

REPORT ON THE REVIEW
OF THE
PROTECTION FOR PERSONS IN CARE ACT

Submitted by the
Legislative Review Committee

March 2003

**PROTECTION FOR PERSONS IN CARE ACT
LEGISLATIVE REVIEW COMMITTEE**



March 2003

Honourable Gene Zwozdesky
Minister of Community Development
229 Legislature Bldg
10800 - 97 Avenue
Edmonton, AB T5K 2B6

Dear Mr. Zwozdesky:

We respectfully submit to you our report on the review of the *Protection for Persons in Care Act*.

This report represents the findings and recommendations of our Committee. Our report and the recommendations reflect a compilation of the input from individuals and stakeholders who participated in and contributed to the process. In listening to the stakeholders and reviewing the submissions received, it was clear that there were many differing views on how best to protect vulnerable adults.

The best interests, safety and well-being of vulnerable adult Albertans were first and foremost in our deliberations. Some of the issues we discussed were sensitive and somewhat complex requiring that differing perspectives be considered in detail.

Our goal was to find the best way to address both the prevention of abuse and response to allegations involving “adults in care”. We believe that increased emphasis on prevention, along with strengthening the responsibilities of those providing services and care, should be a priority. We also want to emphasize that our approach was to balance protection with the rights of individuals.

We would like to acknowledge everyone who was involved in the review of the legislation. They should be commended for their support and commitment to improving the lives of “adults in care”.

Sincerely,

Bryce Jacobs, MLA

Gary Masyk, MLA

Karen Kryczka, MLA

Greer Black

Carl Bond

Brenda Huband

Lyn Krutzfeldt

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Executive Summary

The Minister of Community Development announced a review of the *Protection for Persons in Care Act* (PPCA) on August 8, 2002. The Legislative Review Committee was appointed to guide the process, consult with stakeholders, review legislation from other jurisdictions, and provide recommendations to the Minister.

Extensive public input was provided in September, October and November 2002 through regional and provincial stakeholder consultation meetings (164 participants), a meeting with government staff in departments impacted by the PPCA (30 participants), and nearly 300 written responses to a prepared questionnaire.

A large majority of stakeholders believe that the legislation is important and necessary, and there is a need to build on its strengths and address its shortcomings.

The Committee believes that the fundamental purpose of the PPCA should remain focused on prevention through education and deterrence. The PPCA should apply equitably to all clients who receive services from agencies that the Government funds, directly or indirectly. However, provision should be made to ensure the rights and autonomy of clients are safeguarded. Government's role should complement that of agencies in prevention of and responding to abuse.

The recommendations of the Committee include:

- The PPCA should include a strong statement of guiding principles and objectives to clearly reflect the educative and preventive nature of the legislation.
- The PPCA should be expanded to apply to all adults in care who receive services from agencies or bodies that receive funding from the Government of Alberta.
- The definition of abuse should focus on the impact or harm to the alleged victim and the requirement of "intent" should be removed. Abuse should include actions that have the potential to cause, or are reasonably likely to cause, serious harm. Abuse should not be defined to include systemic quality of care issues.
- The term "alleged abuser" should be defined to include: other clients, health care professionals and other service providers, employees, contractors, family members, volunteers and any other third-party individuals.
- The role and responsibilities of agencies in prevention of, and response to, abuse should be strengthened and clarified.
- Reporting of abuse should continue to be mandatory within a specified timeframe. The only instance where some discretion should be considered is client-to-client incidents and only in limited circumstances.
- Every reasonable effort should be made to protect the identities of complainants and/or witnesses. No individual should be compelled to provide information during an investigation.

- The Minister or a designate should have discretion in directing full investigations of abuse with such decisions subject to review.
- Agencies, alleged victims and guardians/agents should be notified of the commencement of investigations and outcomes.
- Investigators should access client health information only with the consent of the client or the guardian/agent. Similarly, investigators should access employment records only with the prior consent of the employee.
- In view of the legislation's educative and preventative orientation, no further offences are recommended.
- The Minister's decisions should continue to be focused on approving or rejecting investigators' recommendations intended for agencies and reference to the Minister's decision being "final and binding" should be removed.
- The Minister should refer any serious matter involving an agency to the appropriate Minister with jurisdiction over that agency.

The Committee believes that implementation of the recommendations in this report will make a positive difference in the lives of “adults in care”.

I. Introduction

The Minister of Community Development appointed the Legislative Review Committee on July 2, 2002 to plan and oversee the legislative review of the PPCA including:

- Planning and participating in the consultation.
- Reviewing the input obtained from the entire consultative process.
- Drafting of a report with recommendations that captures the information received through the consultative process.
- Planning any proposed amendments to the PPCA.
- Planning for the communication of any resultant amendments to the PPCA upon proclamation.

The Committee is chaired by Broyce Jacobs, MLA for Cardston-Taber-Warner, and includes Government Members Gary Masyk, MLA for Edmonton Norwood (Vice Chair) and Karen Kryczka, MLA for Calgary West. Public members include Greer Black, Carl Bond, Brenda Huband and Lyn Krutzfeldt.

The Committee acknowledges with gratitude the contributions of stakeholders through their participation in consultation meetings, written submissions and responses to a questionnaire in the public discussion guide. Regional stakeholder consultation sessions were held in October 2002, in Red Deer, Grande Prairie, Lethbridge, Calgary and Edmonton. A provincial discussion forum was held in Edmonton. A meeting with staff of various provincial government departments took place in early November 2002. In total, 164 citizens participated in the consultation meetings, and 30 in the inter-departmental session.

In response to the public discussion guide, 262 completed questionnaires and 34 other written submissions were received. The diverse mix of comments and views of stakeholders made it challenging to draw more than general inferences about responses attributable to specific types of stakeholders (for example, clients, family members, employees, employers). The results are also not representative of a statistically significant sample of Albertans' views on these issues.

There was a lack of strong stakeholder consensus on many of the issues posed in the consultation meetings and questionnaire. Yet, the overall sentiment was that the legislation is important and necessary. Most stakeholders commented that there is a need to build on the strengths of the current legislation and address its shortcomings.

Many individuals in the consultation meetings or who responded to the questionnaire commented upon the complexity and sensitivity of the issues that the PPCA is attempting to address. Among others, these considerations include: provincial legislation dealing with facilities, agencies and organizations, health professional legislation and practice standards, levels of funding, staff deployment, training and competencies, and societal attitudes toward individuals in care.

Stakeholders acknowledged that the reporting and investigating mechanisms in the PPCA have a deterrent effect while they also offer protection for complainants, and place obligations upon agencies. Ultimately, ministerial recommendations are viewed seriously by service providers and agencies.

Some stakeholders commented that the legislation has reasonably streamlined and efficient processes. They said that the investigative process results in an objective, consistent evaluation of complaints by independent and neutral third party investigators. The PPCA also enables reports of abuse to be made directly to law enforcement officials or to a professional association in appropriate circumstances.

In addition to the valuable information provided by stakeholders, the Committee considered other adult protective legislation in other provincial jurisdictions in Canada. The Civil Law Branch of Alberta Justice provided the Committee with a detailed overview and comparison of Alberta's legislation with adult protection legislation in British Columbia, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland. The Committee found it very useful during the course of deliberations to critically analyze the advantages and disadvantages of legislative approaches in other jurisdictions.

This report provides a brief overview of adult protection in Alberta followed by the Committee's recommendations. The Committee's approach was to first examine the purpose and scope of the PPCA, and the definitions of abuse and alleged abuser. Next, agency responsibilities, reporting, investigations, outcomes and then offences under the PPCA are addressed. The paper concludes with examining recommendations and the Minister's role in reviewing outcomes of investigations, followed by appendices.

II. Adult Protection in Alberta

The PPCA was proclaimed in January 1998, after being introduced as a Private Member's Bill. It was the first adult protective legislation of its kind in Canada with an orientation toward education, prevention, investigations, reporting, protection for complainants, and ministerial recommendations.

The legislation was viewed as a starting point on which improvements could be considered at a later date after the PPCA had been operational for a few years.

The PPCA is not the sole legislative mechanism to address the protection of persons in care. The PPCA complements other relevant provincial legislation, including the:

- *Dependent Adults Act*
- *Freedom of Information and Protection of Privacy Act*
- *Health Information Act*
- *Health Facilities Review Committee Act*
- *Health Professions Act*
- *Mental Health Act*
- *Ombudsman Act*
- *Personal Directives Act*
- *Persons with Developmental Disabilities Community Governance Act*
- *Powers of Attorney Act*
- *Protection Against Family Violence Act*
- *Social Care Facilities Review Committee Act*
- *Social Care Facilities Licensing Act.*

Additionally, the provisions of the *Criminal Code of Canada* may apply in circumstances where a criminal offence is alleged to have occurred.

Numerous provincial government ministries, programs and services have complementary and important roles, including:

- Health and Wellness (acute care hospitals, continuing care facilities, Alberta Alcohol and Drug Abuse Commission, and mental health approved homes and group homes),
- Seniors (lodges, unique homes),
- Community Development (select facilities for adults receiving services from the persons with developmental disabilities program),
- Human Resources and Employment (hostels, emergency shelters and transitional homes), and
- Children's Services (women's shelters and youth shelters which serve clients 18 years of age and older).

III. Recommendations

1. Principles of the PPCA

Recommendations

1.1 The PPCA should include a strong statement of guiding principles and objectives to clearly reflect the educative and preventive nature of the legislation.

Discussion

The PPCA's main purpose is to prevent abuse of adults receiving services from publicly funded agencies (which include those owned and operated by the public, voluntary and private sector), by requiring that abuse be reported and investigated. The Committee believes that the PPCA's emphasis should continue to be on abuse prevention through education and deterrence, rather than punishment.

The Committee believes that the PPCA should articulate clear principles of purpose which:

- Promotes the dignity and respect of persons in care, and their right to safety, protection and freedom from abuse.
- Supports education and prevention, including appropriate staff training.
- Recognizes that disputes and differences of opinion should be resolved at the level of the agency, wherever possible.
- Recognizes the important roles of communities, families, individuals, agencies, and service providers in providing support and protection to those in care.
- Recognizes that other provincial government ministries and bodies also have important and complementary roles and responsibilities in addressing protection of persons in care and quality of care issues.

In support of this recommendation, the legislation should continue to ensure consistency across Alberta and enable those who have concerns about abuse of vulnerable adults to seek assistance and/or intervention.

2. Scope of the PPCA

Recommendations

2.1 The PPCA should be expanded to apply to all adults in care who receive services from agencies or bodies that receive funding from the Government of Alberta.

Discussion

All Albertans have the right to be protected against abuse. An important role of Government is to complement the efforts of communities, families, individuals and service providers in protecting persons in care. Government should continue to have a role, by responding to allegations of abuse involving adults receiving services from agencies that the Government directly or indirectly funds.

The potential involvement of the Alberta government in addressing the needs of individual citizens, particularly in their private homes, poses difficult societal questions. These issues include moral, legal and ethical considerations, as well as implications for individuals' privacy and autonomy.

The Committee has carefully examined stakeholders' many diverse views on the potential scope of future legislation and believes the PPCA should apply to all adults who receive services from publicly funded agencies, irrespective of location or private/public ownership. Adults who receive publicly funded home care services, those receiving services from the persons with developmental disabilities program and those receiving services from mental health designated facilities should all have similar access to protective legislation.

However, the power of investigators to enter a person's home should be restricted. Entry should only be permitted with the consent of the client or his guardian/agent.

This approach will safeguard the autonomy of the person who is the alleged victim, and permit clients to determine if they want to become involved in the investigation. If consent to enter a person's home is refused, an investigation may still occur by involving the agency and other parties, as well reviewing the records of the agency.

3. Definition of Abuse and Alleged Abuser

Recommendations

- 3.1 The definition of abuse should focus on the impact or harm to the alleged victim and the requirement of “intent” should be removed. Abuse should include actions that have the potential to cause, or are reasonably likely to cause, serious harm. Abuse should not be defined to include systemic quality of care issues.**
- 3.2 The term "alleged abuser" should be defined to include: other clients, health care professionals and other service providers, employees, contractors, family members, volunteers and any other third-party individuals.**

Discussion

In keeping with the preventative and educative purpose of the legislation, clients should not have to suffer harm before action is taken. The Committee believes that there is merit in expanding the definition of abuse to include actions or lack of actions that are reasonably likely to cause death, serious physical or psychological harm, or significant property loss.

The Committee acknowledges that the issue of "intent," while important, should not be the critical component in the definition of abuse. The definition of abuse should instead focus on the harm or potential harm to the client, rather than the apparent state of mind of the alleged abuser. The concept of intent need not be the reporter's primary concern, but may become evident during the course of the subsequent investigation.

The PPCA is intended to address abuse on a case-by-case, individual basis through reporting, education and prevention. Systemic quality of care issues such as staffing levels and funding are beyond the mandate of the PPCA. These issues are best dealt with by other responsible bodies such as health authorities, Persons with Developmental Disabilities community boards and lodge foundations.

The Committee agrees that regardless of who the alleged abuser is, all complaints of abuse should fall under the jurisdiction of the PPCA. The term "alleged abuser" should apply to all parties including: clients, family members, health care professionals and other service providers, employees, contractors and volunteers involved with clients who receive services from publicly funded agencies.

4. Agency Responsibilities

Recommendations

4.1 The role and responsibilities of agencies in prevention of, and response to, abuse should be strengthened and clarified.

Discussion

Agencies that provide services to vulnerable adults have a primary duty to protect their clients from abuse and to maintain a reasonable level of safety. The Committee believes that the role of agencies should be strengthened to specify that agencies:

- Treat persons in care with dignity and respect, recognizing that persons in care have the right to refuse care, treatment or services.
- Make an effort to complete comprehensive reference checks (in addition to criminal record checks) on all employees, contractors and volunteers.
- Obtain consent from persons in care or their guardians/agents when making decisions about the person's well-being, whenever possible.
- Provide education (upon orientation and on a continuing basis) in abuse recognition, prevention and intervention for all agency caregivers.
- Provide for the immediate safety, security and well-being of persons in care, and timely and appropriate intervention when the agency is made aware of an allegation of abuse.
- Enable caregivers who have clients in their care or under their supervision to have appropriate information about the needs and care requirements of clients.
- Develop, implement and enforce comprehensive operational guidelines, policies and procedures to address prevention and allegations of abuse.
- Cooperate and assist with PPCA investigations.

Most agencies have comprehensive policies and procedures that address abuse. Agencies should be formally relied upon in the initial stages of investigating a formal complaint under the PPCA. As a result, we see agencies as generally conducting initial investigations of alleged abuse, as well as ensuring the immediate safety of alleged victims. Publicly funded agencies should continue to be accountable and Government should investigate only as a last resort or in special circumstances.

5. Reporting Abuse, Investigations and Outcomes

Recommendations

- 5.1 Reporting of abuse should continue to be mandatory within a specified timeframe. The only instance where some discretion should be considered is client-to-client incidents and only in limited circumstances.**
- 5.2 Every reasonable effort should be made to protect the identities of complainants and/or witnesses. No individual should be compelled to provide information during an investigation.**
- 5.3 The Minister or a designate should have discretion in directing full investigations of abuse with such decisions subject to review.**
- 5.4 Agencies, alleged victims and guardians/agents should be notified of the commencement of investigations and outcomes.**
- 5.5 Investigators should access client health information only with the consent of the client or the guardian/agent. Similarly, investigators should access employment records only with the prior consent of the employee.**

Discussion

With the fundamental purpose of the legislation oriented to education and prevention, the Committee supports the continued requirement for mandatory reporting of abuse under penalty for non-compliance. The exception should remain that it is optional for clients who are alleged victims to report abuse.

Everyone should be obligated to report abuse within specified reasonable time frames when they become aware of an incident. Agency staff must take all reasonable and expedient steps to prevent further harm to the alleged victim.

