A Guide to Understanding the

Protection for Persons in Care Act

July 2010

Government of Alberta

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Contact information:

Protection for Persons in Care
Station M, Box 476
Edmonton, AB T5J 2K1

Phone: 1-888-357-9339
Fax: 780-415-8611

www.seniors.alberta.ca/PPC

Preface

This guide was created to help you understand and implement the *Protection for Persons in Care Act, SA 2009, cP-29.1* (PPCA). This guide is not a substitute for legal advice.

For the exact wording and interpretation of the PPCA, please refer to the Act in its entirety. In the event of a discrepancy between this guide and the PPCA, the PPCA shall govern.

For more information call the Protection for Persons in Care Information and Reporting Line at 1-888-357-9339. To view the full Act and Regulations, and for other printed resources, visit the Protection for Persons in Care website at: **www.seniors.alberta.ca/PPC**

Use of the pronoun “he” in this guide is meant to refer to “he” or “she.”

What is the *Protection for Persons in Care Act (PPCA)*?

The PPCA is an important law that promotes the prevention and reporting of abuse of adult Albertans who receive care or support services that are funded, directly or indirectly, by the Government of Alberta.

Service providers must take reasonable steps to protect clients from abuse, while providing care or support services. The PPCA requires service providers to prevent abuse of clients and requires abuse to be reported. The PPCA also ensures that reports of abuse made to Protection for Persons in Care are reviewed.

Who does the PPCA apply to?

The PPCA applies to service providers that receive funds from the Government of Alberta, directly or indirectly, for the provision of care or support services to clients.

A service provider is:

- A **nursing home**, as defined in the *Nursing Homes Act.*
- An **approved hospital**, as defined in the *Hospitals Act,* which includes all acute care and auxiliary hospitals.
- A **lodge accommodation**, as defined in the *Alberta Housing Act,* but not self-contained units.
- A **facility** designated under the *Mental Health Act,* which includes:
  - — Alberta Hospital Edmonton;
  - — Centennial Centre for Mental Health and Brain Injury;
  - — Claresholm Centre for Mental Health and Addictions;
  - — Northern Alberta Forensic Psychiatry Centre of the Alberta Hospital Edmonton; and
  - — Southern Alberta Forensic Psychiatry Centre.
- A **social care facility** as defined in the *Social Care Facilities Licensing Act,* which means a shelter, hostel or other establishment operated to provide accommodation and maintenance for unemployed or indigent persons.
- A **facility** as defined in the *Social Care Facilities Review Committee Act*, which means a facility that provides care, treatment or shelter and that is funded, wholly or partly, by the Department of Children and Youth Services, such as a women's shelter or a youth shelter.
- The operator of a **supportive living accommodation** licensed under the *Supportive Living Accommodation and Licensing Act* that receives part or all of its operating funds, directly or indirectly, from the Government of Alberta.
- **A person that provides care or support services, other than family managed supports, to individuals with developmental disabilities** and receives funding under the *Persons with Developmental Disabilities Community Governance Act*.
- **A person that provides day programs, residential and care services, or residential and support services funded by Alberta Health Services**, including addictions and mental health treatment and rehabilitation centres.

Service providers do not include family members or volunteers who provide care or support services to a client who are not paid by public funds.

> In the future, service providers that provide home care services under the *Co-ordinated Home Care Program Regulation* of the *Public Health Act,* and family managed supports funded by a community board under the *Persons with Developmental Disabilities Community Governance Act* will be included as service providers in the PPCA Regulation.

What is the role of persons who provide care or support services?

Service providers, their employees and persons engaged for services[1] are responsible for keeping clients safe from abuse, when providing care or support services.

Responsibilities for service providers, employees of service providers, and persons engaged for services:

1. Take reasonable steps to protect the client from abuse and maintain a reasonable level of safety for the client.
2. Take all reasonable steps to provide for the immediate safety, security and well-being of all clients when notified that a report of abuse has been made.

Other responsibilities specific to service providers:

1. Require new employees, new volunteers and all others who will be providing care or support services to undergo a criminal records check.
2. Make the main highlights of the PPCA available to clients, volunteers and persons employed or engaged for services by the service provider.

Taking reasonable steps to protect means taking precautions to control risks, avoid harm and prevent abuse. It also means that service providers should arrange for proper training, supervising and coaching of staff, and developing and enforcing policies and procedures. It is also a good idea to develop best practices for maintaining a reasonable level of safety for clients.

