



Department of Health and Community Services

Adult Protection Act (to be proclaimed)

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

The overall intent of the *Adult Protection Act (Act)* is to ensure that vulnerable adults are protected from harm. This Act will replace the 38 year old *Neglected Adults Welfare Act*.

The emphasis of the new *Act* is upon self-determination and supporting individuals to live independently within their own communities, rather than under guardianship. While the *Act* provides for a provincial director to become guardian of an adult, this action should only be a last resort after all other avenues of supportive intervention have been exhausted.

2. Who does the *Act* protect?

The proposed legislation, like the current *Act*, targets a very small group of adults - 'the most vulnerable of the vulnerable'. Under this *Act*, an adult in need of protective intervention lacks the capacity to understand the consequences of his or her life choices and (a) is incapable of caring for him/herself, or refuses, delays or is unable to make provision for adequate care and attention for him/herself; or (b) is abused or neglected.

3. What is capacity and how is it assessed?

Individuals are presumed to have capacity to make decisions about their own personal and health care, legal and financial affairs, business or assets unless proven otherwise. The *Act* acknowledges that an individual's capacity refers to their specific decision-making and judgment abilities and will be determined by the administration of a competency assessment. An individual may have capacity with respect to some types of decisions but lack capacity to make other decisions. Capacity for decision-making is assessed by health professionals using competency assessment tools.

4. How are individuals determined to be in need of protection under the *Act*?

A person who reasonably believes that an adult may be in need of protective intervention must immediately give that information to the appropriate authorities. An evaluation and/or investigation are conducted. If necessary, a judge may declare that the adult is in need of protective intervention.

5. What happens if a person is determined to be in need of protective intervention?

The judge will make an order regarding the care and custody of the adult. In making the order, the judge will consider recommendations prepared by professionals within the regional health authority. These recommendations are part of a service plan that is regularly reviewed and adjusted.

6. What if an individual is declared in need of protection and his or her capacity for decision-making improves?

The *Act* ensures that the individual's status as an adult in need of protection also be reviewed and re-assessed regularly.

7. What are some key features of the new *Act*?

The new *Act* will include a provision to recognize the assistance of a spokesperson to communicate the wishes of an individual. In many cases, competent individuals with diminished decision-making capacity in some areas can make decisions if they have support and assistance.

The new *Act* also provides for emergency intervention and removal of an adult from his/her home where the Regional Director feels that leaving the adult in the home could result in significant harm if there was no action taken during the time required to obtain a warrant.

8. Is there a legal obligation to report suspected abuse or neglect of an adult?

Yes, it is mandatory to report suspected cases of abuse or neglect involving an adult who may be in need of protective intervention.

9. Are there any penalties associated with violating the *Act*?

Yes, penalties are increased under the new *Act* to reflect the seriousness of violating the *Act*, for example, by failing to report, interfering with an investigation or preventing access to information.

Where offences fit within the Criminal Code (such as assault, threat, or criminal negligence, to name a few), these will continue to be potential criminal matters for the police to investigate.

10. When will the *Act* be proclaimed?

The *Adult Protection Act* will be proclaimed into law at a future date to allow time for the provincial policy manual to be developed and procedures and training to be carried out.