

Minority Report by Rachel Notley, MLA
Alberta Legislature Standing Committee on Health
Report on Bill 24, Adult Guardianship and Trusteeship Act
October 2008

The full Committee Report is available at
http://www.assembly.ab.ca/committees/health/PDF/Bill24_FINAL_Report.pdf

The transcripts of the Committee meetings, and of the written submissions to the Committee, are available at
<http://www.assembly.ab.ca/committees/health/index.html>

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.