People need to be informed about when, where and how to report abuse, and the other rights and responsibilities within the PPCA. Brochures should be put in visible locations so they are available to all clients, family members, visitors and employees. Service providers can also reference the PPCA in organizational policies and procedures, orientation manuals and any materials for clients, such as client handbooks. Service providers can also include information about the PPCA in newsletters, have information sessions for clients and family members, deliver training and in-services to staff, and highlight the PPCA and abuse prevention during orientation to new employees and volunteers.

Good human resources policy complements abuse prevention policy because it acknowledges and supports positive practices in providing care or support services to clients.

1 Persons engaged for services are individuals who are bound by contract, some other formal arrangement, or moral or legal obligation to provide services.

What is abuse?

The PPCA has a specific definition of what abuse is and is not. The "individual involved" in the abuse is any person who allegedly abused a client or who allegedly failed to prevent abuse of a client. The client must have been receiving care or support services from a service provider at the time the abuse occurred.

According to the PPCA, abuse is an act or an omission that:

- **Causes serious bodily harm:**
  - Serious harm resulting from actions such as hitting, slapping, striking, pushing, burning, kicking and using inappropriate force to restrict a client's movement.
- **Causes serious emotional harm:**
  - Serious harm resulting from acts such as threatening, intimidating, humiliating, harassing, coercing, ridiculing, yelling, swearing, isolating from regular activity or restricting from appropriate social contact, and withholding of, or preventing access to, adaptive aids used by the client.
- **Results in the administration, withholding or prescribing of medication for an inappropriate purpose, resulting in serious bodily harm:**
  - Dispensing or administering a medication without a client-specific order/prescription from an authorized health professional; administration of an experimental medication that is not part of a formal clinical trial; administration of a medication that is ordered to be given on a PRN or "as needed" basis, but has been given on a frequency shorter than allowed or to sedate a client.
- **Subjects an individual to non-consensual sexual contact, activity or behaviour:**
  - Unwanted or inappropriate touching and kissing; forcing, threatening or coercing a client to participate in a sexual activity; subjecting the client to sexually explicit photographing; or exposure to sexually explicit materials or language.
- **Involves misappropriating, or improperly or illegally converting a significant amount of money or other valuable possessions[2]:**
  - Incidents where a person, who by deception or dishonesty, obtains property or funds belonging to a client; staff asking or telling clients to give them money; and misusing the funds or assets of a client, or obtaining the property or funds of a client without the knowledge and full consent of the client or their legally authorized financial decision maker.
- **Results in failing to provide adequate nutrition, adequate medical attention or another necessity of life without a valid consent, resulting in serious bodily harm:**
  - Harm resulting from failing to provide essential care, monitoring or supervision that is needed to protect the client from health and safety hazards; failing to assess a client who fell and experienced a bone fracture; or significant weight loss due to inadequate nutrition.

2 A significant amount of money is different for everyone, depending on a person's financial situation.

Understanding "serious harm"

A few ways to think about serious harm:

- Any hurt or injury that interferes in a grave or substantial way with the physical or psychological integrity, health or well-being of the person.
- Any hurt or injury that interferes with the health or comfort of the person, where it is more than merely transient or trifling in nature.
- Harm which is traumatic, life threatening, involving severe or prolonged pain, or requiring medical intervention.

Some clients may not be able to express or demonstrate that they have experienced serious pain or serious discomfort. It is important to use your own judgement in these cases. In addition, as there is no absolute criteria for judging what serious harm is, think of it broadly.

Range of bodily harm:

- **Minor:** low level of harm that did not require any physical intervention or treatment.
- **Moderate:** harm that required first aid treatment or relatively minor intervention.
- **Major:** more serious harm that required medical assessment and medical treatment, or resulted in a significant decline in the person's health.
- **Traumatic:** harm that resulted in extensive injuries or a temporary disabling injury, or that made a pre-existing condition worse.
- **Extreme:** harm that resulted in a permanent disability or death.

Range of emotional harm:

- **Minor:** brief, short-term impact that resulted in temporary stress or embarrassment.
- **Moderate:** significant impact on the client—the client is distressed.
- **Major:** high impact on the client—the client is very distressed.
- **Traumatic:** significant and life-changing impact on the client—the client would benefit from professional therapeutic intervention.

