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ADULT GUARDIANSHIP ACT

[RSBC 1996] CHAPTER 6

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Part 1 — Introductory Provisions

Definitions

1 In this Act:

"abuse" means the deliberate mistreatment of an adult that causes the adult

- (a) physical, mental or emotional harm, or
- (b) damage to or loss of assets,

and includes intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy or denial of access to visitors;

"adult" means anyone who has reached 19 years of age and, for all purposes incidental to an application under section 6 (2), includes a person who has reached 18 years of age;

"care facility" has the same meaning as in the *Health Care (Consent) and Care Facility (Admission) Act*;

"court" means

- (a) in this Part and Part 2, the Supreme Court,
- (b) in Part 3, the Provincial Court, and
- (c) in Part 4, the Supreme Court or the Provincial Court;

"decision maker" means a person appointed under this Act as an associate decision maker or substitute decision maker;

"designated agency" means

- (a) in Part 2, a public body, organization or person designated under section 61 (a) for the purposes of that Part,
- (b) in Part 3, a public body, organization or person designated under section 61 (a.1) for the purposes of that Part, and
- (c) in Part 4, a public body, organization or person referred to in paragraph (a) or (b);

"health care" has the same meaning as in the *Health Care (Consent) and Care Facility (Admission) Act*;

"near relative" means an adult child, a parent, an adult brother or sister or any other adult relation by birth or adoption;

"nearest relative" means the person mentioned in the definition of "near relative" who has priority in the order mentioned in that definition;

"neglect" means any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage to or loss of assets, and includes self neglect;

"representation agreement" means an agreement made under the *Representation Agreement Act*;

"representative" means a person authorized by a representation agreement to make decisions on behalf of another;

"self-neglect" means any failure of an adult to take care of himself or herself that causes, or is reasonably likely to cause within a short period of time, serious physical or mental harm or substantial damage to or loss of assets, and includes

- (a) living in grossly unsanitary conditions,
- (b) suffering from an untreated illness, disease or injury,
- (c) suffering from malnutrition to such an extent that, without intervention, the adult's physical or mental health is likely to be severely impaired,
- (d) creating a hazardous situation that will likely cause serious physical harm to the adult or others or cause substantial damage to or loss of assets, and
- (e) suffering from an illness, disease or injury that results in the adult dealing with his or her assets in a manner that is likely to cause substantial damage to or loss of the assets;

"spouse" means a person who

- (a) is married to another person, and is not living separate and apart, within the meaning of the *Divorce Act* (Canada), from the other person, or
- (b) is living and cohabiting with another person in a marriage-like relationship, including a marriage-like relationship between persons of the same gender.

Guiding principles

2 This Act is to be administered and interpreted in accordance with the following principles:

- (a) all adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters;
- (b) all adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their assets;
- (c) the court should not be asked to appoint, and should not appoint, decision makers or guardians unless alternatives, such as the provision of support and assistance, have been tried or carefully considered.

Presumption of capability

- 3 (1) Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about personal care, health care, legal matters or about the adult's financial affairs, business or assets.
- (2) An adult's way of communicating with others is not grounds for deciding that he or she is incapable of making decisions about anything referred to in subsection (1).

Part 2 — Decision Makers, Guardians and Monitors

Not In Force

4-43 [Not in force — see Supplement]

Part 3 — Support and Assistance for Abused and Neglected Adults

Purpose of this Part

- 44 The purpose of this Part is to provide for support and assistance for adults who are abused or neglected and who are unable to seek support and assistance because of
- (a) physical restraint,
 - (b) a physical handicap that limits their ability to seek help, or
 - (c) an illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect.

Definition

44 . 1 In this Part, "**guardian**" includes a committee under the *Patients Property Act*.

Application of this Part

- 45** (1) This Part applies whether an adult is abused or neglected in a public place, in the adult's home, a relative's home, a care facility or any other place except a correctional centre.
- (2) This Part does not
- (a) override the rights in section 4 of the *Health Care (Consent) and Care Facility (Admission) Act*, or
 - (b) prevent an adult's representative, decision maker or guardian from refusing health care for the adult in accordance with wishes the adult expressed while capable, even if the refusal will result in the adult's death.