The Committee believes that reporting by agencies should not be mandatory in some situations involving client-to-client incidents if: a) the incident is relatively minor or trivial in nature, and b) there is no harm or potential harm to the victim, c) the client who is the alleged abuser lacks mental capacity, and d) an intervention plan exists to address prevention and the safety of clients.

While efforts should continue to be made to keep the identities of complainants and/or witnesses confidential, there should be no provision in the PPCA that ensures this. While all reasonable steps may be taken to hold these names in confidence, total confidentiality cannot be guaranteed. Disclosure may be required by other legislation, including in the course of a criminal investigation or by other regulatory bodies.

Participation of witnesses and alleged abusers in the investigation should remain voluntary. Witnesses and/or alleged abusers should not be compelled to provide information during an investigation.

There are considerable merits to having the legislative authority to screen or conduct a preliminary review of complaints of alleged abuse under the PPCA. Current legislation provides no discretion to address the merits of individual complaints. The decision whether or not to proceed with a full investigation under the PPCA, separate from the investigation of the agency, will need to be subject to review. Only the client who is the alleged victim (or his/her guardian or agent), the agency, alleged abuser and/or complainant should be able to request a review of the decision to proceed or not proceed with a full investigation.

There should be a legislative provision requiring that agencies, alleged victims and their guardians/agents be notified of the commencement of an investigation and the outcome of the investigation. Notification and knowledge of the outcome are viewed as essential to further safeguard the client's safety and well-being.

Investigators must continue to obtain consent from the person in care or their legal guardian prior to accessing client health information. However, there needs to be a process to gather essential health information in circumstances where a person in care lacks mental capacity and there is no legal guardian or agent appointed, as well as where the person in care has since become deceased. In such situations, there should be a mechanism to access client health information if it can be demonstrated that it is relevant to the investigation. The provisions of the *Health Information Act* provide that the alleged victim's private health information will be held strictly confidential.

There is a need to clarify that employment records are private personal information and not accessible to investigators as part of the record of the agency. Investigators should be able to access employment records, but only with the consent of the employee (for example, the alleged abuser and/or witnesses).

6. Offences Under the PPCA

Recommendations

6.1 In view of the legislation's educative and preventative orientation, no further offences are recommended.

Discussion

The legislation currently provides for three offences:

- Failure to report abuse.
- Retaliating for reporting by taking adverse employment action upon complainants who are service providers or employees, or altering, interrupting or discontinuing client service due to making complaints.
- Knowingly making a false report.

The emphasis of the legislation, supported by the majority of stakeholders, does not suggest the need for increased punitive measures.

7. Recommendations and the Role of the Minister

Recommendations

7.1 The Minister's decisions should continue to be focused on approving or rejecting investigators' recommendations intended for agencies and reference to the Minister's decision being "final and binding" should be removed.

7.2 The Minister should refer any serious matter involving an agency to the appropriate Minister with jurisdiction over that agency.

Discussion

The Committee suggests that recommendations arising from investigations should be primarily oriented to prevention and that these recommendations are restricted to agencies and not intended for any third-party over which the Minister does not have jurisdiction.

The principles of natural justice are intended to apply in circumstances where the rights of an individual are affected by the actions of a public body. Ministerial approval or rejection of recommendations is not binding on agencies and does not infringe upon the rights of individuals. As a result, the Committee recommends that only relatively limited review mechanisms involving the decision of the Minister are needed and that reference to the Minister's decision being "final and binding" should be removed.

There is presently a high degree of voluntary compliance with the investigator's recommendations, which are subject to Ministerial review and approval. Therefore, the Committee is not recommending that agencies be compelled to comply with implementation. In a large majority of instances, agencies and facilities respond appropriately and in a timely manner. They view their responsibilities very seriously to take all reasonable measures to protect persons in care.

When the Minister is aware of a serious matter involving an agency, the Minister should refer the matter to the appropriate Minister, with the request that the other Minister address the matter.

IV. Appendices

Appendix 1: Legislative Review Committee Terms of Reference

Appendix 2: News Release of August 8, 2002 with Backgrounder

Appendix 3: News Release of September 17, 2002

Appendix 4: Advertisement Related to the Consultation

Appendix 5: Schedule of Stakeholder Consultation Sessions

Appendix 6 Organizations Represented at Stakeholder Sessions

Appendix 7: Written Submissions Received from Organizations

Appendix 8: Questionnaire Results

Appendix 9: Summary of Comments from Stakeholder Consultation

Appendix 10: Special Thanks and Acknowledgements

APPENDICES

Protection for Persons in Care Act
LEGISLATIVE REVIEW COMMITTEE
TERMS OF REFERENCE

SCOPE

The Legislative Review Committee reports to the Minister of Community Development. The Committee will assist with the coordination of the legislative review from June 2002 through to 2003/04.

PURPOSE

To plan and oversee the legislative review of the *Protection for Persons in Care Act* including:

- Planning and participating in the consultation including:
 - regional and provincial stakeholder consultation sessions
 - coordinating the development and distribution of a public discussion guide
 - Interdepartmental consultation.
- Reviewing the input obtained from the entire consultative process including the feedback received at the stakeholder sessions and discussion paper/written submissions.
- Drafting of a report with recommendations that captures the information received through the consultation process.
- Planning any proposed amendments to the *Protection for Persons in Care Act*.
- Planning for the communication of any resultant amendments to the Act upon proclamation.

MEMBERSHIP**Government Members**

Broyce Jacobs, MLA (Chair)
Cardston-Taber-Warner

Gary Masyk, MLA (Vice-Chair)
Edmonton Norwood

Karen Kryczka, MLA
Calgary West

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Public Members

Mr. Greer Black, Calgary

Ms. Lyn Krutzfeldt, Edmonton

Ms. Brenda Huband, Calgary

Alberta Community Development

Edith Baraniecki, Director Protection for Persons in Care

Sandra Plupek, Senior Investigations Coordinator

GENERAL

1. The *Protection for Persons in Care* Legislative Review Committee will be chaired by Broyce Jacobs, MLA, with Gary Masyk, MLA as Vice-Chair and Karen Kryczka, MLA as Member at Large.
2. Coordination, administrative and technical support will be provided by Community Development.
3. Meetings will be at the discretion of the Chair.
4. Members will receive remuneration and or expenses.

June 27, 2002



News release

August 8, 2002

Protection for Persons in Care Act legislative review begins

A legislative review of the *Protection for Persons in Care Act* (the *Act*) has begun with the appointment of a review committee.

The legislative review committee will review Alberta's existing *Act* (and similar legislation in other provinces), the scope of the *Act*, the definitions of abuse, broad administrative and legal implications, and its consistency with other legislation. The committee will conduct public consultations in Fall 2002, beginning with the release of a public discussion guide and questionnaire for Albertans wanting to make a submission.

Chair of the review committee is Broyce Jacobs, MLA for Cardston-Taber-Warner, who served 18 years as a municipal councillor and 17 years as reeve prior to his election to the Legislative Assembly in March 2001. Vice-Chair is Gary Masyk, MLA Edmonton Norwood, who is a small business owner. Member at large is Karen Kryczka, MLA for Calgary West, who is chair of the Seniors Advisory Council for Alberta.

In addition, the committee includes four public members: Greer Black, president of Bethany Care Society and the Alberta Long Term Care Association; Lyn Krutzfeldt, director of Central Park Lodge for Western Canada; Brenda Huband, executive director of Carewest; and Carl Bond, president of Travois Holdings and Summit Care Corporation.

"These committee members have experience and perspectives that are different, but complementary," said Gene Zwozdesky, Minister of Community Development. "They should work well as a team to carry this review through to its expected conclusion."

The review will include five regional stakeholder sessions: Red Deer (October 1), Grande Prairie (October 3), Lethbridge (October 7), Calgary (October 8) and Edmonton (October 10). In addition, there will be a provincial forum held in Edmonton on October 17 and an interdepartmental session. Participation in the stakeholder sessions will be by invitation to ensure representation from a broad cross-section of stakeholders.

Information from the consultations and submissions will be reviewed and summarized in a report with recommendations to be presented to the Minister of Community Development. Any proposed legislative amendments will come forward to government in 2003.

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The goal of the *Act* is to protect adults in publicly funded care facilities such as hospitals, nursing homes and other care settings, against abuse. It includes: mandatory reporting of any allegations of abuse such as emotional, sexual, financial or physical abuse; mandatory investigation of all complaints received; and recommendations to further safeguard persons in care.

When the *Act* came into force in 1998, it was decided to get the *Act* working as soon as possible to promote the safety and well being of adults in care, and then have a review to consider making changes in future. About 500 complaints are received annually; many are dismissed as unfounded or without sufficient evidence, but may still result in recommendations aimed at improving the safety and security of persons in care. The majority of complaints involve seniors living in long-term care settings.

For information, visit the Web site at www.cd.gov.ab.ca or call toll-free 310-0000, (780) 415-8617.

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Editor's Note: Background information on the committee members and the *Act* is attached.

For further information contact:

Gene Zwozdesky, Minister
Community Development
Phone: (780) 427-4928

Broyce Jacobs, Chair
PPCA Legislative Review Committee
Phone: (403) 223-0002



Backgrounder

August 8, 2002

Protection for Persons in Care Act Legislative Review

The *Protection for Persons in Care Act* came into force in 1998, after having been introduced as a private member's bill by Don Tannas, MLA Highwood. At that time, the legislation was recognized as a starting point in developing adult protective legislation in Alberta. A review was planned to take place several years after the *Act* was in operation. The review process began in July 2002 with the appointment of an MLA led review committee.

The main purpose of the *Act* is to prevent abuse of adults in publicly funded care facilities by requiring that abuse be reported and investigated. The emphasis of the *Act* has been on abuse prevention through education and deterrence, rather than applying a more punitive approach.

Since implementation, a number of concerns have been raised about certain aspects of the *Act* such as the definitions of abuse and the limited scope of the *Act*. Some of the other issues to be reviewed include the mandatory reporting and investigating requirement, the outcomes of investigations, and the right to appeal decisions.

The committee is planning a public consultation that will include written submissions in response to a public discussion guide that will be widely distributed in Fall 2002. As well, stakeholders will be invited to participate in five regional consultation sessions and a provincial discussion forum to be held in October.

A consultation summary report with recommendations is expected to be completed later this year. If amendments to the legislation are proposed, they are expected to come forward to the Legislative Assembly in 2003.

An independent administrative review by the Ombudsman began in January 2002. Findings from the Ombudsman's review will be considered in tandem with the broader legislative review.

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Protection for Persons in Care Act Legislative Review Committee:

Broyce Jacobs, MLA Cardston-Taber-Warner, Committee Chair, was elected to his first term as Member of the Legislative Assembly in March 2001. He is a member of several standing committees and was on the Human Resources & Employment committee to review the programs and services that support low-income Albertans. Prior to his election as MLA, Jacobs served 18 years as a municipal councillor, 17 years as reeve, and four years as director of the Alberta Association of Municipal Districts and Counties.

Gary Masyk, MLA Edmonton Norwood, Vice-Chair, was elected to his first term of office in March 2001. A small business owner and active community volunteer, he sits on several standing committees of government.

Karen Kryczka, MLA Calgary West, was elected to her second term as Member of the Legislative Assembly in 2001. She is chair of the Seniors Advisory Council for Alberta and a member of the Standing Committee on Health and Community Living. Since her election in 1997, Ms. Kryczka has served on a number of committees concerning seniors, aging population, aboriginal justice and school councils.

Greer Black is the current president of the Alberta Long Term Care Association. He is also president of Bethany Care Society, a voluntary, not-for-profit organization that provides health, housing and community services and programs for seniors and persons with disabilities in Calgary, Cochrane and Airdrie. The Society also provides a range of supportive housing options and lifestyle services designed to promote aging in place. Two new housing units are under development in Red Deer and Sylvan Lake.

Carl Bond is president of Travois Holdings and Owner/Operator of two private long-term care facilities in Calgary. He is also president of Summit Care Corporation that offers innovative housing options and is currently building two new continuing care facilities in Calgary and Edmonton. He was a member of the Long Term Care Review Committee representing the Long Term Care Association.

Brenda Huband is executive director of Carewest, a wholly owned subsidiary of Calgary Health Region. Carewest provides both residential and community services to younger adults and seniors with varying care needs. She was former site leader of Carewest's Sarcee, Royal Park and Signal Pointe care centres. As well, she was formerly senior operating officer for Northern Lights Regional Health Services in Fort McMurray.

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Lyn Krutzfeldt is director of operations for Central Park Lodges Inc. in Western Canada. Central Park Lodges provides accommodation, care and services across both Canada and the United States. In Alberta, Central Park Lodges operates long term care services and retirement residences in Medicine Hat, Calgary and Edmonton.

Ministry staff participating on the Legislative Review Committee include:

Edith Baraniecki, director of Protection for Persons in Care, has been involved with the *PPC Act* since prior to its proclamation. Before coming to Community Development with the centralization of Protection for Persons in Care, Edith worked at the Ministry of Health and Wellness since 1992. Edith is a Registered Nurse with a Bachelor of Nursing, Certificate in Gerontology, and has a Master of Science in Administration.

Sandra Plupek, senior investigations coordinator, has been working with the Alberta Government since 1982. Prior to coming to Protection for Persons in Care, she worked at the Office of the Public Guardian. Sandra has primarily worked in programs that provide services to persons with disabilities in the former Department of Family and Social Services. She has a B.A. Special degree in Sociology from the University of Alberta.

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News release

September 17, 2002

Protection for Persons in Care Act public consultation begins

The public consultation component of the *Protection for Persons in Care Act* legislative review has begun with the release of a public discussion guide. This guide will be widely distributed to stakeholders and other Albertans and includes information on: the definition of abuse, the scope of the Act, agency duties, reporting and investigating, investigation outcomes, the right to appeal and other issues. It also includes a questionnaire for written responses.

The Act has an impact on adults in care, their families and guardians, community advocacy organizations, healthcare professionals and service providers, professional associations and unions, regional health authorities, persons with developmental disabilities boards, law enforcement agencies and others. All interested Albertans are encouraged to participate in the consultation by completing the questionnaire by **October 25, 2002**.

“We want to hear a wide range of views and opinions from Albertans,” said review chair Broyce Jacobs, MLA Cardston-Taber-Warner. “All interested Albertans are encouraged to participate and we hope that many residents, families and front-line caregivers will provide their perspective.”

In addition to the discussion guide and questionnaire, the consultation includes five regional stakeholder sessions: Red Deer (October 1), Grande Prairie (October 3), Lethbridge (October 7), Calgary (October 8) and Edmonton (October 10), and a provincial forum in Edmonton on October 17. An estimated 250 participants, representing a wide-ranging cross-section of stakeholders, will be invited to these sessions.

Information from the consultations and completed questionnaires will be reviewed and summarized in a report with recommendations to be presented to Gene Zwozdesky, Minister of Community Development. The report will then be made available to stakeholders and the public for additional comment. Any proposed legislative amendments will come forward to government in 2003.

- more -

-2 -

Copies of the discussion guide and additional information are available on the Web site at www.cd.gov.ab.ca or by calling 415-8617 in Edmonton or toll-free 310-0000, (780) 415-8617. TTY services and alternative formats available on request.

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Please note: Media site with audio voice clips also available; go to www.cd.gov.ab.ca

For further information contact:

Broyce Jacobs, Chair
PPCA Legislative Review Committee
MLA Cardston-Taber-Warner
Phone: (403) 223-0001

Andrea Collins
Communications
Community Development
Phone: (780) 427-6530

Advertisement Related to the Consultation

Please send us your views on the Protection for Persons in Care Act

The *Protection for Persons in Care Act* provides safeguards against abuse for adults in publicly funded care facilities, such as hospitals, nursing homes, group homes and senior's lodges. The *Act* requires mandatory reporting and investigation of alleged abuse.