What is not abuse?

There are certain circumstances where an act or omission is **not** abuse, such as:

- If a service provider carries out their duties according to professional standards or practices (e.g., when a registered nurse provides necessary medical treatment).
- If the care or support services provided by the service provider are reasonably necessary in the circumstances (e.g., a staff member uses the least restrictive intervention possible to keep a client or others safe when the client's behaviour is a danger to himself or others).
- If the act or omission is the result of, or can be attributed to, a client refusing care or support services (e.g., a client makes an informed decision to stop medical treatment or engages in self-induced harm as a result of lifestyle choices).
- Decisions made by a client, or on behalf of a client by either:
  - an agent under the *Personal Directives Act*
  - an attorney under the *Powers of Attorney Act* or
  - a co-decision-maker, specific decision maker, guardian or trustee under the *Adult Guardianship and Trusteeship Act*
- Decisions made by a review panel under the *Mental Health Act*.
- Decisions made by a person described in section 28(1) of the *Mental Health Act*.
- Actions taken under the *Emergency Medical Aid Act*.

How do I report abuse?

Anyone who believes there is or has been abuse involving a client must report that abuse as soon as reasonably possible.

If a client's safety is in immediate danger, call the police.

The person reporting the abuse is called the "complainant." If the complainant cannot speak or write, a report can be made in another acceptable manner.

There are four options for reporting abuse:

1. Report to the **Protection for Persons in Care (PPC) Information and Reporting Line: 1-888-357-9339.**
   - The PPC reporting line is not an emergency number and is only open during regular business hours, Monday to Friday, from 8:15 a.m. to 4:30 p.m.
   - A written abuse report can also be submitted to PPC by letter or by completing an Abuse Report Form available at: **www.seniors.alberta.ca/PPC**

     The form or letter can then be mailed or faxed to:

     Protection for Persons in Care
     Station M, Box 476
     Edmonton, Alberta T5J 2K1

     Fax: 780-415-8611
2. Report to a **police service** if the abuse is criminal in nature.

3. Report to a **professional regulatory college or body** if the abuse involves a health professional. For example, if the incident involved a registered nurse, the report can be made directly to the College and Association of Registered Nurses of Alberta.
4. Report to the **Mental Health Patient Advocate** at 780-422-1812 if the client is or was detained under the *Mental Health Act,* or if the client is or was subject to a Community Treatment Order at the time the alleged abuse occurred.

It is optional for clients, who have been subject to abuse, to report it. If they choose to report the abuse, they must do so no later than two years from the date the alleged abuse occurred.

Do I have to give my name and personal information when I report abuse?

When reporting abuse, the complainant **must** provide their name and contact information (address and telephone number). Anonymous reports are not accepted.

Your name and other personal information will be kept confidential, except in the following situations:

- When PPC refers an abuse report to the police.
- When PPC refers an abuse report to a regulatory body or other committee, body or person for investigation.
- When an appeal under the PPCA is initiated.
- When required by law to do so.

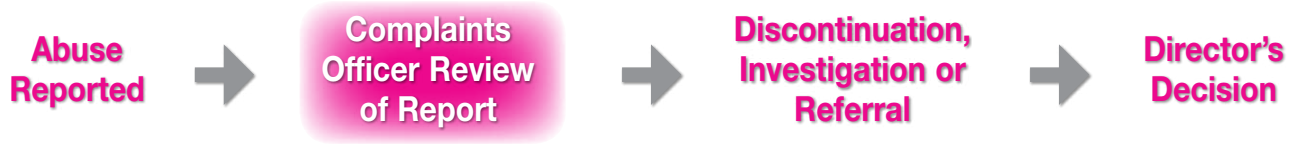
How am I protected when I report abuse or assist with an investigation of abuse?

If you report abuse or assist with the investigation of an abuse report, you are protected. Service providers cannot take adverse action, such as dismissing an employee or discontinuing services to a client, because they reported abuse, helped with an investigation or were subject to abuse. There is also protection for people who comply with inquiries from a complaints officer. If a service provider does take adverse action they may be guilty of an offence.

What if I don't report abuse?

Individuals who fail to report abuse, or who make a false or malicious report of abuse, may be guilty of an offence and fined up to $10,000.

What happens after the abuse is reported?



