



BRITISH COLUMBIA LAW INSTITUTE
CANADIAN CENTRE FOR ELDER LAW STUDIES

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A. CONTEXTUAL OVERVIEW OF LEGISLATIVE MILESTONES IN ABUSE AND NEGLECT LEGISLATION

The rise of North American interest in legislating around issues of adult abuse, neglect or “vulnerability” emerged from the American “Great Society” of the 1960s. With the passing of the *Older Americans Act*,¹ a national framework of rights, guarantees and institutions for American seniors was created. One important aspect of that framework was the requirement of data collection on issues relating to older adults, including incidents of abuse or neglect.

From that information base arose the American Adult Protection Services system, which included purview over areas of adult abuse and neglect. That system was implemented differently in the various American jurisdictions, but was founded on a protectionist model. Over the decades, that model has often been criticized as being overly invasive into the lives of the adults it was meant to protect. Indeed, the framework was closely analogized to child protection legislation, invoking concepts of paternalism and *parens patriae*.

Interest in having similar adult abuse, neglect or vulnerable adult legislation in Canada arose in the 1970s.² Indeed, with the introduction of the Newfoundland *Neglected Adults Welfare Act*³ (NFLD NAWA) Newfoundland took a leading role in this area. The NFLD NAWA created a mandatory reporting obligation for “a person who has information which leads him or her to believe that an adult is a neglected adult...”⁴ This vanguard legislation was limited to “neglected” adults and carried the hallmark of mandatory reporting of suspected neglect. Not until 1986 did the next Canadian jurisdiction, Nova Scotia, enact analogous legislation, entitled the *Adult Protection Act*⁵ (NS APA). The NS APA held a

¹ *Older Americans Act of 1965*, 42 U.S.C.A. §§ 3001-3058ee (2005).

² For an overview of Canadian accomplishments and milestones in the area of adult abuse and neglect, see The Canadian Network for the Prevention of Elder Abuse at: www.cnpea.ca.

³ R.S.N.L. 1990, c. N-3 (in force May 1, 1973).

⁴ *Ibid.*, s. 4(1).

⁵ R.S.N.S. 1989, c. 2.

broadier mandate, requiring mandatory reporting for “every person who has information, whether or not it is confidential or privileged, indicating that an adult is in need of protection....”⁶ Shortly thereafter, the Maritime movement towards preventing adult abuse and neglect continued, with Prince Edward Island enacting its *Adult Protection Act*⁷ (PEI APA) in 1988.

The 1990s showed a significant development in elder abuse and neglect community movements, as well as the establishment of key organizations focussed on the area.⁸

These developments moved the understanding of the issues past the initial “adult protection” model,⁹ often associated with acting in the adult’s “best interests,” towards an adult “support and assistance” model, associated with the goals of respecting an adult’s right to live at risk (if mentally capable), individual referencing,¹⁰ minimal interference and community networks of support.

In the late 1980s and early 1990s, Ontario engaged in a comprehensive legislative development covering all aspects of substitute decision-making, including guardianship,

⁶ *Ibid.* s. 5(1).

⁷ R.S.P.E.I. 1988, c. A-5.

⁸ For an overview of some key milestones in this area, see: The Canadian Network for the Prevention of Elder Abuse online at: http://www.cnpea.ca/canadian_accomplishments_milestones.htm. Selected developments in the area of abuse and neglect include:

Development of New Horizons and other Health Canada family violence prevention initiatives. These provide many Canadian communities with their first opportunity to explore abuse issues in later life.

1990 - Ontario *Nursing Home Act* sets out some of the rights of residents living in nursing homes.

1991 - Annual Canadian Association on Gerontology discussion meeting in Toronto: “Do We Need a Canadian Committee for the Prevention of Elder Abuse?”

1993 - First national conference on elder abuse held.

1994 - B.C. Coalition to Eliminate Abuse of Seniors becomes a non-profit provincial organization to raise awareness of abuse and neglect in later life. The organization develops from 5 years of work by interested seniors and community agencies.

1998 - Roundtable discussion at Canadian Association on Gerontology in Halifax. “Creating a Canadian Network for the Prevention of Elder Abuse.” Bylaws established and criteria developed.

1999 - BC Law Institute creates the Project on Seniors Issues, to consider legal issues affecting older adults including adult abuse, neglect and self-neglect. This project is later established as the Canadian Centre for Elder Law Studies.

1999 - 2nd National Conference on Elder Abuse held in Toronto.

⁹ With its analogous roots in the more paternalistic child protection model.

¹⁰ The concept of individual referencing is based on the principle that an adult’s behaviour should be viewed in the context of his or her unique, individual characteristics. See: The Honourable Madam Justice Marion Allan and Laura Watts, *A Comparative Analysis of Adult Guardianship Laws in BC, New Zealand and Ontario*, CCELS Report No. 4, October 2006, at 56.

health care substitute decision-making (powers of attorney for personal care and a default substitute health care decisions list), financial substitute decision-making (powers of attorney for property) and capacity assessments. This sophisticated legislative package¹¹ was included in the *Substitute Decisions Act* and was proclaimed in force in 1992.¹²

Ontario resisted “stand-alone” elder abuse legislation for a number of reasons. First, during that era, the precursor to the Ontario Community Care and Access Centres¹³ had been established. As such, there were embedded one-stop resources for seniors already. Second, there was a sense that creating specific “vulnerable” or “elder abuse” legislation might have the effect of isolating or ghettoizing groups who would be better served by comprehensive substitute decision-making and modern guardianship legislation more generally. Specific protections, however, were provided for within the long-term care setting.

At much the same time as Ontario was developing its legislation, British Columbia was also engaged in broad community-based review of legislation and policy relating to adult guardianship, personal planning, substitute decision-making, “vulnerable” adults, abuse and neglect. British Columbia made the decision to create a specific part of the new *Adult Guardianship Act*¹⁴ for the provision of support and assistance to adults who are abused or neglected. This model was envisioned as serving those unable to get help because of either a physical impediment or a mental disability affecting their ability to make decisions.¹⁵

The legislative package was completed in 1993, but for a number of reasons including fiscal and operational issues, these laws were not immediately brought into force. The package of laws included the *Adult Guardianship Act*¹⁶ (AGA), the *Representation Agreement Act*¹⁷ (RAA), the *Health Care (Consent) and Care Facility (Admission) Act*¹⁸ (HC(C)CF(A)A) and the *Public Guardian and Trustee Act*¹⁹ (PGTA). None of these laws were immediately brought into force, as questions of infrastructure requirements, funding, development of regulations and other issues were not yet resolved. Some subsequent amendments to this package were made in 1999 and 2001.²⁰

Cabinet eventually announced that most of the package would be brought into force on February 28, 2000.²¹

¹¹ The legislation was based on the extensive committee process which led to the Fram Report.

¹² *Substitute Decisions Act*, S.O. 1992, c. 30.

¹³ For more information about the Community Care Access Centres see online at: <http://www.oaccac.on.ca>.

¹⁴ R.S.B.C. 1996, c. 6.

¹⁵ Gordon, Robert et al., eds., *The 2005 Annotated British Columbia Representation Agreement Act, Adult Guardianship Act and Related Statutes*, (Toronto: Thomson Carswell, 2005) p. 209. Cited below as “Gordon.”

¹⁶ *Supra*, note 14.

¹⁷ R.S.B.C. 1996, c. 405.

¹⁸ R.S.B.C. 1996, c. 181.

¹⁹ R.S.B.C. 1996, c. 383.

²⁰ *Adult Guardianship Statutes Amendment Act*, S.B.C. 1999, c. 25 and the *Adult Guardianship Amendment Act, 2001*, S.B.C. 2001, c. 2.

²¹ For a complete review of the introduction of the legislation and the various specific amendments, see Gordon, *supra*, note 15.

However, of that newly developed *Adult Guardianship Act*,²² only Part 3 dealing with issues of support and assistance for abused or neglected adults was brought into force at that time.²³

Part 3 of the AGA incorporated, predominantly for the first time in legislation, much of the new thinking in the “support and assistance” model referred to above.

British Columbia’s move to modern legislation began to spread eastward. In 1998 Alberta²⁴ enacted its *Protection for Persons in Care Act*²⁵ (AL PPCA) and Manitoba followed by enacting its *Protection for Persons in Care Act*²⁶ (MB PPCA) in 2001. Both of these jurisdictions limited the scope of their legislation to persons who were in some form of care.

Abuse and neglect legislation then appeared in Saskatchewan via the Public Guardian and Trustee powers (e.g. freezing of assets added in 2001) and into Quebec’s civil law. Some aspects of this were also introduced in the NWT and Nunavut.

The most important recent milestone is the development of broad, independence-based legislation in Yukon. For those in favour of abuse and neglect legislation which supports an adult’s right to live at risk while capable, Yukon’s 2005 developments are considered to be the current gold standard in Canada.

May 2005 saw the introduction of the *Decision-Making Support and Protection to Adults Act*.²⁷ This umbrella legislation is divided into three schedules as follows:

Decision-Making Support and Protection to Adults Act

Schedule A - *Adult Protection and Decision-Making Act*²⁸ (the APDMA)

Part 1 - Supported Decision-Making Agreements

Part 2 - Representation Agreements

Part 3 - Court-Appointed Guardians

Part 4 - Adult Protection

Part 5 - Miscellaneous Provisions

Schedule B - *Care Consent Act*²⁹

Schedule C – *Public Guardian and Trustee Act*³⁰

²² *Supra*, note 14.

²³ B.C. Reg. 12/2000 (OIC 34/2000).

²⁴ Interestingly the AL PPCA came into force by proclamation on January 5, 1998 after having been introduced as a Private Member’s Bill (Don Tannas, MLA Highwood).

²⁵ R.S.A. 2000, c. P-29.

²⁶ C.C.S.M., cP144.

²⁷ S.Y. 2003, c. 21.

²⁸ Being Schedule A to the *Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c. 21.

²⁹ Being Schedule B to the *Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c. 21.

³⁰ Being Schedule C to the *Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c. 21.

Part 4 of Schedule A of the APDMA, entitled Adult Protection (“Part 4”), provides the substantive framework for support of adults who are being abused, neglected or self-neglected. The adult protection provisions in this part are very similar to Part 3 of British Columbia’s AGA.³¹ The reporting structure under Part 4 is even more open than British Columbia’s legislation.

In sum, Canada has seen a strong and consistent evolution of abuse and neglect legislation across the country, but with different patterns. This memorandum will identify three primary schools of abuse and neglect legislation, discuss their particular aspects and provide some preliminary recommendations.

B. EXTENT OF THE PROBLEM IN BRIEF

To date, there are very few statistics available that document the scope and severity of elder abuse in Canada.³² Moreover, there is very little evidence of the true impact of abuse or neglect on older adults, their families, and the larger community.³³ This absence of information is perhaps unsurprising, given that the concept of elder abuse only first appeared in the academic literature in 1975.³⁴ Indeed, elder abuse only emerged as a law reform issue during the late 1970s—an emergence that was largely due to the efforts of seniors’ groups, caregivers, and gerontologists in this area.

Like other forms of intimate and familial violence, elder abuse is complicated by a remarkably low public visibility and a high reluctance to report cases of abuse and neglect.³⁵ It is additionally complicated by “ageist stereotyping and by the fact that persons outside the family context may be perpetrators.”³⁶ In the post-WWII era, our society’s institutional structures have been heavily based on a negative view of aging, specifically, and a negative consideration of older adults, generally.³⁷ Ageist beliefs promulgating negative images of older adults as “dependent, vulnerable” individuals who are “unable to make appropriate decisions for themselves, and making no contribution to society” creates a daunting obstacle when confronting cases of elder abuse, neglect, and exploitation.³⁸

An equal formidable challenge is in defining what constitutes elder abuse or neglect. While many persons would acknowledge physical, psychological, financial, and sexual forms of abuse, abuse of a spiritual (religious or cultural) nature is more easily overlooked. In addition, while some incidents may arise in the home, others will occur within the health

³¹ *Supra*, note 14.

³² F/P/T Committee of Officials (Seniors), *Enhancing Safety and Security for Canadian Seniors* (September 1999), online: Public Health Agency of Canada <http://www.phac-aspc.gc.ca/seniors-aines/pubs/enhancing/pdf/enhancing_e.pdf> at 13.

³³ *Ibid.*

³⁴ Manitoba Law Reform Commission, *Adult Protection and Elder Abuse*, Report #103, December 1999 at 6.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ By way of example, consider the mandatory retirement regime that exists across Canada and the United States. See: *Ibid.*, p. 8.

³⁸ *Ibid.*, p.9.

care setting itself. For example, it is estimated that approximately 7% of older adults in Canada reside in personal care homes, and studies suggest that residents are also at risk of physical and psychological mistreatment.³⁹ This finding appears in complete contradiction to the current conception and intention of care facilities, which is to provide a safe and healthy environment for its residents. These considerations are especially important when considering requisite legislative protections in this area; and at the very least, understanding the scope of the problem across our country.

While there is not a lot of empirical data available, recent studies have indicated the presence of a major societal problem. According to Statistics Canada, approximately 4,000 incidents of violence against persons aged 65 or older were reported to Canadian police services in 2003.⁴⁰ Over 25% of these reported incidents were perpetrated by a relative, and nearly equal amounts were directed against women (46%) and senior men (54%).⁴¹ An estimated 63% of incidents were committed by non-relatives; 34% of these persons were strangers, while 19% were casual acquaintances.⁴² The majority of family-related assaults occurred within the home, where the victim and the accused shared living space.⁴³ The 1999 General Social Survey on victimization reported similarly significant findings. According to this study, approximately 7% of Canada's seniors experienced some form of emotional or financial abuse, and nearly 1% of respondents reported experiencing physical or sexual violence from an adult child, caregiver, or spouse.⁴⁴ Because these studies rely in large part on the older adult's self-reporting, it should be stressed that these statistics cannot truly capture the extent of elder abuse or neglect in Canada.

What is abundantly clear, however, is that the issue of elder abuse and neglect is a significant problem across our country, and one that cannot be overlooked or under-developed in terms of legislative action. Although Canada's law reform landscape has only recently confronted the subject of elder abuse and neglect,⁴⁵ continued advancements in our legislative models have helped to compensate for this historical omission.

³⁹ *Ibid.*, p. 12.

⁴⁰ Statistics Canada, "A Portrait of Seniors in Canada: 2006" (February 2007), online: Statistics Canada <<http://www.statcan.ca/english/freepub/89-519-XIE/89-519-XIE2006001.pdf>> at 72.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*, p. 73.

⁴⁴ Seniors Resource Centre Association of Newfoundland, "Looking Beyond the Hurt: A Service Provider's Guide to Elder Abuse" (May 2006), online: Seniors Resource Centre of Newfoundland and Labrador <<http://www.seniorsresource.ca/beyond.htm>> at 10.

⁴⁵ *Supra*, note 34, p. 6.

C. LEGISLATIVE MODELS IN CANADA

Canadian abuse and neglect legislation can be grouped into these categories:

- 1.1 *Newer Comprehensive Adult Protection Regimes*
("Newer Comprehensive" - such as Yukon and BC)
- 1.2 *Older Comprehensive Adult Protection Regimes*
("Older Comprehensive" – such as PEI and New Brunswick)
- 1.3 *Deliberately Limited Regimes*
("Limited" - such as Ontario, Alberta and Manitoba)
- 1.4 *Protectionist Regimes*
("Protectionist" – such as Nova Scotia)
- 1.5 *Patchwork of Other Regimes*
("Patchwork" - such as NWT, Saskatchewan and Quebec)

1.1 & 1.2 Comprehensive Adult Protection Regimes (newer and older)

A *comprehensive* regime is a discrete piece of specific legislation, either stand-alone or embedded in a broader type of substitute decision-making or guardianship scheme, which particularly addresses adult abuse and neglect.

Legislation will describe a specific class or classes of adults who are protected from defined forms of abuse and neglect. This comprehensive approach includes some type of agency intervention and investigation, often by means of a designated agency.⁴⁶

Within Canada, there are two sub-groupings of jurisdictions with comprehensive regimes. These groupings can largely be explained by their timing. The newer regimes include BC and Yukon; the older regimes include PEI and NB.

As mapped in the following matrix, the newer regimes are typified by their breadth of scope and their commitment to the independence of the adults which may be the subject of the legislation. These regimes tend to be embedded in a modern substitute decision-making or guardianship regime and they embody a least-restrictive approach. Their definitions of abuse and neglect reflect more current thinking in the field and also include strong rights-based language. These regimes are supported by closely knit Public Guardian and Trustee legislation and include strong powers to investigate abuse, a broad scope of possible outcomes and the requirement to consult with the adult to the greatest extent possible.

⁴⁶ *Supra*, note 34.

The older regimes tend to be, naturally, more indicative of the thinking around issues of abuse and neglect in past decades. Their scope is narrower; however, a commitment to an independence-based model exists, but it may be less clearly stated. Powers to investigate may be less well developed, and the scope for outcomes may also be somewhat more limited.

Hallmarks of the most modern comprehensive abuse and neglect legislation include the following:

1. Legislation applies to all adults, regardless of location or care recipient status;
2. Legislation applies to all adults, regardless of vulnerability or mental capability;
3. Definition of abuse includes physical, emotional, psychological, financial, sexual, chemical and spiritual abuse, as well as a general statement that other rights may also exist;
4. Definition of abuse does not require intention to cause abuse;
5. Legislation includes neglect, and also a self-neglect provision which respects a person's right to live at risk;
6. Legislation includes a statement of adult independence and the desire to have the abuse and neglect legislation used in the least restrictive possible fashion, recognizing adults' rights to live at risk and make individual choices;
7. Rejection of a *reasonable person* standard for decision-making (what would a reasonable person want) and endorsing an *individual referencing* model (what would this person want);
8. Protection for whistleblowers reporting abuse in good faith;
9. Protection from liability for those investigating abuse and all persons who reported abuse in good faith;
10. A provision making malicious or false claims an offence;
11. Designated agencies to report abuse to;
12. Voluntary reporting;
13. Mandatory investigation by an agency upon receipt of a report of abuse or neglect;
14. Strong investigatory powers of that agency;
15. Ability to preserve assets of the adult during the investigation process;
16. Broad range of possible outcomes including involvement of community networks or other community resources – with removal of the adult and/or guardianship as the last possible resort;
17. Requirement that the adult, regardless of capability, must be consulted with to the greatest extent possible and that their wishes must guide the process and outcomes. Capable adults may naturally refuse assistance.

