

A Fact Sheet on **The Hearing Process**

What is The Vulnerable Persons Living with a Mental Disability Act?

On October 4, 1996, a law came into force in Manitoba, called *The Vulnerable Persons Living with a Mental Disability Act*.

The Act was developed to promote and protect the rights of adults living with a mental disability who need assistance to meet their basic needs. The legislation recognizes these Manitobans as “vulnerable persons.”

The Act is based on the belief that vulnerable persons should have the opportunity to make their own decisions and direct their own lives, with support if necessary.

Who is the Commissioner?

The Vulnerable Persons' Commissioner is appointed to protect the decision-making rights of vulnerable persons under the Act.

Anyone may apply to the Commissioner to appoint a substitute decision maker for a person the applicant believes to be a vulnerable person. A substitute decision maker may be appointed to make decisions about the vulnerable person's personal care and/or property.

When an application is received, the Commissioner conducts a preliminary investigation to determine if criteria established under the Act have been met. If the criteria appear to be met, the Commissioner asks a hearing panel to make recommendations on the application.

What is a hearing panel?

The hearing panel roster has members located throughout Manitoba and is comprised of relatives of vulnerable persons, lawyers and community members. When the Commissioner makes a referral, three members are appointed as a panel. One member is designated as the presiding member. After conducting the required hearing, the hearing panel makes recommendations to the Commissioner about:

- whether the criteria respecting the appointment of a substitute decision maker is appropriate under the circumstances being reviewed;
- who the substitute decision maker should be;
- what powers the Commissioner should grant to the substitute decision maker; and
- the length and other terms and conditions of the appointment.

Who is notified of the hearing?

At least seven days in advance, all parties to the hearing will be notified of the date, time, place and purpose of the hearing.

Notice of the hearing will be provided to:

- the person for whom the application is made;
- the applicant;
- the proposed substitute decision maker;
- any currently appointed substitute decision maker;
- the person's committee, if any;
- the person's nearest relative; and
- anyone else the Commissioner considers appropriate.

The vulnerable person is entitled to be present at the hearing. All other persons given notice and anyone else (with the consent of the vulnerable person or the hearing panel) may attend. Persons given notice may be represented by someone else if necessary.

People given notice of the hearing who cannot attend, but would like to participate, should contact the Hearing Panel Coordinator.

Where practical, hearings are held in the community where the vulnerable person lives.

What happens at the hearing?

The panel considers information presented at the hearing in order to make recommendations to the Commissioner. The hearing is conducted on an informal basis.

The presiding member and panel will ask about the application. All parties to the hearing may present information and are encouraged to do so orally where possible. The panel will solicit and accept reports or other documentation.

Participants must make factual statements and presentations in accordance with the Act. Although hearings are conducted informally, the civil standard of proof applies. Parties to the hearing must furnish any information, produce any record, paper or other material the panel requests.

Are the proceedings confidential?

Under the Act, all persons involved in the hearing (both before and after it takes place) must keep all information confidential.

What happens after the hearing?

At the end of the hearing, the panel members make written recommendations, and provide reasons for their recommendations, to the Commissioner. These recommendations apply only to matters the Commissioner has referred to the hearing panel. In addition to its recommendations, the panel will forward to the Commissioner any documents it has received and considered.

The Commissioner considers the recommendations and supporting material, and decides to appoint or not to appoint a substitute decision maker.

Soon after, the Commissioner sends a copy of the decision to all persons who were originally notified of the hearing.

Can decisions be appealed?

The Commissioner's decision on the appointment of a substitute decision maker may be appealed to the Court of Queen's Bench by any person given notice of the hearing.

The appeal must be filed and served within 30 days after a copy of the Commissioner's decision has been received, or within the time permitted by the court.

Note: French Language Services are available upon request. If you wish to present in French, please contact the Hearing Panel Coordinator within 7 days of receiving the Notice of Referral to a Hearing Panel so that the appropriate arrangements can be made in preparation for the hearing date.

For more information, contact:

Hearing Panel Coordinator

300 - 114 Garry Street
Winnipeg, MB R3C 4V4
(204) 945-6485

or

Office of the Vulnerable Persons' Commissioner

315 - 258 Portage Avenue
Winnipeg, MB R3C 0B6
(204) 945-5039

Call 1-800-757-9857 toll-free outside Winnipeg