

## **Housing and Capability Issues Background Paper**

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### **Executive Summary**

Home and housing are pivotal to wellbeing. The home is much more than a roof over a person's head; it is the source of stability in the person's life and the centre of meaningful relationships. In fact, stable, appropriate and adequate housing is inextricably related to an adult's inherent right to life and security, and to his or her health, social, spiritual and moral well-being and development.

There are many ways in which the home can be a tool of abuse, especially for vulnerable older adults. It may be the material asset exploited by adult children or other persons in financial abuse. An abusive spouse may use coercion and fear of losing the family home to induce fear in the victim—"If you leave, you'll get nothing but the clothes on your back." In other cases family may threaten to remove vulnerable persons from the home and place them in a long term care facility to gain cooperation with demands.

Some family members may have informal agreements to provide care to an aging parent or other relative in exchange for the possession and title of home. However, if the care agreement is subsequently reneged upon, the older adult is left without the home and without support.

Financial abuse may occur as the older person becomes more physically or mentally vulnerable or more socially isolated as spouse and friends die. Hospital admission is often a transition point in which family or others escalate or perpetuate financial abuse, including unplanned property sales.

There are other potential abuse and neglect situations connected with housing. When the home is sold and parents come to live with children, power dynamics may change because they are living in the children's home. Conversely adult children may come to live with and depend on parents as a result of loss of housing, changes in their own life, or because of mental health, addiction or gambling problems. Substance use and mental health problems are a factor in 17-33% of the senior abuse cases reported to agencies across Canada.

Some abuse evolves through a gradual encroachment on the home, where adult offspring, a tenant, or pseudo tenant start by "helping", but gradually takeover the person's life and home, often isolating them. The victim may end up in basement, room, or attic of his or her own home.

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The home is often the abuse battlefield, and it becomes very important for vulnerable adults and their abuser “who stays” and “who leaves” the primary residence. While the *Family Relation Act* and policy for Violence Against Women in Relationships offer some safeguards regarding exclusive occupancy and protection orders, these may not be sufficient to cover the diverse types of relationships that abused older adults and other vulnerable adults may have or the types of harm they may experience. The fear of becoming homeless can be significant for vulnerable persons and indeed, fleeing domestic violence is one of the main reasons for homelessness, particularly among women.

**Leaving abuse:** While there are a number of transition housing and other safe housing options for people fleeing abuse, many of these are not suited to “vulnerable adults”, a general term which may include seniors, people with physical disabilities, developmentally disabled persons, people with mental health or substance use problems etc. Many existing shelter and longer term housing options are unable to meet the needs of abused people with complex needs; immigrants (because of language, culture issues); abused men (especially older men); and gay or lesbians.

Research indicates that vulnerable persons in an abusive situation face a number of practical and legal problems. Some persons leaving domestic violence or other abuse may be turned down for rental housing because they are considered higher risk tenants. Sponsored immigrants will be required to “prove” abuse in order to be eligible for social housing. “Crime free multi housing policies” in social housing in British Columbia may leave some at risk of eviction because of the abuser’s violent or other criminal acts.

### **Victimization in publicly funded (subsidized) and market housing**

Victimization can occur in a variety of housing settings including publicly funded and market housing and may be perpetrated by family, other tenants, or operators. The increasing lack of affordable and appropriate housing for older adults, other vulnerable and marginalized adults increases their exposure to a wide variety of harms as tenants. Basically they may be forced to put up with unacceptable housing and social conditions because of a lack of alternatives.

For example, some landlords may manipulate and misuse tenancy law; intentionally neglect suite or building repairs; unlawfully evict the occupants; develop and enforce arbitrary and unreasonable house rules that violate tenants’ rights; and withhold information to tenants. Abuse in rental housing by landlords may involve use of power and control, use of rationalization and justification, authoritarian approaches, as well as many of the divisive tactics commonly seen in family violence (divide and conquer). The existing legal

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remedies, such as arbitration under the Residential Tenancy Act (“RTA”) are often ill suited to address these types of situations which often affect many tenants in the same building. Moreover the RTA does not apply to some types of rental housing, such as assisted living.

### **Victimization of homeless persons**

The term “homeless” refers three different groups- chronically homeless adults, newly homeless adults, and adults at risk of homelessness (near homeless). People who are homeless are extremely vulnerable to a wide variety of increased physical and mental health risks, as well as victimization in shelters or on the streets.

In recent years the traditional “seniors housing” has begun providing shelter for persons with chronic mental health or substance use problems who have been homeless or whose housing has been unstable. However, this mixed housing environment has raised a variety of concerns, ranging from the screening process, the amount of mental health and other support the formerly homeless tenant receives in the community, as well as safety risks to other tenants, many of whom are elderly and frail, from the tenant or his or her associates. The extent of the problem is unclear, but the perception of risk is significant.

### **Capacity and housing**

Mental capacity issues arise in many ways in the context of homes and housing. Persons living in a long standing abusive situation may be severely depressed, which may be mistaken as mental incapacity. Questioning a person’s mental capacity, especially if he or she is older, is a common strategy that abusers use to undermine the perceived reliability of the victim.

Persons whose mental capacity is diminishing may be more susceptible to persuasion (“undue influence”) by exploitive friends, neighbours or family members, relinquishing control of their home or other assets. Existing procedural safeguards for powers of attorney for real estate may mitigate potential financial abuse, but there may be means of working around these protections.

A person’s mental capacity may be raised when she or he is in the hospital. Part of hospital discharge planning involves assessing the capacity of the abused, neglected or self neglecting person when they decide to go home (“is it safe, is it appropriate; do they need to live some place else”). The accuracy of the assessment often depends on the ability to adequately assess risk, take needed time with person, and connect with appropriate resources for follow through.

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Older tenants whose mental abilities are deteriorating or not stable are very susceptible to the risk of eviction. Tenants' mental capacity may legitimately be called into question by a building manager who is concerned about the tenant's ability to safely live there, as well as the safety of other tenants from fire or other risks.

When looking at mental capacity issues in the context of housing it is important to separate it from the adult's lack of knowledge (understanding implications, short and long term consequences of decisions); depression/anxiety; power dynamics; or the inadequacy of available options. Mental capacity is also more likely to be called into question when family, housing providers, or other tenants lack needed information or are unaware of useful community resources.

### **Special capacity issues in housing with supports**

Over the years a wide variety of housing models such as supportive housing and assisted living have developed in the province to provide some level of support and assistance to adults. Supportive housing falls under the *Residential Tenancy Act* ("RTA"), while assisted living comes under the *Community Care and Assisted Living Act* ("CCALA"). The latter uses a functional approach to capacity focussing on self care (dressing), safety, and wandering. Capacity for admission to subsidized assisted living units is through Continuing Care and regional health authority. There may be differences in assessing capacity; operators of non subsidized units are expected to have a prospective resident's doctor assess function and capacity. Section 26.3 of CCALA provides a number of restrictions on which persons with reduced mental capacity can be accepted into assisted living facilities, and how long they can continue to live there.

Increasingly, there is a tension between health care expectations and legal responsibilities under different Acts. Housing providers struggle with what they can reasonably provide the person in terms of services, given the type of staff and resources they have. At the same time, the BC Human Rights Code creates a duty to reasonably accommodate the needs of persons with physical or mental disabilities.

### **Future Directions**

It is increasingly recognized that responding appropriately to mental capacity issues for abused or otherwise vulnerable adults in the context of housing requires a multi-pronged approach that requires coordination of services; improved legal education for services providers, renters and housing providers; along with strong legal and social advocacy. In addition to those considerations, this paper provides a series of recommendations related to

rights information, social and legal research, coordination of services, improving access to justice legislative reform; and capacity assessments.

## **Part I Introduction**

*Home is much more than a roof over a person's head; it is the source of stability in the person's life and the centre of meaningful relationships. In fact, stable, appropriate and adequate housing is inextricably related to an adult's inherent right to life and security, and to his or her health, social, spiritual and moral well-being and development.*

This paper is prepared for the Vanguard Collaborative as part of a broader project looking at mental capacity and abuse issues affecting vulnerable adults in British Columbia. The issues are largely described in the context of British Columbia law, policy and practice, but the paper also draws on information from other jurisdictions. It combines literature reviews with formal and informal interviews with service providers to identify emerging issues in this area.

The paper highlights some of the ways in which housing or the home can be a tool of abuse; and housing and safety issues in leaving abuse, and considers these issues across the mental capacity continuum. It offers examples of victimization that may occur in publicly funded and market housing. It explores mental capacity issues that can arise in various types of housing across the housing and care continuum and some of the existing efforts to address some of these connections between housing and abuse. Given the diversity of topics included, it is intended as an overview, not a comprehensive statement of any of these very complex issues.