1.3 Deliberately Limited Regimes

Ontario,⁴⁷ Alberta and Manitoba⁴⁸ have abuse and neglect regimes which have been deliberately limited in scope.

These jurisdictions have specifically chosen to have no applicable abuse and neglect specific legislation outside care centres such as long-term care facilities.

This decision to limit the geographic scope of the legislation was rigorously debated in each of these jurisdictions. Generally, in each of these jurisdictions, a comprehensive approach was rejected on the basis that it would be too invasive in adults' lives, and that other existing legislation would suffice.⁴⁹

As such, specific adult abuse and neglect legislation was determined to be either over-reaching or redundant. Indeed, the thinking was, “why have such specific legislation when assault, theft, neglect,⁵⁰ fraud and other forms of exploitation are covered in the *Criminal Code* or via family / domestic abuse legislation and civil remedies?”

Discussion in these jurisdictions also indicated a real apprehension that specific adult abuse and neglect legislation would increase the ageist ghettoization of crimes or abuses particularly against older adults. Instead of being considered criminal acts, persons in authority might instead look to the abuse and neglect legislation and determine that it was “a civil matter” instead, and not pursue criminal charges. Much of this debate mirrors discourse regarding violence against women legislation in the 1980s.

Further, many expressed real fear that the enthusiasm of well-meaning agencies or individuals to save the often older or disabled adults from themselves would result in substantial state interference in the affairs of these adults.

As such, abuse and neglect regimes were narrowly focussed on adults who were recipients of care – and in Ontario, in particular – of long-term care. There was an acknowledgement that within these particular settings, adults are vulnerable by virtue of their placement and that the institutions are in a particular fiduciary relationship with the adults who they house.⁵¹

⁴⁷ Ontario's Bill 140 has a new adult abuse and neglect component which will be the cutting edge of these regimes in a deliberately limited scope.

⁴⁸ Manitoba's legislation only covers abuse.

⁴⁹ In Alberta, there is also a sense of moving towards a medicalized model as opposed to a social rights model.

⁵⁰ *Criminal Code*, R.S.C. 1985, c. C-46, s. 215.

⁵¹ It is likely that the abusive experiences found in past institutional care settings such as the aboriginal residential schools and schools for the disabled (such as the Jericho School for the Deaf) may have shaped some of this thinking.

With this understanding that adults within care are vulnerable by virtue of their situation, it is thus not surprising that reporting of abuse and neglect is mandatory in nature.⁵²

Hallmarks of the most modern deliberately limited adult abuse and neglect legislation include the following:

1. Legislation applies to all persons in care, which most notably includes long-term care (may also include a hospital, nursing home, lodge, group home, respite care, health facility, or personal care home);
2. Mandatory reporting of abuse by all persons, including staff, professionals, and the general public. Reporting of abuse is not required by the victims of the abuse;
3. Definition of abuse includes physical, emotional, psychological, financial, sexual, chemical and spiritual abuse, inappropriate use of restraints, as well as a general statement that other rights may also exist;⁵³
4. Definition of abuse does not require intention to cause abuse but may include willful blindness (“knew, or ought to have known”);
5. Legislation includes a statement of adult independence and the desire to have the abuse and neglect legislation used in the least restrictive possible fashion, recognizing adults’ rights to live as they choose and to make individual choices;
6. Rejection of a *reasonable person* standard for decision-making (what would a reasonable person want) and endorsement of an *individual referencing* model (what would this person want) for capable adults;
7. Protection for whistleblowers reporting abuse in good faith and with reasonable cause;

⁵² Except where protected by privilege. Also adults in care are not mandatorily required to report abuse of which they have been the victim.

⁵³ In Ontario the following has been used in Ministry of Health and Long-Term Care’s Policy on the *Prevention, Reporting and Elimination of Abuse of Residents of Long-Term Care Homes* (Document #0808-01, November 2004):

“Abuse” of a resident means any action or inaction, misuse of power and/or betrayal of trust or respect by a person against a resident, that the person knew or ought to have known would cause (or could reasonably be expected to cause) harm to the resident’s health, safety or well-being.

The policy goes on to provide examples of categories of abuse (physical, sexual, emotional, verbal, financial, neglect, prohibited use of restraints, etc.) and sets out definitions within each of those categories.

This definition has been cited with approval by the Advocacy Centre for the Elderly in their “Written Submission to the Standing Committee on Social Policy on Bill 140, *An Act respecting long-term care homes*” online at: <http://www.advocacycentreelderly.org/pubs/Nursing/Submission.pdf>.

8. Protection from liability for those investigating abuse and all persons who reported abuse in good faith and with reasonable cause;
9. A provision making malicious or false claims an offence;
10. A provision making it an offence to discourage someone from making a report of abuse or neglect;
11. Mandatory investigation upon receipt of a report of abuse or neglect, typically by a Director of the care facility, and then a report out to an external agency for review;
12. Strong investigatory powers of that agency;
13. Requirement that the adult, regardless of capability, must be consulted to the greatest extent possible and that their wishes must guide the process and outcomes to the greatest extent possible;
14. Every care home or long-term care residence should have a written abuse and neglect policy which is approved by the appropriate Minister responsible (health);
15. Every care home or long-term care residence should have a written restraints policy which is approved by the appropriate Ministry responsible (health).

1.4 Protectionist Regimes

Nova Scotia has the most protectionist regime in Canada and has been the subject of some notable criticism.

Nova Scotia has a split system – the current *Adult Protection Act*⁵⁴ (NS APA) of 1989 is limited in scope to persons living in the community. However, since 2004, there has been an intention to have the NS APA paired with the *Protection for Persons in Care Act*⁵⁵—to broaden the scope of the legislation to include care recipients.

A protectionist regime requires mandatory reporting and is entrenched in the best interests of the adult model. In the NS legislation, the adult's status is determined in terms of needing protection. If the adult is determined in need of protection, the state can remove the adult from their home, order assessments and in some circumstances require assistance be given.

The NS APA also does not include financial abuse. However, the Public Guardian and Trustee can be notified if assets are at risk.

Pursuant to the NS APA, it is an offence to fail to report information, including information that is confidential or privileged, indicating that an adult is in need of protection.⁵⁶ Contravention of the Act is an offence punishable on summary conviction. The Act also contains procedures to assist the Minister in the investigation.

⁵⁴ *Supra*, note 5.

⁵⁵ S.N.S. 2004, c.33 (not in force).

⁵⁶ *Supra*, note 5 at s. 16(1).

If:

- the adult being assessed will not consent to the assessment, or
- the investigation is impeded by a member of the family of the adult or anyone having care and control of the adult interferes with the assessment with in any way, and
- there are grounds to believe the person being assessed is in danger, then the Minister may apply *ex parte*, or
- four days notice of the hearing has been given to the adult or the person with care and control of the adult,

the court may, if satisfied that there are reasonable and probable grounds to believe that the person being assessed is an adult in need of protection, make an order authorizing the entry into any building or place.⁵⁷

There are no provisions which expressly give the person being assessed the right to be heard, or have his or her wishes taken into consideration. An offender may be fined up to a \$1000, sent to prison for up to a year, or both.⁵⁸

The NS APA is currently undergoing a review. A Discussion Paper published by the Ministry of Health⁵⁹ indicates that much has changed since the NS APA came into effect in 1985, in terms of the way the Act is administered and how services are delivered. The preliminary review by the Ministry indicates that the way the Act works may not reflect the current needs of adults in need of protection, particularly older adults (who made up 75% of the people assisted under the Act).

When the Act came into effect, the primary role was to assist adults living at home who were being abused by caregivers. The intention was that the Act would provide short-term remedies until long-term solutions were put in place. The NS APA reflects such short-term goals, for example, through the requirement that an order deeming an adult to be “in need of protection” be reviewed by a court every six months. The Ministry reports that most adults receiving services under adult protection are experiencing self-neglect, not abuse and neglect by others. Presumably these statistics will be reflected in upcoming recommendations.

Although it would not be recommended to pursue a protectionist based model, the hallmarks of such a regime include:

1. Mandatory reporting generally (in this case – in the community);
2. Punishable offences and fines for failure to report abuse and neglect;
3. Few provisions placing limits on false claim provisions;
4. Use of a best interests test as opposed to an individual referencing test;

⁵⁷ *Ibid.*, s. 8(2).

⁵⁸ *Ibid.*, s. 17.

⁵⁹ Nova Scotia, Ministry of Health, *Adult Protection Act Discussion Paper*, September 2004.

5. Little provision for input from adult;
6. Mandatory investigation of reports of abuse;
7. Ability to authorize medical exams of adult, possibly against their will;
8. Ability to obtain a court order to overcome an impeded investigation;
9. Ability to remove an adult from their residence.

1.5 Patchwork of Other Regimes

Some jurisdictions have not implemented specific adult abuse and neglect legislation. Saskatchewan, the NWT and Quebec cannot be said to have abuse and neglect legislation; however, in its absence other legislation is sometimes used.

Typically, in such cases, domestic violence legislation primarily fills the void. However, this is very limited, and does not capture the broader need for abuse and neglect legislation. In Saskatchewan, the *Victims of Domestic Violence Act*⁶⁰ includes “persons who reside or resided together in a family, spousal or intimate partner relationship or parents.”⁶¹ In the NWT the *Protection Against Family Violence Act*⁶² includes a “spouse, former spouse, persons who resided or who are residing together in a family or intimate relationship, parents or grandparents.”⁶³

Quebec’s most direct legislation on abuse and neglect is found in the *Quebec Charter of Rights and Freedoms*⁶⁴ which includes “aged or handicapped persons who may be exploited.”⁶⁵

Additionally, each jurisdiction has a Public Guardian and Trustee Act or equivalent (in Quebec there is the *Public Curator Act*, R.S.Q. c. 81) and adult guardianship legislation and human rights legislation. In Saskatchewan, recent amendments to the *Public Guardian and Trustee Act* now allow for the freezing of assets in cases of suspected abuse.⁶⁶

Unlike the deliberately limited legislation of Ontario, Alberta and Manitoba, these jurisdictions have not restricted their legislation. Rather, it seems there is a void in law, neither for nor against a regime of adult abuse and neglect legislation. As such, the only hallmark is the lack of legislation itself.

⁶⁰ S.S. 1994, c. V-6.02.

⁶¹ *Ibid.* at s. 2(a).

⁶² S.N.W.T. 2003 c. 24.

⁶³ *Ibid.* at s. 2(1).

⁶⁴ R.S.Q. c. C-12.

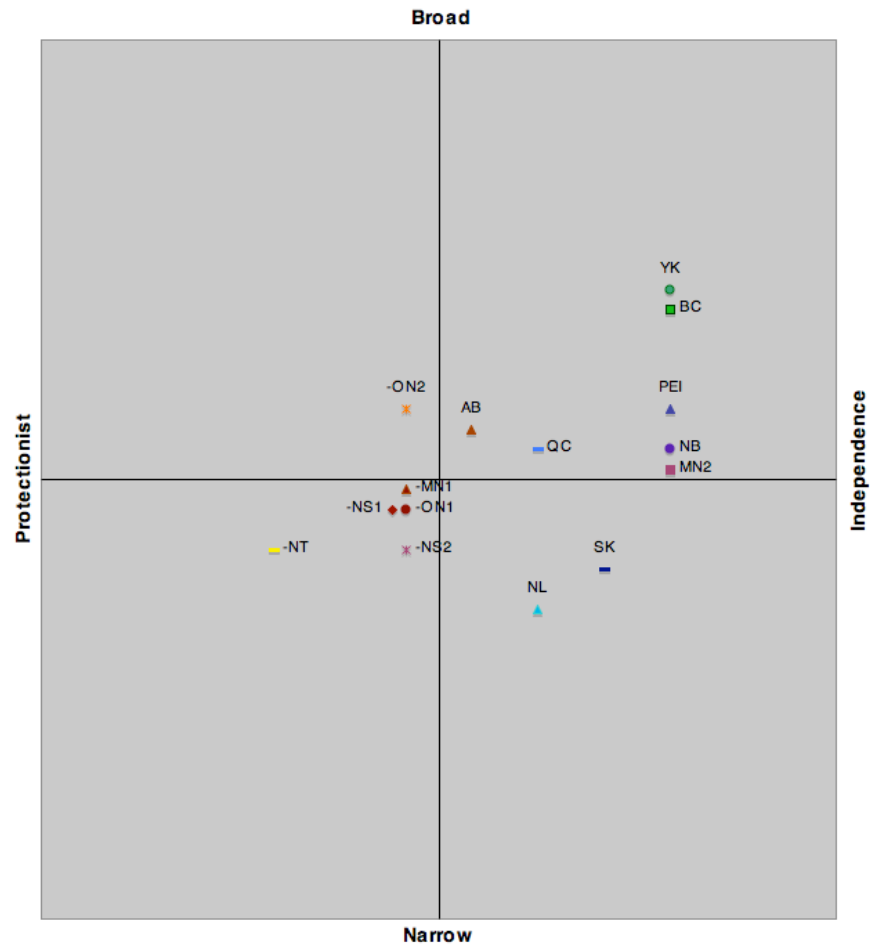
⁶⁵ *Ibid.* at s. 48.

⁶⁶ S.S.1983, c. P-36.3; amended in 2001, c. 33, s. 19.

D. MAPPING CANADIAN ABUSE AND NEGLECT LEGISLATION

The goal in mapping Canada's adult abuse and neglect statutory regimes is to provide a visual tool outlining the various groupings and trends in this field. It is not meant to be a scientific statistical representation and is not held out as such. Rather, it is a useful way to parse the component policy choices which typically make up adult abuse and neglect legislation, in order to better consider the various options. Further, it allows an at-a-glance mapping of where each jurisdiction lies in relation both to the others, and also to the whole.

Comparing Adult Protection Legislation



- BC: Adult Guardianship Act, R.S.B.C. 1996 c.6 Part 3
- ▲ AB: Protection for Persons in Care Act, R.S.A. 2000, c.P-29
- ▬ SK: Public Guardian and Trustee Act, S.S. 1983, c.P-36
- ▲ MN1: Protection for Persons in Care, C.C.S.M., c. P144
- MN2: Vulnerable Persons Living with a Mental Disability Act, C.C.S.M. c. V90
- ON1: Nursing Home Act, R.S.O. 1990 c.N1
- ✱ ON2: An Act Respecting Long-term Care Homes, (Bill 140), 2007 (not in force)
- ▬ QC: Charte des Droits et Libertés de la Personne, L.R.Q. C-12
- ▲ PE: Adult Protection Act, R.S.P.E.I. 1988, c.C-13
- NB: Family Services Act R.S.N.B. 1980, c.F-22
- ◆ NS1: Adult Protection Act, R.S.N.S. 1989, c.2
- ✱ NS2: Protection for Persons in Care Act, S.N.S. 2004, c.33 (Not In Force)
- ▲ NL: Neglected Adults Welfare Act, R.S.N.L. 1990, c.N-3
- YK: Decision Making, Support and Protection to Adults Act, S.Y. 2003 c.21
- ▬ NT: Protection Against Family Violence Act, S.N.W.T. 2003, c.24 & Guardianship and Trustee Act, S.N.W.T. 1994, c.29

1. Methodology

The graph maps legislative components using a Cartesian coordinate system along two axes:

North to South	=	Broad to Narrow Scope and Application
East to West	=	Protectionist to Independence Models

Various legislation is evaluated and given a score on each axis. The exact score for each statute is not as relevant as is position on the graph in relation to other statutes. Again, this is not meant to be a complete statistical representation, but rather a useful visual tool.

1.1 Explaining the Broad – Narrow Axis (North – South)

- The Broad – Narrow axis (North - South) contains the following eleven indicia that evaluate the scope of the statute's scope and application:

1. Does the legislation apply to long-term care facilities?

2. Does the legislation apply to people receiving care or who are in “group home” environments?

3. Does the legislation apply to people in private care accommodations?

4. Does the legislation apply to the entire community?

5. Does the legislation apply to hospitals?

6. Does the legislation cover neglect?

7. Does the legislation cover abuse?

8. Does the legislation cover self-neglect?

9. Does the legislation avoid the concept of intention or a *mens rea* requirement?

10. Does the legislation apply to people who are vulnerable?

11. Does the legislation apply to people who are mentally capable?

- The score for each piece of legislation is created by adding up the number of “Yes” answers on the questionnaire under the Broad-Narrow heading.
- Answering “Yes” to all the questions will create the broadest and most encompassing possible scope for the legislation. Conversely, answering “No” to all the questions will create the narrowest and most limited possible scope for the legislation.

- The median value for the axis, 6.5, is subtracted from the raw score in order to create the value that is plotted on the graph.
- A low score on this axis indicates that a statute applies to fewer people or applies in limited situations, whereas a high score would mean that the statute is broad in the sense that it applies to many people and covers numerous situations.

