

# CANADIAN CENTRE



CANADIAN CENTRE FOR  
ELDER LAW

# FOR ELDER LAW

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## Submission On BC Seniors' Advocate 2012

July 2012

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## **1. Introduction**

The Canadian Centre for Elder Law (CCEL) is pleased to contribute to the consultation process regarding a Seniors' Advocate for BC (SABC) through this submission, and through direct consultation with staff. We applaud the Minister of Health for undertaking this important public policy issue. We look forward to the Ministry's findings, its ensuing recommendations, and the strategy to implement a SABC.

The CCEL is a national, non-partisan, non-profit body dedicated to exploring the particular legal issues that affect older Canadians. Our parent body, the BC Law Institute, first began studying elder law issues in 1999, and formally established the CCEL in 2003. BCLI / CCEL staff lawyers have specialized practice experience in the field of elder law, and work closely with governments, universities, civil society and networks to promote laws, policies and systems that are responsive and appropriate to the needs of Canada's rapidly aging population.

### **a. The Demographic Imperative**

It is nothing new to note that the Canadian population is rapidly getting older, but the importance of the demographic imperative cannot be overstated.

Statistics Canada projects the number of seniors in Canada will reach between 9.9 million and 10.9 million by 2036—more than double the 4.7 million in 2009.<sup>1</sup> Seniors are expected to outnumber children aged 14 and under for the first time between 2015 and 2021.<sup>2</sup> Canada's very elderly population is also projected to grow: by 2036, there could be 3.3 million people aged 80 and over, up from roughly 1.3 million in 2009.<sup>3</sup> Further, in 2009, there were about 6,000 centenarians,<sup>4</sup> and this demographic is projected to triple, or even quadruple.<sup>5</sup> BC, as an attractive retirement destination, has a population that is aging more rapidly than the median age.

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<sup>1</sup> Statistics Canada, "Population projections: Canada, the provinces and territories" *The Daily* (26 May 2010) Statistics Canada Catalogue no. 91-520-XWE, online: <<http://www.statcan.gc.ca/daily-quotidien/100526/dq100526b-eng.htm>>.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

In short, as the population ages, there will be an increasing need for systems, agencies, strategies and responses related to this demographic shift.

It is the opinion of the CCEL that the creation of a SABC is a useful and important step in addressing an existing gap in services that will only increase under the above demographic pressures.

**Recommendation #1: The Ministry of Health should establish a Seniors' Advocate for British Columbia, which is appropriately staffed and resourced to ensure its ability to meet the increasing needs of the rapidly aging population of BC.**

## **b. Format of Submissions**

This submission is structured to respond generally to many of the questions raised in the Ministry of Health Discussion Paper, with some license taken for efficiency. In some cases, several similar questions have been grouped together in one response. As the CCEL is a non-political, non-partisan legal research organization, the CCEL does not take a position on issues associated with budgetary allocation. As such, these submissions do not respond to all questions posed in the Discussion Paper.

## **2. Elder Abuse and Neglect**

As a result of Canada's rapidly aging population, there is a pressing need to address elder abuse and neglect. Few reliable up-to-date statistics on the prevalence of elder abuse and neglect in Canada have been published. The most conservative statistics suggest that 1 in 12 older Canadians are abused or neglected—a fraction high enough to imply urgency.<sup>6</sup> Recent indicators suggest, however, that prevalence may be both higher and on the rise.<sup>7</sup> The National Initiative for Care of the Elderly has just commenced a comprehensive and national prevalence study. This new study will be the first scientifically rigorous study on

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<sup>6</sup> Elizabeth Podnieks, "National Survey on Abuse of the Elderly in Canada" (1992) 4:1 Journal of Elder Abuse & Neglect 5.

<sup>7</sup> While a national study has not yet been completed in Canada, local indicators of community response networks, elder law clinics, police and social work are tracking an increase in elder abuse and neglect. This trend may be based on increased awareness, or indicate abuse occurring more often. Perceptions of Canadians towards Elder Abuse were measured in "Awareness and Perceptions of Canadians Toward Elder Abuse", a report produced for the federal government in 2008. This publication indicated a more significant proportion of the population was being abused, than previous statistics had recorded. See: [http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/human\\_resources\\_social\\_development\\_canada/2008/001-08-e/report.pdf](http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/human_resources_social_development_canada/2008/001-08-e/report.pdf)

Additionally, the absolute (real) number of mistreated individuals in Canada is increasing, due to a dramatically increasing population (Lachs and Berman, 2011, Plouffe et al 2009).

community-dwelling adults (over 55) in Canada. The study will focus on financial, psychological, physical and sexual abuse as well as neglect of older Canadians. The CCEL is pleased to be a research partner in this HRSDC-funded research.<sup>8</sup>

## **a. Elder Abuse and Neglect Generally**

The CCEL defines elder abuse as an action or inaction by an individual or organization that results in harm to an older person. Abusers may be family members, friends, caregivers, persons in a position of trust or power, or even strangers. Abuse may take shape as an isolated incident or as a pattern of behaviour.