Housing and shelter issues are increasingly being identified in many parts of Canada as being pivotal factors in the abuse problems that many seniors, as well as vulnerable younger adults, face. The issues here are described largely in the context of older adults, who are a very heterogeneous population.

Housing affordability and financial security are frequently critical to whether or not women and men are able to safely leave abuse and make new lives. Some older adults are left in the untenable position of having to remain in an abusive situation, simply because they cannot find decent, affordable, alternative housing.

## Part II Housing and Abuse

### A. Housing as an instrument of abuse

Approximately 1 in 12 (8%) older adults will experience one or more forms of abuse at some point in later life, or about 356,300 older adults across Canada and 49,400 in British Columbia. <sup>1</sup> Financial abuse has been identified as the most common form of abuse for older adults in Canada, representing at least 50% of all abuse situations identified. <sup>2</sup> Financial abuse may occur by itself, but in many instances it is accompanied by emotional abuse. Where that does not work, or as the situation deteriorates, physical abuse may also occur.

While a significant proportion of the financial abuse may involve liquid assets such as money in an account, the home still tends to be older adults' greatest asset, representing typically three quarters of the person's or an older couple's wealth.<sup>3</sup>

In 2004, 61.9% of older families owned their own home. However, the rate was much lower among "unattached" seniors (that is, those who are single, widowed, divorced or separated).<sup>4</sup> Other research on home ownership indicates that two-thirds of senior families had lived in their home an average of 25 years. About 90% of them had paid off their mortgages.<sup>5</sup>

In a period of time with rapidly escalating housing prices, it is commonplace to encounter older adults who are "house rich, but money poor". In 2005, the median value of senior families' homes in Canada was \$163,000, an increase of 25% between 1999 and 2005.<sup>6</sup> The average home price in British Columbia in 2008 was \$445,000.

Widowhood is often an important transition point in older adults' lives, one which may leave some vulnerable to changing family dynamics and exploitation. In the first year or two in particular after the death of a spouse or partner, the widow or widower often needs to make multiple, often complex legal and practical decisions at a point when they may also be feeling alone, and isolated. <sup>7</sup>In many cases the person may be experiencing grief and bereavement. At this point in time, some family members may be tempted to treat the "family home" as a common asset, not the parent's property.

#### (i) Types of harms

Service providers working with older adults, as well as lawyers frequently encounter situations where one or both parents are under pressure from their adult children

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- to put the adult child's name on the house or land title, sometimes with the adult child promising to provide shelter and care till the end of life (the promise is later renegeed upon);<sup>8</sup>
- to "gift" the property to an adult child (sometimes presented as a way to avoid probate taxes);
- to sell the house and come live with the children (at which point the family power dynamics may change);
- to relinquish more and more space in the house or being forced live in the basement of their own home.

In some cases (particularly for frail and physically dependent older adults), abuse entails not only psychological threats involving losing the home, but also threats of removal to a long term care facility (" send you to a nursing home").

Other forms of financial abuse involving housing may include

- the use of "reverse mortgages", with funds going to the adult children;<sup>9</sup>
- using the house as security for the family member's loans<sup>10</sup>, not realizing the risk of loss;
- adult children selling or encumbering the property via a power of attorney, usually without the older adult's consent.

Some of these are more likely to occur where the older adult has had little experience with financial matters or where the older adult's mental capacity or physical health has begun to deteriorate.

Abuse situations may also arise in the context of adult children coming back home to live with the parent, usually following a major change in the adult child's life such loss of job, divorce, recurrence of a mental health or substance use problem. These adults are to some degree dependent on the older adult for shelter and food.

For adult children, coming home is usually not a matter of choice. It may reflect a lack of affordable housing and stable employment opportunities in the community or province. Whether financial or other forms of abuse occur is often dependent on the quality of the pre-existing relationship between the people. In over-crowded housing, abuse and violence can easily happen.

Another type of abuse involving the home is "the encroacher" who may be adult offspring or grandchild, a tenant a "pseudo tenant" (a person pretending to be a tenant for service providers), or the girlfriend or boyfriend of a tenant. The person may start by "helping", but gradually takes over the

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vulnerable person's life and home, usually isolating them. The victim may end up living in basement, room, or attic of their own home.

### (ii) Setting the stage

Abuse in the context of housing often reflects the interaction of characteristics of the abuser, the victim, as well as broader systemic issues that can facilitate the likelihood of harm occurring.

**The abuser:** Research conducted in the mid 1990s indicated that financial abuse by family members is most likely to occur when three elements occur together:

- the perpetrator is in a position of financial pressure (need or greed);
- they have the opportunity/ access to the property or resource (often through a power of attorney); and
- they have a false sense of entitlement to the mother's or father's assets or property.<sup>11</sup>

**The victim:** Widowhood or poor health, including diminished mental capacity increase the likelihood of opportunity and access to property being in place. For example, Australian research indicates that 76% of known financial abuse cases reported to agencies involved persons with suspected diminished decisionmaking capacity and 43% had a physical disability.<sup>12</sup> Statistical data from the Elder Abuse Helpline in Australia revealed that 18% of financial abuse cases involved older people with dementia, a mental illness or intellectual disability.<sup>13</sup>

**The broader environment:** Some common business practices may also increase the risk of exploitation for older adults. For example, the financial industry will require loan guarantees from family members as they start up or develop businesses, often with the parent's home being used as security. When businesses fails (and failure is commonplace for small, new and home based businesses especially during economic downturns),<sup>14</sup> older adults are at greater risk of losing those assets. Obviously the use of an older adult's assets as security when given freely is not financial abuse, but it can be when the asset is given under pressure, or through deceit or misrepresentation.

### (iii) The effects of abuse

When financial abuse via housing occurs, it has significant emotional and financial consequences for the older adult. The adult child's harmful actions represent a profound breach of trust in the family, along with shame and disbelief from the older adult that their son or daughter (sister, brother) could do this. The financial impact is often permanent and devastating,

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undermining the long term economic security and quality of life for the older adult in later years.

In the context of property transfer, the older adult is often unable to get the actual home back and it is seldom possible to reverse these housing transactions, especially in cases involving third party transactions. The victim will have to expend considerable money on a lawyer to get the money back, and these matters are not covered by legal aid. In many cases, the money is usually spent or lost forever.

### **(iv) Mental capacity**

Mental capacity issues arise in many ways in the context of homes and housing. Persons whose mental capacity is diminishing may be more susceptible to persuasion (“undue influence”) by exploitive friends, neighbours or family members, relinquishing control of their home or other assets. Existing procedural safeguards for powers of attorney for real estate may mitigate potential financial abuse, but there may be means of working around these protections.

Persons living in a long standing abusive situation may be severely depressed, which may be mistaken as mental incapacity. Questioning a person’s mental capacity, especially if he or she is older, is a common strategy that abusers use to undermine the perceived reliability of the victim.

It is a truism that mental capacity is not “an all or nothing” matter. Any conclusions about the mental capacity should always focus on the specific type of decision under consideration. Simpler and “ordinary” financial activities may require less capacity, and more complex decisions are likely to require more skill and knowledge in order to make an informed decision.

When looking at mental capacity issues in the context of housing it is important to separate it from the adult’s lack of knowledge (understanding implications, short and long term consequences of decisions); depression/anxiety; power dynamics; or the inadequacy of available options. Mental capacity is also more likely to be called into question when family, housing providers, or other tenants lack needed information or are unaware of useful community resources.

For some vulnerable adults, mental capacity may be raised when the person is in the hospital. Part of hospital discharge planning involves assessing the capacity of the abused, neglected or self neglecting person when they decide to go home (“is it safe, is it appropriate; do they need to live some

place else"). The accuracy of the assessment often depends on the ability to adequately assess risk, take needed time with person, and connect with appropriate resources for follow through.

### **B. Housing and spousal abuse**

Counselors working with abused older women who have experienced long term spousal abuse note the home is often the women's greatest emotional asset. In many cases the person has lived in the house or community for 45 years. Much of her life experience, good or bad, is there. The home has provided her with sense of stability in her life—and is often tied to her sense of belonging in the community.<sup>15</sup> The fact that the home holds a lifetime of possessions, plus a companion animal often compounds the abused older adult's reluctance to leave. For many older women, the "family home" is often her greatest asset (and it may be her only financial asset).

Older women experiencing spousal abuse note it is commonplace for the "family home" to be used as a form of coercion and to induce fear—"If you leave, you'll get nothing but the clothes on your back". Adult children may also use housing as a threat to get what they want. Threats to remove a frail, vulnerable person from the home and place them in a nursing home (institutional setting) are fairly commonplace.