Complaints officer review of report

All abuse reports received by PPC are reviewed by a **complaints officer** to make sure that:

1. The client involved in the abuse report is an adult;
2. The client was receiving care or support services from a service provider at the time the allegation of abuse occurred;
3. The allegation of abuse involved an act or omission that caused serious emotional harm, serious bodily harm, or involved sexual abuse or significant financial abuse;
4. The alleged abuse occurred within two years of the date the complainant reported the abuse;
5. The complainant has reasonable grounds to believe abuse occurred; and
6. The complainant has provided their name and contact information.

If multiple allegations were made in one abuse report, each allegation must be reviewed separately and may need to be dealt with in a different manner.

As part of the review, the complaints officer contacts the complainant by telephone to confirm the information provided in the report of abuse, and to explain the PPCA, the processes involved and to gather other pertinent information about the allegations reported. The complaints officer must also send a letter to the complainant acknowledging receipt of the report of abuse within 30 days of the report being made.

If the complaints officer considers it appropriate, he will notify the service provider and the individual involved that a report of abuse has been made.

Next, the complaints officer decides if an investigation is necessary.

In order for the complaints officer to make a decision, he may need to make inquiries about individual aspects of the abuse report. He may also need to gather information from other people, such as the service provider, the client or the client's legal representative.

The PPCA enables the complaints officer to collect or obtain personal, health and financial information about any client who is the subject of the report of abuse.

When making inquiries, the complaints officer will attempt to determine what, if any, action has already been taken in response to the report of abuse. Through the inquiries process, and based on the information gathered from the complainant and other parties, the complaints officer will decide on the next steps.

Referrals to police or to Justice and Attorney General

If the alleged abuse is an offence under the *Criminal Code* (Canada), the complaints officer must make a referral to the appropriate police service.

If the complaints officer believes that the abuse could constitute an offence under another provincial law, the complaints officer must refer the report to the Minister of Justice and Attorney General. For example, the *Adult Guardianship and Trusteeship Act* has an offence related to guardians, co-decision makers or trustees who wilfully cause serious mental or physical harm or financial loss to the represented adult. The *Personal Directives Act* also has an offence for any person who, without consent of the maker of a personal directive, destroys, conceals or alters that maker's personal directive.

If a referral is made to the police or to Justice and Attorney General the complaints officer will notify the complainant, and others as necessary, in writing and include reasons for the referral.

After making the referral, the PPC file may be closed; however, if these bodies determine that the matters do not constitute an offence, the police or Justice and Attorney General may refer the abuse report back to PPC. If so, the complaints officer will review the abuse report again and decide if a PPC investigation is necessary or what other action should be taken.

Decision to discontinue the review of a report of abuse

The complaints officer may decide to refuse to review or to discontinue the review of all or part of the abuse report if he believes:

- The matter is frivolous (lacking substance), vexatious (serving only to cause annoyance), or made in bad faith (knowingly misrepresenting a situation);
- The report of abuse was made more than two years from the date the alleged abuse occurred; or
- No investigation is necessary, as might be the case when:
  - The allegation has already been investigated and resolved;
  - The allegation was previously reported directly to the police or to a professional college or other body, and an investigation is already underway;
  - The allegation was addressed by the service provider and has been resolved;
  - The complainant withdrew the report (for example, the complainant may have reported the abuse but after getting more information, determined it was not abuse); or
  - The matter does not fall within the jurisdiction of the PPCA.

Notification of the complaints officer's decision

After a complaints officer decides to discontinue the review of a report of abuse, or if the complaints officer refuses to review the report of abuse, he must notify the complainant, in writing, and provide reasons for the decision. The complaints officer must also inform the complainant of their right to have the complaints officer's decision reviewed by the PPC director.

Applying for a review of the complaints officer's decision

If the complainant doesn't agree with the complaints officer's decision to discontinue the review of the report of abuse, the complainant can apply for a review of the decision. The complainant must submit an application for review to the PPC director, in writing, within 15 days of being notified of the complaints officer's decision.

The application for review must include all of the following information:

- The file reference number.
- The complainant's name and contact information.
- A brief description of the complaints officer's decision and the date the decision was made.
- The date the complainant received notification in writing of the complaints officer's decision.
- The reasons for requesting the review.
- The date on which the application for review is being made.
- The signature of the complainant.

