

Hospitals Act

CHAPTER 208 OF THE REVISED STATUTES, 1989

as amended by

1992, c. 16, s. 5; 1994-95, c. 7, ss. 29-37;
2000, c. 6, s. 102; 2000, c. 29, ss. 15, 16; 2001, c. 5, s. 4;
2005, c. 42, s. 86; 2007, c. 39; 2008, c. 8, ss. 33-37; 2008, c. 58
2010, c. 41, s. 113; 2014, c. 27, s. 8



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An Act Relating to Hospitals

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Short title

1 This Act may be cited as the *Hospitals Act*. R.S., c. 208, s. 1.

Interpretation

2 In this Act,

(a) “administrator” means the officer or his designee who is responsible to the board for the administration and management of a hospital;

(b) *repealed 2005, c. 42, s. 86.*

(c) “board” means board of directors, governors, management, trustees, commission or other governing body or authority of a hospital or facility under this Act;

(ca) “common-law partner” of an individual means another individual who has cohabited with the individual in a conjugal relationship for a period of at least one year;

(d) and (e) *repealed 2005, c. 42, s. 86.*

(e) “formal patient” means a formal patient within the meaning of this Act;

(f) “hospital” means a building, premise or place approved by the Minister and established and operated for the treatment of persons with sickness, disease or injury and the prevention of sickness or disease, and includes a facility, a maternity hospital, a nurses’ residence and all buildings, land and equipment used for the purposes of the hospital, or means, where the context requires, a body corporate established to own or operate a hospital, or a program approved by the Minister as a hospital pursuant to this Act or any other Act of the Legislature;

(g) *repealed 2005, c. 42, s. 86.*

(h) “involuntary patient” means an involuntary patient under the *Involuntary Psychiatric Treatment Act*;

(ha) “qualified dental practitioner” means a licensed dentist under the *Dental Act*;

(i) “medical director” means the physician responsible for the supervision and direction of the medical services in a facility;

(j) “Minister” means the Minister of Health;

(k) to (m) *repealed 2005, c. 42, s. 86.*

(n) “patient” means a person who receives diagnosis, lodging or treatment at or in a hospital;

(o) *repealed 2005, c. 42, s. 86.*

(p) “prescribed” means prescribed by the regulations;

(q) “psychiatric facility” means a psychiatric facility pursuant to the *Involuntary Psychiatric Treatment Act*;

(r) “psychiatrist” means a physician

(i) who holds a specialist’s certificate in psychiatry issued by the Royal College of Physicians and Surgeons of Canada, or

(ii) whose combination of training and experience in psychiatry is satisfactory to the Nova Scotia College of Physicians and Surgeons and who has been approved by the College as a psychiatrist for the purpose of this Act;

(s) *repealed 2005, c. 42, s. 86.*

(sa) “qualified medical practitioner” means a member under the *Medical Act*;

(sb) “qualified midwife” means a midwife under the *Midwifery Act*;

(t) and (u) *repealed 2005, c. 42, s. 86.*

(v) “spouse” means, with respect to any person, a person who is cohabiting with that person in a conjugal relationship as married spouse, registered domestic partner or common-law partner;

(w) “substitute decision-maker” means a person who is given the authority to make admission, care or treatment decisions on behalf of a patient under this Act or a voluntary patient;

(x) “voluntary patient” means a voluntary patient under the *Involuntary Psychiatric Treatment Act*. R.S., c. 208, s. 2; 2000, c. 6, s. 102; 2000, c. 29, s. 15; 2005, c. 42, s. 86; 2008, c. 8, s. 33; 2008, c. 58, s. 1.

Reference to psychiatrist

2A For the purpose of this Act, any reference to a psychiatrist carrying out a capacity or competency assessment means

(a) for the purpose of a person in a psychiatric facility, a psychiatrist as defined in clause (r) of Section 2; and

(b) for the purpose of a person in a hospital, the attending physician or other suitable health professional determined by the hospital. 2005, c. 42, s. 86.

Act does not apply

3 This Act does not apply to or affect

(a) a tuberculosis sanatorium or hospital;

(b) a nursing home, a home for the aged, an infirmary or other institution the purpose of which is the provision of custodial care;

(c) a hospital exempted from the provisions of this Act by or under an order of the Governor in Council. R.S., c. 208, s. 3.

Approval for operation or construction

4 (I) No person shall

(a) operate a hospital pursuant to this Act unless it has been approved by the Governor in Council;

(b) construct, improve, renovate, alter or add to a hospital unless the plans and specifications for the construction, improvement, renovation, alteration or addition have been approved by the Minister or a person or body designated by him;

(c) construct, improve, renovate, alter or add to a hospital in a way that differs from the plans and specifications for the construction, improvement, renovation, alteration or addition that have been approved by the Minister or a person or body designated by him.