#### **(i) Efforts to protect abused persons in the home**

The home is often the abuse battlefield, and it becomes very important for vulnerable adults and their abuser "who stays" and "who leaves" the primary residence. While the *Family Relation Act [RSBC 1996] c. 128*, and policy for Violence Against Women in Relationships offer some safeguards regarding exclusive occupancy and protection orders, these may not be sufficient to cover the diverse types of relationships that abused older adults and other vulnerable adults may have or the types of harm they may experience.<sup>16</sup>

Over the past decade there have been important legal efforts to help the family violence victim to remain in the home. These domestic violence approaches typically involve the use of restraining orders, by removing the abuser and other intervention tools. However, the family violence protection approach is not used consistently across Canada, and some jurisdictions tend to focus only on spousal or spousal-like relationships.

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In 2007, the Ministry of Attorney General Justice Services Branch Civil and Family Law Policy Office initiated a Family Relations Act Review. <sup>17</sup>Section 9 of that Review dealt with defining family violence for the *Family Relations Act* and orders for safety. The review asked for input on whether family violence should be defined in the *Family Relations Act* and if so, what types of harms should be included. Questions were raised about who should be able to apply to court for an order preventing harassment and prohibiting contact, or for exclusive occupancy. Much of the Review focused on family violence in the context of spouses, leaving out some of the types of situations that older adults might experience in relation to abuse and the home.

Existing family violence protection laws in many parts of Canada may not apply to other types of family relationships. They also tend to be focused on physical harm and are predicated on an assumption that serious harm comes primarily when people are living under the same roof. These requirements in effect exclude many of the types of harmful situations that older adults may face, such as when there is intimidation by an adult child, grandchild or nephew, new male or female friend (boyfriend or girlfriend).

Below are some examples of the range of approaches currently in use in other parts of Canada:

- Alberta's *Protection Against Family Violence Act* RSA 2000 c. p-27 covers the spouse, person **residing in the same household** and related by blood or marriage, people residing in the same place and who have care and legal custody over the other.
- Nova Scotia's *Domestic Violence Intervention Act* S.N.S. 2001 c. 29 only applies to those **cohabiting in a conjugal relationship**
- the Northwest Territories' *Protection Against Family Violence Act* S.N.W.T. 2003, c. 24 includes harms from a spouse, former spouse, persons who resided or are residing together in a family or intimate relationship, as well as parents, grandparents.

### (ii) Moving out

Canadian experience has shown if an abused person leaves the home, the financial and emotional costs of relocation are often very high, particularly in rural communities. The further the relocation, the higher the costs become. Moving may mean leaving lifetime supports, generational homes, and sometimes leaving the person's culture. <sup>18</sup>

Researcher Carol Seychuk notes abused women in rural communities in British Columbia face special challenges:

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"The backlash and rumours in a small community can literally paralyze a person. Pressure from the abusive partner, family, and friends, even when it is well meaning, is difficult to avoid. Women have reported that, when they go against their social system, even for reasons of fear, the resulting guilt and isolation can leave them with no other option but to return.<sup>19</sup>

Counselors also note that the lack of adequate and affordable housing in communities means some people experiencing family violence cannot leave or avoid going back to the abuse.

### **(iii) Housing discrimination and abuse**

In recent years, research in several North American jurisdictions has identified that women who have found safety in a domestic violence program often face the discrimination when they take the next step and begin the search for safe, permanent, and affordable housing.<sup>20</sup>

Examples of the discrimination include being turned down for housing, as well as being at risk of eviction because of the violent and criminal acts of their abusers. Abused persons may also face discrimination because they seek assistance and protection from law enforcement or the courts. In British Columbia, when immigrant women state on their applications for BC Housing that violence is their reason for seeking housing, their applications are very strictly scrutinized "in order to prevent misuse of the system".<sup>21</sup> Thus, victims of domestic violence may be held to a higher standard than other tenants.

Rental housing policy in social housing may hold older tenants accountable for the violent or illegal actions of their adult children, and evict the older tenant. Many landlords have adopted policies, such as "zero tolerance for crime" policies, that penalize victims of domestic violence.

BC Housing's "Residential Tenancy Agreement Addendum for Crime Free Housing" treats violence by family members as material breach of the contract that can lead to the victim's eviction. The policy, although intended to address "crime" may have a significant impact on abused older adults and other vulnerable persons experiencing family violence who have little if any control over the actions of their abusive spouse or offspring.<sup>22</sup>

These practices blame and punish the victim for the abuser's violent acts in a situation where the victim has no control. The policies and practices have an overall chilling effect on abuse victims.<sup>23</sup> The American Bar Association has urged lawmakers to prohibit this form of discrimination against victims of

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domestic violence.<sup>24</sup> In 2006, the federal law was enacted in the United States to prohibit this type of discrimination in public housing.<sup>25</sup> Provincial or territorial human rights laws in Canada currently are not well situated to consider this form of discrimination in housing.<sup>26</sup>

### **(iv) Spousal abuse and homelessness**

Canadian and American research indicates that family violence is a direct cause of homelessness.<sup>27</sup> Between 27 and 56% of women in homeless shelters are victims of family violence.<sup>28</sup> Older women fleeing spousal abuse or other family violence can end up homeless.<sup>29</sup> In a recent Canadian study with homeless older persons in Toronto, ten people out of a sample of sixty eight older homeless persons interviewed were homeless as a result of family breakdown.<sup>30</sup>

Research on wife abuse indicates many of the connections between abuse and homelessness:

- the woman may have been evicted from the family home by the abuser.
- she may be struggling to support herself on one income.
- she may not have held a job for many years because the couple had agreed that she would be the primary caretaker.
- she may have been denied housing because of her abuser's bad credit history.
- she may have been forced to leave the area where she lived and worked for fear that her batterer would come after her.

### **C. Leaving the abuse : transition housing and other safe housing options**

Most available short or long term housing options are typically geared to younger women with children fleeing domestic violence, and are unable to meet the needs of older adults. A survey by Statistics Canada indicated that about one-third of women's shelters reported services for older women.<sup>31</sup> This is likely a significant over estimation.<sup>32</sup> Transition houses and shelters may identify being able to accommodate "special needs" (which includes mobility challenges, deaf or hearing impaired, blind or vision impaired, have a guide dog, or require attendant care) whether or not they have much experience or any training in helping.<sup>33</sup>

That said, Canada and the United States have begun developing several different approaches to meet the transitional and longer term housing needs of abused or neglected seniors. Below are some of the approaches being used in the United States:

- providing emergency shelter

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- converting transitional housing program units to be "elder-friendly"<sup>34</sup>
- "full service shelter" <sup>35</sup>
- short-term safe housing while other housing or services are arranged (Sacramento County)<sup>36</sup>
- small scale transitional shelters with a few beds<sup>37</sup>

The first Canadian effort to meet the housing needs of older abuse victims developed in Montreal in the early 1990s, but the crisis housing closed its doors due to a lack of operational funding. Since then, a range of models have developed. See Appendix A.

### **(i) British Columbia efforts**

The British Columbia-Yukon region was the first in Canada to take a comprehensive approach to the crisis shelter issues affecting older women, first by assessing whether they were able to use the existing resources, how many were and what were the barriers to that use. The "Silent and Invisible" report prepared in 2001 by Jill and Henry Hightower and Greta Smith among other things identified the fact that older women tended to view crisis housing as "only for the young". <sup>38</sup>

The research team also highlighted policy challenges, service delivery problems, environmental and income barriers, and education/ training needs for staff. That report became an important stepping stone to developing a pilot project that would use somewhat different types of crisis housing models in different communities in British Columbia and the Yukon, working closely to integrate housing and support from counselors for the older women.

The report, the training materials and shelter models that subsequently developed have significantly broadened our understanding of older women's needs in this area, and in understanding that housing and income security are intimately tied in the lives of abused older women. Although there are a number of guiding principles and emerging promising practices, the "best approach" may vary from community to community. For example, in Whitehorse, Yukon has formed safe homes for older women who are or have been abused. Kaushee's Place, a transition home in Whitehorse now employs a respected elder as a part time Outreach Worker to work with older abused women "on their own turf".

### **(ii) Meeting the needs of special groups**

Abused older adults, like of age groups are very heterogeneous. They include not only older women but also older men, seniors with disabilities, gay, lesbian, bisexual and transsexual seniors among others. They may be singles or couples. One of the many challenges in this area, is how to meet the diverse needs of this group of abused or neglected older adults. For example, most of the traditional emergency housing models have been based on the idea of man as abuser, and woman as victim, which may or may not apply to abuse in later life. Unfortunately, aging can become a "great equalizer" in this area, leaving people of either sex vulnerable.