Research suggests elder abuse victims are more likely to have poor health and/or health conditions that limit their activities.<sup>9</sup> Victims are also less likely to have someone to trust and confide in, or someone who would help them if they became ill.<sup>10</sup>

The most commonly noted types of elder abuse and neglect are financial, physical, emotional and sexual; however, the categories are not closed. Other types include forced restraints, confinement and isolation, abandonment, deprivation of human rights, medication abuse, and spiritual or cultural abuse.

Many victims of abuse are unaware they are being abused, particularly in cases of financial exploitation. There are also significant challenges to reporting abuse, including risk, shame, punishment, social isolation and fear of the abuser withholding of contact with friends or family.<sup>11</sup>

Among the general public, little is known about exactly what will happen if a concerned citizen reports suspected elder abuse and neglect. The process is both opaque and under-resourced. There is no one central government agency or organization with the responsibility to continue to raise awareness or move forward efforts to reduce elder abuse and neglect.

Currently, under the BC *Adult Guardianship Act*, regional health authorities are 'Designated Agencies' for elder abuse and neglect complaints and investigations.<sup>12</sup> Each of the regional

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<sup>8</sup> The "National Survey on the Mistreatment of Older Canadians," which is being conducted by the National Initiative for Care of the Elderly was announced on June 15, 2012. For further details see:

<http://www.nicenet.ca/detail.aspx?menu=52&app=262&cat1=707&tp=2&lk=no>

<sup>9</sup> *Ibid.* at 16.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.* at 47.

<sup>12</sup> Designated Agencies Regulation, BC Reg 19/2002, s 3. Community Living British Columbia is a designated agency with respect to adults with developmental disabilities (s 2). Providence Health Care Society is also a

Health Authorities has created systems for responding to this mandated task; however, each response is different. While it is likely beyond the anticipated role of the SABC to “take over” the role as reporter and responder from the Designated Agencies, there is much middle ground which is not adequately covered by the current regime.

In many instances, the Health Authorities may be in a conflict of interest or ethical challenge, as allegations of abuse and neglect may indeed be levied against their own staff or systems. This area of potential conflict is one in which the SABC might helpfully play a role in assisting in elder abuse cases.

**Recommendation #2: The CCEL strongly encourages the SABC to have a mandate to raise awareness of elder abuse and neglect, as well as the power to act as a central “clearing house” of information and referral for elder abuse and neglect cases.**

**Recommendation #3: The CCEL recommends that the government more fully explore the role that the SABC might play in reporting or investigating elder abuse cases, particularly where one of the legislated authorities might be in a conflict of interest. This exploration should also consider the “middle ground” that the SABC might play between the duties of the BC Ombudsperson and the Designated Agencies listed in the *Adult Guardianship Act*.**

**Recommendation #4: The CCEL recommends that the Ministry of Health explore if the SABC could play a helpful role in developing a structure to assist the Designated Agencies and other stakeholders in centralizing or harmonizing responses to elder abuse and neglect in BC.**

### **3. Values and Principles**

#### **a. Broad Principles**

##### **1. The United Nations Principles for Older Persons (1991)**

#### **Broad Principles**

The CCEL agrees that the UN Principles provide a useful preliminary foundation for the SABC principles; however, we emphasize that the interpretation of the UN Principles requires a fuller description to illuminate the meaning of these broad principles. The UN

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designated agency with respect to individuals receiving care at hospitals or other services provided by Providence Health (s 4).



resolution provides a more robust statement of the principles that is worthy of consideration.

## Background

In 1990, the UN General Assembly designated 1 October as the "International Day of Older Persons". In 1991, the Assembly adopted the "United Nations Principles for Older Persons" ([resolution 46/91](#)), encouraging governments to incorporate them into national program whenever possible. The full statement of the Principles includes a call for action in many areas, among them:

**Independence:** Older persons should have access to food, water, shelter, clothing, health care, work and other income-generating opportunities, education, training, and a life in safe environments.