A review committee, appointed by Community Development Minister Gene Zwozdesky, is chaired by Broyce Jacobs, MLA Cardston-Taber-Warner, and will conduct a province-wide consultation that will examine issues such as:

- The definition of abuse
- The scope of the *Act*
- Reporting and investigation
- Outcomes, offences and appeals

The *Act* has a direct impact on persons in care, their families and guardians, healthcare professionals and service providers, professional organizations and unions, regional health authorities, persons with developmental disabilities boards, community advocacy groups, law enforcement agencies and others.

Interested Albertans are encouraged to participate in the consultation by obtaining a copy of the discussion guide and completing the questionnaire by **October 25, 2002**.

The guide is available on the Web site: www.cd.gov.ab.ca, from your MLA's office or by phoning: (780) 415-8617 in Edmonton or toll-free 310-0000 (780) 415-8617. TTY phone service and other alternative formats are available on request.



APPENDIX 5**Schedule Of Stakeholder Consultation Sessions**

| | | |
|------------------|---|--|
| October 1, 2002 | Red Deer Regional Consultation | Holiday Inn 6500 67 Street Red Deer |
| October 3, 2002 | Grande Prairie Regional Consultation | Trumpeter Hotel 12102 100 Street Grande Prairie |
| October 7, 2002 | Lethbridge Regional Consultation | Ramada Hotel 2375 Mayor Margrath Drive Lethbridge |
| October 8, 2002 | Calgary Regional Consultation | Coast Plaza Hotel 1316 33 Street N.E. Calgary |
| October 10, 2002 | Edmonton Regional Consultation | Chateau Louis Conference Centre 11727 Kingsway Avenue Edmonton |
| October 17, 2002 | Edmonton Provincial Discussion Forum | Chateau Louis Conference Centre 11727 Kingsway Avenue Edmonton |
| November 7, 2002 | Edmonton Inter-departmental Session | Standard Life Centre 10405 Jasper Avenue Edmonton |

**Red Deer
Regional Consultation Session
October 1, 2002**

Committee Members Present: Broyce Jacobs, Gary Masyk, Karen Kryczka, Greer Black, Carl Bond, Brenda Huband, Lyn Krutzfeldt

Community Development Facilitators: Deb Berg, Julie Friesen

Organizations Represented:

1. Alberta Mental Health Board
2. Alzheimer Society of Red Deer & Central Alberta
3. Catholic Social Services
4. Central Alberta Residence Society
5. Central Alberta Sexual Assault Centre
6. David Thompson Regional Health Authority
7. Michener Services
8. Northcott Care Centre
9. Office of the Public Guardian
10. Persons with Developmental Disabilities, Central Alberta Community Board
11. Red Deer College
12. Royal Canadian Mounted Police
13. Seniors Advisory Council for Alberta
14. Society of Parents & Friends of Michener Services
15. The Bethany Group

**Grande Prairie
Regional Consultation Session
October 3, 2002**

Committee Members Present: Gary Masyk, Carl Bond, Lyn Krutzfeldt

Guests: Mel Knight, MLA, Grande Prairie – Smoky

Community Development Facilitators: Deb Berg, Julie Friesen

Organizations Represented:

1. Heart River Housing
2. Francophone Representative
1. Alberta Human Resources & Employment
2. Grande Prairie & District Golden Age Centre
3. Persons with Developmental Disabilities, Northwest Alberta Community Board
4. North Peace Community Living Society
5. QE II Hospital
6. Seniors Advisory Council of Alberta
7. Grande Prairie & District Association For The Mentally Handicapped
8. AADAC
9. Grande Spirit Foundation, Heritage Lodge
10. Alberta Mental Health Board
11. Alberta Council on Aging
12. Mistahia Health Region
13. Office of the Public Guardian
14. Peace Health Region
15. Northwestern Health Services Region

**Lethbridge
Regional Consultation Session
October 7, 2002**

Committee Members Present: Broyce Jacobs, Gary Masyk, Karen Kryczka,
Greer Black

Community Development Facilitators: Deb Berg, Miriam Petersen

Organizations Represented:

1. Central Park Lodge
2. Chinook Health Region
3. Cypress View Foundation
4. Extencicare Fort MacLeod
5. Green Acres Foundation
6. Lethbridge Family Services
7. Office of the Public Guardian
8. Palliser Health Region
9. Persons with Developmental Disabilities, South Alberta Community Board
10. Southern Alberta Community Living Association
11. Sun Country Child & Family Services
12. Taber & District Housing
13. Vulcan Community Health Centre

Calgary
Regional Consultation Session
October 8, 2002

Committee Members Present: Broyce Jacobs, Gary Masyk, Karen Kryczka, Greer Black, Carl Bond, Brenda Huband

Community Development Facilitators: Deb Berg, Julie Friesen, Dwayne Van Bavel

Organizations Represented:

1. Alberta Mental Health Board
2. Bethany Care Center
3. Calgary Association of Self Help
4. Calgary Health Region
5. Calgary Police Service
6. Calgary Society for Persons with Disabilities
7. Canadian Association of Retired Persons
8. Colonel Belcher Hospital
9. Developmental Disabilities Resource Centre
10. Families Allied to Influence Responsible Eldercare
11. Foothills Foundation
12. Health Authority 5
13. Health Care Educators
14. High River General Hospital
15. Mayfair Care Centre
16. Meadowlands Retirement Residence
17. Metropolitan Calgary Foundation
18. Office of the Public Guardian
19. Persons with Developmental Disabilities, Calgary Community Board
20. Resicare Society
21. Seniors Advisory Council for Alberta
22. The Renoir
23. Wheatland Housing Management

**Edmonton
Regional Consultation Session
October 10, 2002**

Committee Members Present: Broyce Jacobs, Gary Masyk, Karen Kryczka, Carl Bond, Brenda Huband, Lyn Krutzfeldt

Community Development Facilitators: Deb Berg, Julie Friesen, Marci Scharle

Organizations Represented:

1. Alberta Hospital Edmonton
2. Alberta Therapeutic Recreation Association
3. Beaver Foundation
4. Capital Health Authority
5. Central Park Lodges
6. Cross Cancer Institute
7. Crossroads Regional Health Authority
8. Devonshire Care Centre
9. Edmonton Calder Constituency Office
10. Edmonton Police Service
11. Elder Advocates of Alberta
12. Excel Resources Society
13. Hardisty Nursing Home Inc.
14. Ma'Mowe Capital Region, Children's Services
15. Norquest College
16. Office of the Public Guardian
17. Persons with Developmental Disabilities, Edmonton Community Board
18. Persons with Developmental Disabilities, Northeast Alberta Community Board
19. Robin Hood Association
20. St. Joseph's Auxiliary Hospital
21. The Capital Care Group
22. Venta Nursing Home
23. Victorian Order of Nurses
24. Westlock Independence Network
25. Westview Regional Health Authority

Edmonton
Provincial Discussion Forum
October 17, 2002

Committee Members Present: Broyce Jacobs, Gary Masyk, Karen Kryczka, Carl Bond, Brenda Huband, Lyn Krutzfeldt

Community Development Facilitators: Deb Berg, Julie Friesen, Anne Davidson

Organizations Represented:

1. Alberta Association for Community Living
2. Alberta Association of Chiefs of Police
3. Alberta Association of Registered Nurses
4. Alberta Association of Rehabilitation Centers
5. Alberta Cancer Board
6. Alberta College of Social Workers
7. Alberta Committee of Citizens with Disabilities
8. Alberta Council of Women's Shelters
9. Alberta Human Rights and Civil Liberties Association
10. Alberta Medical Association
11. Alberta Senior Citizens Housing Association
12. Canadian Mental Health Association
13. Canadian Union of Public Employees
14. Capital Care Group
15. Catholic Social Services
16. College of Licensed Practical Nurses of Alberta
17. Developmental Disabilities Centre, U of A
18. Good Samaritan Society
19. Greater Edmonton Foundation
20. Health Sciences Association of Alberta
21. Health Sciences Council, U of A
22. Michener Services
23. Newthorad Seniors Housing Foundation
24. Persons with Developmental Disabilities, Northeast Alberta Community Board
25. Persons with Developmental Disabilities Provincial Board
26. Qualicare
27. Registered Psychiatric Nurses of Alberta
28. Royal Canadian Mounted Police K Division
29. St. Michael's Health Center

Inter-Departmental Consultation Session November 7, 2002

Departments Represented:

Children's Services:

- Legislative Planning
- Social Care Facilities Review Committee

Community Development:

- Protection for Persons in Care
- Records and FOIP
- Persons with Developmental Disabilities, Provincial Board

Finance:

- Budget & Business Planning

Health and Wellness:

- Health Facilities Review Committee
- Mental Health Patient Advocate
- Strategy Development

Human Resources and Employment:

- Legislative Services

Information and Privacy Commission:

- Policy and Consultation

Infrastructure:

- Property Development

Justice and Attorney General:

- Civil Law Branch, Legal Services
- Crown Prosecutors Office
- General Prosecutions
- Office of the Public Trustee

Learning:

- Basic Learning Division

Seniors:

- Client and Information Services
- Housing Innovation and Policy
- Housing Operations

Solicitor General:

- Policing Programs

Written Submissions Received From Organizations

Name of Organization:

1. AADAC
2. Alberta Association of Registered Nurses
3. Alberta Children's Services
4. Alberta Council of Women's Shelters
5. Alberta Health and Wellness
6. Calgary Police
7. Canadian Mental Health Association
8. Canadian Union of Public Employees
9. City of Edmonton
10. College of Physicians & Surgeons
11. Edmonton Autism Society
12. Families Allied to Influence Responsible Eldercare
13. Gerontology Research Centre, Simon Fraser University
14. Headwaters Health Authority
15. Health Sciences Association of Alberta
16. Independent Living Resource Centre of Calgary
17. Office of the Public Guardian
18. Persons with Developmental Disabilities, Alberta Provincial Board
19. Qualicare Health Services Corp
20. Seniors Community Health Council
21. Social Care Facilities Review Committee
22. Southern Alberta Community Living Association
23. United Nurses of Alberta

Protection for Persons in Care Act
Legislative Review
QUESTIONNAIRE RESULTS

September 17 to October 31, 2002

INTRODUCTION

The Legislative Review Committee of the *Protection for Persons in Care Act* (the *Act*) had the responsibility to coordinate the development and distribution of a public discussion guide as part of the consultation process. The public discussion guide included some general background information on key components of the *Act*, identified specific questions for discussion and included a questionnaire to enable respondents to comment on key issues and to provide any additional comments about the *Act*.

BACKGROUND

The public consultation commenced on September 17, 2002 with the release of the discussion guide. A total of 3,175 printed discussion guides with questionnaires were distributed. In addition, stakeholders who had internet access could obtain the guide and questionnaire from the Community Development Web site. The questionnaire could be submitted online or printed and then faxed or mailed in. Respondents were instructed to return the questionnaire by October 25, 2002; this deadline was extended to October 31, 2002. This enabled respondents to make their submission over a 45-day period.

A total of 262 completed questionnaires were received. The majority (184) of questionnaires were returned by mail or fax, and the balance (78) were submitted online.

The questionnaire was structured to obtain some basic information on respondents. While optional, most respondents were willing to identify their role (client, family, employee/service provider, employer/operator or other) and associate themselves with a stakeholder type (Regional Health Authority, AADAC, Lodge/Foundation, Children's Services, Alberta Mental Health Board, Cancer Board, Persons with Developmental Disabilities program, Human Resources and Employment or other).

The design of the balance of the questionnaire was structured into eight (8) general categories of questions dealing with:

- the definition of abuse,
- the scope of the *Act*,
- agency duties,
- reporting abuse,
- the investigation process,
- offences, and
- appeals.

At the end of the questionnaire, any additional comments could be noted.

The contracted writer had responsibility for reviewing and analyzing all responses from the questionnaires and comments.

I WHO RESPONDED

There were 262 individuals who responded by submitting a completed questionnaire.

a) Stakeholder Type

The majority of respondents were from a Regional Health Authority (30%), Persons with Developmental Disabilities program (21%) or associated with a Lodge/Foundation (10%).

The following indicates the actual respondents by stakeholder type:

- 79 - Regional Health Authority
- 55 - Persons with Developmental Disabilities program
- 26 - Lodge/Foundation
 - 5 - Children's Services
 - 5 - Human Resources and Employment
 - 3 - Alberta Mental Health Board
 - 1 - AADAC
- 45 - Other
- 43 - No Response

Of those who identified themselves as in the "other" category some noted that they were the general public. Examples of others who identified any association in the "other" category were a police service, City of Calgary Family and Community Support Services, client of a private nursing home, Canadian Association of Retired Persons and a private facility operator.

b) Stakeholder Role

The most significant number of respondents were employees (37%). Approximately 42% were employees associated with a Regional Health Authority and 32% were employees with the Persons with Developmental Disabilities program. Overall 19% of respondents were family members.

The following indicates the number of actual respondents by role:

- 98 - Employees
- 50 - Family
- 49 - Other
- 44 - Employer
- 15 - No Response
- 6 - Client

II HOW STAKEHOLDERS RESPONDED

The questionnaire was structured to permit respondents to answer “yes/no/not sure” to all 21 questions. Five of the questions had an additional sub-question attached that allowed for an open-ended response through written comments. All 21 questions permitted respondents to provide their comments. The majority of respondents answered each question (by indicating “yes/no/not sure”) while a small percentage, ranging from 2% to 11%, did not answer specific questions and left some blank.

The following data is reflective of 260 of the 262 total questionnaires received. For many questions, the data summary comments presented in the next section may not reflect the responses from those stakeholders with a low response rate (AADAC – 1 response, Mental Health – 3, Children’s Services – 5, and Human Resources and Employment – 5). However, in some areas, their responses are mentioned.

A. DEFINITION OF ABUSE

1. Should the “intent” requirement be removed from the current definition of abuse?

| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
|------------|-----------|-----------------|--------------------|
| 56% | 32% | 10% | 2% |

The “Yes” Responses

Of those who answered “yes”, a very strong majority of family members (72%) were in support of removing the need for “intent” in the definition of abuse. This was followed by, others 63%, employees 52% and employers 48%.

Individuals associated with the Persons with Developmental Disabilities program (PDD) also strongly supported the removal of intent from the definition (65%), lodges 46% and Regional Health Authorities 39%.

The “No” Responses

Of those who answered “no”, the majority were employers (41%) followed by employees (34%). As well, Regional Health Authority (48%), lodges (38%) and PDD (22%) respondents also indicated “no”.

2. Should the definition of abuse include actions that have potential to cause harm?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 65% | 23% | 10% | 2% |

The “Yes” Responses

The majority of all stakeholder types were in favour of adding “potential to cause harm” to the definition of abuse. Respondents from Human Resources and Employment were 100% in favour, lodges 65%, PDD 62% and Regional Health Authorities 57%. When examined by role, family members were very supportive with 92% indicating “yes”, along with clients 83%. Only 53% of employees and 50% of employers responded in the positive.

The “No” Responses

Overall 23% of respondents identified that “potential to cause harm” should not be included in the definition of abuse. This included Regional Health Authority 32%, lodges 27%, and PDD 24%.

3. Should the definition of abuse include failure to provide reasonable quality of care?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 61% | 22% | 14% | 3% |

The “Yes” Responses

Overall, 61% of respondents stated that they believed that “reasonable quality of care” should be added to the definition of abuse. While the actual number of respondents was low for Alberta Mental Health Board and AADAC, their responses were 100% in favour. Those who did not indicate an association with a specific stakeholder type were 78% in favour, followed by PDD with 65%, lodges 46% and Regional Health Authorities 39% in favour. Families were 72% in favour, employees 52% and employers 48% also stated, “yes”.

The “No” Responses

Overall 23% of respondents noted that “reasonable quality of care” should not be included in the definition of abuse. This included 30% of those in the Regional Health Authorities, PDD 29% and lodges 23%.