There is also a lack of awareness of how to meet the special needs of other groups including older adults who are gay, lesbian or transsexual; older immigrants who may have economic, cultural and language challenges; as well as other groups.

### **D. Mental capacity issues**

Family violence research looking at health effects indicates that living in an abusive environment is a significant risk factor for developing stress related mental health problems such as anxiety or depression. American and Canadian research indicates that between 44% and 62% of abused older adults experience some level of depression, with 6% of abused older adults being severely depressed.<sup>39</sup>In its more severe forms this may be mistaken for dementia among older adults. In some instances of abuse, depression and dementia may co-exist.<sup>40</sup> Substance use and mental health problems are a factor in 17-33% of the senior abuse cases reported to agencies across Canada.<sup>41</sup>

When looking at capacity issues in the context of housing and abuse, it can be challenging to separate out capacity issues from the effects of the abuse situation especially if it has been long term, which may include depression/anxiety; and a personal feeling of having lost control over the situation. Capacity issues may also be coloured by power dynamics within the relationship, influence and undue influence; as well as the inadequacy of available options.

Decisionmaking capacity involves knowledge and appreciation of the effect of various decisions options. However, these largely revolve around awareness of choices; choices that make sense to the person in their particular circumstances; and the person's understanding of the short and long term implications of the decision if freely made. Some knowledge and

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appreciation issues may be related to service provider's lack of information (of the situation).

In many abuse cases involving older adults, mental capacity per se may not be an issue. It is more often a matter of knowledge and having a real choice- being aware that there are choices and that the available choices make sense to circumstances; understanding the short and long term implications of the decision if freely made. However, there can be issues of influence, choices, and undue influence. It is beyond the scope of this paper to talk about the dynamics of undue influence in the context of abuse and neglect. However, it may be important in future research to consider to what extent does the traditional legal understanding of undue influence or capacity take into consideration the dynamics of these issues?

## **Part III Victimization in publicly funded and market housing**

In 2000-1, the Steps to Safety and Security in Seniors Rental Housing (STEPS) project found that building managers were frequently struggling to help frail older tenants, including tenants who were experiencing neglect or self neglect, or whose mental or physical capacity may be diminishing.<sup>42</sup>

The project also found that older adults may experience intimidation or harassment from others in publicly funded and market rental housing in British Columbia. Perpetrators included building staff, such as building managers, handyman, neighbours, family, and strangers.<sup>43</sup> The types of harms to seniors in rental housing included physical abuse; psychological abuse (harassment); sexual abuse and sexual harassment; financial abuse; and violations of rights ( which was the most common form, along with intimidation), including discrimination.<sup>44</sup>

This research is further supported by the insights of tenancy groups, the 2007 Ontario Human Rights Commission report on housing discrimination,<sup>45</sup> and recent British research.<sup>46</sup> Each indicates that in both the non-profit and private rental markets, some landlords will purposefully exploit their power over older tenants. Some tenants in seniors' housing, for example can live in a hostile environment, where legitimate concerns and opinions are effectively silenced. See Appendix B for housing discrimination resources.

Landlords may exert power and control over some or all tenants by

- manipulating and misusing sections of the residential tenancy law;<sup>47</sup>
- intentional neglecting suite or building repairs;
- unlawfully evicting the occupants;
- developing and enforcing arbitrary and unreasonable house rules that violate tenants rights;<sup>48</sup>
- Withholding information to tenants.

Much of the abuse by housing providers in rental housing involves the use of power and control, rationalization and justification, as well as many of the divisive tactics commonly seen in family violence. There are also strong parallels in some of these situations with what violence prevention experts describe as "bullying behaviours". It is also common for a "problem" housing manager to treat one group of residents in a positive manner and a minority in an abusive manner, a tactic often seen in abusive family dynamics.<sup>49</sup> See Appendix B. In some cases questions about a tenant's mental capacity have been raised by landlords, staff or management to discredit the reliability of the tenant making the abuse claim.

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Some non-profit boards and property management companies prefer to hire people with authoritarian approaches who "run a tight ship", increasing the risk of intimidation or harassment of older tenants or other vulnerable groups. Older adults have described these environments as "living in a boot camp".<sup>50</sup> The managers often work for low pay, in isolation, and with considerable responsibilities but little control over many aspects of their jobs. The fact that the non profit housing is run by a "charity" may lead some managers to believe that tenants "should just shut up, keep quiet and be happy with what they have".<sup>51</sup>

### **A. Use of residential tenancy laws to intimidate and control**

Less than reputable landlords may have older and other vulnerable tenants sign fixed term tenancy contracts. This permits the landlord to manipulate contract terms to easily rid themselves of anyone who is expressing concerns or is considered "difficult". In this way they are also able to avoid having cases brought to rental arbitration over legitimate problems. The abuse of process undermines security of tenure and has proven to be a very effective means to keep the remaining older tenants fearful and 'in line', having a "chilling effect" on the remaining tenants.

### **B. Vulnerability from other tenants**

Another source of concern emerging in British Columbia is a change in the housing mix. In recent years, publicly funded or publicly subsidized housing has been trying to meet the chronic and legitimate housing needs of persons who are or have been homeless (which may include younger persons with mental illness, and persons with addictions) by housing them in what has traditionally been considered "seniors housing". Frail seniors in the mixed housing may be living in an unsafe environment with people who have been described as "drug addicts, hookers, and mental health patients".<sup>52</sup> In some quarters it has been described as a "volatile mix".<sup>53</sup> The result is the older tenants become increasingly isolated in their homes, with increasing negative effects on their own mental wellbeing.

The concern is how to better balance needs and achieve appropriate housing for diverse groups in ways that does not marginalize them. One of the promising efforts in this area is supports in the building that draw all people out. Research indicates quality of life for the older tenants decreases and management problems increase.<sup>54</sup>

Research emphasizes careful tenant screening and extended management for any successful age integration in subsidized housing.<sup>55</sup> The general consensus is a need for support services within buildings for the new and original tenants. There is also a need to address underlying problems that

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stoke the fear among frail older adults (e.g. when “friends” of the new tenants who frequent the building to deal drugs).

### **C. Vulnerability in rental housing**

The tenants in subsidized “social” housing are often vulnerable as a result of a combination of factors--their low socio-economic status, their marital status ( many are unattached), and the lack of affordable housing options (places to move if experiencing harassment).

To understand some factors behind the victimization in subsidized rental housing, it is important to consider who typically lives in this type of housing. It will tend to be seniors (the vast majority who are women) living alone, and people with lower income. Two thirds of senior renters have low income, reducing their housing and other options. In 2004, 38.1% of unattached older women in Canada lived below the poverty line.<sup>56</sup>

Most older adults have little knowledge about their rights as tenants. Because of their marginalized position, in conjunction with societal ageism and sexism, they are often very vulnerable to intimidation. Combine this with lower levels of functional literacy among older adults (8 out of 10 function at the two lowest literacy levels), and it becomes easy for some individuals to exploit them.<sup>57</sup> These older adults typically have few options or the resources to “just pull up and move someplace else”. In some housing settings, such as SROs (single room occupancy) health risks and victimization from other tenants or strangers is prevalent, but it is certainly not limited to that environment.<sup>58</sup>

Seniors in some types of rental housing in Canada often have fewer legal rights than other tenants. The housing may not be covered by the regular tenancy law in the province (e.g., assisted living in British Columbia is not covered by the *Residential Tenancy Act*, similarly, seniors' lodges in Alberta are excluded from its *Residential Tenancies Act* R.S.A. [2004] c. R 17.1).

Canadian research indicates that age discrimination in housing against older seniors (e.g. those aged 80 and over) is becoming increasingly commonplace, which again leaves them very vulnerable if they are living in an abusive housing environment.<sup>59</sup>

### **D. Reinforcing vulnerability (systemic issues)**

Older adults and other vulnerable adults experiencing harassment, abuse, or other types of harms in rental housing are at a significant disadvantage in having problems, including improper eviction addressed.

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In 2001, British Columbia moved to a self help approach to tenancy dispute resolution. Most of the Residential Tenancy Branch offices in the province were closed, with only one in Burnaby, one in Victoria, and limited services in Kelowna remaining to serve over one million renters in the province. Individuals can obtain forms from Government Agent Services in their community.<sup>60</sup> Some tenants may be aided by useful plain language resources such as the *Tenant Survival Guide* produced by Tenant Resource & Advisory Centre.<sup>61</sup> However the responsibility to “fix” the abusive housing situations lies with the vulnerable tenant.