**Participation:** Older persons should remain integrated into community life and participate actively in the formulation of policies affecting their well-being.

**Care:** Older persons should have access to social and legal services and to health care so that they can maintain an optimum level of physical, mental and emotional well-being. Older people should be accorded full respect for dignity, beliefs, needs and privacy.

**Self-fulfillment:** Older persons should have access to educational, cultural, spiritual and recreational resources and be able to develop their full potential.

**Dignity:** Older persons should be able to live in dignity and security, be free of exploitation and physical or mental abuse, and be treated fairly regardless of age, gender and racial or ethnic background.<sup>13</sup>

**Recommendation #5: The UN Principles for Older Persons should be adopted only as a preliminary foundation, with full consideration to the contextual descriptors contained within Resolution 46/91, rather than just the keyword principles. More modern iterations of the Principles should also be considered.**

## 2. Framework for the Law As It Affects Older Adults (2012)

A more advanced set of principles for considering and including older people has recently

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<sup>13</sup> The full descriptions of the Principles contained in the resolution are more comprehensive. For the purposes of this submission we have compressed the descriptions. See United Nations, Resolution 46/91, online: <http://www.un.org/documents/ga/res/46/a46r091.htm>.

been developed by the Law Commission of Ontario (LCO) in their *Framework for the Law As It Affects Older Adults, Final Report*, April 2012 [LCO Older Adults Report]. We attach a copy of the LCO Older Adults report as “Appendix A” to this submission.

LCO has adopted the following six principles for its framework for the law as it affects older adults:

- Respecting dignity and worth
- Fostering independence and autonomy
- Promoting participation and inclusion
- Recognizing the importance of security
- Responding to diversity and individuality
- Understanding membership in the broader community.<sup>14</sup>

## Background

The LCO came to an early determination that its Framework would be rooted in a set of principles. These principles were built on a thorough review and analysis of leading national and international documents in the field, specifically building on the foundations created by the International Principles for Older Persons and the National Framework on Aging (NFA) developed by the Federal/Provincial/Territorial Ministers Responsible for Seniors in 1998.<sup>15</sup> While the LCO acknowledges that there are challenges in defining and grounding principles, a principles-based approach can provide a set of norms against which to evaluate existing or potential laws policies and programs.<sup>16</sup> The LCO Older Adults Report determined that the principles should be rooted in an “anti-ageist approach to the law and aim to advance substantive equality.”<sup>17</sup> That is, the norms that are identified through the principles should proactively address negative attitudes and approaches toward older adults (at the level of both individuals and systems) as they are manifested in the law. Through research and consultations, the LCO has identified the six above-noted guiding principles for the law as it affects older adults.

The LCO Older Adults Report details in full the basis for its principles and we respectfully

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<sup>14</sup> Law Commission of Ontario, Older Adults Final Report, April 2012, online: <http://www.lco-cdo.org/en/older-adults-final-report-sectionIII> [LCO Older Adults Report].

<sup>15</sup> See *Principles for the National Framework on Aging: A Policy Guide*, online: <http://www.phac-aspc.gc.ca/seniors-aines/publications/pro/healthy-sante/nfa-cnv/index-eng.php>.

<sup>16</sup> LCO Older Adults Report, <http://www.lco-cdo.org/en/older-adults-final-report-sectionIII>.

<sup>17</sup> Ibid.

refer you to Appendix A, Section 3.

**Recommendation #6: The CCEL strongly recommends that the SABC adopt the principles established in the LCO Older Adults report.**

Wales has an analogous “Older People’s Commissioner”, which was established in 2006. The principles followed by that office may also be of use in considering principles for the SABC.

Key principles for the Older People’s Commissioner for Wales include:

- To promote awareness of the interests of older people in Wales and of the need to safeguard those interests
- To encourage best practice in the treatment of older people in Wales
- Keep under review the adequacy and effectiveness of law affecting the interests of older people in Wales
- To challenge age discrimination<sup>18</sup>

**Recommendation #7: The “principles” or “operations” part of the SABC mandate should incorporate the key principles for the Older People’s Commissioner for Wales.**

## **b. Operating Principles for the SABC**

The CCEL will briefly comment below on each proposed operating principles outlined at page 6 the Discussion Paper:

### **1. The older adult is always the client regardless of who initiates contact with the Office**

The CCEL supports an approach that puts the older adult “first”, but is concerned that “client” may not be the most appropriate term. Indeed, use of this term may be confusing to some seeking to understand the difference between support and advice from an advocate and individual legal advice.