1.2 Explaining the Protectionist – Independence Axis (East – West)

- The Protectionist - Independence axis (East - West) contains the following twenty-three indicia that evaluate the underlying philosophy and intention of the statute:

1. Does the definition in the legislation include physical abuse?

2. Does the definition in the legislation include financial abuse?

3. Does the definition in the legislation include emotional / psychological abuse?

4. Does the definition in the legislation include sexual abuse?

5. Does the definition in the legislation include chemical abuse?

6. Does the definition in the legislation include spiritual abuse (religious or cultural)?

7. Does the definition of abuse include a component which mentions violation of other rights?

8. Is there protection for whistleblowers?

9. Is there protection from liability?

10. Is there a system to deal with false claims, such as making it an offence?

11. Is there more than one place to report incidents of abuse?

12. Does the legislation avoid a “best interests” test for capable adults?

13. Is reporting voluntary for community members?

14. Is reporting voluntary for members of the health care sector or government?

15. Are there mandatory investigation processes in the legislation?

16. Is there a broad range of possible outcomes to the investigation available?

17. Do investigators have strong powers to investigate?

18. Is there a process of community support or networks identified?

19. Is there system which allows the freezing or other protection of assets?

20. Does the adult have to be consulted to the greatest extent possible?

21. Is there a statement of guiding principles in the legislation?

22. Is there a regime for financial support?

23. Is there an established mechanism for determining capacity?

- The score of each piece of legislation is created by adding up the number of “Yes” responses on the questionnaires under the Protectionist – Independence heading.
- Answering “Yes” to all the questions will indicate the most independence-based theory of the legislation, promoting such values as the least possible intervention, the right to live at risk and individual referencing. Conversely, answering “No” to all the questions will indicate the most protectionist model, promoting a state’s right to decide what is in the best interests of the adult, using the measurement of what a reasonable person would do in the circumstance.
- The median value for the axis, 11.5, is subtracted from the raw score in order to create the value that is plotted on the graph.
- A high score indicates that the statute in question adopts a significant number of provisions that stress independent decision-making. A low score indicates that the statute in question adopts a model which is based on more paternalistic standards.

1.3 The Matrix is Value Neutral

The primary purpose of the graph is to map some of the individual component policy decisions made by the drafters on two axes, which divides the legislation into four quadrants:

- Broad and Independence-based
- Broad and Paternalistic-based
- Narrow and Paternalistic-based
- Narrow and Independence-based

The graph is value neutral. It does not suggest that one set of policy choices is better than another. Rather, it is intended to be a visual representation of these policy choices. Even within the quadrants, there can be a variety of different approaches. The policy choices reflected in each quadrant are described below.

1.4 What is Mapped

The graph plots all abuse and neglect legislation in Canada, including: newer and older comprehensive regimes, deliberately limited regimes and protectionist regimes.

It also plots patchwork regimes, which will be, by their nature, outliers on the graph. Patchwork regimes are indicated by a *bar symbol*.

In order to view the broadest possible picture, the graph also notes legislation which would be applicable but is not yet force. Such legislation is indicated by an *asterisk*.

1.5 The Matrix Interpreted

(a) *Broad and Independence-based (Yukon, BC, PEI, NB, QC)*

Statutes that fall within this quadrant are ones that could apply to most adults regardless of their geography or care status. The definitions of abuse tend to be modern and comprehensive as well, which means that the abuse and neglect legislation will apply to a wide variety of situations. This also makes the Act broad in scope.

Not surprisingly, the *newer comprehensive regimes* of BC and Yukon appear near each other in the upper right-hand corner of the broad and independence quadrant and the *older comprehensive regimes* of PEI and NB appear lower in the quadrant. PEI and NB are narrower in scope than BC and Yukon, although they rank similarly on the independence axis.

Quebec is an outlier in this quadrant. It is included in this quadrant predominately because the Quebec legislation protects against “abuse” which is undefined, and thus subject to common law interpretation, and “all exploitation.” In reality, however, Quebec should not be seriously considered to be grouped with the other legislation.

Manitoba’s *Vulnerable Persons Living with a Mental Disability Act* also shows up in this quadrant. It is specific legislation to persons with disabilities and lies fairly far along the independence axis. This is unsurprising as this legislation was drafted with the specific goal of empowering persons with disabilities and is informed by modern disability theory. It is, however, really part of a patchwork of legislation making up Manitoba’s regime.

Yukon’s legislation is broader in scope than all other legislation in Canada. It also has the most modern definitions included (with the exception of some components of Ontario’s Bill 140). Again, this is reflective of the newer status of Yukon legislation and the incorporation of the most recent thinking on comprehensive abuse and neglect legislation.⁶⁷

Thus, the abuse and neglect legislation of Yukon is Canada’s best representative modern, comprehensive statute.

⁶⁷ It should be noted that much of the BC drafting team was contracted to draft the Yukon legislation.

(b) *Broad and Protectionist*

The upper left-hand corner of the graph is empty, which is unsurprising. Legislation which would rank that high in both breadth and protectionism would significantly infringe many of Canada's espoused rights, including *Charter* provisions.

(c) *Centre - North of the Graph (ON, AB, MB)*

The centre of the map generally indicates policies reflected in legislation which we have described as "deliberately limited." Ontario's Bill 140 ranks as the broadest of this group of three. Ontario's current legislation, which is under revision, ranks slightly below the centre-mark; however, it seems very likely indeed that Bill 140 will soon become law. As such, it may be helpful to look to Bill 140 as more representative of Ontario's regime.

Deliberately limited regimes rank as less independence-based generally, as they have a very specific group to which the legislation applies, but within that cohort, strong protections exist, such as mandatory reporting.

(d) *Narrow and Protectionist (NS, NWT, NU)*

Of this grouping, only Nova Scotia truly belongs in this quadrant. Both the NWT and Nunavut are outliers, and indicative of a patchwork of other domestic abuse legislation.

Nova Scotia's *Adult Protection Act* is limited by having slightly narrower definitions of abuse (not financial) and by making the statutes apply only to persons living in the community. It is also, perhaps, more protectionist than it appears by the manner in which the legislation is used.

Nova Scotia's *Protection for Persons in Care Act* also falls within this quadrant, as it is also based on a number of protectionist principles and is limited in scope. However, if the PPCA was *added* to the NS APA the end result would likely push Nova Scotia into the broad and protectionist category.

Nevertheless, this legislation has been under review for some time as should not be looked to as a model for abuse and neglect legislation.

(e) *Narrow and Independence-based (SK, NL)*

Only Newfoundland properly belongs in this quadrant. Saskatchewan's placement in this quadrant is indicative of the patchwork of domestic violence legislation predominately intertwined with new powers of the Public Guardian and Trustee to investigate financial abuse.

Newfoundland's legislation is particularly narrow, in that it only applies to adults who are neglected and who are mentally or physically incapable of caring for themselves (self-neglected). While reporting is mandatory and there are some significantly protectionist-based indicators, there are also many other indicators are embedded in an independence based model. Many of the answers to the indicia questions were in a grey zone and Newfoundland may be more properly read closer to the centre of the matrix, closer to the protectionist based axis.

What is clear from this map, however, is that Newfoundland's legislation is significantly different from the rest of the modern groupings.

However, the question as to whether Newfoundland will choose to move to a modern comprehensive based model or towards a deliberately limited legislative regime will be one of internal policy and local societal norms.

E. THE LARGER LEGISLATIVE FRAMEWORK REQUIRED

Abuse and neglect legislation requires a strong legislative framework of supporting and complimentary legislation.

Regardless of whether a modern comprehensive regime is chosen or a deliberately limited regime, abuse and neglect legislation is only one part of a much larger legislative picture.

1. Public Guardian and Trustee Legislation

In order for adult abuse and neglect legislation to properly function, it requires a strong, modern and adequately funded Public Guardian and Trustee regime. The particulars of a variety of Canada's PGT regimes will be detailed below.

2. Substitute Decision-making Legislation (POA Legislation and/or Advance Directive Legislation)

A strong set of substitute decision-making statutes is also required. This should include methods for adults to plan ahead for someone they trust to take over decisions about health care and finance. The stronger and more accessible the substitute decision-making laws are, the fewer requirements for remedial abuse and neglect legislation seem to exist. In Canada, the leaders in the field of substitute decision-making regimes are Ontario and Yukon.

Both evidence-based research, professional commentary and anecdotal evidence suggest that when adults are afforded simple, safe and well-understood personal planning options, such as powers of attorney for personal care (attorneys, health care proxies, directors, representatives etc) and powers of attorney for finance (attorneys, directors etc) there are savings to government, savings to individuals and perceived reductions in abuse and neglect. With excellent, accessible and affordable substitute decision-making tools, adults are best able to turn their minds to decisions which may be required in future.

Advance care planning refers to the use of substitute decision-making tools such as health care proxies and powers of attorney for finance. In many, but not all, jurisdictions, a written advance directive may also be used, which will provide direct consent to treatment (or restriction from treatment) the health care provider. Advance directives may be contentious and should never replace proxy-health care decision-making.

3. Modern Guardianship Legislation

A modern, graduated guardianship regime is also an important part of the legislative package. Should a person be found, pursuant to adult abuse and neglect legislation, to require a guardian, the matter is then passed to the PGT for statutory guardianship or to the broader guardianship regime itself, if a family member or friend applies for that position. Without such complementary regimes in place, persons found to be requiring assistance pursuant to the abuse and neglect legislation would have no recourse.

In modern comprehensive jurisdictions such BC and Yukon, the abuse and neglect legislation is embedded in the broader adult guardianship statute. In the deliberately limited jurisdictions⁶⁸ such as Ontario, the guardianship legislation is flexible and specifically tailored to keep the matters, where possible, out of court.

Modern guardianship laws reject a binary all-or-nothing approach to capability and capacity, instead recognizing that there are shades of grey on the capability continuum. As such, modern guardianship legislation is drafted to support an adult's capability wherever possible.

With an embedded least-restrictive approach, modern guardianship legislation also tries to encourage non-court-based resolutions, including a system of statutory guardianship. BC has recently reintroduced new guardianship legislation on April 19, 2007 in its Bill 29, with these hallmarks. If passed it may provide the new benchmark in modern Canadian guardianship legislation.

4. Health Care Consent Legislation

Abuse and neglect often arise in cases when the laws of consent are not well understood or followed. Where the adult is capable, medical treatment must be specifically consented to for each treatment; where the adult is incapable, the correct substitute decision-maker must be consulted to make the health care treatment decision.

Having a default list of substitute decision-makers to cover cases where an adult has neither a court-appointed personal guardian nor an appointed health care proxy⁶⁹ enables health care providers to obtain consent for treatment and avoid forcing or withholding treatment themselves. This, in turn, may reduce incidents of abuse or neglect by ensuring that a

⁶⁸ Alberta's guardianship system is peculiar in Canada with its division powers between the Public Guardian and Public Trustee, and is not to be recommended.

⁶⁹ Such as a power of attorney for personal care, health care director or representative.

person is making the substitute health care decision according to the values, previously expressed wishes or beliefs of the incapable adult. Such default lists of substitute decision-makers also reduce reliance on public officials, health care providers and the Public Guardian and Trustee to provide these services, and ensure matters remain out of court.

5. Modern Long-Term or Persons in Care Legislation

Modern and thorough long-term care legislation is especially required when using the deliberately limited model, such as Ontario's new Bill 140. Indeed, as comprehensive models are often embedded within guardianship legislation, deliberately limited models are often embedded within long-term or persons in care legislation.

However, it plays a slightly different, but no less important role in a comprehensive model too. Several jurisdictions are in the process of updating their long-term care legislation and regulations and there is a strong acknowledgement that modernization of these legislative regimes are overdue.

Issues of institutional abuse and neglect are currently of prime concern, as reports of inadequate nursing and personal care, denial of residents' rights, prevalent use of physical and chemical restraints and locked wards, whistle blowing repercussions and abuse caught on surveillance cameras are consistently reported in the media. New research also indicates that abuse and neglect in institutional settings is prevalent and serious.⁷⁰

Ontario's new Bill 140 promises to set the new standard for long-term care legislation in Canada and the Advocacy Centre for the Elderly's written submissions to the standing committee are especially useful.⁷¹

F. INTERSECTION WITH PUBLIC GUARDIAN AND TRUSTEE LEGISLATION

1. General

This section addresses the role played by the Public Trustee, Public Guardian and Trustee or equivalent official in the implementation of adult abuse and neglect legislation in representative jurisdictions from each type of legislative regime, and the powers required to carry it out.

2. NEWER COMPREHENSIVE REGIMES

Under the newer comprehensive regimes of Yukon and British Columbia, the Public Guardian and Trustee (PGT) has investigative and administrative powers that complement

⁷⁰ See Kamaal Zaidi, "Elder Abuse and Neglect in Institutional Settings: A Recent Overview of Adult Protection Legislation and Related Initiatives in Canada," online at: <http://low.bepress.com/cgi/viewcontent.cgi?article=4466&context=expresso> (Berkley Electronic Press) and also Charmaine Spencer et al, Institutional Abuse in Canada – in progress.

⁷¹ Online at: <http://www.advocacycentreelderly.org/pubs/Nursing/Submission.pdf>.

those of the designated agencies. They allow the PGT to assume temporary or permanent guardianship of the person in cases where mental capacity is lacking or is doubtful, and to protect assets of an abused and neglected adult on an emergency basis whether or not capacity is present.

2.1 British Columbia

The Public Guardian and Trustee of British Columbia (BCPGT) has a substantial, though not a primary, role in the implementation of the abused and neglected adults legislation found in Part 3 of the *Adult Guardianship Act* (AGA).⁷² This legislation covers adults who may or may not have full legal capacity, but who are subject to “abuse,” “neglect,” or “self-neglect” as defined in s. 1 of the AGA.

There is a considerable degree of intersection between the BCPGT’s functions under the abused and neglected adults provisions, the BCPGT’s protective mandate in regard to mentally incapable adults and its supervisory jurisdiction over committees and representatives. When one of these roles of the BCPGT is engaged, it may lead to the engagement of another. For example, a report of self-neglect under s. 46 of the AGA and subsequent refusal by the adult in question of assistance under a support and assistance plan prepared by a designated agency will lead to an incapability assessment for the purposes of Part 3 arranged by the BCPGT. This may in turn lead to the conclusion that the adult in question is really suffering from dementia, requiring the BCPGT to act as the adult’s committee.

2.1.1 BCPGT Designates the Designated Agencies

The primary role in implementing Part 3 of the AGA belongs to the designated agencies. It is the BCPGT, however, who designates the agencies for the purpose of Part 3 by regulation, and may limit their functions as designated agencies by any factor that the BCPGT considers advisable.⁷³

2.1.2 BCPGT Facilitates Community Response Networks

The BCPGT is also charged with the task of organizing networks of public bodies, organizations or persons for the provision of support and assistance to abused or neglected adults (community response networks or “CRNs”).⁷⁴ It is empowered to establish an agency to assist in planning or developing a network of public bodies, organizations or persons and training staff.⁷⁵ As a result, the British Columbia Association of Community Response Networks (BCCRNS) was created with assistance, financial and otherwise, from the Office of the BCPGT. The BCPGT is also empowered to research the most effective ways of providing community and other services to carry out the purposes of this Act.⁷⁶

⁷² *Supra*, note 14.

⁷³ *Ibid.*, s. 61(a.1). This has been done in the *Designated Agencies Regulation*, B.C. Reg. 19/2002.

⁷⁴ *Ibid.*, s. 61(b).

⁷⁵ *Ibid.*, s. 61(c).

⁷⁶ *Ibid.*, s. 61(d).

2.1.3 Assessments of Incapability for the Purpose of Part 3

When an adult who has been subject to abuse or neglect (including self-neglect) refuses support and assistance offered as a result of intervention by a designated agency under Part 3, and the staff of the designated agency believe that the adult may lack the capacity to make that decision, the BCPGT's office may be asked to arrange an assessment of incapability under s. 53(5) of the AGA.

The BCPGT's office will assign a team of two or more assessors located in the area where the adult lives who have experience in dealing with abused, neglected and self-neglected adults. They will base the decision whether the adult is incapable of deciding to reject a support and assistance plan on whether the adult understands:⁷⁷

- (a) the services described in the support and assistance plan;
- (b) the reason the services are being offered to the adult; and
- (c) the consequences to the adult of not accepting the services.

The *Adult Guardianship (Abuse and Neglect) Regulation*⁷⁸ stipulates that the assessment must be conducted according to the *Practice Guidelines for Incapability Assessment* established by the BCPGT.

2.1.4 Referral to BCPGT Where Designated Agency Decides Not to Take Further Action

If a designated agency determines that an adult does not need support and assistance, it may advise the BCPGT of this under s. 47(2) of the AGA, but pass on to the BCPGT any concerns involving the conduct of a representative or committee that have come to light as a result of its inquiry so that the BCPGT may consider taking appropriate steps in pursuance of its supervisory jurisdiction over these officeholders.⁷⁹ For example, the BCPGT could inspect accounts, conduct an audit, require the accounts to be passed, apply for removal and replacement of a committee, etc.

2.1.5 Referral to BCPGT Where Financial Abuse Suspected

A designated agency may notify the BCPGT under s. 47(3) of the AGA that it finds that an abused or neglected adult needs support and assistance. Typically this would be done in cases of financial abuse so that the BCPGT's investigatory and audit powers can be

⁷⁷ Public Guardian and Trustee (B.C.), *Adult Guardianship Act Part 3: A Guide for Communities* (Vancouver: Office of the Public Guardian and Trustee, 2001) at 26-27.

⁷⁸ *Adult Guardianship (Abuse and Neglect) Regulation*, B.C. Reg. 13/2000, s. 3(2).

⁷⁹ Gordon, *supra*, note 15 at 214.

invoked. The BCPGT's Office also advises designated agencies and community response networks to contact it if they need assistance with an inquiry into financial abuse.⁸⁰

2.1.6 Protection of Assets in Urgent Cases

As noted in Part "B" of this memorandum, where the BCPGT has reason to believe that the financial affairs, business or assets of an abused or neglected adult require immediate protection, the BCPGT has the power under ss. 19(2) and (3) of the BCPGTA to prevent withdrawals from the adult's account in a financial institution, direct any source of income to send the income to the BCPGT in trust for the adult, halt any disposition of the adult's real or personal property, and take any other step reasonable in the circumstances for up to 7 days. This power can be exercised as a result of, or in the course of an inquiry by, a designated agency, but is not dependent for its exercise on a preceding or concurrent inquiry by a designated agency. It could be exercised on the BCPGT's own initiative if information concerning financial abuse of an adult comes to the knowledge of the BCPGT in other ways.

