



Twenty-Seventh Legislature
First Session

Standing Committee on Health

October 2008

Report on Bill 24: *Adult Guardianship and Trusteeship Act*



Standing Committee on Health

801 Legislature Annex
Edmonton, AB T5K 1E4
Phone (780) 415-2878

Health.Committee@assembly.ab.ca
www.assembly.ab.ca/committees/health



October, 2008

To the Honourable Ken Kowalski
Speaker of the Legislative Assembly of Alberta

The Standing Committee on Health has the honour to submit its Report containing recommendations on Bill 24, *Adult Guardianship and Trusteeship Act*, for consideration by the Legislative Assembly of Alberta.

Fred Horne, MLA
Edmonton-Rutherford
Chair
Standing Committee on Health

Contents

Members of the Standing Committee on Health	3
1.0 Introduction	4
2.0 Order of Reference	4
3.0 Recommendations	5
Appendix A: Minority Report	9
Appendix B: List of Submitters and Presenters	11

**MEMBERS OF THE
STANDING COMMITTEE ON HEALTH**

27th Legislature, First Session

Fred Horne, MLA
Chair
Edmonton-Rutherford (PC)

Bridget A. Brennan Pastoor, MLA
Deputy Chair
Lethbridge-East (L)

Cal Dallas, MLA
Red Deer-South (PC)

Kyle Fawcett, MLA
Calgary-North Hill (PC)

Verlyn Olson, QC, MLA
Wetaskiwin-Camrose (PC)

Dr. Raj Sherman, MLA
Edmonton-Meadowlark (PC)

Tony Vandermeer, MLA
Edmonton-Beverly-Clareview (PC)

Jonathan Denis, MLA
Calgary-Egmont (PC)

Rachel Notley, MLA
Edmonton-Strathcona (NDP)

Dave Quest, MLA
Strathcona (PC)

Dr. David Swann, MLA
Calgary-Mountain View (L)

1.0 Introduction

Bill 24, *Adult Guardianship and Trusteeship Act* was introduced and received first reading on June 2, 2008, at which time it was referred to the Standing Committee on Health for review.

2.0 Order of Reference

Excerpt from the *Votes and Proceedings of the Legislative Assembly of Alberta*, Monday, June 2, 2008:

Introduction of Bills (First Reading)

On motion by Hon. Mr. Renner, Deputy Government House Leader, the following Bill was referred to the Standing Committee on Health for the committee's review with the committee reporting to the Assembly in the fourth week of October 2008:

Bill 24 Adult Guardianship and Trusteeship Act — Hon. Mrs. Jablonski

3.0 Recommendations

Pursuant to Standing Order 74.2(1)

when a Bill is referred to a Policy Field Committee after first reading, the committee may conduct public hearings on the subject matter of the Bill and report its observations, opinions and recommendations with respect to the Bill to the Assembly.

The Standing Committee on Health recommends that the Bill proceed and provides the following observations, opinions and recommendations:

Termination of Supported Decision-making Order (s. 8)

- The Committee recommends that a supported decision-making order terminate upon the granting of a co-decision-making, guardianship, or trusteeship order or the coming into effect of a personal directive under the *Personal Directives Act*, R.S.A. 2000, c. P-6.

Suggested wording for consideration:

Section 8 is struck out, and the following substituted:

Effect of Court order

8 A supported decision-making authorization terminates on

(a) the supported adult becoming an assisted or represented adult under this Act, or

(b) a personal directive of the supported adult taking effect under the *Personal Directives Act*.

Termination of Guardianship Order (s. 17(4))

- The Committee recommends that a guardianship order terminate upon the granting of a co-decision-making order.

Suggested wording for consideration:

Section 17(4) is struck out and the following substituted:

(4) If a guardianship order is in effect in respect of an adult who is the subject of an application for a co-decision-making order, the Court shall terminate the guardianship order in the co-decision-making order.

Service of the Order on the Represented Adult (ss. 26(4), 46(4))

- The Bill currently provides in sections 26(5) and 46(4) that the Court may dispense with service of notice upon an adult who is the subject of an application if it is satisfied that notification would be harmful to that person. Some Committee Members felt that the Court's discretion should be broadened to include situations where it was satisfied that the adult's condition was such that service would serve no useful purpose. However, the

majority of the Committee recommended that the discretion be limited to that set out in the Bill.

Public Guardian's Ability to Apply for Guardianship at 17 Years of Age (s. 26)

- The Committee recommends that section 26 be clarified to indicate that the Public Guardian is entitled to apply for guardianship of a person one year under the age of majority notwithstanding the wording of section 26(2).