The application can be submitted as a letter or by using the Application for Review of a Complaints Officer's Decision Form, available online at **www.seniors.alberta.ca/PPC**. The letter or the form can then be mailed to the PPC office (contact information on the front of this guide).

The director's review of the complaints officer's decision

Once the application for the review is received, the director will review the complaints officer's decision to make sure:

- The complainant was given a full and fair opportunity to present their case.
- The complaints officer clearly communicated the decision and the reasons for the decision.
- The decision was impartial and independent.
- There is no evidence of bad faith, improper purpose or irrelevant considerations in the decision.
- The decision was reasonable, considering the evidence.

The director may confirm or reverse the complaints officer's decision to discontinue the review. The director may also take any other appropriate action. Within 30 days after receiving an application for review, the director must complete the review and issue a written decision, with reasons, to the complainant.

The director's decision is final and cannot be appealed.

Decision to investigate

If the complaints officer decides that an investigation of the allegations within the abuse report is necessary, he will refer the report to a PPC investigator. However, if the abuse involves a registered health professional or a registered member of a health discipline, the report may be referred to the appropriate regulatory body for investigation. For example, if the abuse involves a physician, the report will be referred to the College of Physicians and Surgeons of Alberta. If the abuse involves a client who is detained in a mental health facility or who is subject to a Community Treatment order at the time of the abuse, the report may be referred to the mental health patient advocate.

Notification about the decision to investigate

If a complaints officer decides that an investigation is necessary, he will notify the following people:

- The complainant.
- The client who is alleged to have been abused, if appropriate.
- The client's legal representative (guardian, co-decision-maker or agent), if known.
- The individual(s) involved[3] or their legal representative, if known.
- The client's service provider.
- Any other person the complaints officer considers appropriate, including another legally appointed substitute decision-maker.

What is a PPC investigation?

Allegations that are not criminal in nature, not an offence under another provincial law, and where there is no other committee, body or person authorized to investigate the abuse are referred to a PPC investigator.

Each investigation is unique and is influenced by the nature, number and complexity of the allegations, the client's personal circumstances, the type of service provider and/or individual involved, the setting, the culture of the organization, and the witnesses who can provide information.

Investigations generally have three parts:

1. On-site visits.
2. Interviews with people who can provide information relevant to the allegation of abuse.
3. Review of relevant records.

The Minister of Seniors and Community Supports appoints individuals to be investigators who carry out the investigation. These investigators are contracted by PPC.

3 Individual involved is a person who allegedly abused a client or who allegedly failed to prevent abuse of a client.

Investigator's role

Investigators gather information related to the allegations by collecting evidence, determining the facts and conducting analyses. They state if the allegation is founded or unfounded, and make recommendations to improve the safety of clients and prevent abuse.

In order to do this, the PPCA gives investigators the power to:

1. **Enter the building**: The PPCA allows investigators to enter the service provider's premises at any reasonable hour with permission of the person in charge or with a court order, if necessary.
2. **Interview**: Investigators might need to interview or get a written statement from the individual involved, client and any other person who may have information relevant to the abuse report. If a client has a legal representative appointed, investigators must obtain consent of the legal representative prior to interviewing the client.

   Interviews help to clarify the events leading up to the incident, what occurred at the time, how it occurred, who was involved, extent of harm experienced by the client, what happened after and how it could have been prevented. The PPCA allows people to disclose personal information, health information and financial information to the investigator.
3. **Review Records:** Reviewing and copying records is an important part of the investigation. There are certain records that can be helpful in the investigation process, such as care plans, medication administration records, training records, incident reports, medical reports, log notes, training and orientation materials, job descriptions, policies and procedures, and meeting minutes. If an incident involved some type of equipment, investigators may need to review inspection and maintenance records, and consult safety and operation manuals.
4. **Examine equipment**: Investigators may need to examine and even temporarily remove equipment such as canes, restraints, oxygen tanks, wheelchairs or walkers, if they relate to the report of abuse.
5. **Photograph and record**: The PPCA allows investigators to photograph or record anything in the premises that might help with the investigation.

Consultation on the investigator's proposed recommendations

After the investigator has gathered all relevant information, he will consult with the people who will be most affected by the recommendations, such as the client, client's legal representative, individual involved, complainant, and service provider, to discuss the preliminary findings, and what actions and recommendations could be considered. Recommendations are aimed at preventing abuse, or improving the safety or well-being of all clients.