SUMMARY

The questionnaire responses indicated that the definition of abuse should be adjusted with consideration given to removing “intent” from the definition of abuse and broadening the definition to include “potential to cause harm” and incorporate failure to provide reasonable quality of care.

THE SCOPE OF THE ACT

4. Should *the Act* apply only to adults who receive services from publicly funded agencies or facilities?

| | | | |
|------------|-----------|-----------------|--------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 10% | 80% | 7% | 4% |

The “Yes” Responses

Limiting *the Act* to adults receiving services from publicly funded agencies was not well supported with only 10% of respondents indicating a “yes”. In addition to those associated with the Alberta Mental Health Board which responded with 67% in favour, PDD and Children’s Services had the highest response in favour of limiting *the Act* to publicly funded agencies at 20% each.

The “No” Responses

A strong majority of respondents (80%) were of the opinion that *the Act* should be broadened to include individuals who are not receiving services from a publicly funded agency. Responses ranged from 62% to 100% with lodges indicating 92%, employers 89%, family 84%, Regional Health Authorities 81%, and clients 67%.

5. Should adults living in their own homes or in private care settings who receive services through home care be covered under *the Act*?

| | | | |
|------------|-----------|-----------------|--------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 84% | 7% | 5% | 4% |

The “Yes” Responses

A strong majority (84%) responded that adults in their own homes or in private care settings receiving home care services should be covered under *the Act*. The majority of stakeholders expressing support for this included Children’s Services and Human Resources and Employment with 100% in favour, lodges 92%, Regional Health Authorities 89%, and PDD 69%. Employers indicated a “yes” response at 95%, family 86% and employees 84%. The balance ranged from clients 67% to others 78%.

The “No” Responses

Only eighteen actual respondents indicated a “no” response which comprised 7% of the total. As well, there were 5% who answered that they were “not sure”.

6. Should all adults with developmental disabilities who receive services be covered under *the Act* regardless of the setting?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 82% | 7% | 8% | 3% |

The “Yes” Responses

As with the above two questions, the responses here were consistent in that 82% of all respondents were of the view that clients of PDD be covered under the *Act*. This included 96% of lodge respondents, Regional Health Authorities 80% and PDD respondents 73%. Employers were the strongest majority with 98%, family 90% and clients 83%.

Of the total 262 respondents to the questionnaire, 55 associated themselves as a PDD stakeholder. As noted above, 73% of PDD stakeholders responded with a “yes” to this question which was 40 actual “yes” responses. Distinguished by role, those PDD respondents who were in favour were employers 100%, family members 86% and employees 71%. No PDD clients responded to the questionnaire so no data is available for this stakeholder group.

The “No” Responses

As with the previous question which related to persons residing in their own homes or private settings, only eighteen actual respondents indicated a “no” response to this question, again comprising 7% of the total. Here, there were 8% who were “not sure” as to whether all PDD clients should be covered under the *Act*.

Of the PDD respondents, there were 10 actual “no” responses with one being a family member and five identified as employees. Four others described themselves as “other”.

7. Should all adults who receive services in a mental health designated facility or diagnostic and treatment center be covered under *the Act*, regardless of setting?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 81% | 3% | 14% | 3% |

The “Yes” Responses

Again, consistent with all the other questions mentioned above that are related to scope of the *Act*, the strong majority (81%) indicated that these adults be covered under the *Act* regardless of setting. This included 100% of those associated with the Alberta Mental Health board, lodges 92%, other 84%, Regional Health Authorities 80%, Children’s Services 80% and PDD 69%.

Those who answered “yes” and identified themselves by role included client 100%, family 88%, employer 84%, other 78% and employee 77%.

The “No” Responses

Only seven actual respondents (3%) answered with a “no” and 14% of overall respondents indicated they were “not sure”.

8. Should the *Act* define an “alleged abuser”? Who should be considered an “alleged abuser”?

| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
|-------------------|------------------|------------------------|---------------------------|
| 54% | 21% | 18% | 7% |

The “Yes” Responses

A slight majority of all the primary stakeholder types were of the view that the *Act* should define an alleged abuser including Regional Health Authorities 57%, lodges 50% and PDD 49%. These included clients 67%, family 62%, employees 56% and employers 41%.

The “No” Responses

Overall, 21% of the respondents indicated that “alleged abuser” should not be defined including 23% for both lodges and Regional Health Authorities and 18% for PDD. None of the respondents who were clients indicated a “no” response.

Note: Without doing a thorough analysis of the comments related to this question, it cannot be determined through the data if respondents were in agreement with limiting abuse complaints by type of alleged abuser.

SUMMARY

Of the four questions that dealt with scope of the *Act* and its application to clients and agencies, there were a consistently high number of responses (approximately 82% across the board) in favour of broadening the scope of the *Act* to include:

- clients who are not receiving services from a publicly funded agency,
- clients who are living in their own homes or in other private care settings and receiving home care services,
- adults with developmental disabilities who are receiving services, and
- adults who receive services from designated mental health facilities or diagnostic and treatment centers.

AGENCY DUTIES

9. Should *the Act* impose other duties of an agency? What might some of those duties be?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 47% | 21% | 20% | 10% |

The “Yes” Responses

A strong majority of clients (83%) stated that other duties should be imposed on an agency, followed by family 60%, employees 45% and employers 25%. The major stakeholder responders (Regional Health Authority, lodges and PDD) showed only slight support for imposing other duties on an agency ranging from 38% to 46%.

The “No” Responses

Overall, 21% of respondents indicated a “no” response while another 20% indicated they were “not sure”. Of those who responded with “no”, employers were 43% and employees 23%.

REPORTING ABUSE

10. Should reporting of abuse be mandatory in all circumstances?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 71% | 14% | 10% | 5% |

The “Yes” Responses

There was significantly strong support for maintaining mandatory reporting of abuse with 71% of respondents indicating “yes”. Of these, 83% were clients, family 80%, other 71%, employers 68%, employees 67% and 62% who did not identify their role. The majority of stakeholders who responded with “yes” were from the Regional Health Authority 75%, PDD 67% and lodges 50%.

The “No” Responses

Of the 14% of respondents who indicated “no”, the lodges represented 23%, PDD 16% and Regional Health Authorities 11%.

11. Should the identity of complainants and/or witnesses be confidential?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 58% | 18% | 18% | 5% |

The “Yes” Responses

Each of the major stakeholder types responded with a “yes” ranging from 53% to 67% in support of a confidentiality requirement, while 80% of those from Children’s Services indicated a “yes”. Similarly, the “yes” responses categorized by role, ranged from 53% to 67% in favour of maintaining confidentiality of complainants and witnesses.

The “No” Responses

Of the 18% respondents who indicated “no”, 24% were from Regional Health Authorities, PDD 15% and lodges 12%. By role, 22% families responded “no”, employers 20%, clients 17% and for both employees and employers 16%.

12. Should *the Act* provide a timeframe for reporting abuse?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 71% | 15% | 9% | 5% |

The “Yes” Responses

There was general support for inclusion of a timeframe for reporting abuse from all stakeholder types. The lodges were 85% in favour, PDD 73% and Regional Health Authorities 70%. Those in the other category were also 69% favourable.

There was also reasonably consistent support for a timeframe when reviewed by role with employers 77%, other 76%, family 74%, employees 68%, and clients 67%.

The “No” Responses

Respondents who answered “no” were not substantial with PDD 13%, lodges 12% lodges and Regional Health Authorities 11%. Of the families, 18% indicated there should be no timeframe, clients 7% and employees 13%.

SUMMARY

The data indicates that there was strong support for mandatory reporting of abuse and for including a timeframe for reporting. Ensuring the identity of complainants and witnesses remains confidential also received some support.

THE INVESTIGATION PROCESS

13. Should the Minister or designate have discretion in directing full investigations of abuse?

| | | | |
|------------|-----------|-----------------|--------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 65% | 15% | 14% | 7% |

The “Yes” Responses

The data indicates consistency in support of providing the Minister or designate with discretion in directing full investigations of abuse. Each of the three primary stakeholder types responded with 65% in favour. When examined by role, clients were 83% in favour, employers 73%, employees 61% and families 60%.

The “No” Responses

Of those who responded by stating “no” the lodges were 23% and both the Regional Health Authority and PDD were 9%. Also not in favour were family 20%, clients 17%, employees 13% and employers 11%.

14. Should facilities or alleged victims/guardians be notified of the commencement of investigations?

| | | | |
|------------|-----------|-----------------|--------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 76% | 9% | 8% | 6% |

The “Yes” Responses

There was significant agreement amongst stakeholders that facilities or alleged victims/guardians be notified of the commencement of investigations. Lodges were 92% in favour, PDD 80% and Regional Health Authorities 78%. Employers were 86% in favour, employees 77%, families 74% and clients 67%.

The “No” Responses

Those who responded with a “no” were relatively small with a total of 24 actual respondents, comprising 9%.

15. Should investigators have access to client health information without consent?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 33% | 47% | 15% | 5% |

The “Yes” Responses

There was not strong support for investigators obtaining client health information without consent. The Regional Health Authorities were at 37%, lodges 35% and PDD 27% in favour. Of the clients, 67% responded “yes”, but the balance of the other stakeholder roles responded from 30% to 38% in favour.

The “No” Responses

Those who responded with a “no” were more significant with lodges 54%, Regional Health Authorities 47% and PDD 44%. Employees were 55% against, employees 48%, families 40% and clients 33%.

16. Should witnesses and/or alleged abusers be required to provide information during an investigation?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 78% | 7% | 10% | 5% |

The “Yes” Responses

The stakeholders were consistently strong in their support that witnesses and/or alleged abusers be required to provide information during an investigation. Lodges were 88% in support, Regional Health Authorities 82% and PDD 71%. Clients were 100% favourable, families 92%, employees 81% and employers 68%.

The “No” Responses

A very small number of respondents were not in support of witnesses being obligated to provide information during an investigation. The highest were employer respondents with 16% against and Regional Health Authorities 10%.

17. Should investigators have access to employment records of an alleged abuser?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 55% | 24% | 17% | 4% |

The “Yes” Responses

Stakeholders were 55% in favour of permitting investigators to access employment records of an alleged abuser. Support for this was not strong but was consistent across the three primary stakeholders with lodges at 46%, PDD 45%

and Regional Health Authorities 43%. When examined by role, the main support was primarily from families 75% and clients 67%. There was less support from employers 50%, and employees 40%. However, those in the other category were in favour 71% by role and 78% by stakeholder type.

The “No” Responses

Those most opposed to having investigators access employment records were the Regional Health Authorities at 42%, lodges 35% and PDD 18%. Only 39% of employers and 36% of employees were not supportive.

SUMMARY

The responses indicate significant support from stakeholders for enabling the Minister to have discretion in directing full investigations of abuse; notifying facilities, victims and guardians of the commencement of investigations; and for requiring witnesses and alleged abusers to provide information during an investigation. Permitting investigators access to client health information without consent was not supported. There was some support for access to employment records of an alleged abuser but not substantially high.

INVESTIGATION OUTCOMES

18. Should recommendations be restricted to agencies?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 10% | 71% | 15% | 4% |

The “Yes” Responses

There was little support to keep recommendations restricted to agencies only. Both PDD and Regional Health Authority respondents were only 11% in favour of restricting recommendations to agencies, followed by lodges at 8%.

The “No” Responses

The majority of all stakeholders were of the opinion that recommendations be made beyond agencies. Lodges were very much opposed to restricting recommendations to agencies at 85%, PDD 65% and Regional Health Authorities 63%. Also opposed were families 82%, employees 70% and clients 67%. Employers however were less opposed with only 39% responding with a “no”. Of those who were “not sure”, 44% were a Regional Health Authority respondent.

19. Should the Minister’s decisions be limited to approving or rejecting recommendations? What powers should the Minister have?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 29% | 34% | 28% | 9% |

The “Yes” Responses

There was not strong support for limiting the power of the Minister to approving or rejecting recommendations only. Lodges were 42% in favour, PDD 35% and Regional Health Authorities 29%. Similarly, by role, stakeholders who were employers were 43% in favour, clients 33%, employees 31%, and family 12%.

The “No” Responses

Those who answered “no” were 34% of the overall stakeholders, slightly higher than those who answered “yes” and “not sure”.

SUMMARY

There was clear support for making recommendations beyond only agencies, but no consensus of any type for limiting the decisions of the Minister to approving or rejecting the recommendations.

OFFENCES

20. Should new offences be considered?

| | | | |
|-------------------|------------------|------------------------|---------------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 56% | 10% | 23% | 11% |

The “Yes” Responses

There was some support for creating new offences in *the Act*. Those fully in favour at 100% were families and respondents associated with the Alberta Mental Health Board. The Children’s Services respondents were 80% in favour, followed by 70% of family respondents. The three primary stakeholders were similar in their responses with lodges 54% in favour, PDD 49% and Regional Health Authorities 48%. Employees were only 49% in favour and employers 43%.

The “No” Responses

Only 10% of respondents answered “no” while the percentage of those who responded by indicating that they were “not sure” was substantially higher at 23%.

APPEALS

21. Should there be an appeal process?

| | | | |
|------------|-----------|-----------------|--------------------|
| <u>YES</u> | <u>NO</u> | <u>NOT SURE</u> | <u>NO RESPONSE</u> |
| 72% | 10% | 12% | 6% |

The “Yes” Responses

A strong majority of all stakeholders were in support of having an appeal process. This included PDD 76%, lodges 73% and Regional Health Authorities 68%. Both Mental Health and AADAC were 100% in favour. Clients were strongly supportive with 83% in favour. Employers also indicated strong support for an appeal process at 80%, employees 76% and family 62%.

The “No” Responses

Only 10% of respondents answered “no” and the percentage of those who answered “not sure” was also minimal at 13%.

Summary of Comments from Stakeholder Consultation

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A. Themes in Stakeholder Comments

As noted previously, stakeholders provided comments in consultation meetings, as well as formally, in response to the questionnaire. This section presents a general overview of their comments about the strengths and weaknesses of the current legislation.

1. Strengths

Respondents who supported the overall purpose and intent of the *Protection for Persons in Care Act (PPCA)* presented the following themes (in approximate rank order):

- ✓ *Educative*: the PPCA is educative rather than punitive, and ensures provincial consistency in its approach. It is client-focused, and serves a purpose by creating awareness on the part of persons in care, service providers, staff and stakeholders.
- ✓ *Empowering*: the presence of the legislation empowers those who have concerns about care being provided to a vulnerable person an opportunity to report the incident, take action, and/or seek advice. The legislation may offer increased dignity to persons in care and perhaps reduce their feelings of isolation and vulnerability.
- ✓ *Deterrent*: the legislation may act as a deterrent, and offer avenues of recourse where none existed previously. It may prevent a "sweeping under the rug" approach by certain agencies in particular circumstances, and increase the accountability of agencies who receive public funds to provide services.
- ✓ *Validation*: the legislation offers protection for complainants and addresses malicious and false reporting. The investigative process and outcomes, as well as follow-up, validate an agency's approach to dealing with abuse.
- ✓ *Improvements in Quality of Care*: the legislation has resulted in some overall improvements in the quality of care in publicly funded facilities. In response to the legislation generally and recommendations specifically, service providers may introduce and/or revise policies and procedures, institute new training, and generally demonstrate more sensitivity to patients and clients.
- ✓ *Recommendations Result in Action*: many stakeholders believe that recommendations from investigations are viewed seriously by service providers. These recommendations are most often acted upon expediently and appropriately by service providers, likely resulting in increased quality of care to vulnerable adults.
- ✓ *Timely Responses*: many respondents noted that the PPCA process is reasonably streamlined and efficient. There is a simple reporting process. The province-wide toll-free number is readily accessible, and callers are provided with helpful advice, and treated with respect and dignity. If the caller's issues are not within

the jurisdiction of the PPCA, an appropriate referral is made to another agency. Agencies and service providers are most often notified of investigations in a timely manner.

