



Protection of Persons in Care Act

By Douglas A.S. Paterson, Q.C.

This act was passed in Manitoba in the year 2000, presumably because of many reports or suspicions of vulnerable people being cared for in a less than acceptable way while under institutional care. 'Abuse' under the act can basically mean any type of mistreatment in a health facility. A 'patient' refers to an adult resident, in-patient, or a person under respite care in a health facility (hospital, personal care home).

The main thrust of the act is that a health care facility has a statutory duty to protect a patient from abuse AND to keep a reasonable level of safety for the patient.

Additionally, other duties are outlined. A service provider or employee must promptly report to the Minister responsible any reasonable belief that a patient is or likely to be abused. Even if the information which forms the basis of the belief is confidential, the report must be made, except in a solicitor-client relationship. Of course, a

patient herself may report abuse to the Minister.

On receipt of an abuse report, the Minister must make inquiries and decide if more investigation is needed. If abuse is seen as likely, the Minister must refer the report to an investigator, and also advise the patient of the status of the complaint. If the patient has a committee acting for him/her, the Minister must so advise the committee.

An investigator may enter the health care facility at any reasonable time with proper identification. The operator of the health care facility must provide records and assistance to the investigator. If this is not forthcoming, a high court justice may issue a warrant to obtain the records and assistance.

Prior to reporting, an investigator must try to involve the patient as much as reasonably possible.

Once the report is received, the Minister may give directions to

the health care facility to protect the patient from abuse. These directions must also be given to the patient (or committee) and any other person who should be aware given the nature of abuse and the need for patient privacy.

Of course, the health care facility must comply with the directions and report to the Minister how and when it so complied.

If a professional health care employee has been the abuser, the Minister may report that to the person's professional governing body. It may then investigate but in any event must report its conclusions to the Minister.

If the Minister reports an employee to a professional governing body, that in itself may mean the Minister need not report the complaint to an investigator as outlined above.

Persons making complaints to protect a patient cannot be sued or fired or demoted, or charged criminally because of such complaint. As well the operator

of a health care facility cannot take any negative action against the patient or person complaining. The identities of complainers or witnesses interviewed must not be revealed and must be kept private to the Minister and investigator. Even the Courts must protect against disclosing the identities of such people.

If the Act is breached, a fine of \$2,000.00 for a person and \$30,000.00 for a company may result.

A person knowingly making a false report may be convicted and fined a maximum of \$2,000.00.

Based on my experience with family and friends of residents, suspected abuse in health care facilities is common. On the other hand, operators and staff usually have a good explanation.