2.1.7 Organization, Staff and Funding in the B.C. BCPGT's Office Devoted to the Administration of Abused and Neglected Adults Legislation

The functions connected with the implementation of the abused and neglected adults provisions in Part 3 of the AGA are subsumed in the organization of the BCPGT's Office, as well as in its internal and external financial reporting and Annual Report, under the general category of "Services to Adults." This category also comprises committeeships carried out under the *Patients Property Act* and acting in health care matters as a substitute decision-maker under the HC(C)CF(A)A. An organization chart of the BCPGT's Office is appended for reference.

We are advised by the BCPGT's Office that neither costs and revenues related to services to adults, nor the caseload, are tracked internally by reference to the enactment governing the services that are provided. In other words, the resources engaged in the administration of the abused and neglected adults legislation and the associated expenditures cannot be isolated as if that particular aspect of the BCPGT's overall provision of Services to Adults were a specific cost centre.

2.1.8 Staffing of Assessment and Investigation Services Division

The functions performed by the BCPGT's Office in relation to Part 3 of the AGA are carried out by a division called "Assessment and Investigation Services." We are advised by the BCPGT's Office that this division currently and historically has 4 regionally based administrative officers (AO21 level) and two or three administrative support personnel (Clerk R9s) engaged in investigation of matters related to its services to adults, which cover committeeship and health care decision-making in addition to incapability assessment and investigations connected with the abused and neglected adults provisions.

⁸⁰ Public Guardian and Trustee (B.C.), *Adult Guardianship Act Part 3: A Guide for Communities* (Vancouver: Office of the Public Guardian and Trustee, 2001) at 13.

2.1.9 Personnel-related Costs

The annual salary range for the 4 administrative officers is \$49,047-\$55,963.

The salary range for the 2 or 3 administrative support personnel is \$34,922 - \$39,512. as of 1 April 2007.

2.1.10 Annual Cost Associated with Assessment and Investigation

The 2005-2006 Annual Report of the BCPGT indicates that expenditure in that fiscal year for Assessment and Investigation Services was \$709,187. Self-generated revenues for this division in that year were \$4,175.

We are advised that Part 3 of the AGA accounts for a very small portion of the caseload of the Assessment and Investigation Service, as most of the implementation of Part 3 is done by the designated agencies. A figure of \$169,091 appears in the Annual Report for 2005-2006 representing expenditure for that fiscal year in relation to “Adult Guardianship,” but we were cautioned that this is a calculated estimate based on a notional allotment of portions of FTEs (full-time equivalent positions) rather than representing a separately tracked cost, and should not be relied upon for purposes of projecting costs in other jurisdictions.

3.0 Yukon

The Yukon legislative regime for protection of abused and neglected adults was modelled on that of British Columbia. The similarities are notable, including the interaction of the designated agencies with the office of the Public Guardian and Trustee (YPGT).

3.1 Designated Agencies Have Primary Role

As in British Columbia, the primary responsibility role for the implementation of abused or neglected adult legislation in the Yukon Territory belongs to the designated agencies and not to the YPGT. A signal difference, however, is that the agencies are designated by an ordinary regulation, not by the YPGT.⁸¹

3.2 YPGT Retains Significant Role

The YPGT has an important role in connection with protection of the property of an abused or neglected adult. Involvement of the PGT does not depend solely on there being a question of lack of capacity. It may result from a report by a designated agency made in the course of an abuse and neglect investigation under the *Adult Protection and Decision Making Act*⁸² (APDMA) that the subject’s financial affairs require protection.

⁸¹ *Supra*, note 28.

⁸² *Ibid.*

3.3 Power of YPGT to Investigate Financial Abuse

If a designated agency informs the YPGT that it is inquiring into abuse or neglect of an adult, the YPGT is empowered to investigate the adult's financial affairs.⁸³ The YPGT may also investigate and audit a trust of which the adult is or may be a beneficiary, an attorney of the adult under a power of attorney, a guardian of the adult appointed under the *Adult Protection and Decision-Making Act*, or an associate decision-maker or representative under that Act.⁸⁴

The *Public Guardian and Trustee Act* gives the YPGT a general right to all information necessary to perform its functions under the Act. Anyone having custody or control of information to which the YPGT is entitled is required to disclose it to the YPGT.⁸⁵ This obligation overrides every claim of confidentiality or privilege except solicitor-client privilege.⁸⁶

In carrying out an investigation or audit, the YPGT may require production by an attorney, representative, decision-maker, or guardian, or any person or institution having records relating to the financial affairs of the adult, of accounts, securities or other records the YPGT considers necessary.⁸⁷ The YPGT may also require them to provide a report, information, or explanation that the YPGT considers necessary.⁸⁸ If they do not comply, the YPGT may apply to the Supreme Court of the Yukon Territory for an order directing production. If that order is not complied with, the YPGT may apply for a further order authorizing the YPGT to enter premises where the accounts, securities, or other records are kept and inspect or copy anything the YPGT deems relevant to the particular investigation or audit.⁸⁹

3.4 Urgent Protection of Financial Assets

If the YPGT has reason to believe that the financial affairs of an adult who is apparently abused or neglected within the meaning of the APDMA are in need of immediate protection, the YPGT can freeze the account of the adult in a financial institution, direct that a source of income belonging to the adult be paid to the YPGT in trust, stop a disposition of the adult's property, or take any other step that is necessary to protect the financial affairs of the adult and is reasonable in the circumstances.⁹⁰ These measures can last up to 21 days.⁹¹

While these urgent protective measures could follow upon a report by a designated agency under s. 78(2)(d) of the APDMA that the financial affairs of an abused or neglected adult

⁸³ *Supra*, note 30, s. 9(1).

⁸⁴ *Ibid.*, s. 9(2).

⁸⁵ *Ibid.*, ss. 23(1), (2).

⁸⁶ *Ibid.*, s. 23(3).

⁸⁷ *Ibid.*, s. 10(1)(a), (b).

⁸⁸ *Ibid.*, s. 10(1)(c).

⁸⁹ *Ibid.*, ss. 10(3)-(5).

⁹⁰ *Ibid.*, s. 18(2).

⁹¹ *Ibid.*, s. 18(3).

require immediate protection, it appears that s. 18 of the *Public Guardian and Trustee Act* permits the YPGT to invoke these powers on its own initiative without first receiving a designated agency's report.

3.5 Temporary and Permanent Guardianship

The YPGT may act as a guardian of a person incapable of managing all or part of his or her affairs under Part 3 of the APDMA.⁹² The YPGT could apply to the Supreme Court for appointment as the permanent guardian of an adult if evidence of incapacity emerged from an investigation by a designated agency of allegations of abuse or neglect.⁹³

The YPGT may also apply *ex parte* for temporary guardianship for up to 180 days if it has reason to believe that an adult is incapable of managing all or part of his or her financial affairs, that an order is necessary to prevent financial damage or loss, and that compliance with the usual notice requirements in a guardianship application would produce delays that would not be in the best interests of the adult.⁹⁴

Temporary guardianship might be sought in order to prevent further loss in the case of financial abuse where there is some degree of loss of capacity. A temporary guardian is vested by virtue of the appointment with the power to “do anything that is necessary to preserve and protect the adult from further damage or loss.”⁹⁵ This includes the express powers to freeze accounts in a financial institution, divert payment of a source of income to an account the temporary guardian has ordered frozen, and halt a disposition of the incapable adult's property.⁹⁶

The YPGT's powers to seek appointment as the temporary or permanent guardian of an adult is independent of any investigation by a designated agency and could be exercised by the YPGT on its own initiative whether or not a designated agency is concurrently investigating allegations of abuse or neglect.

3.6 Potential Outcomes of the YPGT's Involvement

During or after an investigation conducted by the YPGT into a matter affecting an adult who may be abused or neglected, the PGT may:

- (a) report to the designated agency that is conducting an investigation under the APDMA,
- (b) report to the RCMP,

⁹² *Ibid.*, s. 4(2)(a). See also APDMA, *supra*, note 28, s. 29(b).

⁹³ APDMA, *supra*, note 28, s. 35(1). The YPGT cannot be appointed as a guardian without its consent: *Public Guardian and Trustee Act*, *supra*, note 30, s. 4(3).

⁹⁴ *Supra*, note 28, s. 35(1)(c).

⁹⁵ *Ibid.*, s. 35(7).

⁹⁶ *Ibid.*, ss. 12, 18.

- (c) make or support and application for temporary or permanent guardianship,
- (d) provide information to the Supreme Court of the Yukon Territory regarding a guardianship application or order,
- (e) provide information to the Territorial Court respecting an adult protection order under the ADMA or any other matter before the court
- (f) take any other action under the *Public Guardian and Trustee Act*, the ADMA or any other Act that the YPGT considers appropriate. This could include exercising the powers of temporarily freezing bank accounts, preventing dispositions of property, and diverting sources of income to the YPGT in trust in order to preserve the financial well-being of an adult and prevent further financial abuse.

4. OLDER COMPREHENSIVE REGIMES

4.1 Prince Edward Island

Under the *Adult Protection Act*⁹⁷ of Prince Edward Island, the primary investigatory responsibility for reports that a person is in need of assistance or protection belongs with the Minister of Health. The Official Guardian and Public Trustee, which are two separate offices, have limited roles in the implementation of the Act.

Where the Minister applies for a temporary guardianship order for protection of a person's welfare and affairs while further investigation is being carried or arrangements are being made regarding the person's needs, the court may arrange for the person to be represented by the Official Guardian or legal counsel on the application.⁹⁸

The Minister may request the Public Trustee to intervene "in such a way and to such degree as may be demonstrably necessary temporarily to prevent or contain...loss or damage" if convinced that a person evidently in need of assistance or protection is unable to manage his or her affairs or protect his or her estate.⁹⁹ Within 120 hours after the intervention commences, either the Minister or the Public Trustee must apply "[f]or such court order or appointment as would normally be required."¹⁰⁰ The intervention may not be continued unless that application is made for the order that would be sought under the Act in non-emergency circumstances, e.g. for a condition, circumstances, and needs assessment, temporary guardianship, or provision of health care.

⁹⁷ *Supra*, note 7.

⁹⁸ *Ibid.*, s. 17(1).

⁹⁹ *Ibid.*, s. 24(1).

¹⁰⁰ *Ibid.*, s. 24(2).

5. DELIBERATELY LIMITED REGIMES

In the deliberately limited regimes (e.g., Ontario and Alberta), the Public Trustee typically becomes involved in cases of adult abuse or neglect only where there is a question of lack of mental capacity placing the adult at personal or financial risk.

5.1 Ontario

Involvement of the Public Guardian and Trustee (OPGT) of Ontario with the administration of the adult abuse and neglect prevention provisions in that province is focused on situations where risk of physical, emotional or financial harm to an individual doubt is associated with lack of mental capacity or doubtful capacity.

5.1.1 The OPGT's Investigative Powers Under the *Substitute Decisions Act, 1992*

The *Substitute Decisions Act, 1992*¹⁰¹ requires the OPGT to investigate any allegation that

- (a) a person is incapable of managing property or incapable of personal care and
- (b) serious adverse effects are occurring or may occur as a result.¹⁰²

“Serious adverse effects” in relation to possible incapacity to manage property are defined as “loss of a significant part of a person’s property, or a person’s failure to provide necessities of life to himself or herself or for dependants.”¹⁰³ In relation to alleged incapacity for personal care, “serious adverse effects” are defined as “serious illness, or injury, or deprivation of liberty or personal security.”¹⁰⁴

While there is no requirement to report abuse or neglect to the OPGT in Ontario, it is evident from the above that if the OPGT’s office received a communication hinting at lack of capacity on the part of a resident in long-term care and the possibility of “serious adverse effects” as defined in ss. 27(1) and 62(1) of the *Substitute Decisions Act, 1992* investigative action by the OPGT would be required.

5.1.2 Interaction of Reporting Obligations under *Nursing Homes Act* and the OPGT’s Jurisdiction

A report of abuse or neglect occurring in a nursing home made under s. 25 of the *Nursing Homes Act*¹⁰⁵ that raises a question as to the subject’s capacity can lead to the OPGT conducting an investigation pursuant to the *Substitute Decisions Act, 1992*.¹⁰⁶ The Director

¹⁰¹ *Supra*, note 12.

¹⁰² *Ibid.*, ss. 27(2), 62(2).

¹⁰³ *Ibid.*, s. 27(1).

¹⁰⁴ *Ibid.*, s. 62(1).

¹⁰⁵ R.S.O 1990, c.N7.

¹⁰⁶ *Supra*, note 12.

under the *Nursing Homes Act* may call in other appropriate persons to investigate a problem of alleged neglect, unlawful conduct, or improper or incompetent treatment endangering a resident that has been reported to the Director under that Act.¹⁰⁷ This could include the OPGT if the facts suggested possible incapacity to manage property or personal care.

5.1.3 Potential Outcomes

The outcome of an investigation under the *Substitute Decisions Act, 1992* may range from closure of the file if no evidence of incapacity is found to the OPGT becoming the permanent guardian of the adult if incapacity is found. If the adult in question is capable of giving a power of attorney, the OPGT may arrange for a trusted person to act as the adult's attorney, or another alternative solution short of obtaining a guardianship order may be found.

5.1.4 Temporary Guardianship

If the OPGT has reasonable grounds as a result of an investigation conducted under the *Substitute Decisions Act, 1992* that a person is incapable of managing property or personal care and prompt appointment of a temporary guardian of property or of the person is required to prevent serious adverse effects, the OPGT is required to apply to court for appointment as the temporary guardian of the property or of the person, as the case may be.¹⁰⁸ A temporary guardianship order can last up to 90 days.¹⁰⁹ The OPGT's powers as temporary guardian are those that the court sets out in its order.¹¹⁰

5.1.5 Statutory Guardianship under Section 16 of *Substitute Decisions Act, 1992*

If there is a need for intervention on a long-term basis and the guardianship needed is only in relation to the management of property, the OPGT may arrange to become the statutory guardian of property under s. 16(1) of the *Substitute Decisions Act, 1992*. This does not involve a court appointment. If a certificate of incapacity is issued by a qualified assessor, the OPGT automatically becomes the statutory guardian of property of the individual concerned.¹¹¹ The individual named in the certificate of incapacity may apply to the Consent and Capacity Board for a review of the assessor's finding that the person is incapable of managing property.¹¹²

5.1.6 Bill 140

Bill 140, the *Long-Term Care Homes Act 2007* would bring long-term care facilities under a single regime in Ontario, repealing the *Nursing Homes Act, Homes for the Aging and Rest*

¹⁰⁷ Advocacy Centre for the Elderly, *Community Training Manual* 3rd Edition (December 2002). Online at www.advocacycentreelderly.org/pubs/eamanual/eamanualsec4a.pdf.

¹⁰⁸ *Supra*, note 12, ss.27(3.1), 62(3.1).

¹⁰⁹ *Ibid.*, ss.27(6), 62(7).

¹¹⁰ *Ibid.*, ss.27(7), 62(8).

¹¹¹ *Substitute Decisions Act, Supra*, note 12, s.16(5).

¹¹² *Ibid.*, s.16(6)(b).

Homes Act, and Charitable Institutions Act. It has passed third reading in the Ontario legislature. Bill 140 contains a reporting regime for abuse and neglect of residents in long-term care homes similar to that now found in the present *Nursing Homes Act*. The term “abuse” is defined in s. 2(1) of the Bill to include physical, sexual, emotional, verbal or financial abuse in relation to a resident. Each of the enumerated forms of abuse may be further defined in regulations. The OPGT’s office does not anticipate significant change in the pattern or volume of referrals to it in relation to residents of long-term care homes as a result of the enactment of Bill 140.¹¹³

5.1.7 Staffing of Guardianship Investigations Team

Investigations are carried out by a 14-member Guardianship Investigations Team within the office of the Public Guardian and Trustee, which in turn is part of the Family Justice Services division of the Ministry of Attorney General. About 40 to 45 percent of the matters referred to the Guardianship Investigation Team relate to residents in long-term care institutions, but only a very small proportion of these result in investigations. The remainder are usually resolved through provision of advice to the institution by the OPGT’s office.¹¹⁴

Financial information specific to the operation of the Guardianship Investigation Team was not available.

5.2 Alberta

Public guardianship of a mentally incapable person and public trusteeship of the estate of a person unable to manage his or her estate are divided in Alberta between the Public Guardian and the Public Trustee. The office of Public Guardian is created under the *Dependent Adults Act*.¹¹⁵ The office of the Public Trustee is created under the *Public Trustee Act*.¹¹⁶ Both officials may perform services functions under the *Dependent Adults Act* in respect of a “dependent adult,” i.e. someone in respect of whom a guardianship or trusteeship order is in effect, or both.

The Public Guardian of Alberta may be appointed to act as guardian of a mentally incapable person if no other person is willing, able and suitable to apply or be appointed as guardian, and is required to apply for appointment if this is the case.¹¹⁷ The Public Trustee is required to apply for appointment as the trustee of the estate of a person if the person is unable to make reasonable judgments about matters concerning his or her estate, or is otherwise in need of a trustee, and there is no one else willing, able or suitable to serve.¹¹⁸

¹¹³ Telephone conversation with Acting Team Leader, Guardianship Investigations Team, Public Guardian and Trustee’s Office (Ont.), 20 April 2007.

¹¹⁴ *Ibid.*

¹¹⁵ R.S.A. 2000, c. D-11, s. 20.

¹¹⁶ S.A. 2004, c. P-44.1, s. 2.

¹¹⁷ *Dependent Adults Act*, R.S.A. 2000, c.D-11., s. 21.

¹¹⁸ *Ibid.*, ss. 35(1), 47, 48

The Public Trustee may also be appointed by the court as trustee of an estate if the court considers an applicant unsuitable to serve as the trustee.¹¹⁹

Facts coming to light as a result of an investigation under the *Protection of Persons in Care Act*¹²⁰ into alleged abuse of a resident of a care facility that call into question the mental capacity of the resident, or the ability of the resident to care for property, may result in a guardianship or trusteeship order being made. A guardianship order could conceivably result from an investigation into alleged domestic violence under the *Protection Against Family Violence*¹²¹ if the investigation raises doubts concerning the subject's capacity.