- ✓ *Collaborative Relationships with Other Investigative Agencies*: the legislation provides that allegations of abuse may be reported directly to a health professional college for investigation. Protection for Persons in Care (PPC) and investigators are seen by many respondents to be sincere in their intent to work with health professional colleges.

The legislation also provides for the involvement of law enforcement officials, if the abuse incident is thought to be criminal in nature. Investigations by a police service take precedence over investigations by PPC investigators. PPC will release all of the reported information to the police service.

- ✓ *Quality of the Investigative Process*: the legislation provides for an unbiased, consistent evaluation of reported events by independent and neutral third party investigators, on contract to the Department of Community Development. This addresses potential conflict of interest concerns and ensures the integrity of the process.

Investigators are chosen on the basis of their specific competencies and backgrounds. Some respondents believe that investigators keep stakeholders well informed of the process. Similarly, investigators are most often seen to attempt to be sensitive to organizational nuances, policies and procedures, customs and cultural issues. The reporting, investigative and follow-up processes are generally viewed to be fair, unbiased and conducted professionally.

- ✓ *Confidentiality*: the obligation for complainants' identities to be made known to PPC (although held in confidence) is largely seen by stakeholders to result in fewer frivolous and/or unsubstantiated complaints. There is a reasonable comfort level with the confidentiality and discrete nature of the investigative process.

2. Weaknesses

Many respondents commented that the PPCA had weaknesses, consistent with the following themes (similarly in approximate rank order):

- *A limited scope*: the PPCA should address all vulnerable adults receiving publicly funded services. Some advocated that the legislation should include privately operated programs, services and facilities, adults receiving home care services, and patients in designated mental health facilities.
- *An unclear mandate*: the target population whom the PPCA is intended to protect needs to be expanded and *protect the person* (irrespective of their actual location or source of funding), *rather than being limited to facility or agency - based care*.

This is evident in the lack of a preamble and/or purpose in the introductory sections of the legislation.

- *Overlaps and gaps with legislation protecting Albertans against individual and family violence and abuse:* there is a need for increased clarity about reporting and investigative processes, largely as a result of the significant overlap in provincial government legislation governing publicly funded facilities (*Health Facilities Review Committee Act, Social Care Facilities Review Committee Act, Mental Health Act, etc.*).

These and related circumstances result in a perception by some of a lack of coordination, parallel processes, redundancies, duplicate and/or inconsistent findings and recommendations, differing timeframes for investigations to be completed, and confusion in terms of reporting and accountability.

Additionally, each ministry's legislation has its own confidentiality requirements. One example is the *Alberta Alcohol and Drug Abuse Commission Act*.

At times, these conflicting confidentiality and administrative requirements may hinder the ability of PPCA investigators to access important information. In practical terms, this may be unduly cumbersome and onerous in terms of duplication of interviews and investigations, and impact unnecessarily on agencies' time and resources.

- The absence of a *right of appeal* and adherence to the "*principles of natural justice*," throughout the entire process.
- The absence of legislative options, in that all cases of "abuse" must be investigated, with *no opportunity for the use of discretion*.
- Similarly, the perception that the investigator's and Minister's recommendations may be beyond the scope of the investigation, irrelevant, and/or unrealistic to implement. The circumstances may give rise to complaints of the *absence of administrative fairness and natural justice*.
- *Failure to address quality of care issues and "systemic abuse."*
- The need for *increased expediency* in the process, from the first report of abuse through to the outcomes and recommendations. This might potentially involve legislated timeframes.
- The *inability to effectively address client-to-client abuse*, particularly in circumstances where the alleged abuser (most often due to mental incapacity) lacks the ability to form "intent."

- The *absence of any requirement for agencies, staff, alleged abusers, families and third parties to cooperate* with the investigation, including the lack of sanctions for agencies who fail to respond to the Minister's recommendations.
- The *restriction of the PPCA's mandate to deal only with "agencies,"* with no jurisdiction over parties such as staff, alleged abusers, witnesses and family members.
- The potential that the *PPCA investigation and outcomes are redundant,* and merely duplicate internal investigations and related agency processes, extending over much longer timeframes.
- The *questionable value of obligating agencies to obtain criminal record checks* on new employees and volunteers, on a "one time" basis.
- The absence of any legislative mechanisms to provide for *emergency protection and crisis intervention* of those who are abused, by comparison to those found in the Child Welfare Act.

B. Summary of Stakeholder Comments

Respondents made numerous suggestions for enhancements to the PPCA. These have been categorized in a manner consistent with their presentation in the *Public Discussion Guide* and dealt with in the public consultations.

For each section, background information will be provided, largely consistent with the discussion guide and the information noted in the "*PPC Bulletins*" published periodically by Alberta Community Development.

Stakeholder comments from the consultation meetings and written responses will be presented next.

1. Definition of Abuse

The questions posed in the PPCA questionnaire included:

- *Should the "intent" requirement be removed from the current definition of abuse?*
- *Should the definition of abuse include actions that have potential to cause harm?*
- *Should the definition of abuse include failure to provide reasonable quality of care?*

Background

The PPCA currently defines "abuse" as:

- *intentionally* causing bodily harm
- *intentionally* causing emotional harm, including threatening, intimidating, humiliating, harassing, coercing or restricting from appropriate social contact
- *intentionally* administering or prescribing medication for an inappropriate purpose
- subjecting to non - consensual sexual contact, activity or behaviour
- *intentionally* misappropriating or improperly or illegally converting money or other valuable possessions, or
- *intentionally* failing to provide adequate nutrition, adequate medical attention or other necessity of life without valid consent.

These types of abuse (except for subjecting to non-consensual sexual contact, activity or behavior) require intent on the part of the person causing the abuse. Neither potential abuse nor failure to provide a reasonable quality of care constitute abuse under the current definition.

The types of alleged abuse reported to PPC deal largely with physical, emotional and neglect circumstances. The facilities involved mostly include hospitals and nursing homes, settings for clients receiving services from the Persons with Developmental Disabilities program, and seniors in lodges.

Intent is often very difficult to determine, so complaints may be dismissed for insufficient evidence. Some complainants believe that they must be assured that there was intent to harm clients before reporting instances of abuse, although this is actually one of the of the functions of the investigation.

Stakeholder Comments

Should the "intent" requirement be removed from the current definition of abuse?

The definition implies that abuse always involves harm, through domination and/or victimization, and is viewed by most stakeholders to be reasonably comprehensive and consistent with other definitions of abuse. The examples that define abuse in the interpretation bulletins issued by Alberta Community Development were seen to be helpful.

Supportive comments, uniformly from family members of persons in care, employees and others included:

- "... keeping 'intent' helps separate the malicious from the unintentional."

- *"Abuse is intentional. If the word is removed, an accident may be construed as abuse. Therefore, any fall, any medication error or other such incident could be subject to an investigation. I don't believe this to be the intent of legislation. Facilities have a process for handling such incidents... and they are part of risk management and quality improvement processes to resolve and correct. This is sufficient."*
- *Removal of "intent" from the current definition of abuse creates more problems than it solves. Situations where there is actual harm may be due to incompetence, lack of knowledge of policies or procedures, and inappropriate policies and procedures, rather than the intent to harm."*
- *Intent is a key aspect. There are unfortunate occasions where actions deemed "abusive" occur; however, the abuser is remorseful and/or it was an accidental incident. Intent may help to identify those actions that were intentional, that were meant to harm. I believe these situations should be the focus of an investigation."*

Others (including employees and employers) viewed the definition to be unclear, presenting the requirement for "intent" to potentially be a disincentive to report abuse:

- *"Although there could be some obvious accidents reported as abuse, by eliminating intent we make the decision to report easier for potential complainants. The issue of intent versus inadvertent harm or neglect would still be an important issue for the investigator to consider when developing recommendations, but would not discourage reporting."*
- *"Intent is (only) relevant when deciding on the appropriate remedy, not for determining whether harm has occurred and needs to be redressed. The focus on intent also tends to import criminal law ideas."*
- *"It is the role of the investigating team to determine intent. If it is determined to be an accident, recommendations can still be made, and it validates the rights of the person who has been abused intentionally or unintentionally."*
- *"Intent or intentionally causing is a very ambiguous term, for which there is no definition. It is also extremely difficult to prove. The concern should be for the safety of the client, not with how they came to be unsafe. A caregiver should not abuse or neglect a client intentionally or unintentionally, and a client has the right to expect to be safe."*
- *"(It) seems that if so many cases are dismissed because of insufficient evidence of "intent," that there is something critically wrong with the definitions. If there is not a requirement for "intent" to be established in sexual abuse, why would there be a need for intent to be established for other kinds of abuse? Logically, one could argue that only sexual abuse is perceived by this Act to be of a serious nature. I think that any client in an agency who is subjected to an action that*

causes some harm or has the potential to cause harm should be considered abused."

Some respondents commented that the PDD definition of abuse is superior. The PDD definition deals with abuse as occurring:

"... in any situation where a more powerful person takes advantage of a less powerful one."

The PDD definition addresses abuse in a manner similar to the PPCA, which also includes exploitation and inappropriate use of restraints. However, the PDD definition does not include financial abuse or the inappropriate administration of medications. The types of abuse noted in the PDD Abuse Reporting and Investigation Protocol are otherwise quite consistent with those listed in PPC Bulletin #1, with the exception that the PDD definition does not rely upon intent.

Should the definition of abuse include actions that have potential to cause harm?

The majority of respondents to the questionnaire (particularly family members and employees) believe that the definition of abuse should include actions that have the potential to cause harm. Representative comments included:

- *"... the PPCA was developed to prevent abuse; therefore it should address those actions that have the potential to cause harm. Again, remember the emphasis on educate, and be proactive rather than reactive. If we know such behaviors have the potential to cause harm, do we wait for harm to be caused before we address them?"*
- *"Assuming that the approach of the Act is corrective, the definition of abuse is far too restrictive. At present, the definition virtually requires a criminal offence before abuse exists and harm is nearly always required. Intent is difficult to prove in many cases."*

Given that many service providers or agency employees will have little training or experience, they may "abuse" a client unintentionally. Inappropriate actions that have the potential to cause harm should be included in the definition, along with providing a defined level of care and safety."

Others disagreed:

- *"Extending the definition to include potential to cause harm would significantly increase the number of complaints when, in the majority of cases, the incidents could be investigated by the facility/service provider and appropriate education, guidance and support could then be provided to the caregiver."*

- *"Many of these types of situations presently seem to fall under the definition of failure to provide adequate care. Organizations should be encouraged and/or required to have processes in place to identify and address these "near misses." While I agree with the intent of this suggestion, it would be very difficult to define and investigate."*

Should the definition of abuse include failure to provide reasonable quality of care?

There was a wide range of stakeholder views about whether the definition of abuse should include "failure to provide reasonable quality of care." A small majority of respondents (especially family members and employees) to the questionnaire commented that this definition should be included in the legislation:

- *"This would require that very clear and specific standards be put in place along with corresponding funding and accountability measures, if not educational and support programs. Moreover, the standards would have to be the same for all operators on the province-wide basis."*
- *"Quality is sometimes hard to measure, but consistent standards need to be maintained and constantly revisited to ensure quality care, a step beyond the very basics. Sometimes it's just common sense."*

Yet, others suggested that quality of care should not be included, as it is too difficult, abstract and confusing to define the term "quality of care":

- *"... You will step outside the boundaries of what this act was intended to focus on. If there are complaints about failure to provide reasonable quality or levels of care, then they should be made to the funding authority, not to the PPCA. These things should be (dealt with) by the appropriate jurisdiction, not by an external body that has no authority over the facility."*
- *"Investigators would have to determine what this concept entails. It would be beneficial if defined in the Act itself. The greatest concern facing people in care is patient-to-patient abuse, assault, negligence, etc. Quality of care would be a secondary issue."*
- *"This would require that very clear and specific standards be put in place along with corresponding funding and accountability measures, if not educational and support programs... With respect to nursing homes, the definition of abuse would require a significant revision to the Nursing Homes Act and related regulations, plus basic service standards..."*
- *"Quality of care is already addressed by Regional Health Authorities, facilities and service providers, the Health Facilities Review Committee, and accreditation processes."*

- "... it should be borne in mind that the PPCA may not be the appropriate Act concerning allegations about providing adequate nutrition, adequate medical attention or other necessities of life. An investigation about these matters may be more appropriately commenced under the Health Facilities Review Committee Act in approved hospitals, etc."

2. Scope of the Act

The questions posed in the PPCA questionnaire included:

- *Should the PPCA apply only to adults who receive services from publicly funded agencies or facilities?*
- *Should adults living in their own homes or in private care settings who receive services through home care be covered under the PPCA?*
- *Should all adults with developmental disabilities who receive services be covered under the Act, regardless of the setting?*
- *Should all adults who receive services in a mental health designated facility or diagnostic and treatment center be covered under the PPCA, regardless of the setting?*

Background

The PPCA currently applies to adult clients in:

- approved hospitals as defined in the *Hospitals Act*
- lodges as defined in the *Alberta Housing Act*
- nursing homes as defined in the *Nursing Homes Act*, which are owned and operated by, or under contract to health authorities
- facilities which are operated by, or receiving some operating funds directly or indirectly from the provincial government, including:
 - places of care for persons who are aged or infirm
 - hostels or other establishments providing accommodation for not less than four unemployed or indigent persons
 - emergency shelters
 - residential alcohol and drug abuse treatment centers
 - group homes or shelters for physically or mentally handicapped persons
 - vocational rehabilitation and training centers for physically or mentally handicapped persons.
- any institution or organization designated by regulation as an agency.

The legislation does not apply to Alberta Hospital Edmonton, Alberta Hospital Ponoka, Raymond Care Center, Claresholm Care Center, housing accommodations as defined in the *Alberta Housing Act*, and correctional institutions as defined in the *Corrections Act*.

The current definition of an "agency" means that a significant number of vulnerable adult Albertans are not covered by the PPCA. Adults living in privately funded or privately operated facilities and those who live in their own homes are not covered.

While home care services are provided to some people residing in facilities to which the PPCA applies, such as lodges, many clients live in their own homes, and therefore are not covered by the legislation. In these circumstances, clients may report abuse to the agency or funding source, or to the police.

Only some adults with a developmental disability who receive services from a service provider as defined in the *Persons with Developmental Disabilities (PDD) Community Governance Act* are subject to the PPCA's jurisdiction. PDD has determined that the PPCA does not apply to some clients because of the nature of their funding arrangement. This also means that the provisions of the PPCA do not apply to those agencies that provide services to such clients.

In some other cases, an agency may serve some clients that are included and others that are excluded from the PPCA. There are circumstances where a client would be covered under the PPCA while attending a day program, but not at their home, because of the type of funding provided by PDD.

The PPCA presently applies to every facility designated in the *Mental Health Regulation*, except for Alberta Hospital Edmonton, Alberta Hospital Ponoka, Raymond Care Center and Claresholm Care Centre.

Stakeholder Comments

Should the PPCA apply only to adults who receive services from publicly funded agencies or facilities?

The present legislation is seen to be facility or agency-based, rather than people-based. A strong majority of stakeholders (family members, employees, and others) believe that the definition of "persons in care" should be expanded and clarified. In this process, however, the PPCA should continue to attempt to balance protection of the public with individual rights.

Should adults living in their own homes or in private care settings who receive services through home care be covered under the PPCA?

Most suggestions from respondents referenced the concept of enhancing the definition of persons in care to include *"any vulnerable adult Albertan who receives programs and services from public funds, irrespective of location or setting, the number of hours of service per day, or the number of people receiving services in the location."*

Many respondents (including family members, employees, employers and others) noted that the scope of the Act should include those in "supportive housing" and "assisted living

(aging in place) facilities," as well as those receiving home care services. The enhanced definition would include programs and services provided by the private sector, as long as they were at least partially publicly funded.