The self help process works to the significant disadvantage of any vulnerable renter who does not have someone to support them in the process. Moreover, each matter is dealt with on an individual basis, meaning that systemic problems in the building cannot be dealt with very effectively by dispute resolution.

### **E. Mental capacity issues in rental housing**

Older tenants whose mental abilities are deteriorating or not stable are very susceptible to the risk of eviction. Physical and mental health issues, including poorly controlled health conditions, depression, grief can all affect mental capacity on a short term or long term basis. Tenants' mental capacity may legitimately be called into question by a building manager who is concerned about the tenant's ability to safely live there, as well as the safety of other tenants from fire or other risks.

In the various types of housing, the staff and management are generally focused on the functional ability of the person to live there and pay for services. Capacity issues may be raised in the context of functional ability, the safety of the person and other tenants, and in self neglect cases (again where safety may be at issue). Claims about tenant “safety” are often raised as “sword” for dealing with many types of tenant challenges.

Capacity issues are also likely to be raised within housing where the person has a substance use or mental health problem. In some cases where there is substantial impairment from long term use the individual may understand the issues, wishes to act, but is unable to execute the necessary steps. The person may not be able to effectively respond to eviction notices, and is at considerable risk of homelessness.

## **PART 4 Emerging efforts to address the issues**

The connection between housing and abuse in later life has largely been overlooked until fairly recently. However as awareness builds, so do the community efforts to address one or more aspects. These include:

### **A. Coordination of services**

Gradually more and more communities are appreciating that housing is only one part of a broader set of needs that abused or neglected older adults may have. It is also increasingly being recognized that both formal and informal services in the community need to be delivered in a coordinated manner so that these needs are met and the person "does not fall through the cracks". Each aspect of these services also needs to be offered in way that

- respects mentally capable older adults' rights to make decisions about their lives,
- builds trust
- enhances safety
- takes the needed time and goes at their pace (long standing abuse cannot be expected to be "fixed" over night)
- responds to a range of needs that person may have
- reduces the risk of further abuse and does not elicit other, different risks for the adult.

### **B. Education for transition house service providers**

The "Silent and Invisible" project produced an excellent handbook for service providers to help them better understand the needs and circumstances of abused older women.

### **C. Education for senior renters**

In the STEPS project, BCCEAS developed a special guide for older renters to help them to know more about their rights. The guide also incorporated abuse information and encouraged older adults to think of their current and future housing needs.

In Montreal, Quebec, the Notre Dame de Grâce CCEA worked to prevent financial abuse of older adults who live in low income housing units. The senior education initiative involved a collaboration of police, a crime prevention organization ("Tandem Montréal"), a national bank and other resources.

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Public education for renters may be *necessary*, but it alone is not *sufficient* to address abuse, harassment and other harms. Research with vulnerable groups indicates that even when people know their rights they may not try to enforce them because it will only escalate the tension with the housing gatekeepers (building superintendents and landlord) and would not address the discomfort of social exclusion, antagonism, and fear of retaliation on a daily basis.<sup>62</sup>

### **D. Education for building managers**

In the 2001 STEPS project, BCCEAS also developed a "Tips of Trade" series to help raise the awareness of building managers about aging issues, to help them better understand older tenants' needs, as well as provide information on abuse issues and community resources.

Tips of the Trade series focused on helping the managers better understand "challenging" tenant behaviours that might otherwise lead to misunderstandings that can set the stage for abuse or violation of rights by the manager. Among other things, Tips of The Trade has been used in British Columbia by a provincial non profit housing association as a newsletter column to inform and sensitize building managers on aging issues.

### **E. Advocacy**

Community representatives in the diverse areas of housing, seniors' advocacy, law, and health are increasingly becoming activists and advocates for frail older adults in areas of housing. Throughout the country, there are significant gaps between need and capacity to meet it in terms of crisis, short- and intermediate term housing for abused older adults.<sup>63</sup> This in part reflects the overall lack of affordable housing across the country. It is also beginning to be acknowledged that policies and legal structures around housing can leave older adults vulnerable, particularly where there are few established standards or little consumer protection built in. Accessible and easily understandable (plain language) legal education about rights as tenants still remains notably absent throughout British Columbia and elsewhere in Canada, leaving older adults vulnerable to exploitation in social and market housing.

There is also a slowly growing recognition that abuse and neglect in later life needs to be considered in a much broader social context. In some communities, that may mean understanding how poverty, endemic unemployment, and a severe lack of housing that "throws people together". It may mean understanding how broader housing policy (such as the relative availability of affordable housing across the lifespan) affect the likelihood and the impact of abuse or neglect of older adults. It also means addressing

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the policy at its foundation. In many communities people are also recognizing abuse and neglect of older adults will need to be addressed in the context of societal ageism.

## Part V Housing with Supports

Over the years a wide variety of housing models such as supportive housing and assisted living have developed in the province to provide some level of support and assistance to adults. Research indicates that here too, vulnerable older adults can experience abuse or neglect from a wide range of actors.<sup>64</sup> Mental capacity is one of several factors that may leave them vulnerable.

### A. Legal framework in British Columbia

Supportive housing falls under the *Residential Tenancy Act* [SBC 2002] c. 78 while assisted living facilities come under the *Community Care and Assisted Living Act* ("CCALA"), [SBC 2002] c. 75. Assisted Living is housing and services, that includes meals, cleaning, activities, 24 hour response and personal care. Assisted living is excluded from RTA by s. 4 (g) ii.

Assisted living is a semi-independent form of housing. The average age of residents is approximately 85 years. People live in their own private dwelling unit within the assisted living residence and can access the range of hospitality and personal assistance services provided through the operator. Residents contract with the assisted living operator for their accommodation and the support services they require.<sup>65</sup>

The exact number of supportive housing units in the province is unknown. However, assisted living facilities have become a growth industry, increasing twenty-seven fold in seven years, from fewer than 200 units in 2001 to over 5420 units by July 2008.

The Office of the Assisted Living Registrar has the responsibility to investigate complaints about the health and safety of assisted living residents and about residences that provide assisted living without registration

American research on assisted living has identified a number of areas for concern for assisted living contracts. These fall under the general categories of

- services, costs and rate increases;
- refunds; residents' rights; eviction procedures;
- financial responsibility;
- waiver of facility responsibility or residents' rights and
- other conditions<sup>66</sup>.

In British Columbia, there is currently no standard contract for assisted living facilities. However, over the past seven years, there have been some efforts.

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Some American research has noted a pattern of omitting or misrepresenting important legal or regulatory requirements especially in the residents' rights and eviction areas.<sup>67</sup> The authors concluded this misrepresentation robbed consumers of their rights, and emphasized the need for basic consumer protections. It also leaves this security of tenure in type of housing very precarious.

In responses to these identified problems, the American research has recommended: standard elements or standard agreement to provide clear and complete information for consumers ; agreements written in clear, coherent, and unambiguous language; every resident be provided a complete copy of the agreement; the agreement include or append a statement of residents' rights; and that the agreement should not include unlawful waivers of facility liability for the health and safety or personal property of residents,

### **B. Special capacity issues in housing with supports**

Assisted living uses a functional approach to capacity, which focuses on self care (dressing), safety, and wandering. Admission to subsidized units of assisted living is through Continuing Care and the regional health authority. There may be differences in assessing capacity; operators of non subsidized units are expected to have a prospective resident's doctor assess function and capability.

Section 26.3 of CCALE also provides a number of restrictions on which persons with reduced mental capacity can be accepted into assisted living facilities, and how long they can continue to live there.<sup>68</sup> The focus to a large extent is their ability to "make decisions on their own behalf". The most of these relate to safety. See Appendix D

### **B. Seeking help for problems**

Assisted living in British Columbia relies on a passive complaint-driven system. However research from the United States indicates that older adults in assisted living facilities have considerable difficulty generating acceptable strategies for handling abusive situations.<sup>69</sup> Residents of assisted living facilities would not easily be able to make changes in their housing arrangements if they were unhappy with care. The results suggested that residents in assisted living facilities would have difficulty reporting abuse if it occurred and would have difficulty making alternate arrangements without assistance from family members.

### **D. Boundaries of appropriate care and services**

Increasingly, there is a tension between health care expectations and legal responsibilities under different Acts. Housing providers struggle with what they can reasonably provide the person in terms of services, given the type of staff and resources they have. At the same time, the BC Human Rights Code creates a duty on all public and private housing providers to reasonably accommodate the needs of persons with physical or mental disabilities. The reasonable limits of this duty in the context of supportive housing or assisted living have not yet been tested in human rights law.

Section 26(3) has two purposes. First, it makes clear that, to live in the semi-independent environment of an assisted living residence, people must have the ability to make their own decisions. People who cannot make decisions on their own pose too great a risk to themselves, and potentially to others, and the Act does not allow operator to house them, unless a spouse will be living with them in the residence or the person is on leave under section 37 of the Mental Health Act.