Suggested wording for consideration:

The following is added after section 26(7):

(8) Nothing in subsection (2) affects the Public Guardian's authority to make an application under subsection (1) in respect of a person who is one year under the age of majority.

Guardianship Plans (s. 33)

- The Committee recommends that the Minister revisit the process for making changes to the guardianship plan under section 33(4), including whether an application to the Court is necessary in every circumstance, and whether review officers could be used as an alternative to the Court to review changes to the plan in certain circumstances.
- The Committee recommends that section 33(3)(b) be amended to clarify that the amended guardianship plan to be filed upon direction of the Court is filed for the purpose of being approved by the Court.

Suggested wording for consideration:

Section 33(3)(b) is amended by adding "for approval" after "guardianship plan."

Termination of Co-decision-making Order (s. 33)

- The Committee recommends that a co-decision-making order terminate upon the granting of a guardianship order.

Suggested wording for consideration:

Subsections (6) and (7) are struck and the following substituted:

(6) If a co-decision-making order is in effect in respect of an adult who is the subject of an application for a guardianship order, the Court shall terminate the co-decision-making order in the guardianship order.

Definition of Personal Representative

- The Committee recommends that "personal representative" as used in section 63 of Bill 24 be defined.

Suggested wording for consideration:

Section 43(1) is struck and the following substituted:

Interpretation

43(1) In this Division,

(a) “adult,” except in sections 47, 48 and 71, includes a person who is one year under the age of majority;

(b) “personal representative” in respect of a deceased person means the executor of the person's will or the administrator of the person's estate.

Complaints Process (ss. 76-77)

- The Committee recommends that a provision be incorporated into Bill 24 that requires
 - (a) a complaints officer to provide written reasons to the complainant when a decision is made pursuant to section 76(1)(a); and
 - (b) an investigator to provide written reasons when he or she notifies the complainant pursuant to section 77(2).
- The complaints process was the subject of considerable discussions by the Committee, and the Committee recommends that the Minister consider a process whereby a second person reviews the refusal of a complaints officer to refer a complaint to an investigator under section 76(1)(a).

Selection of Specific Decision Maker (s. 88) and Regulatory Authority (s. 115)

- The Committee recommends that the process through which a health care provider may select a specific decision-maker be changed to clarify that it is the first person listed in section 1(1)(x) who meets the criteria in section 88(1) who shall be selected as the specific decision-maker. The Committee also recommends that the health care provider be given the option of selecting the Public Guardian as specific decision-maker in circumstances where there is a dispute between family members as to a matter over which a specific decision-maker would have decision-making authority.

Suggested wording for consideration:

Section 88(1) is amended by striking “a relative of the adult who is listed in section 1(1)(x)” and substituting “the nearest relative of the adult”;

The following is added after section 88(1):

(1.1) In accordance with the regulations, if there is a dispute about who is to be selected under subsection (1) the health care provider may select the Public Guardian or a person authorized by the Public Guardian as the specific decision maker.

The following is added after section 115(1)(v):

(v.1) respecting any matter relating to the selection of a specific decision maker under section 88(1.1) and the authorization of a person as a specific decision maker by the Public Guardian;

Overlap of Co-decision-making and Guardianship or Trusteeship Orders

- The Committee recommends that there be a provision in Bill 24 that clarifies that in no circumstance may a person be subject to both a co-decision-making order and a guardianship or trusteeship order.

Suggested wording for consideration:

The following is added before section 80:

79.1 For greater certainty, the Court may not make an order that would result in a person being an assisted adult and a represented adult at the same time.

Age of Majority

- The Committee recommends that all references in Bill 24 to “17 years of age” and “18 years of age” are changed to “one year under the age of majority” and “age of majority” respectively.

Further Consultation with Stakeholders

- The Committee recommends that the Minister undertake further consultation as required with appropriate stakeholders in the development of the regulations, particularly with respect to criteria for capacity assessment, the identification of capacity assessors and the potential overlap in the standards for capacity under Bill 24 and the *Mental Health Act*, R.S.A. 2000, c. M-13.

Appendix A: Minority Report

Rachel Notley, MLA
Edmonton-Strathcona

The component of the majority committee report with which I disagree is that which addresses the complaints process within Bill 24. In particular, the current draft of the Bill includes a proposed section 76(2) which reads as follows:

76(2) A complaints officer may refuse to refer a complaint to an investigator if the complaints officer considers that the complaint is frivolous or vexatious.