Further, in some cases, older adults may not be in a position to reach out for advice, support and assistance. In this case, the SABC may be acting in the broad interests of older adults by

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<sup>18</sup> Older People’s Commissioner for Wales, <http://www.olderpeoplewales.com/en/home.aspx>

responding to an enquiry from someone who is not the older person. In such a context it might be more precise to consider the individual or collective interests of the older person as primary, based on their current (if capable), or previously expressed (if incapable) values, wishes and beliefs.

**Recommendation #8: The CCEL recommends that the SABC use an “older-adult centred approach” rather than a “client-based approach”, focusing on the interests of older people. The CCEL notes that use of the term “client” can be confusing or misleading in many instances.**

## **2. Ensure that the work of the Office is informed by the views, issues and concerns of seniors and seniors groups across BC.**

While the CCEL encourages the SABC to be informed by the views, issues and concerns of seniors and seniors groups across BC, the SABC should also reach more broadly to inform itself.

The CCEL agrees that the creation of one or more advisory bodies with whom the SABC can meet with regularly will help to inform its strategy, operations, practice and direction. Such advisory bodies should be established as part of the structure of the SABC and should provide guidance in proposing useful mechanisms and systems related to the SABC. In this way, older adult leaders, advocates, seniors' serving organizations, researchers in the field, education and wellness resources and civil society will play key roles in providing the SABC with guidance, information and advice.

Additionally, the SABC should have the benefit of regular meetings with the BC Adult Abuse and Neglect Collaborative (the “Collaborative”), which is facilitated through the Office of the Public Guardian and Trustee, either by joining the Collaborative, or through hosting regular meetings with them.

Overall, reporting out of the information gathered through all its efforts should be an important feature of the SABC. Regular public and transparent reports are important and useful requirements.

The SABC should play a leadership role in ensuring that its “lessons learned” are clearly communicated to the broader community. The SABC should undertake appropriate and transparent reporting of its cases, including systemic issues discovered. The SABC should issue plain language reports and tools, and provide resources related to the work it has undertaken.

**Recommendation #9: One or more standing advisory bodies should be created to provide information, guidance, support and direction to the SABC. Advisory bodies should include a wide variety of organizations and experts.**

**Recommendation #10: The SABC either join the BC Adult Abuse and Neglect Collaborative or host regular meetings with them on an ongoing basis.**

**Recommendation #11: The CCEL recommends that information gathered by the SABC that is important to share with the broader community be communicated appropriately through reports, tool development, online resources and other educational resources.**

### **3. Easily Accessible**

Accessibility can mean many different things to many different people. The CCEL adopts the LCO Older Adult Report definition of “accessibility” in this context. Accessibility is also predicated on the 6 Principles of the LCO Older Adults report.

The CCEL adopts the LCO Older Adults Report’s understanding of mechanical accessibility. The SABC should actively take into account:

- the financial demands imposed on those seeking justice, both in the context of low-income, and for those who are living on fixed incomes;
- accessibility for persons with physical, mental, cognitive and sensory disabilities, and for those with health limitations;
- how information and assistance may be provided to those whose literacy or numeracy or comfort with technology is limited;
- whether dispute resolution and remedies can be provided within time limits that are meaningful for older persons;
- providing meaningful access for persons who are living in settings such as long-term care homes, where there is more limited access to information and to the broader community;
- how meaningful access can be provided for older adults who face additional barriers due to gender roles, linguistic or cultural barriers, immigration status, sexual orientation, dependency relationships, or other issues.<sup>19</sup>

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<sup>19</sup> LCO Older Adults Report, at 172.

Accessibility is a complex concept, which includes a foundational assumption of substantive equality. Human rights law has evolved to the point that we now recognize that equality and fairness require not identical treatment of everyone (formal equality), but rather differential treatment that recognizes unique aspects of our identity that, when interacting with neutral rules and policies, result in barriers to equal access and full participation in society.

Accessibility does not only focus on mechanisms but also on underlying values. To be accessible in this context, the SABC must be anti-ageist.