The investigation or resolution of reports of abuse or neglect of adults where lack of capacity to care for oneself or safeguard one's property is not in question are handled by other official bodies in Alberta, as explained elsewhere in this report.

6. "PATCHWORK" SYSTEMS

6.1 Saskatchewan

Saskatchewan is an example of a jurisdiction lacking an integrated scheme of legislation for protection of abused and neglected adults. The Public Guardian and Trustee of Saskatchewan (SPGT) is nevertheless given certain powers with respect to the investigation of financial abuse of "vulnerable adults" and the freezing of bank accounts to prevent the same. A "vulnerable adult" for the purposes of these provisions is an individual over 16 who has an illness, impairment, disability or aging process limitation that places the individual at risk of financial abuse.¹²²

The SPGT is empowered to investigate an allegation that a vulnerable adult is being subject to financial abuse by another person, or is unable to make reasonable judgments respecting matters relating to his or her estate and there is a likelihood of serious damage or loss as a result.¹²³

The SPGT has the power to examine any record held by any person, and request any person to provide information and explanations that it considers necessary to the investigation.¹²⁴ If production of records is refused, the SPGT may apply to a justice of the peace or a Provincial Court judge for a warrant authorizing the SPGT or other person named in the warrant to enter premises described in the warrant and seize the records.¹²⁵

As a protective measure, if the SPGT receives an allegation that a vulnerable adult is being subjected to financial abuse or is unable to make reasonable judgments respecting his or her estate and loss or damage is likely to result, it may direct a financial institution to

¹¹⁹ *Ibid.*, s. 48.

¹²⁰ *Supra*, note 25.

¹²¹ R.S.A. 2000, c. P-27.

¹²² *Public Guardian and Trustee Act*, S.S. 1983, c. P-36.3, s. 40.5(1).

¹²³ *Ibid.*, s. 40.7(1).

¹²⁴ *Ibid.*, s. 40.7(2).

¹²⁵ *Ibid.*, s. 40.9(2).

suspend any withdrawals or payments from the person's account for up to 30 days except those payments specifically authorized by the SPGT.¹²⁶

7. Investigative and Protective Powers Required by the Public Guardian and Trustee Ancillary to An Abused and Neglected Adults Regime

Powers typically conferred on the Public Guardian and Trustee or equivalent official by more recent legislation concerning abused and neglected adults include the following:

- (a) to inspect and copy all records and require disclosure of any information or explanation the PGT considers necessary to fulfil its duties under the relevant legislation, with a corresponding obligation on parties having it in their knowledge, possession, or custody to produce or disclose it;
- (b) to investigate and audit the financial affairs of an allegedly abused and neglected adult, including any dealings with or by an attorney, representative, substitute decision-maker, trustee, guardian or committee;
- (c) to apply for appointment as a temporary or permanent guardian of an allegedly abused or neglected adult;
- (d) to freeze accounts of an allegedly or actually abused or neglected person in financial institutions;
- (e) to direct payment of any source of income of the allegedly abused or neglected adult to the PGT or to a frozen account from which it cannot be withdrawn without the PGT's permission;
- (f) to prevent transfers or other dealings with the allegedly abused or neglected person's assets;
- (g) to enter premises where the adult resides and interview him or her and those providing care or otherwise to the adult;
- (h) to receive reports of alleged abuse and neglect, and to either act on them or refer them to the appropriate agency;
- (i) provide information, assistance, and advice to another agency investigating the abuse or neglect.

¹²⁶ *Ibid.*, ss. 40.6(1), (2).

G. ROLE OF THE COURTS AND COURT ALTERNATIVES

Naturally, courts retain jurisdiction over all matters, including issues of abuse, neglect, self-neglect, capability, substitute decision-making and guardianship as part of their *parens patriae* jurisdiction.

However, three out-of-court alternatives have come to the fore across Canada:

1. Statutory guardianship provisions in PGT legislation;
2. Substitute decisions or guardianship mediation requirements;
3. Consent and Capability Board hearings.

1. Statutory Guardianship

As discussed above, modern PGT legislation will often include a strong statutory guardianship regime. Pursuant to these powers, the PGT is able to temporarily act as guardian, in limited circumstances, without first applying to court. Statutory guardianship is then passed over to a different appropriate decision-maker, such as a family member, friend or caregiver, if such an individual can be located who is willing to act. This has the benefit of reducing costs of court applications, and also allows for a smoother flow of decision-making for all parties.

2. Substitute Decisions or Guardianship Mediation Requirements

Increasingly, mediation requirements for matters of elder law, including substitute decision-making disputes and guardianship issues, are available.

Indeed, for some time, in Ontario, the Public Guardian and Trustee has had the right to mediate disagreements between an incapable person's guardian for personal care and their guardian of property, or their attorney for property and their attorney for personal care. The Public Guardian and Trustee could also agree to mediate disagreement between joint attorneys, or between joint guardians.

Currently, however, Ontario is significantly broadening the role mediation can play in these disputes. It is currently piloting the extension of its general civil mandatory mediation requirements, and pursuant to Rule 75.1 of the Ontario Rules of Court, contested estates, trusts and substitute decisions matters are now referred to mandatory mediation.

In BC's newly introduced Bill 29,¹²⁷ the *Adult Guardianship and Planning Statutes Amendment Act*, mediation has also been included in the regime for the first time. The new section reads as follows:

¹²⁷ Bill 29, *Adult Guardianship and Planning Statutes Amendment Act*, 3rd Sess., 38th Parl., British Columbia 2007, s.6.

Mediation

6 (1) If a guardianship application is made under section 5 and there is a dispute about

(a) whether or not the adult who is the subject of the application needs a guardian,

(b) who the proposed guardian should be, or

(c) the adequacy of the plan for guardianship,

a hearing under section 7 must not proceed unless mediation is conducted in accordance with the regulations, or unless the regulations permit otherwise.

(2) The following must not be the subject of mediation under this section:

(a) whether or not an adult is incapable;

(b) the content of any written or oral comments submitted to the court by the Public Guardian and Trustee under section 7 (2) (c);

(c) any prescribed matter.

Manitoba's *Vulnerable Person Living with a Disability Act*¹²⁸ also has provisions for mediation. A mediator can be appointed if a dispute arises as to whether the person in question is a vulnerable person or concerning an individual plan for support services to the person in question. The mediated settlement is voluntary, and the result is not binding.

Recently, the first international conference on *Ethics in Elder Law Mediation* was held in Philadelphia at Temple University. The conference outcomes will include materials which will be published in scholarly journals and will build upon the work done by the American Bar Association in the disability field, as well as work of the Centre for Social Gerontology, Ann Arbor, Michigan.

This conference focused on whether or not abuse and neglect cases might be appropriate for mediation. The diversity of opinion on this subject indicates that this area is only at the beginning of its field.

3. Consent and Capability Board Hearings

Both Yukon and Ontario are good examples of jurisdictions which use a well-organized Consent and Capability Board for a variety of issues. However, Consent and Capability Boards do not have authority over abuse and neglect legislation or provisions. They do have purview, however, over related issues such as substitute decision-making disputes,

¹²⁸ C.C.S.M. c. V90.

capability assessments and issues of financial protection and/or financial statutory guardianship.

The functions and purview of the Yukon's Capability and Consent Board extend to matters arising from the *Mental Health Act* and the *Care Consent Act*. It can review all decisions by last resort decision-makers (care providers) for major health care and admission to a care facility and if requested, it must review a care provider's determination of a person's incapability or capability to consent to his or her own health care, admission to a care facility or a personal assistance service; review a care provider's choice of a substitute decision maker; review a decision made by a substitute decision maker for major health care or for admission to a care facility, review the decision of a health care provider to issue a certificate of need for financial protection; consider who should be the substitute decision maker in the case of disputes between two equally-ranked substitute decision makers; consider a request from a substitute decision-maker for direction regarding prior capable wishes.

Decisions of the Capability and Consent Board may be appealed by any party to the Yukon Supreme Court. An appeal must be made within 30 days of the date of the Board's decision or order. Appeals may be made on questions of law or fact. The Court may affirm or rescind the Board's decision. The Court may substitute its decision for the Board's decision or it may refer the matter back to the Board for a rehearing.¹²⁹

The Ontario Capability and Consent Board is an independent body created by the provincial government under the *Health Care Consent Act*. It conducts hearings under the *Mental Health Act*, the *Health Care Consent Act*, the *Personal Health Information Protection Act* and the *Substitute Decisions Act*.¹³⁰ Board members are psychiatrists, lawyers and members of the general public appointed by the Lieutenant Governor in Council. The Board sits with one, three or five members. Hearings are usually recorded in case a transcript is required.

The Board has the authority to hold hearings to deal with the a variety of prescribed issues pursuant to the *Health Care Consent Act*, the *Mental Health Act*, the personal *Health Information Protection Act* and the *Substitute Decisions Act*.

Pursuant to the *Health Care Consent Act*, the Board can review capacity to consent to treatment, admission to a care facility or personal assistance service. It can consider the appointment of a representative to make decisions for an incapable person with respect to treatment, admission to a care facility or a personal assistance service. It also has purview over requests to amend or terminate the appointment of a representative, decisions to admit an incapable person to a hospital, psychiatric facility, nursing home or home for the aged for the purpose of treatment and request from a substitute decision maker for directions

¹²⁹ "Capability and Consent Board – Mandate, Operations, Appointments" – online at: <http://www.yukoncapabilityandconsentboard.ca/overview.pdf>.

¹³⁰ "Consent and Capability Board – Overview" – online at: <http://www.ccboard.on.ca/english/publications/documents/overview.pdf>.

regarding wishes. It will also review consideration of a request from a substitute decision maker for authority to depart from prior capable wishes and will review a substitute decision maker's compliance with the rules for substitute decision-making. Pursuant to the *Substitute Decisions Act*, it will also review statutory guardianship for property.

H. CO-DECISION-MAKING AND SUPPORTED DECISION-MAKING

Regimes of co- or supported decision-making most notably exist in Saskatchewan, Manitoba and Yukon.

These particular options spring from the well of disability rights theory. With the noble goal of providing a mechanism within which a person retains some capacity to make decisions, it has the advantage of infusing more personhood into important decisions. It feels modern, and may be used as a quick fix to make space for a grey zone of capacity where it might not otherwise be available.

Very little academic writing on these regimes exist in Canada, however. Prof. Doug Surtees has done some preliminary writing on Saskatchewan's co-decision-making legislation.¹³¹ Co-decision-making in Saskatchewan arose from the Steering Committee on the Abuse of Adults in Vulnerable Circumstances, partially as a reaction to reports that judges were making plenary guardianship orders, when restrictive guardianship would be more appropriate.¹³² The Saskatchewan advising group built on work established by the Queensland Law Reform Commission's 1992 Discussion Paper entitled *Assisted and Substitute Decisions*¹³³ which noted that "in many cases, the level of a person's mental or intellectual disability means that he or she is able to make his or her own decisions, provided that sufficient support is available."¹³⁴ While the type of support was generally envisioned to be more in the realm of time and encouragement, the Discussion Paper did consider that perhaps a more formal basis for assisted decision-making might be provided within legislation.¹³⁵

In 2001, Saskatchewan passed the *Adult Guardianship and Co-decision-making Act*.¹³⁶ In this legislation, a new formal method for assisting adults in making decisions was created. The legislation commences with six principles of independence and rights for adults under the Act.

This Act covers personal or property guardianship orders, but, as noted also permits the appointment of a personal or property co-decision-maker (or both). Co-decision-makers are

¹³¹ Doug Surtees, "Co-Decision Making: Making Assumptions and Making Decisions", Conference Materials, the Canadian Conference on Elder Law 2005, reprinted in "Elder Law 2006: Understanding an Aging Population", Saskatchewan Legal Education Society, September 2006.

¹³² Surtees, *Ibid.*, p. 6.

¹³³ *Assisted and Substitute Decisions*, (North Quay, Queensland: Queensland Law Reform Commission Discussion Paper 38, July 1992).

¹³⁴ *Ibid.* at 59.

¹³⁵ *Ibid.*

¹³⁶ *Adult Guardianship and Co-decision-making Act*, S.S. 2000, c. A-5.3 (Co-decision-making Act).

required to advise the adult who is the subject of the order.¹³⁷ They are also required to acquiesce in any decision made by the adult provided that a reasonable person could have made that decision and the decision is not likely to result in a loss to the adult's estate. A co-decision-maker must diligently act in the best interests of the adult and act in a manner which will protect the adult's civil and human rights. They must also seek to minimize their own interference in the life of the adult while encouraging maximum participation by the adult in decision-making.

Assuming that co-decision-making is less restrictive and intrusive than guardianship law, it may be a viable option for some.

However, there are significant disadvantages to this system. First, it is unclear who precisely bears the onus of suggesting co-decision-making as a less restrictive and intrusive approach. Surtees suggests that it may be the Court itself which bears this responsibility, but it remains open to interpretation at this point.

Further disadvantages of this system centre on issues of liability and fiduciary duty. In this regime, a co-decision-maker may be liable for decisions made while in the role of the co-decision-maker. It remains unclear if the co-decision-maker bears liability when there is less than perfect control over the decision. Certainly, however, the formal relationship of co-decision-maker establishes a fiduciary relationship. Again, this is a relationship fraught with equitable risk and liability, without the ability to control decisions made or possible costs.

Anecdotal evidence on the part of Saskatchewan elder law lawyers at the Saskatchewan Elder Law 2006 Continuing Legal Education Conference, expressed serious skepticism over why anyone would accept the co-decision-making statutory and equitable responsibilities when stronger and safer options would include acting as an attorney (pursuant to a power of attorney) or guardian (pursuant to the Act), or alternatively just helping someone as a good, supportive friend, without the potential liabilities attached.

Saskatchewan has the only legislation in Canada focused on co-decision-making. However, both Manitoba and Yukon have systems of *supported* decision-making.

Manitoba's legislation is located in its *Vulnerable Persons Living with a Mental Disability Act*.¹³⁸ The goal of this legislation is primarily to assist persons with intellectual challenges. Brought into force in 1993, it retains many of the hallmarks of older legislation, including the worthy desire to move beyond a substituted decision-making regime or guardianship, into the grey zone of "semi-capable" or capable with support.

¹³⁷ Surtees, *supra*, note 131, p. 12.

¹³⁸ *Supra*, note 128.

Manitoba's provisions read as follows:

Supported decision making

6(1) In this section, “supported decision making” refers to the process whereby a vulnerable person is enabled to make and communicate decisions with respect to personal care or his or her property and in which advice, support or assistance is provided to the vulnerable person by members of his or her support network.

Role of supported decision making

6(2) Supported decision making by a vulnerable person with members of his or her support network should be respected and recognized as an important means of enhancing the self-determination, independence and dignity of a vulnerable person.

It is a very preliminary system and one which leaves exposed most of the same concerns and issues found in the Saskatchewan system.

By stark contrast, Yukon's supported decision-making legislation is nearly a complete code. It is found in the integrated *Decision-making, Support and Protection to Adults Act*,¹³⁹ Schedule A - Part 1.

A person who supports an adult to make a decision is defined as an associate decision-maker, for the purposes of the Act.

The sections on supported decision-making are as follows:

PART 1

SUPPORTED DECISION-MAKING AGREEMENTS

Purpose of this Part

4 The purpose of this Part is

- (a) to enable trusted friends and relatives to help adults who do not need guardianship and are substantially able to manage their affairs, but whose ability to make or communicate decisions with respect to some or all of those affairs is impaired; and
- (b) to give persons providing support to adults under paragraph (a) legal status to be with the adult and participate in discussions with others when the adult is making decisions or attempting to obtain information.

¹³⁹ *Supra*, note 27.

Responsibilities of associate decision-maker

5(1) Except as a supported decision-making agreement otherwise provides, the responsibilities of the associate decision-maker are

- (a) to assist the adult to make and express a decision;
- (b) to assist the adult to obtain relevant information;
- (c) to advise the adult by explaining relevant information and considerations;
- (d) to ascertain the wishes and decisions of the adult and assist the adult to communicate them; and
- (e) to endeavour to ensure that the adult's decision is implemented.

Supported decision-making agreement Convention

6 An adult may enter into a supported decisionmaking agreement if they understand the nature and effect of the agreement.

Persons who may not act as an associate decision-maker

7 Except as permitted by the regulations, the following may not act as an associate decisionmaker

- (a) a person who is an employer or employee of the adult;
- (b) a person against whom an order has been made under the *Family Violence Prevention Act* or Part 4 of this Act.

Formalities for supported decision-making agreements

8(1) A supported decision-making agreement is not valid unless it is

- (a) in the form prescribed by the regulations;
- (b) dated;
- (c) signed, in the presence of two witnesses, by
 - (i) the adult, and
 - (ii) the associate decision-maker or decisionmakers;and
- (d) signed by the witnesses in the presence of the adult and each other.

(2) The witnesses under subsection (1) must be 19 years of age or older, and neither of them may be

- (a) a person who is an associate decision-maker or representative for the adult;
- (b) an employee or agent of a person who is an associate decision-maker or representative for the adult;
- (c) a spouse, child, or parent of any person to whom paragraph (a) or (b) applies; or
- (d) anyone who does not understand the type of communication used by the adult.

(3) A supported decision-making agreement shall contain a separate declaration signed by each associate decision-maker indicating their

- (a) relationship to the adult;
- (b) willingness to act as an associate decisionmaker; and
- (c) acknowledgement of the duties of an associate decision-maker under this Part.

Contents of supported decision-making agreements

9(1) A supported decision-making agreement shall include

- (a) a description of the nature of the adult's difficulty in making or communicating decisions;
- (b) the name of at least one associate decisionmaker;
- (c) the types of decisions in respect of which the associate decision-maker is authorized to assist; and
- (d) the types of decisions, if any, in respect of which the associate decision-maker is not authorized to assist.

(2) A supported decision-making agreement may

- (a) designate more than one associate decisionmaker;
- (b) authorize each to assist with respect to different types of decisions; and
- (c) provide for an alternate to act in the place of an associate decision-maker in such circumstances as may be specified in the agreement.