Final report

After all information is collected and discussions completed, the investigator submits a final report to the PPC director. In the report, the investigator will state if the abuse is founded or unfounded. It may include recommendations to prevent abuse and keep clients safe. The report will also have information about who was interviewed and consulted, and what records were reviewed.

What happens after the investigation?

Director's Decision

The director reviews the investigator's final report, and might agree or disagree with the investigator's recommendations and findings. The director then makes a decision and may direct the service provider and/or individual involved to take certain actions to prevent future abuse, and may state how they are to follow-up to show they are compliant with the decision. The decision, reasons for the decision, and any communications will be clearly and consistently documented. All decisions are to be consistent, fair, open and transparent.

The director will provide a copy of the decision to the people most affected: the complainant, client or his/her legal representative, the service provider, the individual involved and others.

People who do not comply with the director's decision may be guilty of an offence and be subject to a fine: individuals can be fined up to $10,000 and service providers up to $100,000.

The client, complainant, service provider, and individual involved have the right to appeal the director's decision to an appeal panel. The appeal notice must be submitted within 15 days after receiving the director's decision.

What happens next?

Follow-up after the decision

After the service provider receives the director's decision, they must respond to the director within a set timeline, indicating that they have complied with the decision. The service provider must also include supporting documentation to show this.

PPC will monitor compliance by assessing all written responses from service providers. If the service provider's response is inadequate or indicates they are not in compliance with the director's decision, PPC may take other steps to encourage compliance, such as issuing an advisory or warning letter. As compliance is required, prosecution may be considered in situations where there is serious uncorrected or continued non-compliance.

Minister's investigation

In certain situations, the Minister of Seniors and Community Supports may initiate an investigation, such as:

1. When a significant number of reports of abuse have been made about a service provider or a class of service providers; or
2. When a report of serious abuse has been made about a service provider.

The PPCA enables the Minister to initiate investigations whether or not the report of abuse has been dismissed. The Minister will designate an investigator to conduct the investigation. After the investigation, the Minister will decide what actions are necessary to take, including ordering specific action for the service provider to take.

Service providers who fail to comply with the Minister's direction may be subject to a fine of up to $100,000 and in the case of an individual, a fine of up to $10,000.

Appendix A

The PPCA Regulations

There are two sets of regulations that accompany the PPCA: Ministerial Regulations and Lieutenant Governor in Council Regulations. The regulations form part of the law.

The **Ministerial Regulations** include details about:

- The director's review of a decision made by a complaints officer.
- The contents of a notice to appeal.
- The collection, use and disclosure of information for the purposes of administering the PPCA.
- Definitions of other terms used in, but not defined by, the PPCA.

The **Lieutenant Governor in Council Regulations** specify:

- Other service providers that come under the PPCA.
- Other acts or omissions that do not constitute abuse.
- Additional bodies which have the authority to investigate reports of abuse.
- The professional regulatory colleges that will be notified in the event that their professional members fail to report abuse.

Appendix B

Definitions

Abuse: an act or an omission, with respect to a client receiving care or support services from a service provider, that:

- Causes serious bodily harm.
- Causes serious emotional harm.
- Results in the administration, withholding or prescribing of medication for an inappropriate purpose, resulting in serious bodily harm.
- Subjects an individual to non-consensual sexual contact, activity or behaviour.
- Involves misappropriating or improperly or illegally converting a significant amount of money or other valuable possessions.
- Results in failing to provide adequate nutrition, adequate medical attention or another necessity of life without a valid consent, resulting in serious bodily harm.

Care or support services: any services that relate to a client's health, or physical and psychological well-being.

Client: an adult who receives care or support services from a service provider.

Complainant: an individual who reports abuse.

Engaged for services: any relationship whereby an individual is retained by the service provider via contract, employment relationship, or another arrangement, whereby the individual has an obligation to provide services.

Financial information: information about the property or financial matters of an identifiable individual.

Health information: health information about an identifiable individual within the meaning of the *Health Information Act.*

Individual involved: a person who allegedly abused a client or who allegedly failed to prevent abuse of a client.

Legal representative: an agent designated in a personal directive that is in effect under the *Personal Directives Act*, or a guardian or co-decision-maker as defined in the *Adult Guardianship and Trusteeship Act.*

Minister: the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for the PPCA. This is currently the Minister of Seniors and Community Supports.

Personal information: information about an identifiable individual.

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