Reporting abuse or neglect

- 46** (1) Anyone who has information indicating that an adult
- (a) is abused or neglected, and
 - (b) is unable, for any of the reasons mentioned in section 44, to seek support and assistance,
- may report the circumstances to a designated agency.
- (2) A person must not disclose or be compelled to disclose the identity of a person who makes a report under this section.
- (3) No action for damages may be brought against a person for making a report under this section or for assisting in an investigation under this Part, unless the person made the report falsely and maliciously.
- (4) A person must not
- (a) refuse to employ or refuse to continue to employ a person,
 - (b) threaten dismissal or otherwise threaten a person,
 - (c) discriminate against a person with respect to employment or a term or condition of employment or membership in a profession or trade union, or
 - (d) intimidate, coerce, discipline or impose a pecuniary or other penalty on a person
- because the person makes a report or assists in an investigation under this Part.
- (5) In subsection (4), "**discipline**" includes
- (a) a refusal to issue or renew a licence or certificate to practise a profession or trade, and
 - (b) a denial or cancellation of permission to practise in a hospital or a refusal to renew that permission.

Determining if the adult needs support and assistance

- 47** (1) A designated agency must determine whether an adult needs support and assistance if the agency
- (a) receives a report under section 46,
 - (b) has reason to believe that an adult is abused or neglected, or
 - (c) receives a report that the adult's representative, decision maker, guardian or monitor has been hindered from visiting or speaking with the adult.
- (2) If the designated agency determines that the adult does not need support and assistance, the designated agency
- (a) must take no further action, and

(b) may advise the Public Guardian and Trustee.

(3) If the designated agency determines that the adult needs support and assistance, the designated agency may do one or more of the following:

- (a) refer the adult to available health care, social, legal, accommodation or other services;
- (b) assist the adult in obtaining those services;
- (c) inform the Public Guardian and Trustee;
- (d) investigate to determine if the adult is abused or neglected and is unable, for any of the reasons mentioned in section 44, to seek support and assistance.

Power to investigate

48 (1) In conducting an investigation described in section 47 (3) (d), a designated agency must make every reasonable effort to interview the adult.

(2) In addition, the designated agency may

- (a) interview the adult's spouse, the adult's near relatives, the adult's friends or anyone else who may assist in the investigation, and
- (b) obtain any information that the circumstances require, including a report from
 - (i) a health care provider who has examined the adult,
 - (ii) any agency that provides or has provided health or social services to the adult, and
 - (iii) any person that manages the adult's financial affairs, business or assets.

(3) Section 62 applies to information referred to in subsection (2) (b).

Power to enter to investigate

49 (1) A designated agency that is conducting an investigation described in section 47 (3) (d) may apply to the court for an order under subsection (2) if someone from the designated agency

- (a) believes it is necessary to enter any premises in order to interview the adult, and
- (b) is denied entry to the premises by anyone, including the adult.

(2) On application under subsection (1), the court may make an order authorizing either or both of the following:

- (a) someone from the designated agency to enter the premises and interview the adult;
- (b) a health care provider, as defined in the *Health Care (Consent) and Care Facility (Admission) Act*, to enter the premises to examine the adult to determine whether health care should be provided.

(3) If an application for a court order will result in a delay that could result in harm to the adult, a justice of the peace may issue a warrant authorizing someone from the designated agency to enter the premises and interview the adult.

(4) The court may only make an order under subsection (2), and a justice of the peace may only issue a warrant under subsection (3), if there is reason to believe that the adult

- (a) is abused or neglected, and
- (b) is, for any of the reasons mentioned in section 44, unable to seek support and assistance.

Duty to report offence

50 If a designated agency has reason to believe that a criminal offence has been committed against an adult about whom a report is made under section 46, the designated agency must report the facts to the police.