Should all adults with developmental disabilities who receive services be covered under the Act, regardless of the setting?

Most respondents (family members, employees, employers, others and those affiliated with Regional Health Authorities and PDD) believe that all adults with developmental disabilities who receive publicly funded services should be covered under the PPCA, regardless of the setting.

Supportive comments for expanding the PPCA's scope included:

- *"Persons living in their own homes deserve protection from abuse, intentional or otherwise, caused by home care services or family. Reports of abuse should be made in the same manner as reports from a client in a provincially funded institution."*
- *"It seems appropriate to include all adults with developmental disabilities under the PPCA, regardless of their living and treatment settings and their unique funding arrangements."*
- *"The PPCA was a very good start and actually made workers aware of their actions or words, and how they could be construed by others. The Act as it is has probably made a big difference in care settings, but has not made a difference in home or private settings. I believe this sector needs to be incorporated into the Act to protect adults who may be at risk of or sustaining abuse."*
- *"The Act should cover all (persons) equally. There is no justification for insulating any one type of operator/living arrangement from the PPCA. To do so is discriminatory toward people in care, based on such things as source of funding and ownership."*
- *"I work in the area of mentally and physically handicapped and feel that these people finally have a piece of legislation that does grant them protection. This Act must be expanded to cover all people under care, not just in residential (housing units) institutions. We have admitted to our facilities some from the community that have not been properly protected, and they need this Act to cover them..."*

There were a considerable number of comments about the implications of having the PPCA apply to clients who receive services from PDD, with the majority sentiment represented in comments as follows:

- *"It is really very inappropriate to have the PDD protocols apply to some clients. All PDD clients should be treated equitably and (the Provincial Government)*

should do away with the protocol, except for having internal investigations complement PPCA investigations. The protocol in PDD has no teeth and we do not need two classes of citizens."

- *"Do away with the PDD protocol, except for having it function as complementary to the PPCA. Treat everyone equally if they are in publicly funded situations."*
- *"It makes no sense to duplicate, so the PDD protocol, which is a weak piece of bureaucracy, should be terminated as an option. Make it all reportable to PPCA, then once it is reported, have the flexibility to involve PDD in the matter."*
- *"The Abuse Reporting and Investigation Protocol (ARIP) which is used by agencies funded through PDD Boards has many features in common with the PPCA. There is a lot of confusion around who is covered by what. The ARIP puts a huge burden on the agency, with relatively little support and no "teeth..."*
- *A single system, backed by legislation and an appropriate administrative vehicle to enforce it, would be better. At present, the self-policing of agencies works only when agencies are already committed to protecting the rights of persons served. Agencies that do not support this philosophy are less likely to properly follow ARIP and require something more substantial like the PPCA, if (its scope) was expanded. We need to do whatever is necessary to provide protection for all vulnerable adults."*

Yet, a minority of respondents proposed that clients covered by the PDD protocol specifically be exempted from the PPCA. They believe that the PDD protocols are more effective, flexible, community-based and less intrusive. Policy and procedural changes (to the PDD protocol) can be made far more quickly than legislation (PPCA). Representative comments included:

- *"It is their home (and) not a facility. All service providing agencies should however have processes and review practices to address concerns and have all clients aware of (these) processes..."*
- *"Agencies in (our region) would like to have abuse reported to one body; either the PPCA or the PDD Abuse Reporting and Investigation Protocol. Our preference is the Abuse Reporting and Investigation Protocol, as it is more applicable to our service, is more expedient, and supports the rights of individuals to access the law and press charges. Individuals can then be supported by agency employees who know them and will assist them with this process, not a complete stranger that they may be uncomfortable dealing with, and may have no confidence in ..."*
- *"The whole PDD system should not be included under PPCA. We have our own abuse protocol managed by PDD. We also have a standards and accreditation process jointly managed by PDD and the Alberta Association of Rehabilitation*

Centers. This is a major overlapping of services and responsibilities, and is not a wise use of public funds or people's time."

- *"... for adults supported through funding from PDD, there has been a reporting mechanism in place since May 1997. The Abuse Reporting Protocol is based on PDD's model of community development, the rights of adults with developmental disabilities, and the need for support and follow-up in the home community when allegations are made... the PPCA serves as a confusing duplication of the Abuse Reporting Protocol... the requirement to report under the PPCA should be removed for adults with developmental disabilities."*

The PDD Provincial Board's position is that the PPCA's role should be limited to readily identifiable PDD direct operation facilities. PDD direct operation facilities support less than 10% of the 8000+ individuals served, while over 90% live in a wide array of shared and individual community living arrangements that are viewed as homes, not facilities.

The PDD Provincial Board's belief is that, through their policy-based Abuse Reporting and Investigation Protocol, PDD already has the capacity to respond to allegations of abuse in the majority of PDD funded environments, to the satisfaction of all PDD stakeholders and concerned citizens. Within PDD's current practices there is already significant flexibility in how allegations are addressed, ranging from internal agency reviews to external formal investigations:

- *"... for both philosophical and practical reasons, the PDD Provincial Board recommends that only specific, identifiable care facilities be covered under the revised PPCA, using criteria determined by PDD. The vast majority of individuals would therefore be covered under a strengthened Abuse Reporting and Investigation Protocol..."*

Should all adults who receive services in a mental health designated facility or diagnostic and treatment center be covered under the PPCA, regardless of the setting?

A strong majority of respondents (family members, employees, employers and others) commented that all adults who receive services in a mental health designated facility or diagnostic and treatment center should be covered under the PPCA, regardless of the setting. Their views were represented by the following comments:

- *(By not been covered under the PPCA) there are those who would argue that mental health clients are again being treated as second-class citizens. If they were to be covered under the PPCA, there would have to be a screening mechanism to deal with these types of complaints, so that frivolous and diagnosis related incidents would not be subject to a full blown investigation.*
- *There is presently no real mechanism in place for non-certified patients in provincial hospitals to deal with their concerns around treatment. Why should mental health clients and patients be treated any differently under the law than*

so-called mentally well people? It's not an easy question to answer because all people, regardless of setting and diagnosis, deserve the protection of the law."

- *What is the difference between services in a (designated) mental health facility and services in a hospital with a mental health ward?*
- *"The PPCA should apply to all publicly funded institutions including Alberta Hospital Edmonton, Alberta Hospital Ponoka, Raymond Care Centre and Claresholm as it presently does to all approved hospitals under the Hospitals Act... it doesn't make sense to have 872 people under a separate set of rules."*

3. **Alleged Abusers**

The questions posed in the PPCA questionnaire included:

- *Should the PPCA define an "alleged abuser"?*
- *Who should be considered an "alleged abuser"?*

Background

The PPCA does not define an "alleged abuser." In practice, the majority of alleged abusers reported under the PPCA are employees, service providers and other clients.

All abuse must be reported and all complaints must be investigated, regardless of the identity of the alleged abuser. This is a lesser concern when the alleged abuser is a service provider or employee or volunteer of an agency, because the agency has some control and responsibility. However, clients may also be abused by a third party, such as other clients, family members, visitors and private practitioners.

In these situations, recommendations may be made to the agency, but the agency may have no power or authority over the alleged abuser. Therefore, it may make it difficult or impossible for an agency to implement any recommendations that relate to an individual not under their direct control.

Stakeholder Comments

Should the PPCA define an "alleged abuser"?

Some respondents suggested that the term "alleged abuser" not be defined in the legislation, as the definition is relatively self-evident. Representative comments included:

- *"An abuser is anyone who either knowingly or unknowingly acts in a manner that results in another person being harmed either physically, mentally, emotionally or financially. The way in which the abuser is dealt with may vary. Obviously... knowingly abusing someone needs to be more severely sanctioned than unknowingly abusing someone. But the principle of being free from abuse must be protected no matter what the motivation."*
- *"If the definition of abuse is clear..., then "abuser" does not need further definition. However, we suggest that the word "alleged" be appended to the word "abuser"..."*
- *"Using the term "alleged" ensures that the accused has not been found guilty, just by association but without due process."*

Who should be considered an "alleged abuser"?

Those who supported the need for the definition of "alleged abuser" (most notably, family members) proposed:

- *"An abuser is anyone who either knowingly or unknowingly acts in a manner that results in another person being harmed physically, mentally, emotionally or financially. The way in which the abuser is dealt with may vary. Obviously the price of knowingly abusing someone needs to be more severely sanctioned than unknowingly abusing someone. But the principle of being free from abuse must be protected no matter what the motivation."*
- *"Anyone who causes actual physical harm, threatens physical harm, threatens by gesture or voice, withholds items or services, delays responding to requests, and/or diminishes a person's dignity in any way."*
- *"Any person or agency that allegedly does the abuse should be considered the alleged abuser. Even though an agency may have no control or authority over the alleged abuser, some pressure can still be brought to bear on a person simply because of the investigation being conducted. In addition, the Act is intended to be preventative and educational in nature. This can be accomplished through the investigative process."*

- *A person who causes unnecessary pain or anguish to someone in care through neglect, action or carelessness. The language should be precise and perhaps degrees of abuse would be possible."*

4. Agency Duties

The questions posed in the PPCA questionnaire included:

- ***Should the PPCA impose other duties of an agency?***
- ***What might some of those duties be?***

Background

Agencies must:

- Protect clients from abuse and maintain a reasonable level of safety. A reasonable level of safety is not defined, but agencies must have policies and procedures regarding abuse and client safety.
- Make the provisions of the legislation available to service providers, employees and clients. This includes informing everyone of the mandatory reporting requirement, and how and where to report abuse.
- Require new employees and volunteers to provide a criminal record check.

Alberta Community Development has requested that agency policy reflect the legislative requirement that abuse or suspected abuse of a client in a publicly funded care facility is reported directly to the PPC reporting line, a police service, or a committee, body or person authorized under other legislation to investigate the abuse.

Investigators are empowered to request a copy of the agency abuse policy, in order to determine if the legislative requirement for reporting is present. Only reporting instances of potential abuse internally does not satisfy the PPCA's legislative requirements.

Agencies are also encouraged to provide in-services and training, and display brochures and posters on the PPCA, so that the reporting number is readily available to staff, patients/clients and their families.

Stakeholder Comments

Should the PPCA impose other duties of an agency?

There was reasonable agreement among respondents with the PPCA's requirements upon agencies. As one respondent noted:

- *"... (existing provincial) legislation, accreditation standards and the Health Facilities Review Committee are already working in this area. Enough already."*

What might some of those duties be?

However, others suggested that the PPCA should additionally oblige agencies to:

- *complete comprehensive reference checks (in addition to criminal record checks) on all employees and volunteers*
- *treat patients with dignity and respect, recognizing that they have the right to refuse care or treatment*
- *obtain consent from the patient or the patient's guardian*
- *ensure the immediate safety and well-being of a client when an allegation of abuse has been made*
- *ensure that caregivers who have a client in their care or under their supervision have sufficient information about the needs of the client, care requirements and the abilities to provide a reasonable level of care*
- *investigate all complaints related to abuse, potential abuse and quality of care concerns*
- *impose a duty to assist with a PPCA investigation by providing information and taking any other action that will assist in the investigative process, including sharing the results of internal investigations*
- *comply with the Minister's recommendations.*

To further augment the role of agencies, the suggestion was made that each agency should be obligated by the legislation to have an "Abuse Review Committee" or similar structure, composed of internal and external representatives. Each committee would be required to have an approved Terms of Reference, and relevant policies and procedures.

A related suggestion was that each agency be required to designate a contact person who is highly knowledgeable in the PPCA and related matters.

With respect to the legislated requirement criminal record checks, respondents were of divergent views. The length of time for a response (up to one month) and cost (\$45 per application) were seen to be problematic. While most agreed that criminal record checks were beneficial for new employees, their value is perceived to be largely on a "one time" basis, with little impact on reducing the incidence of abuse against persons in care over the long term. Others noted that requiring criminal record checks has had a negative impact on volunteerism, as some volunteers find the process insulting and demeaning. Similarly, while the legislation requires criminal record checks, it is silent on their interpretation and application. One respondent noted that there is a far more comprehensive duty (upon agencies) in the screening process to determine whether the applicant, by his or her nature and personality, is suited to the position.

5. Reporting Abuse

The questions posed in the PPCA questionnaire included:

- *Should reporting of abuse be mandatory in all circumstances?*
- *In what circumstances should reporting not be mandatory?*
- *Should the identity of complainants and/or witnesses be confidential?*
- *Should the PPCA provide a timeframe for reporting abuse?*

Background

The legislation requires every individual or service provider who has reasonable and probable grounds to believe and believes there is, or has been, abuse against a client to report such abuse. Failing to report abuse is an offence. Clients may report abuse against them, but are not obligated to do so.

Complaints may be reported to Alberta Committee Development on the toll - free reporting line, in writing or by facsimile, to a police service, a health professional college, or another body (such as the Mental Health Patient Advocate or the Health Facilities Review Committee).

Under section 10 of the PPCA, the Minister: "*... may refer a complaint to a committee, body or person authorized under another enactment to investigate the complaint if the matter also falls within the jurisdiction of that committee, body or person. If a complaint has been referred to a committee, body or person under this section, that committee, body or person has the powers..., duties and responsibilities that fall within its own jurisdiction.*"

All abuse allegations, regardless of who the alleged abuser is, must be reported and must be investigated if the facility or agency comes under the PPCA. If the abuse is of a criminal nature, it must be reported to a police service.

The Department of Community Development made a policy decision in July 2000 that anonymous reports would no longer be taken, especially since the PPCA has provisions for complainant protection. While not all anonymous reports are made maliciously, the opportunity to report maliciously is greater when the identity of the reporter is unknown.

Investigations by a police service take precedence over investigations by PPCA investigators. If thought to be criminal in nature, allegations may be reported directly to a police service or at any time during the PPCA investigation.

PPC and investigators work in collaboration with professional colleges at various stages of addressing an allegation of abuse. The PPCA provides that an allegation of abuse may be reported directly to the college. The college may take whatever action is required under the college's legislation.

Stakeholder Comments

Should reporting of abuse be mandatory in all circumstances?

There was reasonable consensus among family members, employees, employers and other respondents that reporting of abuse be mandatory in all or almost all circumstances. Respondents remarked:

- *"Mandatory reporting in all circumstances is desired. The advantages of mandatory reporting outnumber the disadvantages. (Mandatory reporting) is necessary for early intervention and awareness so that agencies and organizations can devote resources to address the abuse."*
- *"No agency should be allowed to decide if it is or is not abuse. Every incident needs to be reported and checked into by a neutral party."*
- *"Reporting should be mandatory but investigation should be optional."*

In what circumstances should reporting not be mandatory?

Some stakeholders commented that agencies should be able to screen client-to-client abuse, and that it not be mandatory to report these incidents to the PPCA. This is in keeping with the sentiment of some stakeholders that agencies should be provided with the opportunity to initiate mediation and conflict resolution processes, before a decision is made about proceeding under the PPCA.

Should the identity of complainants and/or witnesses be confidential?

Stakeholders, particularly employees and employers, largely supported Alberta Community Development's position to not accept anonymous reports of abuse. Several suggested that individuals who report abuse should be required to sign a formal statement, similar to a police report.

Most respondents believe that the identity of complaints and/or witnesses should be kept anonymous and confidential:

- *"It takes courage and inner strength to report these types of occurrences, and anonymity is a strong support to helping a person decide to report. There are many instances in reporting others for what is deemed to be a breach of law where the reporter is guaranteed anonymity."*
- *"This is not a court of law. It is an investigation into an alleged abuse, where a clear understanding of the facts is very important. Individuals tend to speak more freely if there is some anonymity understood. Although total confidentiality cannot be guaranteed, it can be offered to some degree. The privacy rights can*

also be protected under the Freedom of Information and Protection of Privacy Act."