(2) Subject to the regulations, any approval given under this Section may be suspended or revoked by the Governor in Council. R.S., c. 208, s. 4.

Conflict

5 The board of every hospital has power to carry on its undertaking in the manner authorized by any general or special Act under or by which it was created, established, incorporated or empowered so to do, but where a provision of any general or special Act conflicts with a provision of this Act or the regulations, the provision of this Act or the regulations prevails. R.S., c. 208, s. 5.

By-laws

6 (1) The board of every hospital shall make by-laws respecting the matters required by the regulations to be dealt with in the by-laws of a hospital, and may make by-laws, not inconsistent with this Act or the regulations, respecting any other matters or things relating to the management and conduct of its property and affairs that the board considers necessary or advisable.

(2) The Minister may require the board of a hospital to make, amend, repeal or revise by-laws respecting any matter.

(3) No by-law of the board of a hospital has any effect until it has been approved by the Minister. R.S., c. 208, s. 6.

Existing by-laws

7 The by-laws of any hospital that were in effect immediately prior to the first day of January, 1959, to the extent that they are consistent with this Act and the regulations shall remain in effect until they are amended or replaced by by-laws made under this Act. R.S., c. 208, s. 7.

Admission of patient

8 Subject to such conditions and regulations as the board of the hospital by by-law prescribes, the administrator of a hospital, when there is accommodation in the hospital, on the application of a qualified medical practitioner, a qualified midwife or a qualified dental practitioner, shall admit as a patient any person who in such application is stated to be in need of hospital services. R.S., c. 208, s. 8; 2008, c. 58, s. 2.

Inability to consent

9 (1) Where a person in a hospital requires medical or surgical treatment and is incapable of consenting to the required medical or surgical treatment for any reason and such person does not have a guardian or there is no one recognized in law who can give consent on his behalf to the required medical or surgical treatment, then the Trial Division of the Supreme Court or a judge thereof may upon *ex parte* application by the Public Trustee authorize the required medical or surgical treatment.

(2) The words “the Trial Division of the Supreme Court or a judge thereof” have the same meaning as set forth in clause (a) of Section 2 of the *Incompetent Persons Act*. R.S., c. 208, s. 9.

Student facilities at teaching hospital

10 The board of every teaching hospital shall provide such facilities for medical and dental students as the regulations require. R.S., c. 208, s. 10.

Charge for uninsured hospital services

11 (1) When a patient in a hospital is not entitled under the *Health Services and Insurance Act* to all or part of the services received by him, the patient is liable to pay to the board of the hospital its charges at rates approved by the Minister for the services to which the patient is not so entitled.

(2) When a patient, who is liable under subsection (1) for services received by him, does not pay for the services for which he is liable, and the services are not services provided by the Worker’s Compensation Board or by some other authority, the hospital charges for which he is liable may be paid out of the Consolidated Fund, if the officers of the hospital have made reasonable efforts to collect these charges. R.S., c. 208, s. 11; 1994-95, c. 7, s. 29.

Notice of non-entitlement to insured services

12 (1) When the administrator of a hospital becomes aware that a patient in the hospital is not entitled, under the *Health Services and Insurance Act*, to receive all or part of the services provided by the hospital, he shall within three days give notice by prepaid mail or by personal service that the patient is not entitled to services under the *Health Services and Insurance Act* and of the rate of the hospital’s charges for its services to the patient.

(2) *repealed 1994-95, c. 7, s. 30.*

R.S., c. 208, s. 12; 1994-95, c. 7, s. 30.