Secondly, section 26(3) makes assisted living registrants responsible for ensuring that residents are able to make decisions on their own behalf. As a result, operator of the facility must:

- Assure themselves, at the point of entry, that prospective residents are able to: 1) make an informed voluntary decision to enter the assisted living residence and 2) make the range of decisions necessary to function safely in the residence;
- Assure themselves, on an ongoing basis, that residents continue to be able to make the range of decisions necessary to function safely in the residence; and
- Initiate the "exit process" when residents are no longer able to make the range of decisions necessary to function safely in the residence.

According to the "admission and exit policy", the operator of the facility is not required to (and should not) be testing or assessing the person's mental capacity. They are instead required to maintain a "watchful eye".

## Part VI Homelessness

In 2003 the British Columbia report *Out of Sight Out of Mind*, examined homelessness among older adults.<sup>70</sup> It pointed out:

“At a macro level, the overriding causes of homelessness and risk of homelessness for seniors in Canada, as in other industrialized nations, are economic and financial. The narrow, more specific causes of homelessness of seniors and vulnerable adults are factors such as insufficient numbers of affordable and secure dwellings, declining physical health, mental health difficulties, relationship breakdown, violence and abuse. In addition, the death of a spouse, social isolation, discrimination, or lack of knowledge of benefits and services can compound the risk of homelessness.”<sup>71</sup>

*Out of Sight Out of Mind* identified four interrelated issues, ageing, poverty, health and homelessness. The report emphasized what a “good home” looks like in the context of aging. See definition Appendix E.

A typical older adult at risk of homeless is someone who is living independently and “de-compensating” or a tenant showing aggressive behavior. People work on homelessness issues suggest that some of the mental capacity issues can be addressed, and homelessness can reduced among older adults through integrated service delivery, case management, matrix of options, and age appropriate services

According to local homeless surveys, the number of homeless older adults has increased dramatically in Vancouver area in recent years. The factors associated with the problem are multi-faceted, including among others ageism ( not wanting older tenants/ trying to get rid of them ), poverty and lack of affordable housing, and service delivery silos - especially where health and housing services remain separate and distinct.

Mental capacity issues for those who are homeless relate mainly to personal safety decisions(including for example whether to stay on the streets in extreme weather, fear of being victimized in a shelter, no place for their possessions.)<sup>72</sup>, and “lifestyle “ decisions (sex/ HIV risk, use of alcohol, drugs).

## **PART VII Specific Options for Future Policy and Practice Direction**

### **Issue #1 Rights Information**

Prevention is the key in many abuse issues related to housing. Older adults and other vulnerable persons may not know their rights and may be intentionally or inadvertently misinformed by others.

There is a need for enhanced efforts to improve rights knowledge and knowledge about community resources to better inform choice. There is a need for advocacy to help advance the older person's interests.

1. To reduce the vulnerability of adults and other persons it is recommended that

(a) the provincial government provide funding for the development of legal education resources on a range of housing issues affecting older adults and other vulnerable persons.

(b) a three prong approach be taken to legal education in this area, tailoring special information for service providers, renters and housing providers on aging, capacity, renters' rights and operators' responsibilities.

(c) key information for abused older women and older men dealing with family law issues be made available in print resources and be translated into all major languages used in British Columbia. Resources should be developed in alternative formats for people with low literacy skills.

### **Issue #2 Social and Legal Research**

2. It is recommended that

(a) qualitative research be conducted to develop a deeper understanding of the different patterns and pathways of violence experienced in families in later life

(b) legal and social research be undertaken to examine

- the connections between housing and victimization of vulnerable persons, particularly in the context of systemic harms
- the legal barriers affecting homeless persons' access to housing

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- the circumstances in which special legal documents such as Power of Attorney for Real Estate and the land title system for registering these powers of attorney might be misused

(c) research systematically review mental health, housing and social assistance policy to take account downstream costs on third parties such as older family members to provide a better foundation for policy making

(d) legal research be conducted on housing discrimination in British Columbia, with a particular focus on how it may intersect with victimization.

### **Issue #3 Domestic Violence Protection**

3. It is also recommended that

(a) any future analysis or consideration of domestic violence protection for British Columbia include the types of abuse (as well as the types of relationships and situations) that older adults are likely to experience, such as spouse abuse, abuse by an adult child, grandchild or nephew, new friend or where the perpetrator does not reside in the home.

### **Issue #4 Safe Housing Resources**

There is a need for a range of emergency and longer term safe housing alternatives that will be appropriate for abused and neglected older adults (both women and men) and for other vulnerable adults.

4. It is recommended that

(a) appropriate emergency, short and long term housing alternatives be developed for these groups of persons, and expanded

(b) enhanced training be developed for shelter workers throughout the province, building on past efforts so that they may be better able to help abused older and other vulnerable adults.

(c) transition house policies such as length of time people are permitted to stay be reviewed and adjusted to accommodate the complex needs and greater frailty of some older or vulnerable adults.

(d) appropriate mental health assessment and support be provided for abused or neglected older persons and other vulnerable adults

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(e) safe housing work closely with other community and government resources, and develop protocols where appropriate for meeting the needs of abused and neglected older and other vulnerable adults.

### **Issue # 5 Coordination of Services**

Housing is one part of a broader set of needs that abused or neglected older adults and other vulnerable persons may have. It is also increasingly being recognized that both formal and informal services in the community must be delivered in a coordinated manner so that these needs are met and the person "does not fall through the cracks".

5. It is recommended that community agencies and government bodies endeavour to work together in a coordinated manner, helping to remove barriers and bridge gaps.

### **Issue #6 Improving Access to Justice**

**Legal Aid:** The Briefing Document "Critical elements of an effective response to violence against women"<sup>73</sup> and the BC Association of Specialized Victim Assistance and Counselling Programs paper "Family law services for women who are victims of violence" (2005) identified gaps in legal aid coverage as a major barrier to justice for women exposed to violence.

6. It is recommended that gaps in legal aid coverage be addressed on a priority basis.

**Housing legislation:** The Residential Tenancy Act (RTA), Residential Tenancy Branch and the current arbitration process may not be suitable mechanisms for addressing the kinds of abuse issues and other housing concerns experienced by older tenants and other vulnerable persons.

7. It is recommended that

(a) a low cost, independent/ arm's length, alternative process be developed which utilizes the skills of persons who have a sound knowledge on housing, aging, and rights issues.

(b) if the RTA continues to be used for problems in supportive housing, the arbitrators receive training on abuse issues in rental housing, to understand the power dynamics, have appropriate remedies to address the situation in a safe, fair and timely manner.

**Issue # 7 Provincial and Regional Policy and Practice**

8. To reduce the potential for unintended rights encroachment or re-victimization of abused persons, it is recommended that

(a) BC Housing's "Residential Tenancy Agreement Addendum for Crime Free Housing " eviction policy be reviewed for its impact on abused older adults and other vulnerable persons

(b) "house policies" on matters such as visitors be reviewed to assure they comply with the RTA

(c) a human rights consultation paper be developed on housing providers' duty to reasonably accommodate older adults and persons with mental or physical disabilities across the range of housing

(d) hospitals review their discharge planning process to assess for safety and wellbeing upon returning home, and to help families giving care.

It is important for key stakeholders to recognize the impact of policy decisions in areas such as mental health, housing, social assistance in the lives of older adults, and to recognize and appropriately address the downstream impact of these policies.

**Issue #8 Legislative Reform**

- **Housing law:**

9. It is recommended that

(a) the provincial government examine the feasibility of combining supportive housing and assisted living into one Act that is able to address both the health and safety standards and tenancy/ consumer protection matters.

(b) an independent arms length alternative resolution process be developed to address tenancy/ consumer protection in assisted living.

- **Family Relations Act:**

In 2007, the Ministry of Attorney General Justice Services Branch Civil and Family Law Policy Office initiated a Family Relations Act Review.<sup>74</sup>Section 9 of that Review dealt with defining family violence for the Family Relation Act and orders for safety.

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10. It is recommended that

(a) any change to the *Family Relation Act* to address family violence include a definition of family violence that represents the kinds of harm that older adults and other vulnerable persons can experience. This includes physical abuse, forcible confinement, psychological or emotional abuse, neglect, such as depriving a person of food or clothing or other basic necessities, financial abuse, and sexual abuse, or sexual assault.

(b) this definition should also include not only abuse by adults, but also harms by family members who may be teenagers (grandchildren).

### **Advocacy**

There is a need for advocacy to help advance the older person's or other vulnerable person's interests, especially for abuse situations and in the context of increasing frailty.