In its well-known report, *Discrimination Against Older People Because of Age*,<sup>20</sup> the Ontario Human Rights Commission included the concept of ageism within its broader framework of accessibility. The OHRC defined ageism to mean, in part, “a tendency to structure society based on an assumption that everyone is young, thereby failing to respond appropriately to the real needs of older persons.”<sup>21</sup>

As noted in the LCO Older Adults Report:

[A]geism occurs when planning and design choices do not reflect the circumstances of all age groups to the greatest extent possible.... It is no longer acceptable to structure systems in a way that assumes that everyone is young and then to try to accommodate those who do not fit this assumption. Rather, the age diversity that exists in society should be reflected in the design stages so that physical, attitudinal and systemic barriers are not created.<sup>22</sup>

**Recommendation #12: In order to operate with a rich understanding of the concept of accessibility, the SABC should adopt the definition of accessibility detailed in the LCO Older Adults Report, as well as the policies developed in the Ontario Human Rights Commission report, *Discrimination Against Older People Because of Age*.**

#### **4. Presume people are capable and support self-advocacy as the preferred approach**

It is crucial that the SABC include notions of mental “capacity” and “self-advocacy” within its operating principles. However, these terms refer to two distinct, but conceptually connected, ideas that merit separate analysis.

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<sup>20</sup> Revised Feb 1<sup>st</sup>, 2007 at [http://www.ohrc.on.ca/en/policy-discrimination-against-older-people-because-age?page=age-1\\_.html](http://www.ohrc.on.ca/en/policy-discrimination-against-older-people-because-age?page=age-1_.html)

<sup>21</sup> *Ibid.* at section 4.4.

<sup>22</sup> LCO Older Adults Report, at 17.

**i. Mental Capacity**

All adults in BC are presumed capable unless proven otherwise. Capacity is broadly understood to mean the ability to understand and appreciate the nature and consequences of an action or decision. In BC, we have rejected the concept of “all or nothing” capacity. Rather, capacity is decisional. If a person’s ability to make a specific type of decision is impaired, the person retains the capacity to make all other forms of decisions that he or she is able to understand and appreciate. For example, a person may have lost the capacity to make complex financial decisions about investments, but retain the ability to manage day to day banking. Alternatively, a person may have lost the capacity to manage all financial transactions or decisions, but remain capable of making decisions about his or her personal circumstances, such as where to live and whether to get married.

The CCEL underscores the fundamental right of all adults to be presumed capable, which is highlighted in the Discussion Paper, but warns of the insidious nature of ageism in undermining that fundamental right. The language suggested in the Discussion Paper might be misinterpreted as not presuming capacity as a default. As such, the CCEL suggests expanding the language so that the underlying right is clearer.

**Recommendation #13: Consider revised language to include: “affirm and defend the foundational and presumptive right of all adults to make their own decisions”; “actively work towards eliminating ageist assumptions that older persons may be incapable;” and, “ensure that where an adult has diminished capacity in one or more areas of decision-making, the right to make decisions in other areas is encouraged and protected.”**

**ii. Self-Advocacy**

Self-advocacy is an important strategy for empowering older adults. However, it may not be the most appropriate approach in every case, particularly where a high degree of social vulnerability exists and/or where a diminished level of mental capacity exists.

A person may be highly mentally capable but still very socially vulnerable—often in a hidden fashion—and thus not an appropriate candidate for a default to self-advocacy. For example, if a mentally capable older woman was in a relationship of abuse, was cut off from transportation, and had her communications monitored, reaching out personally for support and assistance herself might be dangerous if not nearly impossible. To assume that she would be an appropriate candidate for self-advocacy is not reasonable.

A person may have diminished mental capacity and be at risk of, or actively experiencing abuse or neglect, and thus not an appropriate candidate for self-advocacy either. For example, consider the circumstances of an older man with some cognitive impairment who



cannot not fully understand and appreciate the consequences of the financial exploitation being perpetrated upon him. This man would also not be an appropriate candidate for self-advocacy, although he might consider himself to be advocating for his own rights and protecting his money.

The Vanguard Report,<sup>23</sup> a broadly adopted publication of the BC Adult Abuse and Neglect Collaborative, includes a clear glossary of terms, discussion of the intersection of social vulnerability and capability (capacity) and a number of tools that help uncover hidden issues, such as elder abuse and neglect. Attention to notions of vulnerability highlights that in some instances self-advocacy is a less appropriate approach, and may serve to further undermine vulnerable adults who are unable to speak for themselves. The Vanguard Report is attached as Appendix B to this submission.

As the Vanguard Report explores in more detail, abuse and neglect are often hidden. Victims often feel shame and are reluctant to disclose the problem. A default to self-advocacy risks ignoring or leaving unexplored many of the key issues and dynamics at play in circumstances involving abuse and neglect of older adults.