Outcome of investigation

- 51 (1) After conducting an investigation described in section 47 (3) (d), the designated agency may do one or more of the following:
- (a) take no further action;
 - (b) refer the adult to available health care, social, legal, accommodation or other services;
 - (c) report the case to the Public Guardian and Trustee or another agency;
 - (d) assist the adult in obtaining a representative;
 - (e) apply to the court for an interim order requiring a person
 - (i) to stop residing at and stay away from the premises where the adult lives, unless the person is the owner or lessee of the premises,
 - (ii) not to visit, communicate with, harass or interfere with the adult,
 - (iii) not to have any contact or association with the adult or the adult's assets, business or financial affairs, or
 - (iv) to comply with any other restriction of relations with the adult,for a period of up to 30 days;
 - (f) apply to the court for an order under Part 7 of the *Family Relations Act* for the adult's maintenance;
 - (g) prepare a support and assistance plan that specifies any services needed by the adult, including health care, accommodation, social, legal or financial services.
- (2) Within 72 hours after filing with the court an application for an interim order under subsection (1) (e), the designated agency must serve a copy of the application on the adult and on the person against whom the order is sought.
- (3) On application under subsection (1) (e), the court may make an interim order described in that subsection if the designated agency establishes that there is reason to believe
- (a) the person has abused the adult, and
 - (b) the adult is unable, for any of the reasons mentioned in section 44 (c), to seek support and assistance.

Adult's involvement in decision making

- 52 The designated agency must involve the adult, to the greatest extent possible, in decisions about how to
- (a) seek support and assistance, and
 - (b) provide the support and assistance necessary to prevent abuse or neglect in the future.

Support and assistance plan

- 53 (1) A designated agency that prepares a support and assistance plan for an adult must explain the plan and the proposed services to the adult.
- (2) If health care services or admission to a care facility is proposed in the support and assistance plan, the designated agency must ensure that the *Health Care (Consent) and Care Facility (Admission) Act* is complied with.
- (3) When explaining the support and assistance plan to the adult, the designated agency
- (a) must communicate with the adult in a manner appropriate to the adult's skills and abilities, and
 - (b) may allow the adult's spouse or any relatives or friends who accompany the adult or who offer their assistance, to help the adult to understand or demonstrate an understanding of the support and assistance plan.
- (4) If the adult decides not to accept the services proposed in the support and assistance plan, they

must not be provided except under section 56 (3).

(5) If the adult decides not to accept the services proposed in the support and assistance plan and the adult appears to be incapable of making that decision, the designated agency may ask the Public Guardian and Trustee to arrange for an assessment of whether the adult is incapable.

Application for support and assistance orders

54 (1) A designated agency that prepares a support and assistance plan may apply to the court for an order authorizing the provision of services to the adult if the report of the assessment under section 53 (5) is that the adult is incapable of deciding not to accept the services proposed in the plan.

(2) At least 7 days before the date set for hearing the application, the designated agency must serve a copy of the application on the following:

- (a) the adult who is the subject of the application;
- (b) the adult's spouse or, if the adult has no spouse, a near relative of the adult;
- (c) the person in charge of any hospital, facility or residence where the adult may be residing or receiving care;
- (d) the Public Guardian and Trustee;
- (e) *[Not in force see Supplement]*
- (f) the adult's representative, decision maker or guardian;
- (g) *[Repealed 2001-2-5.]*
- (h) any person against whom an order is sought under section 56 (3);
- (i) any other person that the court may direct.

(3) The application must be accompanied by

- (a) a support and assistance plan that is prepared by the designated agency and includes a statement of the adult's wishes if known, and
- (b) a report of the assessment under section 53 (5).

The hearing

55 (1) Any of the following are entitled to be heard at the hearing of the application for the provision of services to the adult:

- (a) the adult;
- (b) any person served under section 54 (2);
- (c) any person supporting and assisting the adult who is the subject of the application;
- (d) any person from the designated agency;
- (e) any other person whom the court agrees to hear.

(2) It is up to the designated agency to prove on the balance of probabilities, that the adult who is the subject of the application needs and would benefit from the services proposed in the support and assistance plan.

Support and assistance orders

56 (1) On hearing the application for the provision of services to the adult, the court must consider whether or not the adult

- (a) is abused or neglected,
- (b) is unable to seek support and assistance because of an illness, disease, injury or other condition that affects his or her ability to make decisions about the abuse or neglect, and
- (c) needs and would benefit from the services proposed in the support and assistance plan.