11. It is recommended that

(a) legal and community advocates be funded and expanded to help more older adults throughout British Columbia with tenancy issues, and other legal or rights issues that arise in housing

### **Capacity Assessments**

When looking at capacity issues in the context of housing and abuse, capacity may be confused with other factors such as an acute health problem, an adult's fear or lack of knowledge (understanding implications, short and long term consequences of decisions); depression/ anxiety; power dynamics; and inadequacy of available options.

The person's physical or mental health condition should also be given the opportunity to stabilize before a determination is made on the person's capacity particularly in the context of housing.

12. It is recommended that

- persons carrying out capacity assessments receive training on family violence and related issues to assure that they are better able to give an accurate assessment of the person's capabilities.

## **Appendix A Canadian Transition Housing Models for Abused Older Adults**

British Columbia/ Yukon has embarked on efforts to establish safe homes for abused older adults and offer transition house staff training on aging and abuse. Below are examples of approaches in other Canadian jurisdictions.

- Pat's Place located in Toronto is a newly opened (2008) short-term housing for older people who are experiencing abuse. It is described as a place "can go to take time out from their current situation".<sup>75</sup> People 60 years of age and older who are being abused emotionally, physically, sexually, financially or in other ways by a family member can use Pat's Place. Pat's Place is open to women, men and transgendered persons.
  
- From mid to late 1990s the Kerby Centre (Calgary, Alberta) spearheaded the first special built housing for abused seniors. The housing was built with donated lands and private funds. Resources such as the Rotary House have experienced problems with obtaining operational funding and often have difficulty being able to meet the safety needs of abused or neglected older adults whose "lifestyle" does not match middle class norms, e.g. those older adults with mental health or substance use problems. As a result, these individuals are far less likely to be able to make use of this type of emergency shelter. This is a serious concern for communities across the country trying to respond effectively to abused older adults' needs.
  
- The Seniors Association of Greater Edmonton (SAGE) designated certain apartment suites in social housing for abused seniors.<sup>76</sup> Recognizing that abuse and neglect is a multi-faceted problem, the community approach in Edmonton also provides other services and supports to the older adults, including offering peer support after the crisis has subsided.
  
- 
  
- Hamilton, Ontario has been looking at the feasibility of including crisis beds and some crisis support for abused and neglected older persons (both single and couples) as part of the planning for a non-profit seniors' complex.

- **Appendix B Housing Discrimination Resources**

- *Human Rights in Housing in Canada: An Advocate's Guide*. Centre for Equality Rights in Accommodation (CERA) 2007. This guide provides housing workers, social service providers, and community advocates with tools to help them effectively challenge discrimination in housing.
- *Canadian Housing Equality Resources* Centre for Equality Rights in Accommodation (CERA) 2007. Canadian Housing Equality Resources is a national web site developed to provide community advocates with tools to effectively challenge discrimination in housing.
- *Family Status*. Ontario Human Rights Commission (OHRC) Produced in 2007. This section on the Ontario Human Rights Commission web site describes "family status" (being in a parent and child relationship) and the duty to accommodate and explains how the Ontario Human Rights Code protects specific family relationships from discrimination in the areas of employment, housing, and services.
- *The Right to Adequate Housing*. Centre for Equality Rights in Accommodation (CERA) 2006. This booklet explains how to stand up for the right to adequate housing under Canadian and international law.
- *The Right to an Adequate Standard of Living*. Centre for Equality Rights in Accommodation (CERA) 2006. This booklet explains how Canadians can use international human rights laws to fight for the right to an adequate standard of living.
- *Overview of Human Rights in Housing Guide* Produced by Centre for Equality Rights in Accommodation (CERA) 2005. This is an overview of the Human Rights Code as it relates to housing.
- *Your Rights*. Centre for Equality Rights in Accommodation (CERA) 2005. A brief description for tenants of common forms of discrimination in housing and what to do about them.
- *Ontario's Human Rights Code, Disability and the Duty to Accommodate*. Centre for Equality Rights in Accommodation (CERA) 2003, This guide describes human rights law as it pertains to disability, housing, and the duty to accommodate.

Source : Centre for Equality Rights in Accommodation.

<http://www.equalityrights.org/cera/>

## Appendix C Bullying Behaviours

Bullying by adults has been defined as being "the aggressive behaviour arising from the deliberate intent to cause physical or psychological distress to others".<sup>77</sup>

Bullying occurs where there is

- a power imbalance
- an intent to harm
- feelings of distress by the person who is being bullied
- repetition over time

In rental housing bullying behaviours include

- yelling and screaming
- blaming the target of bullying for "errors"
- making unreasonable demands
- criticizing the target's abilities
- applying rules inconsistently
- threatening loss of services, housing
- insulting and putting-down
- excluding or ostracizing the target

It may also include

- punishing others by constantly criticizing them
- shouting and name calling often in a public forum
- innuendo, deliberate silence, rude gestures and aggressive posturing
- persistently picking on people in front of others or in private
- keeping people in their place
- reprisals
- insisting that there is only one way to do things right...their way.
- other behaviours that are intended to isolate and undermine the intended victim(s)

Other obvious bullying behaviours:

- Public humiliation
- Personal insults and name-calling
- Persistent criticism
- Spreading malicious rumours
- Freezing out, ignoring or excluding

Source: adapted from several sources, including *Anatomy of workplace violence in Canada*. Online: <http://www.workplaceviolence.ca/thm-bullying/discussion.html>

## Appendix D

For residents in assisted living facilities in British Columbia, key areas of function that operators need to be aware of include the resident's ability to:

- initiate activities to the extent necessary to function safely for the periods they are alone in their unit;
- find their way within the assisted living residence given available cueing;
- recognize the consequences of decisions or actions and that some actions may result in injury or harm to themselves or others;
- recognize an emergency and summon help or follow directions;
- find their way back to the residence independently;
- participate in regular reviews of their service needs, that is, respond to questions about needs and services offered; and
- seek assistance when they have a complaint about something happening at the residence, although family or friends may actually convey the matter to the Assisted Living Registrar.

The person must be able to perform all of these functions at the assisted living residence by himself or herself unless a spouse, who is willing and able to make decisions, is there to provide daily support on the person's behalf.

**Source: Assisted Living Registrant Entry and Exit Policy.**

## Appendix E Homelessness and Appropriate Housing

The report *Out of Sight, Out of Mind* notes that rather than initially defining a negative concept like 'homelessness', it is more sensible to begin with a positive concept, 'a good home', or, at the least, appropriate housing.<sup>78</sup>

Appropriate housing has these qualities:

**Safe:** The structure and its appliances and utilities meet code requirements and community standards for physical integrity, fire prevention, environmental health and protection from the elements.

**Secure:** The residents have reasonable security of tenure, freedom from harassment by owners, lien-holders and their agents, and from other residents in a multiple unit residence. The residents may choose when to interact with neighbours and when to be free of interruptions, and people who have no right to enter are effectively excluded ensuring safety and privacy.

**Affordable:** Occupancy costs to rent or buy and maintain and insure the dwelling do not exceed 30% of income. There are exceptions where the residents' resources are sufficient to cover all other basic requirements for normal living and they choose to invest more in a housing purchase in the expectation of a return on their investment, or can afford to and voluntarily choose to pay for a luxurious residence.

**Accessible:** Movement to and from and within the home is within the physical abilities of all of the residents, and it is located where shopping, recreation, friends, health care and services are available using affordable and accessible means of transportation.

**Suitable:** Residents are afforded privacy when they desire that, and opportunities for intimacy in private if and when that is mutually desired. Housing factors do not coerce adults to remain in an abusive or undesired relationship. Suitable housing allows its residents to exercise choices and maintain their dignity.

Homeless is therefore defined as, having no home, or having a home that is not safe, secure, affordable, accessible and suitable.

