to abuse that occurs after this Act comes into force.

Client report of abuse

4 A client may report abuse against his or her person to the appropriate minister.

Complainant protection

5(1) No action lies or shall be instituted against a complainant unless the complaint is made maliciously or without reasonable grounds for the belief.

(2) No agency shall take adverse employment action against a service provider or an employee of an agency because that person is a complainant.

(3) No agency or person shall alter, interrupt, discontinue or threaten to alter, interrupt or discontinue service to a client, or a client's spouse, child or parent who receives services from an agency, because the client is a complainant or because it is alleged that the complainant's spouse, child or parent has been abused.

(4) Every person who contravenes subsection (2) or (3) is guilty of an offence and is liable on summary conviction:

(a) in the case of an individual, to a fine not more than \$5,000;

(b) in any other case, to a fine of not more than \$25,000.

Duties of an agency

6(1) Every agency has a duty to protect the clients it serves from abuse and to maintain a reasonable level of safety for its clients.

(2) Every agency shall make the provisions of this Act available to every service provider, employee and client.

(3) Every agency must require that every successful applicant for employment and every new volunteer provide a criminal record check conducted within the last three months.

Referral to minister

7(1) On receipt of a report of abuse to the Department of Health, the department must, as soon as possible, refer the matter to the appropriate minister for investigation.

(2) On receipt of a referral pursuant to subsection (1), the appropriate minister must, as soon as possible, appoint a person to investigate the complaint.

Investigation

8(1) For the purposes of conducting an investigation, an investigator may enter an agency at any reasonable hour.

(2) An investigator, in conducting an investigation, is entitled to access to the records of the agency for the purpose of inspecting them, making copies of them or taking extracts from them.

(3) If the investigator is refused entry to an agency for the purposes of conducting an investigation, the investigator may apply to the Court of Queen's Bench for an order permitting the investigator to:

(a) enter the agency at any reasonable hour and conduct the investigation; and

(b) require the production of any records of the agency.

- (4) An application pursuant to subsection (3) may be made *ex parte* if the Court considers it proper to do so in the circumstances.
- (5) Subsections (2) and (3) do not apply to:
- (a) the financial records of the agency that relate to the operation of the agency; or
 - (b) the medical or clinical records of a person unless that person or that person's guardian consents to those records being inspected.

Investigator's report

9(1) The investigator must prepare a report for the appropriate minister on the progress of the investigation:

- (a) within 30 days of the investigator's appointment, or in the case of a referral pursuant to section 10, within 30 days of the referral; and
 - (b) every 30 days from that date until the investigation is complete.
- (2) Notwithstanding this section, if the appropriate minister or the investigator is of the opinion that the subject matter of the complaint could constitute an offence pursuant to the *Criminal Code* (Canada), the appropriate minister or the investigator must as soon as possible refer the complaint to the appropriate police service.
- (3) After completing an investigation, the investigator must prepare a final report to the appropriate minister and may recommend in the report any one of the following:
- (a) if the agency involved in the complaint receives funding from the Crown or a Crown agency, that the funding be reviewed or altered;
 - (b) that the agency involved in the complaint take disciplinary action against an employee or service provider;
 - (c) that the complaint be dismissed because:
 - (i) the complaint was made maliciously;
 - (ii) the complaint was made without reasonable grounds for the belief;
or
 - (iii) the complaint is unfounded or the evidence is insufficient;
 - (d) any other recommendation that the investigator considers appropriate in the circumstances.
- (4) After having reviewed the report, the appropriate minister may do any of the following:
- (a) approve in whole or in part the recommendations of the investigator;
 - (b) reject the recommendations of the investigator;
 - (c) order that the investigator undertake a further investigation;
 - (d) take any other action that the minister considers appropriate in the circumstances.

- (5) The decision of the appropriate minister is final and binding.
- (6) The appropriate minister must provide a copy of the decision to the complainant and to the agency involved in the complaint.

Referral to other body

10(1) The appropriate minister may refer a complaint to a committee, body or person authorized pursuant to another enactment to investigate the complaint if the matter also falls within the jurisdiction of that committee, body or person.

(2) If a complaint has been referred to a committee, body or person pursuant to this section, that committee, body or person has the powers pursuant to section 8, in addition to any other powers, duties and responsibilities the committee, body or person may have.

Actions against investigators or others

11 No action lies or shall be instituted against the appropriate minister, an investigator appointed pursuant to section 7 or a committee, body or person to whom a complaint is referred pursuant to section 10, or a member, or former member of or a person employed or engaged by the committee, body or person for anything done in good faith pursuant to this Act.

Offence – false report

12 A person who makes a complaint pursuant to 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 \$2,000 and, in default of payment, to imprisonment for a term of not more than six months.

Crown bound

13 This Act binds the Crown.

Regulations

14 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or phrase used in this Act but not defined in this Act;
- (b) designating institutions or organizations as agencies;
- (c) prescribing professions or occupations for the purposes of subsection 3(4);
- (d) determining the appropriate minister for agencies designated pursuant to clause (b);
- (e) respecting any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (f) respecting any other matter or thing that, in the opinion of the Lieutenant Governor in Council, is necessary or expedient in order to carry out the intent and purposes of this Act.

Coming into force

15 This Act comes into force on assent.