13 to 16 *repealed 1994-95, c. 7, s. 31.*

Regulations

17 The Governor in Council may make regulations

- (a) establishing a plan for providing hospital services to patients requiring treatment and care in hospitals;
- (b) respecting the granting, suspending or revoking of approval of hospitals and additions or alterations thereto;
- (c) respecting the services that must be provided by hospitals to qualify for payments by the Province under this Act;
- (d) prescribing or relating to standards for buildings, equipment and physical facilities, staff requirements and qualifications, standards of care and treatment of patients, operating and administrative practices and other matters to be observed and performed in the establishment, maintenance and operation of hospitals;
- (e) respecting admission, treatment, care, conduct, management and discharge of patients or any class of patients;
- (f) relating to the inspection and the examination of hospitals;
- (g) prescribing the matters in respect of which by-laws shall be made by a hospital;
- (h) respecting the records, books, accounting systems, returns and reports that shall be made and kept by hospitals;
- (i) respecting returns and reports to be made by boards;
- (j) providing for the appointment of such advisory or other committees and other officers or agencies as the Minister considers necessary or advisable for the effective performance of its functions;
- (k) prescribing the terms and conditions under which payment is to be made in respect of the provision of services in hospitals;
- (l) prescribing the matters in respect of which payments may be made out of the Consolidated Fund;
- (m) prescribing the manner in which hospital rates and charges shall be calculated;
- (n) respecting the payments of any grants for construction or otherwise that may be available, and the terms and conditions under which such grants may be paid;
- (o) prescribing forms and certificates authorized or required by this Act;
- (p) protecting the rights of patients;
- (q) respecting any other matter that the Governor in Council considers necessary or advisable to secure the most effective utilization of moneys available under this Act;
- (r) with respect to any matters that he considers necessary or desirable to ensure high standards of treatment and care of patients;

- (ra) defining any word or expression used but not defined in this Act;
- (rb) further defining any word or expression defined in this Act;
- (s) respecting any other matter or thing that is necessary to effectively carry out the intent and purpose of this Act. R.S., c. 208, s. 17; 2005, c. 42, s. 86; 2008, c. 58, s. 3.

Regulations Act

18 The exercise by the Governor in Council of the authority contained in Section 17 shall be regulations within the meaning of the *Regulations Act*. R.S., c. 208, s. 18.

Appointment to hospital board

19 The Governor in Council may appoint one member to the board of each hospital who shall hold office during pleasure. R.S., c. 208, s. 19.

20 to 23 *repealed 2005, c. 42, s. 86.*

24 to 29 *repealed 1994-95, c. 7, s. 34.*

30 to 51 *repealed 2005, c. 42, s. 86.*

Factors in determining capacity or competence

52 (1) Every adult person in a hospital or a psychiatric facility is presumed to have capacity to make all treatment decisions with respect to the person's health care and to be competent to administer the person's estate.

(2) A person in a hospital or a psychiatric facility may be found, after examination by a psychiatrist, not to be capable of consenting to treatment or competent to administer the person's estate.

(2A) In determining whether or not a person in a hospital or a psychiatric facility is capable of consenting to treatment, the examining psychiatrist shall consider whether the person understands and appreciates

- (a) the condition for which the specific treatment is proposed;
- (b) the nature and purpose of the specific treatment;
- (c) the risks and benefits involved in undergoing the specific treatment; and
- (d) the risks and benefits involved in not undergoing the specific treatment.

(2B) In determining a patient's capacity to make a treatment decision, the psychiatrist shall also consider whether the patient's mental disorder affects the patient's ability to appreciate the consequences of making the treatment decision.

(3) In determining whether or not a person is competent to administer his estate, the psychiatrist examining the person shall consider

- (a) the nature and degree of the person's condition;
- (b) the complexity of the estate;
- (c) the effect of the condition of the person upon his conduct in administering his estate; and
- (d) any other circumstances the psychiatrist considers relevant to the estate and the person and his condition. R.S., c. 208, s. 52; 2005, c. 42, s. 86; 2008, c. 8, s. 34.

Declaration of capacity or competency

53 (1) A psychiatrist, after having examined a person in a hospital or a psychiatric facility to determine his capacity to consent to treatment, shall complete a declaration of capacity in respect of that person.

(2) The declaration of capacity shall state whether or not in the opinion of the examining psychiatrist the person examined is capable of consenting to treatment or not.

(3) When a psychiatrist has completed the examination of a person in a hospital or in a psychiatric facility to determine that person's competency to administer his estate he shall complete a declaration of competency in respect of that person.

(4) A declaration of competency shall be signed by the examining psychiatrist and shall state whether or not in his opinion the person examined is competent to administer his estate.

(5) A declaration of capacity and a declaration of competency shall be in such form and contain such information as may be determined by the Governor in Council by regulation. R.S., c. 208, s. 53; 2005, c. 42, s. 86.

Consent to hospital treatment

54 (1) No person admitted to a hospital or a psychiatric facility shall receive treatment unless he consents to such treatment.

(2) Where a patient in a hospital or a psychiatric facility is found by declaration of capacity to be incapable of consenting to treatment, consent may be given or refused on behalf of the patient by a substitute decision-maker who has capacity and is willing to make the decision to give or refuse the consent from the following in descending order:

- (a) a person who has been authorized to give consent under the *Medical Consent Act* or a delegate authorized under the *Personal Directives Act*;
- (b) the patient's guardian appointed by a court of competent jurisdiction;
- (c) the spouse of the patient;
- (d) an adult child of the patient;
- (e) a parent of the patient;
- (f) a person who stands in *loco parentis* to the patient;
- (fa) an adult sibling of the patient;
- (fb) a grandparent of the patient;
- (fc) an adult grandchild of the patient;
- (fd) an adult aunt or uncle of the patient;
- (fe) an adult niece or nephew of the patient;
- (g) any other adult next of kin of the patient; or
- (h) the Public Trustee.