(3) Where more than one associate decisionmaker

is designated to assist with respect to the same type of decision,

- (a) the agreement shall indicate whether they are to act jointly or successively; and
- (b) where it does not so indicate, the persons shall be deemed to be designated to act successively, in the order named in the agreement.

(4) For greater certainty, a supported decisionmaking

agreement may authorize an associate decision-maker to assist the adult in deciding whether to give or refuse consent to care within the meaning of the *Care Consent Act*.

Access to information

10(1) An associate decision-maker has a right to assist the adult to obtain any information to which the adult is entitled in relation to a decision the associate decision-maker is assisting the adult to make.

(2) An associate decision-maker

- (a) must not, without the consent of the adult, attempt to obtain information that is not reasonably required for assisting the adult to make a decision under the agreement;

- (b) must not, without the consent of the adult, use the information for a purpose other than assisting the adult to make a decision under the agreement;
 - (c) must take reasonable care to ensure that the information is kept secure from unauthorized access, use, or disclosure; and
 - (d) must, when they no longer need the information for assisting the adult to make a decision under the agreement, dispose of it using reasonable care to ensure that it is kept secure from unauthorized access, use, or disclosure.
- (3) Despite subsection (2), an associate decisionmaker may, without the consent of the adult, disclose or use information obtained under a supported decision-making agreement, to the extent necessary for
- (a) responding to a designated agency making inquiries under section 62;
 - (b) responding to an investigation by the Public Guardian and Trustee under the Public Guardian and Trustee Act; or
 - (c) the making of an application to the Supreme Court respecting the adult.

Recognition

11 A decision made or communicated with the assistance of an associate decision-maker shall be recognized for the purposes of any provision of law as the decision of the adult, subject to the laws regarding fraud, misrepresentation, and undue influence.

Effect of failing to consult associate decisionmaker

12 An adult or the adult's associate decisionmaker may apply to the Supreme Court to have an agreement between the adult and another person declared void where

- (a) the subject matter of the agreement with the other person is within the responsibilities of the associate decision-maker under the supported decision-making agreement; and
- (b) the adult entered into the agreement with the other person without consulting the associate decision-maker.

Liability of associate decision-maker

13(1) An associate decision-maker is not liable for injury to or death of the adult or for financial damage or loss to the adult if the associate decision-maker

- (a) acts honestly, in good faith, and in the best interests of the adult; and
- (b) exercises the care, diligence, and skill of a reasonably prudent person.

- (2) An associate decision-maker is not liable for a decision made by the adult if the decision-maker did not agree with the decision and advised the adult not to make it.

This complete legislative scheme addresses the concerns raised in the Saskatchewan and Manitoba scheme. The associate decision-maker, for instance, is not liable for decisions resulting in loss if they are undertaken in good faith. This would also seem, by extension, to limit some of the fiduciary obligation exposure as well.

As such, it is the system itself which must be considered from a policy standpoint. If a jurisdiction did wish to entertain a system of decision-making which strives to enhance mental capability for persons with mental challenges or alternative, social capability for persons with physical challenges, then Yukon's legislation is far superior to that of any other jurisdiction in Canada.

Arguably, however, much of the same functional results might be obtained with a strong system of substitute decision-making or very restrained use of a modern independence styled guardian regime.

Overall, supported decision-making as found in Yukon seems less likely to assist older adults, but more likely to assist adults with communication challenges, physical challenges, or acquired brain injury. The regime is heavy, and not well known in Canada, which may lead to some confusion on the part of those confronted with an associate decision-maker. However legislative unfamiliarity is not itself reason to shy away from legislative innovation. For Yukon, the legislation is still too new to provide any useful sense at this stage regarding the success of this supported decision-making scheme.

I. THE CONCEPT OF VULNERABILITY

During the late 1980s and early 1990s the thinking around issues of elder abuse and neglect began to progress away from paternalistic age-based discourse towards an age-neutral, disabilities model. The concept of vulnerability came into fashion. Instead of suggesting that the person was old and thus incapable, the age component was neutralized. Now adults of any age who face societal challenges were labeled "vulnerable."

The concept of vulnerability, however, held sway for only a short period of time.

The objections to this term arising in the late 1990s to present can be reduced into three main arguments:

1. The term vulnerability is vague, imprecise and overbroad. Under the right conditions, any person may be understood to be vulnerable.
2. Use of the term vulnerable is simply code for paternalism and is used to justify otherwise unwarranted intervention.

3. The term is understood to indicate an intrinsic part of an adult's personhood and therefore is objectionable as it defines a person by a perceived disability.

One of the most notable failures of a law reform commission to grasp the importance of defining terms can be found in the Scottish Law Commission's 1996 *Report on Vulnerable Adults*.¹⁴⁰

The Scottish Law Commission had, in its preceding Discussion Paper, suggested using the ordinary dictionary term for vulnerability, which it cited as meaning¹⁴¹

“capable of being wounded, liable to injury, or hurt to feelings:
open to successful attack: capable of being persuaded or
tempted...”

The report then goes on to comment on the large volume of feedback the Commission received regarding the use of this definition. While it was commended as an improvement on the previous language – which included such definitions of “mentally disordered” and “substantially handicapped by any deformity or disability” – it was noted that the dictionary definition of vulnerable was problematic. Indeed the Commission conceded that many respondents commented that at some point in their lives almost everyone was vulnerable in the sense we used in the Discussion Paper.”¹⁴²

The Commission decided to replace the dictionary definition with the following recommendation:¹⁴³

A vulnerable adult should be defined for the purposes of this report as an adult who is unable to safeguard his or her personal welfare, property or financial affairs, and is:

- (a) in need of care and attention arising out of age or infirmity,
or
- (b) suffering from illness or mental disorder, or
- (c) substantially handicapped by any disability

This recommendation is only slightly narrower, but it has the cast of the second and third arguments firmly upon it. Vulnerability is clearly inherent in the person and is understood as being a component of age and disability. Notably, the Commission was most concerned that its original dictionary definition would pose too great a strain on local authorities and it would be difficult for them to best determine who needed to receive their services (presumably whether the adults in question wished them or not).

¹⁴⁰ *Report on Vulnerable Adults*, Scottish Law Commission No. 158, 1996.

¹⁴¹ Chambers Twentieth Century Dictionary (1983 edn) as quoted in *Ibid.* at p. 6.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*, p.7.

Unsurprisingly, the Commission's report was not adopted into legislation and a substantial revision of the thinking around this subject resulted in legislation in 2007.

By contrast, one of the best analyses of the term "vulnerable" was given by the Manitoba Law Reform Commission in its *Report on Adult Protection and Elder Abuse*, in 1999. The Commission notes that

the problematic logic of equating a *vulnerable* adult with one who is legally incapable of managing his or her own affairs is apparent in the circularity of the statutory definitions discussed below.

The vulnerable adult is defined by circumstances, such as abuse, neglect, and exploitation, that induce vulnerability and limit choice. These circumstances then become the justification for nonconsensual and paternalistic intervention, which may limit choice still further.

Despite statutory checks and balances, the powers granted to agencies to intervene into the life of an adult may seriously limit the adult's ability to exercise choice and autonomy.¹⁴⁴

This thinking was also captured in a 2001 publication of the National Advisory Council on Aging. It notes that¹⁴⁵

Adult protection laws also raise concerns about personal autonomy. They are intended for any "vulnerable" adult but those most affected are seniors. The right to make unwise decisions or take risks, for example, appears to be tolerated more readily in younger adults than in seniors. These laws have also been criticized for failing to observe the right to due process, failing to meet the real needs of vulnerable seniors, and exacerbating situations the law was intended to remedy.

The general move away from use of the term "vulnerable" started in the late 1990s and continues today. Instead, jurisdictions with new comprehensive legislation such as BC and Yukon have moved to the simpler "adult who has been abused or neglected" instead. It seems likely that the trend to this type of definition will continue, and the term vulnerable will increasingly fade as statutes are amended and updated across Canada.

¹⁴⁴ *Supra*, note 34, p.30.

¹⁴⁵ Seniors and the Law, Expression: Bulletin of the National Advisory Council on Aging, vol. 14, No.3, Summer 2001, p.6.

J. REMEDIES

There are a broad and varying number of remedies in the adult abuse and protection legislation across Canada. Below please find a review of the relevant provisions.

British Columbia

Under section 51(1) of the AGA¹⁴⁶, the designated agency may do one or more of the following upon conclusion of an investigation as provided under section 47(3)(d):

- take no further action;
- refer the adult to available health care, social, or legal services;
- report the case to the Public Guardian and Trustee or another agency;
- assist the adult in obtaining a representative;
- apply to the court for an interim order requiring a person to restrict contact with the abused or neglected adult for a period of up to 30 days;
- apply to the court for maintenance under Part 7 of the *Family Relations Act*¹⁴⁷; or
- prepare a support and assistance plan for the abused or neglected adult.

Alberta

Alberta's legislation¹⁴⁸ provides that an inspector must present a final report to the Minister. The final report may make any one or more of the following recommendations:¹⁴⁹

- if the agency involved in the complaint receives funding from the government (or a government agency), that the funding be reviewed or altered;
- that the agency involved in the complaint take disciplinary action against an employee or service provider;
- that the complaint be dismissed because
 - it was made maliciously,
 - it was made without reasonable or probable grounds for belief, or
 - it was unfounded or the evidence was insufficient; or
- any other recommendation the investigator considers appropriate in the circumstances.

¹⁴⁶ *Supra*, note 14.

¹⁴⁷ R.S.B.C. 1996, c. 128.

¹⁴⁸ *Protection for Persons in Care Act*, *supra*, note 25.

¹⁴⁹ *Protection for Persons in Care Act*, *ibid.*, s. 8 (3).

Saskatchewan

Saskatchewan's *Public Guardian and Trustee Act*¹⁵⁰ contains two sections that provide remedies in cases of financial abuse of a vulnerable adult.¹⁵¹

- Under one section,¹⁵² a financial institution is authorized to suspend the withdrawal or the payment of funds from a person's account for up to five business days. The financial institution may make this decision if it has reasonable grounds to believe that the person is a vulnerable adult and the person is
 - being subjected to financial abuse by another person, or
 - is unable to make reasonable judgments respecting financial matters is likely to suffer serious financial damage or loss.
- Under the other section,¹⁵³ the Public Guardian and Trustee is authorized to require a financial institution to suspend the withdrawal or payment of funds from a person's account and to require the financial institution to provide the Public Guardian and Trustee with any financial information respecting that person that the financial institution holds if
 - the Public Guardian and Trustee has reasonable grounds to believe that the person is a vulnerable adult, and
 - the Public Guardian and Trustee receives an allegation that the person is (i) being subject to financial abuse by another person or (ii) is unable to make reasonable judgments respecting financial matters is likely to suffer serious financial damage or loss.

Manitoba

Protection for Persons in Care Act

Manitoba's *Protection for Persons in Care Act*¹⁵⁴ authorizes the Minister to make certain directions or orders.

- Upon receipt of a report from an investigator, to give any direction necessary to protect a patient from abuse to the health facility involved in the report.¹⁵⁵
- If the Minister believes, on reasonable grounds, that a person has abused a patient or has failed to comply with a duty to report under the Act,¹⁵⁶ the Minister may refer the

¹⁵⁰ *Supra*, note 122.

¹⁵¹ See *Public Guardian and Trustee Act*, *ibid.*, ss. 40.5 (a) (defining "financial abuse" to mean "the misappropriation of funds, resources or property by fraud, deception or coercion"), 40.5 (c) (defining "vulnerable" adult to mean "an individual, 16 years of age or more, who has an illness, impairment, disability or aging process limitation that places the individual at risk that places the individual at risk of financial abuse").

¹⁵² *Ibid.*, s. 40.5.

¹⁵³ *Ibid.*, s. 40.6.

¹⁵⁴ *Supra*, note 26..

¹⁵⁵ *Ibid.*, s. 8 (1).

¹⁵⁶ *Ibid.*, s. 3.

matter to the body or person who governs the person's professional status or who certifies, licenses, or authorizes the person to carry on work, an occupation, or a profession.¹⁵⁷ The body that receives this report must investigate to determine whether disciplinary proceedings should be commenced against the person and advise the Minister of the results of that investigation.¹⁵⁸

In addition, a contravention of the Act is an offence, which on conviction results in:¹⁵⁹

- for an individual, a fine of not more than \$2000;
- for a corporation, a fine of not more than \$30 000.

Vulnerable Persons Living with a Mental Disability Act

The Executive Director appointed under Manitoba's *Vulnerable Persons Living with a Mental Disability Act*¹⁶⁰ is authorized, after an investigation, to take any appropriate action to protect the vulnerable person, including one or more of the following:¹⁶¹

- providing or arranging for support services for the vulnerable person;
- requesting an investigation by a law enforcement agency;
- taking emergency intervention action;
- applying for the appointment of a substitute decision maker;
- applying for an emergency appointment of a substitute decision maker or for suspension or variation of an emergency appointment;
- applying for termination of an appointment of a substitute decision maker, replacement of a substitute decision maker, or variation of an appointment of a substitute decision maker.

The Executive Director is also authorized (at any time, and without obtaining a court order) to take such emergency intervention action to protect a vulnerable person if the Executive Director believes on reasonable grounds that:¹⁶²

- the vulnerable person is likely to be abused or neglected; and
- there is an immediate danger that the vulnerable person will die or that the physical or mental health of the vulnerable person will suffer serious harm or deterioration.

The Executive Director's emergency intervention action may continue for no more than 120 hours.¹⁶³

¹⁵⁷ *Ibid.*, s. 9 (1).

¹⁵⁸ *Ibid.*, s. 9 (2).

¹⁵⁹ *Ibid.*, s. 12 (1).

¹⁶⁰ *Supra*, note 128.

¹⁶¹ *Ibid.*, s. 25.

¹⁶² *Ibid.*, s. 26 (1).

Finally, note that a person who falsely holds himself or herself as a substitute decision maker for a vulnerable person, or as a substitute decision maker having powers other than those granted by the commissioner, commits an offence¹⁶⁴ and is liable, on conviction to:¹⁶⁵

- for an individual, a fine of not more than \$2000 or imprisonment for a term of not more than six months or both;
- for a corporation, a fine of not more than \$5000.

Ontario

Nursing Homes Act

Ontario's *Nursing Homes Act*¹⁶⁶ does not list discrete remedies, but it does provide that an individual who contravenes any provision of the Act¹⁶⁷ or the regulations is guilty of an offence and on conviction is liable:¹⁶⁸

- for a first offence by an individual, to a fine of not more than \$25 000 or to a term of imprisonment of not more than 12 months or to both;
- for a subsequent offence by an individual, to a fine of not more than \$50 000 or to imprisonment of not more than 12 months or to both;
- for a first offence by a corporation, to a fine of not more than \$50 000;
- for a subsequent offence by a corporation, to a fine of not more than \$200 000;
- in addition to any penalty imposed on a conviction, the court may order that the person pay compensation or make restitution to any person who has suffered a loss as a result of the offence.

Long-Term Care Homes Act, 2007

Ontario's legislature is currently considering a bill that will create a legal framework for long-term care homes.¹⁶⁹

Québec

The *Charter of human rights and freedoms*¹⁷⁰ does not contain discrete provisions setting out statutory remedies.

¹⁶³ *Ibid.*, s. 26 (4).

¹⁶⁴ *Ibid.*, s. 164 (1) (f).

¹⁶⁵ *Ibid.*, s. 164 (2).

¹⁶⁶ *Supra*, note 105.

¹⁶⁷ Other than, ss. 19 (1), 20.1 (7)–(13), 20.1 (16), 20.1 (18), 20.2, 20.5 (1), 20.6 (5), 20.6 (16), and 20.8 (5).

¹⁶⁸ *Ibid.*, s. 36 (1)–(3).

¹⁶⁹ Bill 140, *An Act respecting long-term care homes*, 2d Sess., 38th Leg., Ontario, 2006–07 (second reading 5 December 2006).

¹⁷⁰ *Supra*, note 64.

New Brunswick

New Brunswick's *Family Services Act*¹⁷¹ no longer contains discrete provisions setting out statutory remedies, since a section detailing the powers of the court¹⁷² was repealed.¹⁷³

Prince Edward Island

The *Adult Protection Act*¹⁷⁴ authorizes the Minister to apply for a protective intervention order, if an assessment has determined that the person is in need of protection.¹⁷⁵ In making a protective intervention order, the court may direct that a person who is determined to be a source of harm or danger to the person comply with one or more of the following requirements:¹⁷⁶

- stop residing at and stay away from the premises where the person in need of protection lives (so long as the person who is a source of harm or danger is not the owner or lessee of the premises);
- do not visit, communicate with, harass, or interfere with the person in need of protection;
- do not have any contact or associate with the person in need of protection or that person's affairs;
- pay for or contribute toward the maintenance of the person in need of protection, if the person who is a source of harm or danger has a legal obligation to do so;
- comply with any other restriction of relations with the person in need of protection.

Nova Scotia

Adult Protection Act

Nova Scotia's *Adult Protection Act*¹⁷⁷ authorizes the Minister to apply to court if the Minister is satisfied, on the basis of an assessment, that there are reasonable and probable grounds to believe that an adult is in need of protection.¹⁷⁸ If, after a hearing of the application, the court finds that¹⁷⁹

- the adult is not mentally competent to decide whether or not to accept the Minister's assistance or
- the adult is refusing assistance because of duress,

¹⁷¹ S.N.B. 1980, c. F-2.2.

¹⁷² *Ibid.*, s. 29.

¹⁷³ See S.N.B. 1994, c. 8, s. 5.

¹⁷⁴ *Supra*, note 7.

¹⁷⁵ *Ibid.*, s. 12 (1).

¹⁷⁶ *Ibid.*, s. 12 (4).

¹⁷⁷ *Supra*, note 5.

¹⁷⁸ *Ibid.*, s. 9 (1).