This clause allows for a complaints officer to act as a gatekeeper to the complaints and investigation process upon which dependent adults will rely in the event that they are dissatisfied with the actions of their guardian, trustee or the Public Guardian or Public Trustee. It allows the complaints officer to make a judgment about the frivolousness or vexatiousness of the complaint and to bar the dependent adult from the complaints process. Moreover, the decision is made subjectively by the complaints officer without the obligation to inquire into the matter with the same breadth as would be required through an investigation.

With the current construction of the draft bill, should the dependent adult disagree with the opinion of the complaints officer, the dependent adult is left with no remedy except to commence a judicial review of the decision of the complaints officer in the Court of Queen's Bench. This process is time-consuming and expensive. Committee members heard through public consultations that dependent adults often lack the resources to find or fund legal assistance in these cases.

This act will give guardians and trustees extensive authority to make critical decisions on behalf of the dependent adult. While I have high regard for both voluntary guardians and trustees as well as for the work of the office of the Public Guardian and Public Trustee, I also know that there is always the possibility for legitimate complaints by dependent adults to arise. The level of authority given to guardians and trustees under this act is extensive and touches on the most fundamental aspects of the dependent adult's life.

It is also to be noted that under section 76(2) a complaints officer employed by the office of the Public Guardian or the office of the Public Trustee would also be in the position to determine whether a complaint made against either of these agencies would go forward. While committee members were assured that these complaints would be referred to independent officers as a matter of policy, this obligation is not set out in the current legislation, nor is the criteria for what constitutes independence. Justice must not only be done; it must be seen to be done.

I note with appreciation that the recommendations put forward by the majority of the committee under this section are a good faith attempt to address the concerns noted above. However, it is my view that a simple collegiate review without further contact with the complainant will not adequately address the need for independent and transparent review of such an important decision. Critical natural justice considerations remain absent.

As a result, I am of the view that the draft bill should be amended to address this problem.

I recommend one of the following options. First, section 76(2) could be eliminated. This would result in the obligation for every complaint to be investigated. Alternatively, some form of independent appeal process could be considered wherein a third party would, at the request of the dependant adult, hear the representations of both the dependant adult and the complaints officer and then issue a decision about whether the investigation should go forward.

While either of these options might at first appear onerous, we ought not to lose sight of these important facts: complaints often relate to the most fundamental aspects of a dependant adult's life; we know we currently face a crisis in care for dependant adults; we know the number of dependant adults is expected to grow in the future. As we struggle to address these challenges, we must strengthen, not dilute, every opportunity for transparency and recourse.

Appendix B: List of Submitters and Presenters

The Standing Committee on Health invited written submissions on Bill 24, *Adult Guardianship and Trusteeship Act*. The Committee received 14 written submissions. At the invitation of the Committee 8 submitters made oral presentations at the September 10 meeting of the Committee, which took place in Edmonton, Alberta.

Written Submissions

Name	Organization
1. Nancy J. Forget	Private Citizen
2. Thomas and Bette Paterson	Private Citizens
3. Kara Murray	Gateway Association for Community Living
4. Confidential	Private Citizen
5. Bea Renton	Private Citizen
6. Darryl LaBuick	Alberta Medical Association
7. Fred Hochachka	Private Citizen
8. Sandra H. Harrison	Alberta Mental Health Patient Advocate Office
9. Ruth Maria Adria	Elder Advocates of Alberta Society
10. Jodi L. Skeates	Canadian Life and Health Insurance Association Inc. (CLHIA)
11. Berna Stewart	Private Citizen
12. Barbara Kimmitt	Bennett Jones LLP
13. Lucille A. D'Souza	Royal Bank of Canada (RBC)
14. Randall Osgood	Canadian Bar Association (North) Committee to Review Bill 24

Oral Presentations

Name	Organization
1. Jodi L. Skeates, Dave McKee and Gary Senft	Canadian Life and Health Insurance Association, Inc. (CLHIA)
2. Dr. Lyle B. Mittelsteadt	Alberta Medical Association
3. Suzanne Michaud and Tom Grozinger	Royal Bank of Canada (RBC)
4. Barbara Kimmitt	Bennett Jones LLP
5. Ruth Maria Adria	Elder Advocates of Alberta Society
6. Sandra Harrison	Alberta Mental Health Patient Advocate Office
7. Fred Hochachka	Private Citizen
8. Bea Renton	Private Citizen