Also, the CCEL draws attention to the warning in the definition of “Self-Advocacy” adopted by the Government of Queensland, Australia, which notes that:

Self advocacy is undertaken by a person or group who share the same characteristics or interests on behalf of the same person or group. The difficulty with this form of advocacy is that sometimes those undertaking advocacy and speaking up for themselves are *likely to be further exposed and be more vulnerable to abuse, discrimination and ridicule as a result of speaking up for themselves*.<sup>24</sup>

As such, the CCEL cautions that in some cases self-advocacy may be appropriate, but notes that taking it as a default approach might result in harm and prevent the SABC from providing assistance to those in the deepest need.

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<sup>23</sup> “The Vanguard Report”, Provincial Strategy Document: Vulnerable Adults and Capability Issues in BC, May 21, 2009, <http://www.bcli.org/ccel/publications/provincial-strategy-document-vulnerable-adults-and-capability-issues-bc> (Vanguard Report).

<sup>24</sup> Government of Queensland, 2007, online at: <http://www.qia.org.au/PDFforms/Forms/Advocacy%20Info%20Dec07.pdf> (emphasis added).



**Recommendation #14: The CCEL recommends that self-advocacy be supported generally, but not be presumed to be the preferred approach in all cases. The CCEL recommends that the SABC adopt the Vanguard Report approach to assist in identifying which cases may be more or less appropriate for self-advocacy, based on the intersection of social vulnerability and capability.**

## **5. Timely and responsive, proactive and solution oriented**

We agree with this operating principle and do not provide comments on these ideas in this submission.

## **6. Efficient and accountable**

The CCEL strongly believes in the importance of evaluation and measurement of performance as part of a system for ensuring accountability. It is the experience of the CCEL that performance indicators that reflect work with older adults, particularly with older adults who may be experiencing abuse and neglect, must be developed within that very specific context. Indicators of efficiency regarding time on phone calls may not be appropriate, as older adults may need significant time to explore issues with SABC staff, and may need to feel that they have made a trusting connection before opening up around issues of abuse and neglect. A preliminary study of key performance indicators from other organizations working with older adults who have experienced abuse and neglect or who are concerned around these issues is recommended. Additionally, the key performance indicators should be developed with the input from stakeholders and advisory bodies.

**Recommendation #15: Key Performance Indicators (KPIs) appropriate for working with older adults who are worried about or are experiencing elder abuse and neglect should be developed in consultation with the SABC Advisory bodies and leading experts in the field. The KPIs should then be appropriately tracked and reported on regularly.**

As the CCEL recommends that the role of the SABC be independent and primarily systemic in nature, it also recommends that the SABC report appropriately to legislature in a similar fashion as other independent bodies, such as the BC Ombudsperson.

**Recommendation #16: The SABC should be regularly accountable to the legislature as a whole, a standing bi-partisan committee and to the auditor general. Where power is exceeded jurisdictionally, the SABC should be accountable to the courts.**

## **7. Complementary and works in collaboration with existing bodies and other organizations that provide services to seniors**

The SABC should not unnecessarily duplicate services. However, the SABC should not take on face value that the services are in fact duplicative. In order to fulfill its requirements of accessibility discussed above, however, the SABC should be accommodating rather than strict on this.

The SABC should not assume that other services are actually accessible or that they would be appropriate. For example, should an older woman be fleeing an abusive relationship with her older partner, it should not be presumed that regular transition house services would be appropriate for her. The built environment may not be accessible, her health needs may not be conducive, and policies such as those requiring women to vacate the premises during portions of the day may not be possible for her.

## **4. Purpose of the Seniors' Advocate**

Substantively, the CCEL agrees that “the broad purpose of the Office of the Seniors' Advocate could be to focus on the interests of seniors to ensure that their issues, needs and concerns are heard and considered in the provision of services and the development of public policy.”

### **a. Age Requirement**

The CCEL does not recommend an age requirement. The CCEL adopts a “Lifecourse and Aging” approach, understanding aging to be part of an ongoing development in a person's life, as the culmination of lived experiences. Age is not static, and age 65 can mean a different thing for people in different social circumstances. For example, people may experience some of the health challenges typically associated with aging, such as osteoporosis and liver disease, if they have had very low-incomes for much of their lives. Also, people with certain developmental disabilities may “age” more rapidly than others. Aging is a very unique experience and process, and aging is compounded by social circumstances that may undermine access to services, family and community support, and health care. As such, the CCEL takes no position on the issue of an age requirement for the SABC.

### **b. Advocacy**

Before one can affirm the purpose of the SABC, it is important to clarify use of the often differently defined term “advocacy.”