¹⁷⁹ *Ibid.*, s. 9 (3) (a)–(b).

then the court is authorized, if the court determines that it is in the best interests of the adult, to make the following orders:¹⁸⁰

- an order authorizing the Minister to provide the adult with services, which are intended to enhance the ability of the adult to care for himself or herself or to protect the adult from abuse or neglect;
- a protective intervention order directed at any person who, in the opinion of the court, is a source of danger to the adult, which will
 - require that person to leave the premises where the adult resides (unless that person owns or leases the premises),
 - prohibit or limit that person from contact or association with the adult,
 - require that person to pay maintenance to the adult, in the same manner and to the same extent as would be required under the *Maintenance and Custody Act*.¹⁸¹

The legislation expressly provides that nothing in it limits a remedy available or affects an action that may be taken under another enactment.¹⁸²

Protection for Persons in Care Act

Under the *Protection for Persons in Care Act*,¹⁸³ if the Minister believes on reasonable grounds that a person has abused a patient or resident or has failed to comply with the statutory duty to report abuse, then the Minister may refer the matter to the body or person that governs the person's professional status or that certifies, licenses, or otherwise authorizes or permits the person to carry on that person's work, profession, or occupation.¹⁸⁴

Further, a contravention of the Act is an offence.¹⁸⁵ On conviction, a person is liable to:¹⁸⁶

- if the person is an individual, a fine of not more than \$2000; or
- if the person is a corporation, a fine of not more than \$30 000.

¹⁸⁰ *Ibid.*, s. 9 (3) (c)–(d).

¹⁸¹ R.S.N.S. 1989, c. 160, ss. 15–17.

¹⁸² *Supra*, note 5, s. 14 (1).

¹⁸³ *Supra*, note 55.

¹⁸⁴ *Ibid.*, s. 12 (1).

¹⁸⁵ *Ibid.*, s. 17 (1).

¹⁸⁶ *Ibid.*, s. 17 (1).

Newfoundland and Labrador

The *Neglected Adults Welfare Act*¹⁸⁷ places a duty on the director to protect an adult's property.¹⁸⁸ This duty only applies in specific circumstances, which are:

- an adult is removed from the premises where the adult was residing,
- it appears to the director that there is a danger of loss of or damage to the adult's movable property,
- as a result of the adult's temporary or permanent inability to deal with that property, and
- no other suitable arrangements have been made to protect that property.

The scope of the director's duty is to take reasonable steps to protect the adult's property and, for this purpose, the director may enter the adult's place of residence at reasonable times and may recover from the adult, or a person required to support the adult, reasonable expenses incurred in entering the adult's property.¹⁸⁹

Yukon

Yukon's *Decision Making, Support and Protection to Adults Act*¹⁹⁰ authorizes a judge, on application by a designated agency, to issue an adult protection order.¹⁹¹ An adult protection order may require a person to do any of the following:¹⁹²

- stop residing at and stay away from the premises where the adult lives;
- not to contact, visit, communicate with, harass, or interfere with the adult;
- not to have any association with the adult's financial affairs;
- to give the adult possession of specified personal property, including a vehicle, cheque book, bank card, medical insurance card, identification documents, keys, or other personal effects;
- not to take, convert, damage, or otherwise deal with property that the adult may have an interest in;
- to post any security that the court considers appropriate for securing the person's compliance with the terms of the order;
- to comply with any other restriction of relations with the adult that the judge considers appropriate.

¹⁸⁷ *Supra*, note 3.

¹⁸⁸ *Ibid.*, s. 10.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Supra*, note 27.

¹⁹¹ *Ibid.*, s. 72 (1).

¹⁹² *Ibid.*, s. 72 (2).

In addition, a person who fails to comply with an adult protection order commits an offence¹⁹³ and is liable on conviction:¹⁹⁴

- for a first offence, to a fine of up to \$2000 or imprisonment for up to six months or both;
- for a subsequent offence, to a fine of up to \$5000 or imprisonment for up to twelve months or both.

Northwest Territories

Protection against Family Violence Act

Under the *Protection against Family Violence Act*¹⁹⁵ a designated justice of the peace may make an emergency protection order,¹⁹⁶ which may contain any or all of the following provisions:¹⁹⁷

- restraining the respondent from communicating with or contacting the applicant or other specified person;
- granting the applicant exclusive occupation of a residence;
- directing a peace officer immediately or within a specified time to remove the respondent from a residence;
- directing a peace officer within a specified time to accompany the applicant, respondent, or other specified person to a residence or other location and to supervise the removal of personal belongings;
- granting the applicant or respondent temporary possession and exclusive use of specified personal property;
- restraining the respondent from taking, converting, damaging, or otherwise dealing with property in which the applicant has an interest;
- requiring the respondent to pay compensation to the applicant for monetary losses suffered by the applicant as a direct result of family violence;
- requiring the respondent to surrender to a peace officer
 - a weapon, if the respondent used a weapon or threatened to use a weapon to commit family violence, and
 - any document that authorizes the respondent to own, possess, or control that weapon;
- requiring the respondent to attend counseling or other therapy sessions;

¹⁹³ *Ibid.*, s. 83 (1) (c).

¹⁹⁴ *Ibid.*, s. 83 (2)–(3).

¹⁹⁵ *Supra*, note 62.

¹⁹⁶ *Ibid.*, s. 4 (1).

¹⁹⁷ *Ibid.*, s. 4 (3).

- any other provision that the court considers necessary for the protection of the applicant or another person at risk of harm.

In addition, the legislation expressly provides that an application for an emergency protection order does not diminish any existing right of action for the applicant or any other person who is the subject of family violence.¹⁹⁸

Finally, any person who fails to comply with a provision in an order made under the statute commits an offence and is liable, upon conviction, to a fine not exceeding \$5000 or to imprisonment for a term not exceeding six months or both.¹⁹⁹

Guardianship and Trusteeship Act

Under the *Guardianship and Trusteeship Act*,²⁰⁰ if there is no guardianship order in effect with respect to an adult and if that adult is in need of a guardian and appears to be at risk of

- physical or mental abuse,
- neglect, or
- the deprivation of liberty or personal security,

then the court may make a temporary guardianship order.²⁰¹ The statute does not contain discrete provisions setting out statutory remedies applicable to a temporary guardianship order.

Nunavut

Under the *Guardianship and Trusteeship Act*,²⁰² if there is no guardianship order in effect with respect to an adult and if that adult is in need of a guardian and appears to be at risk of

- physical or mental abuse,
- neglect, or
- the deprivation of liberty or personal security,

then the court may make a temporary guardianship order.²⁰³ The statute does not contain discrete provisions setting out statutory remedies applicable to a temporary guardianship order.

¹⁹⁸ *Ibid.*, s. 15.

¹⁹⁹ *Ibid.*, s. 18.

²⁰⁰ S.N.W.T. 1994, c. 29.

²⁰¹ *Ibid.*, s. 10 (1).

²⁰² *Ibid.*, as duplicated for Nunavut by s. 29 of the *Nunavut Act*, S.C. 1993, c. 28.

²⁰³ *Ibid.*, s. 10 (1).

K. CONCLUSION

Any jurisdiction wishing to modernize its legislation pertaining to abused and neglected adults should first decide which model to pursue.

Three of the five models are easily rejected. For Newfoundland to pursue a *patchwork* or *protectionist* model would be a step backwards in legislative schemes. Choosing an *older comprehensive* model would again not serve the purpose of sufficiently modernizing the legislation in question.

As such, Newfoundland should carefully consider policy options on either the *newer comprehensive* model or the *deliberately limited* model.

Underlying this choice is a set of policy decisions, which is most appropriately determined by the public discourse around issues of protection and intervention.

Should Newfoundland pursue a newer comprehensive model, it is recommended that the integrated and modern Yukon legislation be considered a strong and useful precedent. This legislation stands on the cutting edge of the issues, and provides for a fulsome regime to support independence. It may be considered leading legislation in Canada, and indeed, in international common law jurisdictions.

A key component of the success of Yukon's regime is the strong, integrated nature of the substitute decisions legislation for finance and health care as well as a modern, individually referenced guardianship regime. Further, Yukon has provided adequate legislative support for the required powers of a modern Public Guardian and Trustee regime. It is recommended that any legislative development be paired with these surrounding components.

Should Newfoundland decide to use a *deliberately limited* regime, it would express a rejection of intervention into the lives of capable adults and underscore the rights to live at risk in the community. However, this model is supported by very strong substitute decisions legislation and access to justice systems. In Ontario, for example, civil legal aid is comparatively quite accessible, and community care access centres exist throughout the province to coordinate support services and care needs. A fairly active Consent and Capability Board also stands and the powers of the Public Guardian and Trustee include investigation and statutory guardianship.

In a deliberately limited regime, however, strong abuse and neglect legislation does exist – but is located in purview generally to persons in some form of care. Currently the best model of embedded abuse and neglect legislation in a care setting can be located in Ontario's Bill 140, which is currently undergoing its third reading and is meeting with significant stakeholder approval.

Regardless of which legislative model is chosen, targeted education will play a key role in prevention of adult abuse and neglect. Any successful system will include stakeholder integration and community networks of support to ensure that health care providers, professionals, social workers and members of the public know where to report abuse and neglect, who will investigate, what controls exist within the process and how to follow up appropriately.

Proactive education around issues of abuse and neglect will also include a focussed campaign about substitute decision-making documents, including powers of attorney for finance and health care proxy appointment and advance care planning. Affordable, accessible and clearly understood methods for planning will also play an important role in reducing adult abuse and neglect upstream, reducing the need for use of abuse and neglect legislation downstream.

APPENDIX A: Canadian Abuse, Neglect, and Self-Neglect Legislation: Questions and Answers

1) How are abuse and neglect defined?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3. (“AGA”)

Scope of Application: Adults (“Adult” is defined in section 1 as anyone who has reached 19 years of age) who is abused and neglected and who is unable to seek support or assistance. Reasons for being unable to seek support are enumerated under section 44 of the Act, and include: “physical restraint;” “a physical handicap that limits their ability to seek help;” or “an illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect.” The *AGA* does not incorporate the language of the “vulnerable” person.

Recognized Types of Abuse / Neglect: Section 1 of the Act covers abuse, neglect, and self-neglect. Under section 1, neglect is defined as any failure to provide necessary care, guidance or attention to an adult that causes (or is likely to cause) that adult serious physical, mental or emotional harm, or substantial damage or loss of his/her assets. Self-neglect is similarly defined as any failure of an adult to take care of himself or herself that causes (or is likely to cause) physical, mental or emotional harm, or substantial damage or loss of assets (section 1). This provision recognizes several different types of self-neglect, including: living in grossly unsanitary conditions, suffering from an untreated health condition, suffering from severely impairing malnutrition, and creating a hazardous situation that poses serious physical harm or risk of damage or loss to assets. Among the recognized types of abuse include physical abuse (section 1(a)(b)), financial abuse (section 1(b)), emotional/psychological abuse (section 1(a)(b)), sexual abuse (section 1(b)), and chemical abuse (section 1(b)). Spiritual (religious or cultural) abuse is not recognized under the Act.

Alberta

Applicable Legislation: *Protection for Persons in Care Act*, R.S.A. 2000, c.P-29. (“PPCA”)

Scope of Application: Adults who receive services from an agency (Agency is defined in section 1(b) to mean an approved hospital as defined in the *Hospitals Act*, R.S.A. 2000, c. H-12, a lodge accommodation as defined in the *Alberta Housing Act*, R.S.A. 2000, c. A-25, a nursing home as defined in the *Nursing Homes Act*, R.S.A. 2000, c. N-7, a facility as defined in the *Social Care Facilities Review Committee Act*, R.S.A. 2000, c. S-11, or any institution organization designated by regulation as an agency). This legislation does not include the term “vulnerable” person.

Recognized Types of Abuse / Neglect: While the Act does cover neglect (section 1(a)(iv)), it does not include self-neglect. Under section 1(a)(iv), neglect is defined as the intentional failure to provide adequate nutrition, medical attention or other necessities of life without valid consent. Section 1(a) of the Act defines abuse. Among the types of abuse recognized under this section include physical abuse (section 1(a)(i)), financial abuse (section 1(a)(v)), emotional/psychological abuse (section 1(a)(ii)), sexual abuse (section 1(a)(iv)), and chemical abuse (section 1(a)(iii)). Spiritual (religious or cultural) abuse is not a recognized type of abuse under this Act.

Saskatchewan

Applicable Legislation: *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02. (“*VDVA*”)
Public Guardian and Trustee Act, S.S. 1983, c. P-36. (“*PGTA*”)

Scope of Application: The *VDVA* applies to cohabitants, or persons who reside or have resided together in a family, spousal or intimate relationship or who are the parents of one or more children regardless of marital status (section 2(a) of the Act includes a definition of cohabitants). Unlike the *PGTA*, the *VDVA* does not incorporate the language of the “vulnerable” adult. The *PGTA* defines “vulnerable adult” as an “individual, 16 years of age or more, who has an illness, impairment, disability or aging process limitation that places the individual at risk of financial abuse” (section 40.5(1)(c)).

Recognized Types of Abuse / Neglect: Section 2(d) of the *VDVA* covers “domestic abuse,” and includes physical abuse (section 2(d)(i)), emotional/psychological abuse (section 2(d)(ii)), and sexual abuse (section 2(d)(iv)). The *PGTA* also covers abuse (section 40.7(1)(d)), and specifically financial abuse (section 40.5). Financial abuse is defined as the “misappropriation of funds, resources or property by fraud, deception or coercion” (section 40.5(1)(a)). This legislation does not cover neglect or self-neglect.

Manitoba

Applicable Legislation: *Protection for Persons in Care Act*, C.C.S.M., c.P144. (“*PPCA*”)
Vulnerable Persons Living with a Mental Disability Act, C.C.S.M. c. V90. (“*VPLMDA*”)

Scope of Application: The *PPCA* applies to an adult resident, in-patient or person receiving respite care in a health facility. Under section 1, the definition of patient does not include vulnerable persons within the meaning of the *VPLMDA*. Health facility is defined in section 1 to mean a hospital designated by regulation under *The Health Services Insurance Act*, a personal care home designated by regulation under *The Health Services Insurance Act* or an institution or organization designated as a health facility by regulation. Unlike the *PPCA*, the *VPLMDA* specifically applies to “vulnerable” persons (section 1).

Types of Abuse / Neglect: The *PCCA* does not cover neglect or self-neglect. Section 1 of the Act covers abuse, and includes physical abuse, financial abuse, emotional/psychological abuse, and sexual abuse. The Act does not recognize chemical abuse or spiritual abuse. Although the *VPLMDA* does not cover self-neglect, the legislation does recognize neglect and abuse (section 1). Neglect is defined by any act or omission (whether intentional or unintentional) that is reasonably likely to cause the “vulnerable person” serious physical or psychological harm, or significant loss to his/her property. Section 1 of the *VPLMDA* recognizes several different types of abuse, including physical abuse, financial abuse, emotional/psychological abuse, and sexual abuse. Like the *PPCA*, however, the *VPLMDA* does not recognize chemical or spiritual (religious or cultural) abuse.

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. (“*NHA*”)
An Act Respecting Long-term Care Homes, 2nd Sess., 38th Leg., 2007 (third reading on 29 March 2007) (“*Bill 140*”)
Note: The *NHA* will be repealed once Bill 140 comes into force.

Scope of Application: The *NHA* applies to adults residing in a nursing home (“Nursing home” is defined under section 1 as any premise maintained and operated for persons requiring nursing care or in which such care is provided to two or more unrelated persons). This definition does not include private or public hospitals, municipal homes or charitable homes. Neither the *NHA* nor *Bill 140* refers to “vulnerable” persons.

Types of Abuse / Neglect: The *NHA* covers neglect (section 2(2)), self-neglect (section 2(2)), and abuse (section 2(2)). Under section 2(2), every resident has the right to receive proper food, shelter, clothing, grooming, and care that is consistent with his or her needs. Among the recognized types of abuse include physical abuse (section 2(1) and section 2(2)), emotional/psychological abuse (section 2(1) and section 2(2)), and spiritual (religious or cultural) abuse (section 2(1)). The Act does not include financial abuse, sexual abuse, or chemical abuse. Like the *NHA*, *Bill 140* does cover neglect (section 3(1), Part II), self-neglect (section 3(1), Part II), and abuse (section 3(1), Part II). *Bill 140* recognizes several different types of abuse, including physical abuse (section 1 and section 2(1), Part I), financial abuse (section 1 and section 2(1), Part I), emotional/psychological abuse (section 1 and section 2(1), Part I), chemical abuse (section 1, Part I), and spiritual (religious or cultural) abuse (section 1, Part I).

Quebec

Applicable Legislation: *Charte de Droits et Libertés de la Personne*, L.R.Q., c.C-12 (“*CDLP*”)

Scope of Application: The *CDLP* applies to aged or handicapped persons who may be exploited. Section 48 of the Act states that: “Every aged person and every handicapped person has a right to protection against any form of exploitation.”

Types of Abuse / Neglect: Although the *CDLP* does not cover neglect or self-neglect, its “any form of exploitation” provision would support a very liberal interpretation of abuse. As such, the *CDLP* can be interpreted as including physical abuse, financial abuse, emotional/psychological abuse, sexual abuse, chemical abuse, and spiritual (religious or cultural) abuse (section 48). Section 48 also appears to create a positive obligation on care providers to protect adults in their care. Section 48 states that aged or handicapped persons have the right to “the protection and security that must be provided to him by his family or persons acting in their stead.”

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. (“*APA*”)
Protection for Persons in Care Act, S.N.S. 2004, c.33. (“*Bill 110*”)

Note: Although *Bill 110* passed third reading, it is still not proclaimed in force.

Scope of Application: The *APA* applies to Adults (section 3(a) defines “Adult” as a person who is or is apparently sixteen years of age or older) who are physically or mentally incapable and not living in a care facility (while the *Homes for Special Care Act*, R.S.N.S. 1989, c. 203 covers care facilities, this legislation is silent on the subject of abuse in care facilities). The *APA* does not refer to “vulnerable” persons, but does reference adults in need of protection. Similarly, while *Bill 110* does not apply to “vulnerable” persons, it does apply to everyone in care.