(3) Where a person in a category in subsection (2) fulfils the criteria for a substitute decision-maker as outlined in subsection (5) but refuses to consent to treatment on the patient's behalf, the consent of a person in a subsequent category is not valid.

(4) Where two or more persons who are not described in the same clause of subsection (2) claim the authority to give or refuse consent under that subsection, the one under the clause occurring first in that subsection prevails.

(5) A person referred to in clauses (c) to (g) of subsection (2) shall not exercise the authority given by that subsection unless the person

- (a) excepting a spouse, has been in personal contact with the patient over the preceding twelve-month period or has been granted a court order to shorten or waive the twelve-month period;
- (b) is willing to assume the responsibility for consenting or refusing consent;
- (c) knows of no person of a higher category who is able and willing to make the decision; and
- (d) makes a statement in writing certifying the person's relationship to the patient and the facts and beliefs set out in clauses (a) to (c).

(6) The attending physician is responsible for obtaining consent from the appropriate person referred to in subsection (2). R.S., c. 208, s. 54; 2000, c. 29, s. 16; 2001, c. 5, s. 4; 2005, c. 42, s. 86; 2008, c. 8, s. 35.

Duty of substitute decision-maker

54A The substitute decision-maker shall make the decision in relation to specified medical treatment

(a) in accordance with the patient's prior capable informed expressed wishes unless

(i) technological changes or medical advances make the prior expressed wishes inappropriate in a way that is contrary to the intentions of the patient, or

(ii) circumstances exist that would have caused the patient to set out different instructions had the circumstances been known based on what the substitute decision-maker knows of the values and beliefs of the patient and from any other written or oral instructions;

(b) in the absence of awareness of a prior capable informed expressed wish, in accordance with what the substitute decision-maker believes the wishes of the patient would be based on what the substitute decision-maker knows of the values and beliefs of the patient and from any other written or oral instructions; and

(c) if the substitute decision-maker does not know the wishes, values and beliefs of the patient, in accordance with what the substitute decision-maker believes to be in the best interest of the patient. 2005, c. 42, s. 86; 2008, c. 8, s. 36.

Determination of best interest of patient

54B In order to determine the best interest of the patient for the purpose of clause (b) of Section 54A, regard shall be had to

(a) whether the condition of the patient will be or is likely to be improved by the specified medical treatment;

(b) whether the condition of the patient will improve or is likely to improve without the specified medical treatment;

(c) whether the anticipated benefit to the patient from the specified medical treatment outweighs the risk of harm to the patient; and

(d) whether the specified medical treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c). 2005, c. 42, s. 86.

Reliance on statement in writing

54C Whoever seeks a person's consent on a patient's behalf is entitled to rely on that person's statement in writing as to the person's relationship with the

patient and as to the facts and beliefs mentioned in clauses (a) to (c) of subsection (5) of Section 54, unless it is not reasonable to believe the statement. 2005, c. 42, s. 86.

Review by court

54D (1) Where a substitute decision-maker approves or refuses treatment on behalf of a patient pursuant to subsection (2) of Section 54, the Supreme Court of Nova Scotia (Family Division) or the Family Court where there is no Supreme Court (Family Division) may review the provision or refusal of consent when requested to do so by the psychiatrist or the patient to determine whether the substitute decision-maker has rendered a capable informed consent.

(2) Where the court finds that a substitute decision-maker has not rendered a capable informed consent, the next suitable decision-maker in the hierarchy in subsection (2) of Section 54 becomes the substitute decision-maker. 2005, c. 42, s. 86.

Examination for competency

55 (1) The examination of a person in a hospital or a patient in a psychiatric facility by a psychiatrist to determine whether that person is competent to administer that person's estate may be performed at any time as the need arises.

(2) Subsection (1) applies to an examination of a patient in a hospital or a psychiatric facility for the purpose of determining whether or not that person is capable of consenting to treatment. R.S., c. 208, s. 55.

Presumption of competency and capacity

56 If an examination is not performed within the periods set out in Section 55, the person shall be presumed to be competent or capable of consenting until a psychiatrist determines that the person is not competent or capable of consenting. R.S., c. 208, s. 56.