- (2) When considering the things referred to in subsection (1), the court must take into account the information in the documents mentioned in section 54 (3).
- (3) If the court is satisfied about the matters set out in subsection (1), the court may
- (a) make an order for the provision of support and assistance to the adult without his or her consent,
 - (b) make an order under Part 7 of the *Family Relations Act* for the provision of maintenance for the adult,
 - (c) order a person the court finds has abused the adult
 - (i) to stop residing at and stay away from the premises where the adult lives, unless the person is the owner or lessee of the premises,
 - (ii) not to visit, communicate with, harass or interfere with the adult,
 - (iii) not to have any contact or association with the adult or the adult's assets, business or financial affairs, or
 - (iv) to comply with any other restriction of relations with the adult,
 - (d) order a person the court finds has abused or neglected the adult to pay for, or contribute towards, the adult's maintenance or services to be provided for the adult, or
 - (e) make any other order the court thinks is appropriate and in the best interests of the adult.
- (4) In an order under subsection (3) (a), the court must specify the kinds of support and assistance that are to be provided for the adult, including any of the following:
- (a) admission to an available care facility, hospital or other facility for a specified period of up to 6 months;
 - (b) the provision of available health care;
 - (c) the provision of available social, recreational, educational, vocational or other similar services;
 - (d) supervised residence in a care home, the adult's home or some other person's home, for a specified period of up to 6 months;
 - (e) the provision, for a specified period of up to 6 months, of available services to ensure that the adult's financial affairs, business or assets are properly managed and protected, including any services that may be offered by the Public Guardian and Trustee.
- (5) In an order made under this section, the court must choose the most effective, but the least restrictive and intrusive, way of providing support and assistance.
- (6) If an order is made under this section, the designated agency must serve a copy of the order on the persons who were served with the application under section 54 (2).
- (7) An order made under subsection (3) (a) terminates 6 months after it is made or on an earlier date specified by the court.

Review of support and assistance orders

- 57** (1) A designated agency that obtained a support and assistance order under section 56 (3) (a) must review the need for the order if
- (a) the designated agency has reason to believe that any of the adult's needs or the adult's ability to make decisions about support and assistance has changed significantly since the order was made, or
 - (b) the adult, or a spokesperson for the adult, requests a review and has a substantial reason for doing so.
- (2) If the review under subsection (1) demonstrates that any of the adult's needs or the adult's ability to make decisions about support and assistance has changed significantly, the designated agency must apply to the court to have the order changed or cancelled.

(3) A designated agency that obtains a support and assistance order under section 56 (3) (a) may do either or both of the following:

- (a) review the need for the order before it terminates;
- (b) apply to the court for a renewal of the order.

(4) On application under subsection (2) or (3), the court may

- (a) change or cancel the order if the court is satisfied that any of the adult's needs or the adult's ability to make decisions about support and assistance has changed significantly, or
- (b) renew the order for a further period of up to 6 months if the court is satisfied that the adult still needs the support and assistance provided under section 56 (3) (a).

(5) A support and assistance order under section 56 (3) (a) may be renewed only once.

Review of orders preventing contact

58 (1) A person against whom an order is made under section 56 (3) may apply to the court to change or cancel the order.

(2) On application under subsection (1), the court may change or cancel the order or make any other order it considers to be in the best interests of the adult who has been found to be abused or neglected.

Emergency assistance

59 (1) A person from a designated agency may do anything referred to in subsection (2) without the adult's agreement if

- (a) the adult is apparently abused or neglected,
- (b) it is necessary, in the opinion of the person from the designated agency, to act without delay in order to
 - (i) preserve the adult's life,
 - (ii) prevent serious physical or mental harm to the adult, or
 - (iii) protect the adult's assets from significant damage or loss, and
- (c) the adult is apparently incapable of giving or refusing consent.

(2) In the circumstances described in subsection (1), the designated agency may do one or more of the following:

- (a) enter, without a court order or a warrant, any premises where the adult may be located and use any reasonable force that may be necessary in the circumstances;
- (b) remove the adult from the premises and convey him or her to a safe place;
- (c) provide the adult with emergency health care;
- (d) inform the Public Guardian and Trustee that the adult's financial affairs, business or assets need immediate protection;
- (e) take any other emergency measure that is necessary to protect the adult from harm.