- *"While anonymous reporting needs to be discouraged, persons making reports should feel confident that their names need only be provided to the investigating body - not the abuser, their agency or the victim."*

Others disagreed, providing comments such as:

- *"In a just society, the accused gets to face the accuser."*
- *"The principles of natural justice mandate that the individual alleged to be an abuser be identified as to the nature of the allegation and the identity of the person making the allegation. There may be rare exceptions to this rule, where the individual reporting the abuse may be placed at personal risk of harm, or when notification of the allegation to the abuser would potentially hinder an investigation. In the latter circumstance, the alleged abuser would at some time have the right to be notified of the nature of the allegation and the identity of the reporter."*

Many stakeholders commented on the potential for reprisals against those who report abuse. Reprisals may come from agency staff and management, families and others. This potential exists despite penalties in the PPCA, as well as agency policies and procedures.

Should the PPCA provide a timeframe for reporting abuse?

Some believe that the legislation should provide increased clarity and stipulated timelines with respect to the legislative sanctions for failing to report abuse. Some suggested that there should be a legislative timeframe for reporting abuse, as information could be misconstrued or incorrect after a long period of time. The absence of specific timeframes is seen to result in some abusers escaping the consequences of their actions, as individuals may reconsider reporting after the passage of time:

- *"If 'abuse' is not reported in a reasonable timeframe, investigations are flawed and evidence is lost. Not to report abuse in a reasonable time is in itself abusive; for allowing abuse to continue over time subjects the person at risk to continued harm."*
- *"Facts and figures become blurred with time. In fairness to both accuser and accused, a reasonable timeframe should be set."*

Other stakeholders commented that it would be unrealistic to specify a specific time period in legislation to report abuse (for example, 24 or 48 hours). They viewed a legislative timeframe for reporting abuse to be unrealistic:

- *One would assume that abuse is reported as soon as possible or as soon as discovered. This is not always possible or warranted. In some cases, the resident or family is trying to resolve a problem within a facility by going through channels, so as to rectify the situation. They should not be penalized for doing so... Timeframes, if any, must also recognize that in some cases there will be operators, staff or other victimizers who hide... the abuse."*
- *"Abuse can be ongoing and lifelong... It can take a great deal of time and effort for a victim (who has no visible signs) to know where to turn, who to see and speak to for safety and security and help. There is a constant worry of consequences, retaliation, loss of freedom, rights, control, independence and autonomy."*

6. The Investigative Process

The questions posed in the PPCA questionnaire included:

- *Should the Minister or a designate have discretion in directing full investigations of abuse?*
- *Should facilities and/or alleged victim/guardians be notified of the commencement of investigations?*
- *Should investigators have access to client health information without consent?*
- *Should witnesses and/or alleged abusers be required to provide information during an investigation?*
- *Should investigators have access to employment records of an alleged abuser?*

Background

When a complaint of abuse is received, the following process is initiated:

- An investigator is appointed.
- The facility or agency is informed of the file number and name of the investigator.
- The investigation generally consists of on-site visits, interviews with all parties concerned, and review of policies and procedures.
- Potential criminal activities are reported to the police.
- The investigator prepares a report with recommendations.
- The Minister may accept or reject the recommendations, and then provide them to the agency, with a request for a formal response.

The PPCA does not allow preliminary assessment of complaints. All complaints of abuse must be reported and formally investigated. There is no option to conduct a preliminary review or to screen out complaints which are without merit.

Other provincial legislation (such as the recently proclaimed *Health Professions Act*) permits preliminary assessment of complaints. Complaints may be dismissed after initial review, or if there is insufficient evidence.

Investigators must prepare a report within thirty days of their appointment. They must provide progress reports every thirty days until the investigation is complete. If they believe that the subject matter of the complaint might constitute an offence under the Criminal Code, investigators must initiate a referral to law enforcement officials.

The PPCA does not currently require notice of investigations to be given to any party. Those interested in being notified include facility or agency administrators, service providers, funding agencies, clients and their families, legal representatives (guardians, agents, attorneys or trustees) of alleged victims and alleged abusers.

The PPCA limits investigators in their ability to access some agency records. Investigators are not able to access the financial records of the agency or a person's health information records within the meaning of the *Health Information Act*, unless the person or the person's guardian consents to those records being inspected.

There can be confusion between agency records and health information. Often both are combined in client files, and the distinction between them may be unclear. The authority for PPCA investigators to access agency employment records is similarly unclear, as the legislation is silent on this issue.

PPCA investigators cannot compel any person to cooperate. Alleged victims, alleged abusers, staff and other witnesses may refuse to discuss the events under consideration. This may similarly prevent investigators from being able to conduct complete and thorough investigations.

Stakeholder Comments

Should the Minister or a designate have discretion in directing full investigations of abuse?

Family members, employees, employers and other respondents were largely of the view that the PPCA should enable screening or "triaging" of complaints. The department should be able to request an agency to perform an internal preliminary investigation and subsequently await its results, prior to initiating formal proceedings under the PPCA.

This view was supported by many stakeholders, with one who commented that:

- *"There is a need to consider whether the PPCA should allow the Minister discretion to screen complaints, and not direct investigations of frivolous and vexatious complaints or refer them to professional associations."*

There should be an opportunity under the legislation to conduct a preliminary investigation and/or proceed with alternative complaint resolution processes. Some suggested that, if warranted, the process should provide opportunities for persons in care, families and staff to be involved in conflict resolution and mediation processes.

As respondents noted:

- *"This Act truly needs to be revised to include the element of discretion related to investigation. Without discretion, it allows costly investigations that will achieve very little. Staff in agencies can become victims of "abuse" through the current system, as it allows an individual to constantly pick away at staff who are good and caring people, simply trying to do their job. The current system does not hold a patient responsible for their abusive behavior (e.g. threats to staff, physicians and other patients) and yet when appropriate action is taken to control the situation, the individual is allowed no limit to relentless investigations.*

Staff soon begin to believe that they should either leave the profession, or work in areas where they do not have to deal with abusive patients. It is already difficult to recruit to areas where staff abuse is common, let alone have it reinforced through the actions of the PPCA. This Act most definitely has its place, however consideration has to be given to those who are also trying to provide care and maintain a safe environment."

- *"It seems reasonable to include in the Act an option for the Minister to conduct a preliminary review or a process to screen out complaints which are trivial or otherwise obviously without merit. There should be cooperation with the police."*
- *"... (the Minister) should only investigate very serious instances of abuse and let the authorities deal with less significant types of allegations, but keep the authorities accountable."*
- *"Many individuals... have accused staff falsely of abuse, sometimes several times a day, and it is clearly without merit. At present these (must) be reported. A preliminary review is absolutely necessary."*
- *"... the PPCA may not be achieving the desired outcome of improved patient care. As the relationship between patient and caregiver will be ongoing, it may be more useful to look to mediation of some sort to resolve whatever conflict or misunderstanding is occurring. A mediated resolution may well serve the patient and the health care staff better."*
- *We suggest that it would be useful to have a mediator or facilitator in place who would try to resolve the reporter's concerns up front through discussion with the concerned parties. If mediation or other conflict resolution does not solve the issue, the matter could then be sent for an investigation. The current adversarial process does not encourage direct, honest and complete communication between the parties."*

However, there were those who do not believe that it would be appropriate to give the Minister or a designate discretion in directing full investigations of abuse:

- *"This would give too much power to an individual and violate principles of fundamental justice."*
- *"Each complaint of abuse should be investigated thoroughly, regardless of how insignificant or minor it is perceived to be. Once you start assessing complaints, there is a danger that something could be missed. Yes, this can be expensive but abuse needs to be taken seriously in all circumstances."*
- *"It could defeat the purpose (of the PPCA) if complaints were screened automatically. As in cases of child abuse, every report is considered serious and worthy of investigation. The public would lose confidence in the Act if they thought their report could be dismissed. Determining grounds for investigation would be too subjective in nature."*

Some stakeholders commented that the results of the agency's internal investigation or complaint resolution processes should be reviewed by PPC. It would be important to ensure that the discretionary criteria with respect to preliminary and internal investigations are transparent and fairly applied.

PPC should be cautious in reviewing the results of preliminary and internal investigations. These less formal investigations and inquiries may under - emphasize the extent of the abuse that has occurred or allow abuse to continue to occur. One respondent commented that there are inherent risks to "softening" the Act, as there is a need to be cautious about giving agencies too much ability to do their own investigations.

Some believe that the PPCA investigation should continue regardless of whether a referral has been made to law enforcement officials. The agency would still benefit from recommendations in the PPCA investigation.

Should facilities and/or alleged victims/guardians be notified of the commencement of investigations?

Many respondents, including employees and employers, recommended that there should be provisions for agencies, families and persons in care/guardians to be provided with notification of investigations underway. Guardians of persons in care particularly requested that they be provided with formal notice of investigations, as they have the legal responsibility for ensuring the person in care's best interests and safety. Many respondents also requested that they receive progress reports in the event of lengthy investigations.

Representative comments in support of formal notification included:

- *"Facilities should be informed to gain cooperation and to enable necessary, allowable records to be accessible. Also, people have the right to know they are being investigated, whether they are the victim, guardian, or care provider."*
- *"In all circumstances, they (facilities) should be notified, but only when the investigation commences, not at the time the complaint is made. Sometimes there could be a delay and you do not want the facility doing a cover-up."*
- *"I believe guardians/alleged victim should be notified, so that they can ensure that their legal rights are protected."*

Comments from those opposed to facilities or alleged victim/guardians being notified of the commencement of investigations were consistent with the following:

- *"Notification allows for the possibility of destruction of evidence or coercion to prevent a proper investigation. The abused person may then be placed in even more danger."*
- *"Notification seems to be the just thing to do but on the other hand it can result in rehearsals for interviews or lowering the quality of the evidence. This is a very stressful time for the victims and they should likely know what is going on. I am not convinced that the facility needs to know. "*

Some believe that the legislation should stipulate that the mandatory reporting requirement (by staff) should also involve formal notification to the staff member's agency. Additionally, most stakeholders believe that allegations of abuse should be reported immediately to the person in care's family, guardian, spokesperson and/or advocate. Formal notification to the agency could also be addressed by the agency's policies and procedures, rather than by the PPCA.

Should investigators have access to client health information without consent?

Many respondents commented upon the confusion which investigators experience in accessing documents, due to at times opposing confidentiality requirements of Provincial Government legislation (*Health Information Act, Health Professions Act, Freedom of Information and Protection of Privacy Act, PPCA*, etc.). In practical terms, this may be unduly cumbersome and onerous in terms of duplication of interviews and investigations, and impact unnecessarily on agencies' time and resources.

Respondents were of divergent opinions with respect to whether investigators should have access to client information without consent. Representative comments from those in favour included:

- *"Why should 29 different professional bodies have access to the patient's health information and not the PPCA investigators?"*

- *"An investigator should have access to all pertinent records related to the investigation. However, non-relevant information should never be copied, especially personal medical information. Personal privacy is of the utmost importance."*
- *"The Health Information Act (HIA) should be amended to allow disclosure of relevant personal health information by a custodian without consent to an investigator appointed under the PPCA. This would require only a minor revision of the HIA. Non-relevant information should never be photocopied (especially personal medical information), as personal privacy is of the utmost importance."*

Those opposed, particularly employees, voiced comments similar to the following:

- *"Consent of the patient should be obtained each and every time when it comes to personal information, not just health information. If a patient is mentally incompetent, then it should be the guardian of the patient that must provide consent. If there is no guardian, then someone should make sure a guardian is obtained to look after the rights of the patient."*
- *There is nothing to be gained by eliminating consent. Health information should be accurate and not subject to interpretation. It is also very personal and should not be shared without expressed consent."*

Should witnesses and/or alleged abusers be required to provide information during an investigation?

The majority of respondents believe that witnesses and/or alleged abusers should be required to provide information during an investigation. Some suggested that alleged abusers be compelled to cooperate and provide information to investigators.

Others responded that all parties should be afforded the opportunity to remain silent in the course of responding to allegations. Many voiced concerns about the potential for self-incrimination by alleged abusers:

- *"... the alleged abuser should have the protection under law that whatever information he/she gives will not be used as evidence against them in a court of law. Witnesses must be guaranteed their right to anonymity. The investigator should be granted the power under law to apply to court for a subpoena to compel witnesses to provide a statement."*
- *"Like any forum of inquiry, unless full disclosure is made, the truth will not come out. You must however protect the constitutional rights of the abuser, and any information revealed during the investigation should not be used in a court of law."*

Should investigators have access to employment records of an alleged abuser?

Some stakeholders (especially families) were in favour of PPCA investigators being able to access employment records of an alleged abuser.

Yet others, particularly employees and employers, requested that significant caution be exercised due to legal and privacy considerations:

- *"There is a great need to be careful about expanding the powers and range of the investigator. Before consideration is given to providing this authority, there must be careful understanding of what information specifically would be accessible, as well as the likelihood that this employment information would be of value in the investigation."*
- *"The consent of the employee should ideally be obtained, but where it is withheld, there should be an option for PPCA investigators to apply to the courts to obtain these records (if they are seen to be relevant)."*
- *"Employment records should be viewed as agency records. The employer and alleged abuser would need to be advised beforehand. The PPCA would need to be harmonized with the Freedom of Information and Protection of Privacy Act and the Health Information Act."*
- *"If there is information relevant to the fact that this individual may have previously been investigated for inappropriate conduct related to abuse, that history is important information. But only that portion of the record need be accessible."*
- *"Employment records can provide a window into the type of problems that existed prior to the alleged abuse. However, confidentiality issues must be addressed before these implementations can take place."*

7. Investigation Outcomes

The question posed in the PPCA questionnaire was:

- ***Should recommendations be restricted to agencies?***

Background

Investigations presently are treated as preliminary fact - finding endeavors, which can result in recommendations being made by investigators. Investigators may recommend that an allegation of abuse be dismissed on the grounds that the complaint was:

- Made *maliciously* (knowing it to be untrue)
- Made *without reasonable and probable grounds* for the belief (no objective basis for the complaint, the complainant was lying, etc.)

- *Unfounded* (made a mistake in reporting, no evidence of any elements of abuse, etc.), or
- *Dismissed because the evidence is insufficient.*

Upon receiving the report from the investigator, the Minister (or designate) may:

- Approve the recommendations of the investigator, in whole or in part,
- Reject the recommendations of the investigator,
- Order that the investigator undertake a further investigation, or
- Take any other action that the Minister considers appropriate in the circumstances.

The decision is final and binding, and there is no formal appeal mechanism. When advising the agency, the Minister requests a response from the agency regarding the action taken to prevent a recurrence of the incident(s).

Presently, all recommendations relate to agencies in some way, without making findings of legal responsibility or drawing conclusions of law. When the alleged abuser is not a service provider or employee of the agency (but rather is a third party such as a family member), the Minister has no formal authority to make a recommendation or ensure accountability.

The Minister's decisions are final and binding; most consist of simply approving or rejecting investigators' recommendations. The Minister has the option to approve a recommendation that an agency's funding be reviewed or altered, but only as a recommendation. Any actual decision made to alter funding must be made by an appropriate authority under another process.

Stakeholder Comments

Should recommendations be restricted to agencies?

The legislation as presently written is seen by most stakeholders to have only modest consequences and be too informal. The Minister's recommendations are not legally enforceable, and there is no requirement for agencies to change their policies and procedures. As a result, agencies are free to choose their course of action.