Revocation of declaration

57 (1) If a person in a hospital or a psychiatric facility is examined by a psychiatrist and found incapable of consenting to medical treatment or incompetent to administer his estate and subsequent thereto has been re-examined and found to be capable of consenting to treatment or competent to administer his estate then the examining psychiatrist shall execute a revocation of the declaration of capacity or a revocation of the declaration of competency whichever is appropriate under the circumstances.

(2) The revocation of declaration of capacity shall be signed by the psychiatrist examining the person and shall state that the person described therein is capable of consenting to treatment.

(3) The revocation of declaration of competency shall be signed by the psychiatrist examining the person and shall state that the person described therein is competent to administer his estate.

(4) A revocation of declaration of capacity and a revocation of declaration of competency shall be in such form and contain such information as may be determined by the Governor in Council by regulation. R.S., c. 208, s. 57; 2005, c. 42, s. 86.

Review of declarations

58 (1) A declaration of competency concerning an involuntary patient may be reviewed by the review board pursuant to the *Involuntary Psychiatric Treatment Act* and any appeals from the review board's decision shall be carried out pursuant to Section 79 of that Act.

(2) A declaration of capacity for a patient in a hospital or a psychiatric facility or a declaration of competency for a patient in a hospital or a voluntary patient may be reviewed by the Supreme Court of Nova Scotia (Family Division) or by the Family Court where there is no Supreme Court (Family Division).

(3) A review conducted pursuant to subsection (2) shall be made upon application by the person seeking the review who shall give five days notice to the administrator of the hospital.

(4) An application for review pursuant to this Section shall be made by the person described in the declaration or by the person's substitute decision-maker.

(5) The judge of the Supreme Court may either confirm the declaration of capacity or the declaration of competency or determine that the same should be revoked.

(6) If the judge of the Supreme Court determines that the declaration of capacity or the declaration of competency should be revoked, then he shall issue an order revoking the declaration of capacity or the declaration of competency whichever is appropriate under the circumstances. R.S., c. 208, s. 58; 1992, c. 16, s. 5; 2000, c. 29, s. 16; 2005, c. 42, s. 86.

Public Trustee

59 (1) Where a declaration of competency discloses that a person in a hospital or a psychiatric facility is unable to administer his estate and the circumstances are such that the Public Trustee should immediately assume management of the person's estate, the administrator of the hospital or the chief executive officer of the psychiatric facility shall notify the Public Trustee as soon as possible.

(2) Subject to Section 14A of the *Public Trustee Act*, where there is no guardian to act on behalf of the person in a hospital or a psychiatric facility who is unable to administer his estate and the Public Trustee is of the opinion that his intervention is appropriate, the Public Trustee may take possession of the property and effects and safely keep, preserve and protect the property and effects of the person in a hospital or a psychiatric facility and expend from such property and

effects such amount as is necessary to safely keep, preserve and protect the property and effects and for this purpose shall have all authority necessary so to do. R.S., c. 208, s. 59; 2005, c. 42, s. 86; 2014, c. 27, s. 8.

60 to 70 *repealed 2005, c. 42, s. 86.*

71 *repealed 2010, c. 41, s. 113.*

Involuntary Psychiatric Treatment Act

71A Any reference in this Act to a declaration of capacity or consent to treatment does not apply to an involuntary patient where psychiatric treatment is involved and, for that purpose, the *Involuntary Psychiatric Treatment Act* applies. 2005, c. 42, s. 86.

Administrator

72 (1) The board of a hospital shall appoint a qualified person as administrator to manage its affairs.

(2) In this Section, “qualified person” means a person who has at least the minimum qualifications and requirements determined by the Governor in Council by regulation. R.S., c. 208, s. 72.

73 *repealed 2005, c. 42, s. 86.*

Agreement with other government

74 (1) The Governor in Council may enter into and carry out, or may authorize the Minister or a member of the Executive Council to enter into and carry out, an agreement respecting the observation, examination, investigation, treatment, care and maintenance of persons in hospitals with the Government of Canada or with another government or agency or any combination thereof.

(2) Unless an agreement has been made under this Section, no person for whom the Government of Canada or a government other than the Government of the Province is responsible shall be entitled to receive observation, examination, investigation, treatment, care or maintenance in a hospital in the Province at the expense of the Province. R.S., c. 208, s. 74.

Penalty

75 Any person who violates or fails to observe any provision of this Act or the regulations is liable on summary conviction to a penalty or not more than five hundred dollars and in default of payment to imprisonment for not more than ninety days. R.S., c. 208, s. 75.

Consent to prosecution

76 No prosecution for a violation of this Act or the regulations shall be commenced without the written consent of the Attorney General. R.S., c. 208, s. 76.