(3) After providing the adult with the assistance and services mentioned in subsection (2), the designated agency may conduct investigations under sections 48 and 49.

Appeal from Provincial Court decision

60 (1) A party may appeal to the Supreme Court from an order made by the Provincial Court under this Part.

(2) The time limit for bringing an appeal under subsection (1) is 40 days, beginning on the day after the order is made by the Provincial Court.

(3) An appeal is brought by

- (a) filing a notice of appeal in a registry of the Supreme Court, and
 - (b) serving a copy of the notice of appeal on the parties to the proceeding in which the order of the Provincial Court was made, unless a judge of the Supreme Court orders otherwise.
- (4) The Supreme Court Civil Rules apply to an appeal under subsection (1) to the extent that they are consistent with this section.
- (5) An appeal does not operate as a stay or suspend the operation of the order under appeal, unless a judge of the Supreme Court orders otherwise.
- (6) After hearing the appeal, the Supreme Court may do one or more of the following:
- (a) confirm or rescind the order of the Provincial Court;
 - (b) make any order that the Provincial Court could have made;
 - (c) direct the Provincial Court to conduct a new hearing.
- (7) On application, the Supreme Court may extend the time limit for bringing an appeal.

Protection from liability

- 60 . 1** (1) A person acting on behalf of or under the direction of a designated agency is not personally liable for anything done or omitted in good faith in the exercise or performance or the intended exercise or performance of a power, duty or function conferred under this Part on a designated agency.
- (2) Subsection (1) does not absolve a designated agency or the government from vicarious liability for an act or omission for which it would be vicariously liable if this section were not in force.

Part 4 — Administrative and Miscellaneous Provisions

Designated agencies and organization of community agencies

- 61** The Public Guardian and Trustee may
- (a) by regulation, designate as agencies for the purposes of Part 2 any public body, organization or person,
 - (a.1) by regulation, designate as agencies for the purposes of any or all of the provisions of Part 3 any public body, organization or person and limit their functions as designated agencies by reference to any factor that the Public Guardian and Trustee considers advisable,
 - (b) organize networks of public bodies, organizations or persons for the provision of support and assistance to abused or neglected adults,
 - (c) establish an agency to assist in planning or developing a network of public bodies, organizations or persons and in training staff, and
 - (d) research the most effective ways of providing community and other services to carry out the purposes of this Act.

Right of agency and Public Guardian and Trustee to information and duty to ensure confidentiality

- 62** (1) A designated agency and the Public Guardian and Trustee have the right to all the information necessary to enable them to perform their duties, powers and functions under this Act.
- (2) Any person who has custody or control of information that a designated agency or the Public Guardian and Trustee is entitled to under subsection (1) must disclose that information to the designated agency or the Public Guardian and Trustee.
- (2.1) Subsections (1) and (2) override
- (a) any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege, and
 - (b) any restriction in an enactment or the common law about the disclosure or confidentiality

of information, other than a restriction in section 51 of the *Evidence Act*.

(3) A designated agency must not disclose information obtained under this Act except for the purposes of performing the duties, powers or functions of the designated agency under this Act.

(4) The Public Guardian and Trustee must not disclose information obtained under this Act except for the purposes of performing the duties, powers or functions of the Public Guardian and Trustee.

Power to make regulations

63 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) governing reviews under section 4 (2) and assessments under sections 4 (3) and 53 (5);
- (b) prescribing advocacy organizations for the purposes of sections 4 (10) (e), 8 (2) (f) and 54 (2) (e);
- (c) prescribing amounts for the purpose of section 20 (f);
- (d) prescribing guidelines for the remuneration of decision makers and guardians under section 33;
- (e) prescribing jurisdictions for the purposes of section 42 (resealing foreign orders);
- (f) to do anything required to effect or assist the operation of this Act.

Offences

64 (1) A person who

- (a) contravenes section 46 (5),
- (b) obstructs or hinders a person who is conducting an investigation under section 48 or 49, or
- (c) contravenes an order made under section 51 (3) or 56 (3) (c),

commits an offence.

(2) Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Not In Force

65 [*Not in force — see Supplement*]

Commencement

66 This Act comes into force by regulation of the Lieutenant Governor in Council.