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- <sup>9</sup> For a description of issues related to reverse mortgages, see B.C. Law Institute. *Report on reverse mortgages* CCELS Report No. 2 and BCLI Report No. 41 February 2006. Online: [http://www.bcli.org/sites/default/files/Reverse\\_Mortgages\\_Rep.pdf](http://www.bcli.org/sites/default/files/Reverse_Mortgages_Rep.pdf)  
The report notes the existing law (and the cost of consumer credit disclosure provisions of Part 5 of the Business Practices and Consumer Protection Act, does not provide an adequate legal framework for reverse mortgages. The Report recommends enacting legislation that will specifically address reverse mortgages.
- <sup>10</sup> For a general description of issues related to loan guarantees, see B.C. Law Institute (2004) *Report on financial arrangements between older adults and family members: loans and guarantees*, CCELS Report No. 1 and BCLI Report No. 32, Online: [http://www.bcli.org/sites/default/files/Financial\\_Arrangements\\_Rep.pdf](http://www.bcli.org/sites/default/files/Financial_Arrangements_Rep.pdf)
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<sup>13</sup> Sanders L. ( 2006). Financial abuse of older people: a Queensland perspective. Queensland Elder Abuse Prevention Unit (EAPU), pg. 15 Online: <http://www.eapu.com.au/Portals/0/45-QldperspectiveonfinancialabuseA.pdf>

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<sup>14</sup> For example, in 2001 there were 9,473 consumer bankruptcies and 1,100 business bankruptcies in BC. In 2004, the numbers were : 8373 consumer bankruptcies and 922 business bankruptcies. In 2007 this had decreased to 6,648 consumer bankruptcies and 470 business bankruptcies.

Business bankruptcy is most common in retail and construction and transportation. See : BC Statistics. Annual B.C. business bankruptcies by detailed industry. Online: [www.bcstats.gov.bc.ca/data/dd/handout/BANKNAIC.pdf](http://www.bcstats.gov.bc.ca/data/dd/handout/BANKNAIC.pdf)

BC Statistics. Consumer and Business Bankruptcies by Postal Code Forward Sortation Area, British Columbia . Online: [www.bcstats.gov.bc.ca/data/dd/handout/BANKFSA.pdf](http://www.bcstats.gov.bc.ca/data/dd/handout/BANKFSA.pdf); and B.C. Business Bankruptcies By Detailed Industry (1980 Sic) Annual. Online: [www.bcstats.gov.bc.ca/data/dd/handout/BANKIND.pdf](http://www.bcstats.gov.bc.ca/data/dd/handout/BANKIND.pdf)

According to Industry Canada's, Key Small Business Statistics ( May 2003), approximately one quarter of micro- businesses (< 5 employees) in BC or the prairies will fail in the first year, and 66 % do not survive five years; 55% of small businesses with 6-9 employee are still in existence after five years. Online: [www.c2p2online.com/documents/IndustryCanadaSMEstats.pdf](http://www.c2p2online.com/documents/IndustryCanadaSMEstats.pdf)

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<sup>16</sup> Violence Against Women in Relationship. See Information Bulletin for Police . Online : [http://www.pssg.gov.bc.ca/victim\\_services/publications/policy/InfoBulletin.pdf](http://www.pssg.gov.bc.ca/victim_services/publications/policy/InfoBulletin.pdf)

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<sup>22</sup> BC Housing. *Tenant Handbook*. Online. [http://www.bchousing.org/resources/Tenant/BCH\\_Tenant\\_Handbook\\_2008.pdf](http://www.bchousing.org/resources/Tenant/BCH_Tenant_Handbook_2008.pdf)

The Addendum states that:

The tenant(s), any occupant of the tenant(s)' household, and *any persons invited onto the residential property or residential premise by the tenant(s) or any member of the tenant's family* shall not engage in any criminal activity on the premises or property including, but not limited to:

- (a) any drug-related criminal activity
- (b) solicitation (sex trade workers and related nuisance activity)
- (c) street gang activity
- (d) assault or threatened assault
- (e) unlawful use of a firearm
- (f) any criminal activity that threatens the health, safety or welfare of the landlord, other tenants or persons on the residential property or residential premises.

A single violation of any of the provisions of this addendum shall be deemed a serious violation and material non-compliance with the Residential Tenancy Agreement.

<sup>23</sup> The Greater Upstate Law Project, *supra*, n. 7.

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<sup>25</sup> American Civil Liberties Union, (1/25/2006) "New federal law forbids domestic violence discrimination in public housing". Online: <http://www.aclu.org/womensrights/violence/23929res20060125.html>

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<sup>27</sup> For a good overview, see Novac, S. (December 2007). Family violence and homelessness: connections and dynamics. *Research Bulletin # 40*, Centre for Urban

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<sup>32</sup> 2008 Transition Houses and Shelters for Abused Women in Canada. National Clearinghouse on Family Violence Family Violence Prevention Unit, Public Health Agency of Canada. Online: [http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/pdfs/fem-2008Women\\_e.pdf](http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/pdfs/fem-2008Women_e.pdf)

<sup>33</sup> *Ibid.*

<sup>34</sup> For example, Quigley House in Florida provides shelter for up to two male or female older victims of senior abuse at any given time. "Quigley House". Online: <http://www.quigleyhouse.org/directorsdesk2.htm>

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<sup>44</sup> Spencer, C. (January, 2002). STEPS: Understanding victimization of seniors in rental housing, *GRC News*, 20 (2), 3-4. Online at :  
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<sup>47</sup> For example, the manager may accuse the senior renter as being abusive towards them. The manager may characterize when people expressing legitimate concerns as violating "peaceful use and enjoyment". They may get older adults to sign a fixed tenancy agreement with onerous clauses, so that in effect they are living at there at the will of the manager.

<sup>48</sup> This may include for example, rules prohibiting grandchildren from visiting "because this is a seniors' building"; or rules that limit who can visit and how long guests can stay ("the two week rule- a visitor may stay no more than 14 days total in a twelve month period"). In BC, this second rule violates tenancy law dealing with visitors.

<sup>49</sup> It is often pointed out that violence is a tactic of choice – abusers choose whom, when and where they abuse.

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<sup>52</sup> Hightower, H., Hightower, J. & Smith. M.J.(2003). *Out of sight, out of mind: the plight of seniors and homelessness*. [A report on homelessness and the risk of homelessness among seniors and vulnerable adults in the lower mainland of British Columbia. Seniors Housing Information Program, New Westminster, B.C. Online: <http://www.seniorshousing.bc.ca/OutofSightOutofMind.pdf>

<sup>53</sup> Lewin, T. (August 3, 1992 ) "Volatile mix in housing: elderly and mentally ill," *New York Times*.

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<sup>55</sup> Heumaan, *ibid*.

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## Housing, Capacity and Abuse of Vulnerable Adults

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<sup>61</sup> Tenant Resource & Advisory Centre and Legal Service Society *The Tenant Survival Guide* Online: <http://www.lss.bc.ca/assets/pubs/tenantSurvivalGuide.pdf>

<sup>62</sup> Novac, S. (1996) *Immigrant enclaves and residential segregation: voices of racialized refugee and immigrant women*. Online :  
<http://www.hnc.utoronto.ca/publish/women.pdf>

<sup>63</sup> Beaulieu, M., Gordon, R., & Spencer, C. "Abuse and neglect of older Canadians: key legal and related issues". In Ann Soden (ed.) *Advising the Older Client*. LexisNexis (Butterworths), Toronto, ON. 197-249.

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See :

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<sup>66</sup> California Advocates for Nursing Home Reform. (March 2003) *Better read the small print! An analysis of admission agreements in California's residential care facilities for the elderly*.

<sup>67</sup> California Advocates for Nursing Home Reform. Ibid.

<sup>68</sup> The CCALA states:

s. 26 (1) A person must not operate an assisted living residence that is not registered under section 25 (1)

....

(3) A registrant must not house in an assisted living residence persons who are unable to make decisions on their own behalf.

...

(6) Subsection (3) does not apply to a person if the spouse of the person  
(a) will be housed in the assisted living residence with the person, and  
(b) is able to make decisions on behalf of that person.

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<sup>70</sup> Hightower, et al. *ibid.* n. 52.

<sup>71</sup> Hightower, et al. *ibid.* n. 52. pg. 4

<sup>72</sup> Sinoski, K., Rolfsen, C. Pynn, L. Bellett, G. "Fire victim refused shelter". *Vancouver Sun* December 20, 2008

<sup>73</sup> BC Yukon Society of Transition Houses. *Briefing Document "Critical elements of an effective response to violence against women.* Online  
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<sup>74</sup>Ministry of Attorney General Justice Services Branch (April 2007 ). *Family Relations Act Review, Chapter 9 Family Violence Discussion Paper.* Prepared by the Civil and Family Law Policy Office. Online: <http://www.ag.gov.bc.ca/legislation/pdf/Chapter9-FamilyViolence.pdf>

<sup>75</sup> Family Services Toronto. Online:  
<http://www.familyserVICEToronto.org/programs/seniors/patplace.html#one>

<sup>76</sup> Edmonton Seniors' Safe Housing. Online:  
<http://www.mysage.ca/safehousing.cfm?ts=14>

<sup>77</sup> Randall, P. (1997). *Adult bullying - perpetrators & victims.* Routledge; 1<sup>st</sup>. edition, p.4.

<sup>78</sup> Hightower, et al. *ibid.* n. 52., pg. 14