The CCEL acknowledges the proposed definition of advocacy in the Discussion Paper but raises the concern that it focuses more on notions of individual “one on one” advocacy, rather than broader systemic advocacy. On that basis the definition seems at odds with the proposed mandate of the SABC.

A helpful definition of “systems” advocacy can be found in the government of Queensland document “What is Advocacy?”

Systems Advocacy: This form of advocacy is primarily concerned with influencing and changing the system (legislation, policy and practices) in ways that will benefit people with a disability as a group within society. Systems advocates will encourage changes to the law, government and service policies and community attitudes. Usually systems advocacy do not do individual advocacy. To do so can cause conflict around the use of resources, focus and purpose.”<sup>25</sup>

The CCEL prefers the Australian government’s definitions of advocacy, including its multi-tiered supports for local advocacy bodies. Below we briefly discuss the Australian approach.

## Background

Australia has a good set of terms and definitions for different forms of advocacy.

The Institute for Family Advocacy and Leadership Development in Australia has defined advocacy as: “... the process of standing alongside an individual who is disadvantaged and speaking out on their behalf in a way that represents the best interests of that person.” This is the definition used in terms of the Residential Aged Care Advocacy Services Program.<sup>26</sup>

In this Australian model, the term advocacy often has these key components:

Advocacy:

1. Involves representing and working with a person or group of people who may need support and encouragement to exercise their rights, in order to ensure that their rights are upheld;
2. May involve speaking, acting or writing on behalf of another person or group;
3. Differs from mediation or negotiation because these processes aim to reach a mutually acceptable outcome between parties;
4. Has no prescribed or clearly determined method—what constitutes advocacy will

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<sup>25</sup> Government of Queensland, 2007, online at:

<http://www.qia.org.au/PDFforms/Forms/Advocacy%20Info%20Dec07.pdf>, p. 3.

<sup>26</sup> See National Aged Care Advocacy network, Rights of Older People, online:

<http://www.agedrights.asn.au/rights/whatis.html>

differ in different circumstances and according to the skills and needs of the individual or group;

5. May involve working against established or entrenched values, structures and customs, and therefore needs to be independent of service providers and authorities.
6. Advocates are not impartial because they work entirely from the perspective and interests of the older person. Their role is to assist older people by representing the older person's wishes.<sup>27</sup>

To be an advocate does not mean representing a person beyond aspects of reasonableness, The role is not one of unfettered representation. Rather, it is a role which advances the issues mandated by the system or individual in a fulsome and appropriate manner.

The Australian definition has the following "Aims of Advocacy" which the CCEL recommends considering. In this model, the common aims of advocacy are to:

- Increase the older persons control over goods and services
- Overcome barriers that restrict opportunities
- Ensure appropriate societal and service delivery responses
- Protect human rights
- Ensure a better quality of life
- Be responsive to and emphasize individual needs and wishes
- Be oriented towards outcomes for older people
- Aim for empowerment of disadvantaged individuals and groups
- Challenge stereotypes and stigma<sup>28</sup>

These aims are appropriate for consideration for the SABC as well and emphasize an older-adult centred approach in action.

### **A Model to Balance Systemic and Individual Advocacy Service Provision**

Australia's National Aged Care Advocacy (NACA) network links advocates across the country, and is funded nationally.<sup>29</sup> This network provides an example of a centrally funded advocate with regional hubs, which is a model that might make sense for a jurisdiction like BC, which covers a large geographic territory, and includes diverse communities.

In the Australian NACA network model, a national organization exists which provides broad funding, support and policy development. That centralized body then funds local hubs to

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

provide personal advocacy support. In this way, both systemic “big picture” advocacy and individualized “one-on-one” types of advocacy are delivered.

The NACA network provides information and education to staff, older people and the broader community. NACA supports older adults, their legal representatives and those working to advance the rights and interests of older persons.

**Recommendation #17: The CCEL recommends that the SABC adopt the Queensland government’s definition of advocacy.**

**Recommendation #18: The CCEL recommends that the SABC consider the NACA network as a useful model to allow for provision of both systemic and individual advocacy.**

## **5. Role of the Seniors’ Advocate**

As previously noted and defined, the CCEL believes that the role of the SABC should be primarily a systemic role, with the power to investigate individual issues as appropriate. The role should be not exclusively within the health context, but should cover all aspects of government purview and social norms.

Based on the Australian approach discussed in the section above, systemic advocacy could be defined as taking action to influence or produce change in services, legislation, government policies and practices of agencies for the benefit of older adults as a group within society.

