



British Columbia's  
Office of the Human Rights  
Commissioner

# “We’re still here”

Report of the Inquiry into detentions  
under the *Adult Guardianship Act*



Report | April 2025



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ISBN: 978-1-990626-16-6

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# Executive summary

This Inquiry is intended to shine a light on: (1) whether and to what extent vulnerable<sup>1</sup> adults are being detained under the emergency protection provisions of the *Adult Guardianship Act* (AGA) and (2) whether such detentions are lawfully permitted and in accordance with the Province’s human rights obligations. Adults who are detained under the AGA are often in highly vulnerable positions; while protecting them against abuse and neglect is an important goal, respecting their human rights is an important component of treating vulnerable adults with dignity and protecting their well-being.

The AGA is part of a suite of laws that are designed to ensure that adults’ wishes are heard and respected if they become incapable of making their own decisions. Within the AGA framework, designated agencies (Community Living BC and the regional health authorities) are required to investigate reports that adults are experiencing abuse, neglect or self-neglect and where they have an illness, disease, injury or other condition that affects their ability to make decisions. In some cases, designated agencies encounter serious circumstances where they believe that the adult is at imminent risk of harm and the adult has not accepted an offer of support and assistance. This includes situations where an adult is experiencing abuse, neglect or self-neglect in the community, is at a high degree of risk and does not understand the danger they are in because of cognitive impairment. In these circumstances, the AGA provides the designated agencies with the powers in s. 59(2) to take steps to protect the adult, which have been used to detain adults against their will, for treatment and planning and in some cases for significant periods of time.

This Inquiry — and the Commissioner’s findings and recommendations — are not intended to undermine the important goals of protecting vulnerable adults. Rather, the Inquiry is about ensuring that, when the state exercises extraordinary powers that interfere with an adult’s liberty, the exercise of power accords with human rights laws and standards. The goal is to both protect people from harm and not cause further harm in the process, by respecting their human rights as required by international human rights law.

In the course of this Inquiry, the Commissioner gathered extensive data and records from the Ministry of Attorney General, the Ministry of Health, the Public Guardian and Trustee and the designated agencies. The Commissioner held two community engagement sessions; conducted interviews with family members of adults who were detained under the AGA and interviewed staff in each designated agency. The Commissioner used Canada’s international human rights law commitments as the framework for the analysis.

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<sup>1</sup> The Commissioner is aware that the use of the term “vulnerable” may be perceived to invoke stereotypes and assumptions about the capabilities of adults whom the law treats as lacking capacity. However, in this report, reference to “vulnerability” is not used as a moral judgment or intended to downplay the role of the state, laws, systems and practices in creating vulnerabilities. Rather, it is a recognition that the state always has a responsibility to ensure it does not abuse its power or allow others to abuse their power in relation to people who may be more vulnerable due to their physical, developmental or mental condition.

## The Commissioner found:

- 1 Detentions under s. 59(2) of the AGA impact a significant number of adults.** Between 2018 and September 2023, designated agencies detained 300 people a total of 340 times. The median length of detentions was six days, while the maximum was 212 days.
- 2 Transparency and oversight over detention are lacking.** The Commissioner found a lack of transparency both at a systemic and individual level. Specifically, the Commissioner found a lack of publicly available information on how this law is administered; a tendency to restrict information to representatives, legal counsel and family/friends; with limited ability to seek independent review or oversight.
- 3 Adults' rights to fair process have not been adequately respected.** Detention is a significant interference with liberty that must be accompanied by adequate safeguards to prevent arbitrariness.<sup>2</sup> Such safeguards include rights notification; clear criteria, reasons or timelines for detention;<sup>3</sup> prompt and full disclosure of the information on which the decision to detain is based;<sup>4</sup> access to counsel;<sup>5</sup> and independent oversight and periodic review procedures.<sup>6</sup> These safeguards are largely lacking for s. 59 AGA detentions both in law and in practice.
- 4 Designated agencies who are detaining adults are doing so without legal authority.** The Commissioner found that significant concerns around illegality are raised in some, but not all detentions, including inconsistent and improper reliance on s. 59(2); evidence of detentions beyond the time necessary to address the emergency; failure by designated agencies to seek support and assistance court orders; uncertain police authority; and detentions occurring under “doctor’s orders”.
- 5 Disproportionate impact of detention practice on seniors, people who are unhoused and people with disabilities, including people with mental health and substance use issues, results in systemic discrimination.** The Commissioner concludes that the current approach to detention under s. 59(2) of the AGA is discriminatory because the harms of detention—including the fact that many adults are being detained beyond the scope of the legal authority granted by the AGA and without due regard to their procedural rights—are disproportionately experienced by seniors, people who are unhoused and people with disabilities. The Commissioner is not concluding that any and every detention of vulnerable adults who are apparently abused or neglected is necessarily discriminatory, but that the current system and practices for detention do result in inequality.

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<sup>2</sup> UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, para. 19.

<sup>3</sup> UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, para. 24.

<sup>4</sup> UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, para. 25.

<sup>5</sup> UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, paras. 23, 46, 58, 59.

<sup>6</sup> UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, paras. 4, 19, 44.

The Commissioner makes 10 recommendations to the Ministry of Attorney General, the Ministry of Health and the designated agencies for change, including that they:

- immediately stop detaining adults for longer than the duration of an emergency and ensure all detained adults receive written reasons for being detained;
- provide legal advice and representation to all adults who are detained;
- introduce amendments to the AGA to clarify whether detention is allowed in emergency situations;
- develop provincial regulations, policies or guidelines to support implementation of legislative changes to ensure rights are respected;
- make data reporting mandatory, develop provincial data standards, and require annual public reporting;
- develop mandatory provincial training;
- consult on the role of police under Part 3 of the AGA;
- assess and report publicly on the community health resources that are required to reduce the number and length of detentions of adults under the AGA;
- create an independent mechanism for detained adults to challenge their detentions and their conditions; and
- create an independent officer of the legislature with oversight of detentions in health care facilities