Yet, some respondents were supportive of the present legislative approach to ministerial recommendations, *given the educational and non-punitive nature of the PPCA*. Their comments were consistent with:

- *"I am torn as to the value of the investigations and am concerned about the phenomenal amount of work involved and the cost to the taxpayer. However, I have noted considerable differences in attitude between facilities when allegations are made, with resulting positive or negative responses to recommendations turned into preventing similar situations.*

- *Where I am presently employed, the attitude is refreshingly positive and we recognize where there is a complaint, there is a weakness and we better get out the "fixing kit." We also meet to decide how to prevent situations..."*

Some respondents suggested that outcomes of investigations and the required follow up be decided by a multi-disciplinary committee appointed by the Minister. These individuals would be uniquely qualified to assess the merits of each case.

Others proposed that PPC should allow opportunities for all involved parties to provide feedback on the entire investigative process, from a "quality improvement" perspective. Many commented that all parties to the investigation should be provided with a formal opportunity to address erroneous information in investigative reports.

Most respondents agreed that the investigator should not have the ability to recommend disciplinary action. This is seen to be outside the PPCA's jurisdiction, and as entirely the agency's responsibility.

Many stakeholders commented that there should be an opportunity for a formal debriefing, which would be provided by the investigator (where appropriate) to the agency, person in care/guardians and alleged abuser. This may potentially bring needed closure to the entire experience, and increase accountability and follow-up.

Recommendations should be realistic and workable. Agencies should be encouraged to have policies, practices and educational processes in place to be able to make positive use of the results of the investigation.

A strong majority of respondents (especially family members and employees) believe that recommendations should not be restricted to agencies:

- *"Whatever recommendations are made should protect the abused. If the recommendations need to go beyond the agency to do this, they should."*
- *"There very well could be other players outside of the agency whose actions could have contributed to the abuse occurring, and they could benefit from looking at ways to change how they do things. The bottom line is that it is all of our responsibilities to stop abuse."*
- *"(The Minister) should be able to make recommendations to anyone. If there is no way to enforce compliance, it does not matter. The fact that recommendations have been made may improve things for the victim."*

Those opposed to the Minister making recommendations beyond agencies commented:

- *"It makes no sense to provide recommendations to anyone else, because there is no way to enforce them. At least with agencies you could make it mandatory that they implement them or you can take some action such as (withdrawing) funding if they do not."*
- *"Agencies can only be expected to implement recommendations that they have control to implement. Recommendations made to families can only be recommendations and not requirements. There are no current systems in place to ensure that recommendations made to families are adhered to, thus only voluntary compliance to the recommendations can be expected."*

8. Offences

The question posed in the PPCA questionnaire included:

- ***Should new offences be considered?***
- ***What offences should the PPCA include?***

Background

The PPCA provides for four offences:

- Failure to report abuse.
- Knowingly making a false report.
- Altering services to a client, by way of seeking reprisal for reporting abuse.
- Retaliating for reporting by taking adverse employment action against a complainant.

Abuse is not an offence under the PPCA, though certain kinds of abuse may be prosecuted criminally.

Stakeholder Comments

Should new offences be considered?

The *Criminal Code* and provincial legislation were viewed by many respondents to be sufficiently complementary to the PPCA, minimizing or eliminating the need to identify new offences:

- *"In our view the current Act too broadly defines abuse. No compelling argument has been provided to expand the range of potential abuses under the Act."*
- *"Making abuse or 'failure to protect' offences under the Act may have little effect, and might open up the system to a great deal of litigation, appeals, etc."*

- *"New offences should be included only if they help clarify what abuse constitutes, or aid in protection. A concern for a list is that assumptions are made that the list is definitive..."What offences should the PPCA include?*

Others made suggestions for additional offences, including:

- *"Most importantly, the act of abuse should be an offence."*
- *"The act of abuse; failure to protect the client from abuse; failure to maintain a reasonable level of safety; failure to cooperate with investigations; failure to allow access to information; failure to comply with recommendations."*

9. Ministerial Decisions and Appeals

The questions posed in the PPCA questionnaire included:

- *Should the Minister's decisions be limited to approving or rejecting recommendations?*
- *What powers should the Minister have?*
- *Should there be an appeal process?*
- *What kind of appeals should be allowed?*

Background

The Minister's role is to approve or reject recommendations. The decisions are final and binding, and the Minister has no power to reconsider them.

Agencies, alleged abusers, complainants or others may disagree with findings in investigation reports or ministerial recommendations. Presently there is no access to appeal of the Minister's decisions by clients, alleged abusers, agencies or other parties.

The principles of natural justice require that there must be a rational connection between the evidence presented and the conclusions reached by the decision maker. Natural justice is to administrative fairness what due process is to criminal law.

Stakeholder Comments

Should the Minister's decisions be limited to approving or rejecting recommendations?

Comments from respondents who believe that the Minister's decisions should *not* be limited to approving or rejecting recommendations included:

- *"The Minister should have the power to direct the appropriate body to act, and the report of the action taken should come back to the Minister to review."*

- *"The Minister should have the power to make an order compelling an agency to implement a recommendation and also the power to take any other action. The Minister should not be limited in his powers."*

What powers should the Minister have?

Those *opposed* to allowing the Minister to do more than approve or reject recommendations remarked:

- *"Altering funding probably just punishes the remaining residents, families and staff who have done nothing wrong."*
- *"There are other mechanisms in place to implement recommendations. You cannot put too much power in the Minister's hands when we have other (legislative mechanisms) to deal with recommendations."*
- *"If agencies are responding to the Minister's recommendations and satisfactorily addressing identified problems, there may be no need for the Minister to have more and different powers."*

Should there be an appeal process? What kind of appeals should be allowed?

A majority of stakeholders were of the view that the legislation lacks the right of appeal and other principles consistent with natural justice. Some were able to reconcile the absence of natural justice principles, given that the Minister's recommendations are not punitive or mandatory. An appeal mechanism might be desirable if the Minister's decisions were more authoritative, and compliance was mandatory. However, this could add significant legislative complexity to what is now a relatively straightforward process.

As one respondent noted:

- *"The purpose of the Act is to protect vulnerable adults from abuse and this fact should be strengthened in the legislation. To get into tribunals and other appeal mechanisms would do nothing but dilute the effectiveness of the legislation, not to mention the investigation. It would turn the legislation into a soapbox for every petty grievance. Since no guilt is found and no penalty imposed, there is no necessity of appeal."*

However, in relationship to the administration of the PPCA, one respondent commented that:

- *"... the evidence in the statement of facts and recommendations gathered by the investigator, including a recommendation for disciplinary action, can have a potentially detrimental effect on a person's career... alleged abusers should have the opportunity to understand the evidence and allegations against them and the*

opportunity to rebut these allegations before the final decision is made... administrative fairness calls for an appeal process."

A number of stakeholders commented that there should similarly be certain "rights of natural justice" for individuals unfairly accused of engaging in abusive actions toward persons in care. There is a lack of protection for the alleged abuser. Some stakeholders, particularly unions, believe there is an assumption of guilt before the process even begins:

- *"The employee/person accused also has the right to protection. There is no right of appeal and no recourse."*
- *"The Act has the potential of making a whole new class of victims - the wrongfully accused."*
- *"In an effort to protect adults at risk of abuse, health providers have been left open to abuse by complainants, investigators, and for some, their professional associations... the rights of those accused under the PPCA must be respected in the same way that the rights of the complainant and rights of those abused are protected... it is imperative that the (Review) Committee recognizes the implications of malicious or vexatious accusations on health professionals..."*

The alleged abuser has no right to support, advocacy or legal counsel. As one respondent noted:

- *"The Act doesn't require or provide for adequate supports to the abuser, for example training and education. Agencies are on their own to address the recommendations."*

Respondents commented that the right of appeal should be available to anyone involved in the process. The grounds for appeal should be limited and strictly defined:

- *"All decisions should be appealable, especially if the Minister has discretion to direct whether a full investigation should be conducted or not. As well, the decision of the Minister to "take any other action" should be appealable."*
- *"In the justice system as well as other social service systems (child welfare, PDD, etc.), there are appeal systems in place. Having the right to appeal recommendations should be an option through the PPCA."*
- *"Although establishing and maintaining a formal appeal process could potentially complicate the current straightforward system, the current system is inadequate. There is no forum available to address concerns with the recommendations. The appeal process should be developed for individuals, families, agencies and funders (maybe with different processes for each)."*

- *“The appeal process should have strict timelines for completion of appeals or to help ensure that the alleged victim is not in jeopardy or facing personal stress regarding the appeal process. As well, (the Act should) ensure that any corrective action deemed necessary based on the recommendations of the PPCA report are (implemented) in a timely fashion.”*

A number of respondents suggested that appealing a decision is a democratic right in a society, based on the principles of natural justice and administrative fairness. Some suggested that the appeal should fall under a specific body such as a "citizens' advisory panel" or the legislative authority of the Office of the Ombudsman.

10. Continued Existence of the PPCA

A strong majority of stakeholders advocated for the continued existence of the PPCA. Their sentiments were represented in comments noted earlier in this document.

However, several stakeholder groups proposed that the PPCA should be abandoned. In some instances, this view appeared to result from certain stakeholders' views that the legislation is not sufficiently punitive. Some stakeholders believe that the PPCA should be replaced with more stringent application of the *Criminal Code*, *Charter of Rights and Freedoms*, and formal procedures such as provincial legislation (such as the *Health Facilities Review Committee Act*, *Social Care Facilities Review Committee Act*).

Comments from groups opposed in principle to the continued existence of the PPCA were consistent with the following themes:

- *"Since the PPCA, which purports to protect persons in care, does not have an offence of 'abuse' in it, nor a penalty for abusing a person or persons in care, (our) basic position is that the PPCA is fundamentally flawed and should be repealed.*
- *"... this legislation, while well intended, has proven inadequate to the task of reporting, investigating and redressing abuse of persons in care... we view it as little more than a reporting mechanism... this Act is discriminatory, in that the victimization of citizens in care is not treated in the same way as the victimization of citizens in mainstream society.*

The PPCA should be rescinded because of its potential to:

- *Deprive alleged victims of the full protection of the criminal process and acknowledgment of their criminal victimization,*
- *Deny the protection of the state to our most vulnerable citizens, simply because of where they live, and*
- *Favour mediation, accommodation and compromise, which may err against the interest of victims or, indeed, perpetuate abuse."*

- *"... given the current structure of the PPCA, there is no way to challenge the conclusions (and recommendations). Concerns about due process and protections for the accused are ignored.*

The accused employee does not know the full case against him/her, and is unable to obtain the information which led to the conclusion that he/she is guilty... the MLA Review Committee should seriously address what 'mischief' the PPCA is to address... Complaints about violations of the standards and complaints on abuse should be initially directed to the employer to deal with.

Only if the complainant does not accept or agree with the action undertaken by the employer, would there be the opportunity to take the matter as a report to the appropriate ministry. The government role then would be to act more in the capacity of an ombudsman, as opposed to acting as the manager of the facility or institution. The government should only become involved when the employer has demonstrated its inability to provide the care it is bound to provide."

One respondent commented upon the merits of a unified approach to all provincial legislation addressing patient safety. The rationale is that health professional legislation allows formal investigations to occur for a wide variety of transgressions, of which abuse in its broadest sense is one. The PPCA adds a level of redundancy without adding obvious value:

- *"There are a number of changes, including legislative, which must occur if the patient safety agenda is to be advanced. Rather than looking at patient safety issues through the narrow window of this legislation (PPCA), we would encourage the Legislative Review Committee and the Alberta Government to consider the recommendation to establish an Alberta Patient Safety Institute, and to partner with the health professions and others involved in this initiative.*

The specific concerns for which the PPCA legislation is created could be subsumed into the larger agenda... it's our view that such an approach would bear fruit, far in excess of what can be achieved by tinkering with this legislation.

C. Administrative and Process Issues

1. Communications

Stakeholder Comments

The Department of Community Development is seen by many stakeholders to positively contribute to enhancing the profile of the legislation, in part by preparing brochures and posters, collecting data and distributing an informative quarterly report. The quarterly report is seen to be a valuable educational tool. PPCA brochures and posters were viewed to be helpful in publicizing the intent of the legislation, and the contact number for reporting and further information.

Some stakeholders' remarks point to a continuing lack of understanding of the PPCA's jurisdiction and requirements. Many commented upon the pressing need to further communicate the philosophy and intent of the PPCA to increase the accountability of service providers. This may also heighten the potential that the legislation acts as a deterrent. The toll-free number should be advertised as also being useful for addressing questions and information.

Some suggested translating the PPCA brochures into languages other than English, and in other forms such as Braille. At the present time, brochures are translated into French.

2. Increased Hours for the Reporting Line

Stakeholder Comments

Many respondents commented on the need for a 24-hour a day, 7 day per week reporting line. The obligation to report instances of abuse should be immediate if reasonable and probable grounds exist. As one consequence, response times for the initiation of an investigation would be far more expedient.

Some respondents noted that there is a disincentive to report instances of alleged abuse after regular business hours. Many informants do not want to leave voice mail messages that may subsequently reveal their identity to others.

Many respondents voiced comments consistent with the theme "if there is to be zero tolerance for abuse of persons in care, there needs to be a reporting mechanism available 24 hours a day, seven days per week." Some suggested that every complaint of abuse should be reported to one place in the provincial government.

This might involve a "one window" approach (with knowledgeable staff able to make expedient referrals) for all complainants dealing with protection of vulnerable adults and quality of care in publicly funded facilities. Some advocated that all telephone calls be recorded, so as to increase accuracy.

3. Forms and Documentation

Stakeholder Comments

Some respondents proposed that a generic incident reporting document be developed to increase the efficiency and effectiveness of reporting. This generic incident report would be especially beneficial, should consideration be given to addressing the often commented upon overlap of provincial government investigative agencies' mandates.

Certain respondents suggested that clear consent forms (for release of information) be developed, so that investigators would be in a better position to access personal information from persons in care and their guardians.

4. Registry of Abusers

Stakeholder Comments

Some stakeholders commented above the merits of establishing a Canadian (or at least Alberta based) registry of individuals found to engage in abuse against persons in care. Some suggested the placement of names of alleged abusers on a police reporting system. Among the benefits would be the opportunity for employers to be more selective in recruitment of potential staff:

- *"Too frequently abusive staff can move from one facility to another, and continue to take their abusive habits and practices with them."*

5. Investigators and the Investigative Process

One respondent commented that a proper investigative process involves:

- Independence of the investigator
- Appropriate skills to:
 - Understand the nature of abuse and what this means within the agency (including the subtle, cumulative forms)
 - Be able to understand "abuse" from the perspective of residents, patients and clients
 - Be able to gather good information from clients, family, staff and others
 - Be able to utilize collateral sources of information
 - Know how to gain the most accurate information, including understanding and responding effectively to fears and concerns
 - Understand which actions are criminal matters
 - Ensure fairness and transparency (people need to see that it is occurring, how the decisions are made, and the reasons behind them)

Some respondents were critical of the quality of investigators. They suggested that certain investigators are not sufficiently aware or sensitive to agency functions, protocols and organizational culture. They reportedly behave in a way that is not seen to be professional or appropriate. They do not ask the right questions and their investigations are not taken seriously.

Some investigators reportedly could demonstrate more sensitivity and common sense when conducting interviews, particularly on racial, religious and other parochial issues. A number of stakeholders' comments addressed the need for investigators to be more fully trained in the nuances and legislative differences between various settings, such as municipal lodges, nursing homes, assisted living, etc.

Investigators should adhere to interview guidelines, to ensure professionalism and consistency. Some stakeholders suggested that a comprehensive training program be initiated to increase investigators' knowledge of different living arrangements, cultures, client abilities and supports.

Some proposed that investigators use written or recorded transcripts to guarantee the accuracy of their evidence. Interviewees could be provided with written confirmation of their statements.

Yet, others were supportive of investigators efforts:

- *"My experience in being investigated is quite positive, in that I believe the investigator was very fair and the final decision was that I had not intended to hurt the patient. It was educative for the patient too, so there was some benefit that way. Patients have to understand that staff are obligated to do things that ensure their safety, even if it causes the patient to be upset."*

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