The target population should not be restricted or focused specifically on “vulnerable” or “frail” seniors. Most older adults in BC are neither vulnerable nor frail, and as such may never benefit from the systemic voice of the SABC if the mandate is so limited. However, the SABC should not advance only “positive aging and wellness” narratives either. Rather the SABC should dig into the issues that are systemic in society, such as ageism, and ensure that all older adults are afforded the substantive equality they deserve.

A “streaming” process might be established to allow for different types of complaints or concerns to be addressed more helpfully. Possible streams, in addition to systemic advocacy, could include:

- Providing basic services, such as information and referral, support and raising awareness about helpful materials;

- Advancing the rights of older people to work, socialize and participate in an “age-friendly” community;
- Supporting greater opportunities for seniors and seniors-serving organizations to connect and exchange information;
- Supporting peer-to-peer volunteer advocate initiatives;
- Coaching existing supporters of older adults on issues and resources related to the mandate of the SABC;
- Screening files and directly facilitating the transfer of a file to a particular known service organization (e.g. BC Centre for Elder Advocacy and Support, or a transition house) through active involvement in the transfer process; and
- Individual advocacy services.

The SABC should be charged with supporting the development and institution of a regularly updated Seniors' Strategy for BC. The SABC should issue an annual report card on services, systems and gaps.

**Recommendation #19: The SABC's role should be primarily systemic, with possibility for individual advocacy as well in certain circumstances. The SABC should have appropriate powers to investigate, educate and where possible, influence change in provincial policy to support the advancement of older adults, the reduction of elder abuse and neglect, and the promotion of substantive rights.**

**Recommendation #20: The Ministry should consider a “streaming” process for different types of complainants based on their needs, systems, supports and goals.**

## **a. Independence**

The SABC must be completely independent of government, similar to an Ombudsperson of BC or the redesigned office of the BC Representative for Children and Youth (known as the Children's Advocate). Without this legitimacy, the position will end up conflicted, restrained, and without either the voice or the legitimacy the position requires. The SABC should be allowed to review, investigate and challenge public bodies, including government, health bodies, and systems affecting older persons without fear of defunding or reprisal. The SABC should also be able to act as a voice of social change and ensure that older persons are engaged in debates, conversations and policy development.

**Recommendation #21: The CCEL strongly underscores the need for the SABC to be independent (and be seen to be independent) of government, with reporting structures similar to that of the BC Ombudsperson and the redesigned BC Representative for Children and Youth (known as the Children's Advocate).**

## **6. Key Functions of the Seniors' Advocate**

The following five functions are suggested by the Ministry for consideration:

- Advocacy Services
- Information and Advice
- Receiving and Referring Concerns and Complaints
- Public Awareness and Communication
- Collaboration and Engagement

Under each of these headings the Ministry proposes a broad range of activities, at pages 8-13 of the Discussion Paper. In particular, the CCEL notes that the following range of eight potential advocacy services were suggested in the Discussion Paper:

- Identify trends and issues relating to gaps in services, legislation, policy or practice affecting seniors;
- Provide policy advice to government about the state of services for seniors within the mandated scope of the Office;
- Identify areas where government policies, services and legislation could be more "senior-friendly";
- Recommend proactive and prevention-focused solutions to problems and issues;
- Conduct systemic reviews, produce special reports and policy statements about issues impacting seniors;
- Commission research which could assist in tracking and identifying issues, challenge attitudes and perceptions of seniors;
- Propose legislative changes to government where necessary; and
- Encourage and promote best practice in the treatment of seniors in B.C.

All of these services are important. The CCEL agrees that these services are needed in BC. However, the CCEL is non-partisan and non-political, and as such does not comment on budgetary priorities of the government in the abstract. The CCEL is pleased to provide more direct commentary and advice as this process advances.

The review in the Discussion Paper is very broad. The CCEL is more able to respond effectively and directly to specific proposals, and we are pleased to provide further, more specific, consultation during the next stage of this process.

## **7. Conclusion**

As the age-wave starts to crest, governments nationally and internationally have responded to this most pressing demographic shift in a number of different ways. Some have created small, very limited responses, with predictably frustrated results. Others have created broad-ranging strategies and accepted that this demographic shift is now one of the most fundamental aspects of policy development across the board. Where this broad policy approach has been adopted, significantly greater success has been met.

The CCEL commends the Ministry for taking significant steps to address the needs of the aging demographic by establishing the SABC, and hopes that the SABC will be a fundamental tent peg in a broad seniors' strategy across all government policy.

Thank you for the opportunity to provide input into this process and we look forward to continuing with this process as it develops.