Types of Abuse / Neglect: The *APA* covers neglect (section 3(b)(ii)), self-neglect (section 3(b)(ii)), and abuse (section 3(b)(i)). While neglect is construed as the overall absence of care and attention, self-neglect is characterized as the inability, refusal, or delay to adequate care for oneself by reason of physical disability or mental infirmity (section 3(b)(ii)). Under section 3(b)(i), individuals who are the victims of abuse are also characterized as adults in need of protection. While the *APA* recognizes physical abuse (section 3(b)(i)), emotional/psychological abuse (section 3(b)(i)), and sexual abuse (section 3(b)(i)), it does not recognize financial abuse, chemical abuse, or spiritual (religious or cultural) abuse. Conversely, *Bill 110* does not cover neglect or self-neglect, and does not include a definition of abuse (section 4(1)). Because abuse is not defined, it is uncertain as to whether this legislation would recognize physical abuse, financial abuse, emotional/psychological abuse, sexual abuse, chemical abuse, or spiritual (religious or cultural) abuse.

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“*FSA*”)

Scope of Application: Part III of the *FSA* applies to physically or mentally disabled persons or elderly adults (section 1 defines “elderly” as sixty-five years of age and over). The Act does not incorporate the language of “vulnerable” persons within its statutory framework.

Types of Abuse / Neglect: The *FSA* covers neglect (section 34(1)), self-neglect (section 34(1)(a)(b)), and abuse (section 34(2)). Under section 34(1), neglect is characterized as the absence of proper care and attention. Section 34(1)(a) defines self-neglect as the inability of an “elderly person” to properly care for him or herself by reason of physical or mental infirmity. Among the recognized forms of abuse include physical abuse (section 34(2)(a)), emotional/psychological abuse (section 34(2)(c)), and sexual abuse (section 34(2)(b)). The Act does not recognize financial abuse, chemical abuse or spiritual (religious or cultural) abuse.

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“*APA*”)

Scope of Application: The *APA* applies to adults (section 1(b) defines an adult as anyone who has attained the age of majority) who are physically, mentally, or otherwise incapable. Although the *APA* does not reference “vulnerable” persons, it does include persons “in need of assistance” and persons “in need of protection.” Under section 1(h), a “person in need of assistance” is one who is in serious risk of falling into need of protection. A “person in need of protection” is one who requires intervention for the preservation of security and well-being, the necessity for which arises because, “owing to physical or mental infirmity or disability or other incapacity to remedy the situation himself” (section 1(i)), the person is continually: a victim of abuse or neglect (section 1(i)(i)), incapable of “fending” or caring for himself or herself (section 1(i)(ii)), or fails or refuses to arrange for appropriate care, aid, or attention (section 1(i)(iii)).

Types of Abuse / Neglect: The *APA* covers neglect (section 1(i)(i) and section 1(k)), self-neglect (section 1(i)(i)), and abuse (section 1(a) and section 1(i)(i)). Among the recognized forms of abuse include physical abuse (section 1(a)), financial abuse (section 1(a)), and emotional/psychological abuse (section 1(a)). Neither chemical abuse nor spiritual (religious or cultural) abuse is recognized under this legislation.

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Scope of Application: The *NAWA* applies to adults (defined in section 2(a) as a person who is not a child within the meaning of the *Child, Youth and Family Services Act*, S.N.L. 1998, c. C-12.1) who are mentally or physically incapable of caring properly for themselves, but not suitable to be in a treatment facility under the *Mental Health Act*, R.S.N.L. 1990, c. M-9 (section 2(i)(i) and (ii)). This legislation does not include the language of the “vulnerable” person.

Types of Abuse / Neglect: The *NAWA* covers neglect (section 2(i)) as well as self-neglect (section 2(i)(i), section 2(i)(iii) and section 2(i)(iv)). Under section 2(i)(iii), an individual is a neglected adult when they are not receiving proper care and attention. Self-neglect is similarly characterised as the absence of proper care and attention (section 2(i)(iii)) due to the physical or mental incapability to properly care for oneself (section 2(i)(i)), or the refusal, delay, or inability to make provision for one’s proper care and attention (section 2(i)(iv)). Although the *NAWA* covers cases of neglect and self-neglect, this legislation does not apply abuse of any form, including physical abuse, financial abuse, emotional/psychological abuse, sexual abuse, chemical abuse, and spiritual (religious or cultural) abuse.

Yukon

Applicable Legislation: *The Adult Protection and Decision Making Act being Schedule A to the Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c.21, Part 4: Adult Protection. (“*APDMA*”)

Scope of Application: The *APDMA* applies to adults (“Adult” is defined in section 1 as a person who has reached 19 years of age) who are abused and neglected and who are unable to seek support or assistance. Under section 59(b), reasons for being unable to seek support or assistance include: “physical or chemical restraint” (section 59(b)(i)), “a physical or intellectual disability that limits their ability to seek help” (section 59(b)(ii)), “an illness, disease, injury, or other condition that affects their ability to seek help,” or “any similar reason”). Although the Act does not reference “vulnerable” persons, it does refer to adults in need of assistance or protection.

Types of Abuse / Neglect: The *APDMA* covers neglect (section 58(b)), self-neglect (section 58(b)), and abuse (section 58(a)). Under section 58(b), neglect is defined as the failure to provide necessary care, assistance, guidance or attention to an adult that causes (or is likely to cause) serious physical, mental, or emotional harm or substantial financial damage. Self-neglect is similarly characterized as any failure to take care of oneself that is reasonably likely to cause serious physical, mental, or emotional harm or substantial financial damage (section 58(b)). Among the recognized forms of self-neglect include:

living in grossly unsanitary conditions; suffering from an untreated health condition; suffering from severely impairing malnutrition; creating a hazardous situation that is likely to cause serious physical harm or financial damage; and suffering from a health condition that results in an inability to deal with one's financial affairs in a manner likely to cause substantial damage or loss. The Act recognizes several different types of abuse, including physical abuse (section 58), financial abuse (section 58(b)), emotional/psychological abuse (section 58(a)), sexual abuse (section 58(b)), chemical abuse (section 58(b)), and spiritual (religious or cultural) abuse (section 58(b)).

Northwest Territories

Applicable Legislation: *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24. ("PAFVA")
Guardianship and Trusteeship Act, S.N.W.T. 1994, c. 29. ("GTA")

Scope of Application: The *PAFVA* applies to a spouse, former spouse, persons resided or who are residing together in a family or intimate relationship, parents or grandparents (section 2(1)). The Act does not apply to "vulnerable" persons.

Types of Abuse / Neglect: Although the *PAFVA* covers neglect (section 1(2)), the Act does not include self-neglect. The Act does, however, cover abuse (section 1(2)). Specifically, the *PAFVA* recognizes physical abuse (section 1(2)(a)), financial abuse (section 1 (2)(a) and section 1 (2)(e)), emotional/psychological abuse (section 1 (2)(e)), and sexual abuse (section 1(2)(c)). Conversely, the *GTA* includes physical abuse (section 10(1)(2)), financial abuse (section 10(1)), and emotional/psychological abuse (section 10(1)), but does not reference sexual abuse. Neither the *PAFVA* nor the *GTA* recognize chemical abuse or spiritual (religious or cultural) abuse.

Nunavut

Applicable Legislation: The *Nunavut Act*, S.C. 1993, c. 28. ("NA")
Guardianship and Trustee Act, R.S.N.W.T. 1994, c. 29 as duplicated for Nunavut by section 29 of the *NA*.

The *NA* brought Nunavut into being on 1 April 1999 (section 3) and provided that the ordinances of the Northwest Territories and the laws made under them, effective 31 March 1999, will be duplicated for Nunavut (section 29). As of 1 April 1999, only legislative amendments made by the Nunavut Legislative Assembly apply to legislation inherited from the Northwest Territories. That is, amendments to the Northwest Territories legislation after 1 April 1999 do not apply to Nunavut.

Nunavut does not have a family violence statute, and the *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24 was not adopted into Nunavut's legislative framework. Nunavut's *Guardianship and Trustee Act*, R.S.N.W.T. 1994, c. 29 as duplicated for

Nunavut by section 29 of the *NA*, however, is substantially similar to the Northwest Territories' *Guardianship and Trusteeship Act*, S.N.W.T. 1994, c. 29.

* Please see comments under the Northwest Territories section for applicable *GTA* legislation under this and other questions.

2) Is there a duty to report abuse and neglect?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3. (“*AGA*”)

Reporting Requirement: Under the *AGA*, reporting is generally voluntary (section 46(1)), however designated agencies have a duty to report the commission of a criminal offence to the police (section 50). While reporting is voluntary for community members (section 46(1)), reporting is mandatory for members of the health sector or government (section 50). The Act additionally provides for more than one place to report cases of abuse or neglect. Under section 46(1) of the *AGA*, anyone can report incidents of abuse and neglect to any designated agency (i.e. any public body, organization, or person designated under the Act).

Alberta

Applicable Legislation: *Protection for Persons in Care Act*, R.S.A. 2000, c.P-29. (“*PPCA*”)

Reporting Requirement: The *PPCA* institutes a mandatory reporting requirement (section 2(1)). There are two exceptions to the mandatory reporting requirement. First, mandatory reporting is not required if the information is privileged as a result of a solicitor-client relationship (section 2(3)); and second, a client “may” report abuse against their person but is not required to (section 3). Reporting is mandatory for members of the community (section 2), as well as members of the health care sector or government (section 2(1)-(6)).

Saskatchewan

Applicable Legislation: *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02. (“*VDVA*”)
Public Guardian and Trustee Act, S.S. 1983, c. P-36. (“*PGTA*”)

Reporting Requirement: Saskatchewan’s legislation provides for a voluntary reporting scheme. According to section 8(1) of the *VDVA*, reporting is voluntary for the victim, and for persons (designated or otherwise) on behalf of the victim. Section 40 of the *PGTA* similarly provides a voluntary reporting requirement for financial institutions. The Act

does not reference the reporting requirements for members of government or the health care sector.

Manitoba

Applicable Legislation: *Protection for Persons in Care Act*, C.C.S.M., c.P144. (“PPCA”)
Vulnerable Persons Living with a Mental Disability Act,
C.C.S.M. c. V90. (“VPLMDA”)

Reporting Requirement: Reporting is mandatory under the *PPCA* with two exceptions. First, mandatory reporting is not required if the information is privileged as a result of a solicitor/client relationship (section 3(2)); and second, a patient “may” report abuse against their person but is not required to do so (section 4). Reporting is required for members of the community (section 3(1)), as well as for members of the health care sector or government (section 3(1)). While reporting is required for members of the health care sector or government under the *VPLMDA*, not all reporting is mandatory. Under the *VPLMDA*, reporting is voluntary for community members.

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. (“NHA”)
An Act Respecting Long-term Care Homes, 2nd Sess., 38th Leg.,
2007 (third reading on 29 March 2007) (“Bill 140”)
Note: The *NHA* will be repealed once Bill 140 comes into force.

Reporting Requirement: Ontario’s legislative scheme provides for mandatory reporting of abuse and neglect. Under the *NHA*, mandatory reporting is required for community members (section 25(1)) and members of the health care sector or government (section 25(2)). Section 25(1) states that a “person other than a resident who has reasonable grounds to suspect that a resident has suffered or may suffer harm as a result of unlawful conduct, improper or incompetent treatment or care or neglect shall forthwith report the suspicion and the information upon which it is based to the Director.” Because this reporting structure refers to persons “other than the resident,” it would appear that abused or neglected persons are exempted from this mandatory reporting requirement. Under *Bill 140*, mandatory reporting is also required for members of the community (section 22(1)) and members of the health care sector or government (section 22(1)).

Quebec

Applicable Legislation: *Charte de Droits et Libertés de la Personne*, L.R.Q., c.C-12 (“CDLP”)

Reporting Requirement: Quebec’s legislation provides for a voluntary reporting scheme. Under the *CDLP*, reporting is voluntary for members of the community as well as for members of the health care sector and government.

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. (“*APA*”)
Protection for Persons in Care Act, S.N.S. 2004, c.33. (“*Bill 110*”)

Note: Although *Bill 110* has passed, it is still not proclaimed in force.

Reporting Requirement: Nova Scotia’s current legislative framework provides for a mandatory reporting scheme. Under section 5 of the *APA*, every person who has information (including confidential and privileged information) has a duty to report it in good faith. Mandatory reporting is required for both community members, and for members of the health care sector (section 5(1)) or government (section 5(2)). *Bill 110* stands to change this legislative scheme once proclaimed in force. Although *Bill 110* retains mandatory reporting requirements for members of the health care sector or government (section 5(1) and section 4(2)), it includes voluntary reporting requirements for members of the community (section 6(1)).

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“*FSA*”)

Reporting Requirement: Under the *FSA*, reporting is voluntary (section 35.1). Reporting is voluntary for members of the community (section 35.1(1)), as well as for members of the health care sector and government (section 35.1(1)).

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“*APA*”)

Reporting Requirement: Prince Edward Island’s present legislative framework provides for a voluntary reporting scheme. Under section 4(1) of the *APA*, reporting is voluntary for members of the community as well as for members of the health care sector and

government. If a report is made, the identity of the reporter is protected under section 4(2) of the *APA*.

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Reporting Requirement: Newfoundland’s *NAWA* provides for a mandatory reporting scheme. Under section 4 of the *NAWA*, every person who has information (including privileged or confidential information) that an adult is neglected has a duty to report the neglect. Mandatory reporting not only extends to members of the community (section 4(1)), but also applies to members of the health care sector and government (section 4(1)).

Yukon

Applicable Legislation: *The Adult Protection and Decision Making Act being Schedule A to the Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c.21, Part 4: Adult Protection. (“*APDMA*”)

Reporting Requirement: The *APDMA* supports a system of voluntary reporting (section 61). Reporting is voluntary for community members (section 61(1)) and for members of the health care sector and government (section 61(1)). Anyone who makes a malicious or false report commits an offence under section 83(1)(a) of the Act.

Northwest Territories

Applicable Legislation: *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24. (“*PAFVA*”)

Reporting Requirement: The legislative framework of the Northwest Territories supports a voluntary reporting scheme. Reporting is voluntary for community members as well as for members of the health care sector or government (section 2(1)).

3) Are there powers and duties to investigate allegations of abuse and neglect and who exercises these powers?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3

Designated/Investigative Agency: The Ministry of Children and Family Development, and the five Health Authorities in British Columbia (*Designated Agencies Regulation*, B.C. Reg. 19/2002).

Investigative Powers: The *AGA* provides for a mandatory investigation scheme. An investigative authority must investigate when a report received (section 47(1)). According to section 47, the investigative authority must also investigate if they “have reason to believe that an adult is abused or neglected” or “received a report that the adult’s representative, decision-maker, guardian or monitor has been hindered from visiting or speaking with the adult.” Investigators must make reasonable efforts to interview the adult (section 48(2)). The investigative agency may also interview anyone else who may assist in the investigation. Investigators may obtain any information that the circumstances require (section 48(2)(b)); this includes reports from “a health care provider who has examined the adult,” “any agency that provides or has provided health or social services to the adult,” and “any person that manages the adult’s financial affairs, business or assets.” Investigators may apply for a court order for entry onto premises (section 49). However, in emergencies, investigators may enter premises without a court order, remove the adult from the premises, provide the adult with emergency health care, and inform the Public Guardian and Trustee that the adult’s financial affairs need immediate protection (section 59). As evidenced by section 48 and section 49, investigative authorities possess strong powers to investigate.

Outcomes of Investigative Actions: Section 47(3) and section 51 outline a broad range of possible investigative outcomes. Possible outcomes from investigations include: taking no further action; referring the adult to available services; reporting the situation to the Public Guardian and Trustee or other agency; assisting the adult in making a representation agreement; applying for a court order that the suspected abuser stay away from the adult; applying to the court for a maintenance order under the *Family Relations Act*, R.S.B.C. 1996, c. 128, or preparing a support and assistance plan (section 51). Adults may choose to reject a support and assistance plan. However, if the adult is incapable of deciding not to accept the services proposed in the plan, the designated agency may apply to the court for an order authorizing the provision of services to the adult.

Alberta

Applicable Legislation: *Protection for Persons in Care Act*, R.S.A. 2000, c.P-29. (“*PPCA*”)

Designated/Investigative Agency: Ministry of Seniors and Community Supports (section 1(h)).

Investigative Powers: The Minister must appoint a person to investigate as quickly as possible (section 6(2)). The investigator may enter an agency at any reasonable hour and has access to inspect and copy records (section 7). Section 7 and section 8 provide strong investigatory powers.

Outcomes of Investigative Actions: The *PPCA* provides for a mandatory investigation process (section 6(1)). The investigator must prepare a final report to the Minister and make recommendations including review or alteration in funding for agencies, disciplinary action against an employee or service provider, dismissal of the complaint or any other appropriate recommendation (section 8(3)). The Minister may approve the

recommendations in whole or part or take any other action deemed appropriate (section 8(4)). If the subject-matter of the complaint could constitute a *Criminal Code*, R.S.C. 1985, c. C-46, offence, the Minister or the investigator must refer the complaint to the police as soon as possible (section 8(2)). As evidenced by section 8(3)(4) of the *PPCA*, the Act outlines a broad range of possible investigatory outcomes.

Saskatchewan

Applicable Legislation: *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02. (“*VDVA*”)
Public Guardian and Trustee Act, S.S. 1983, c. P-36. (“*PGTA*”)

Designated/Investigative Agency: Under the *VDVA*, an emergency intervention order may be granted by a justice of the peace (section 3(1)). A victim’s assistance order may also be made by the Court of Queen’s Bench (section 7(1)).

Investigative Powers: The Saskatchewan legislation provides for a permissive investigation scheme (section 40.7(1)). Under section 40.7(1) of the *PGTA*, the provision outlines a voluntary investigation process whereby the Public Guardian and Trustee may investigate an allegation of financial abuse against a vulnerable adult. The *PGTA* also provides for strong investigatory powers, as enumerated under sections 40.8-40.9 of the Act (pertaining to the production of and control over records under examination).

Outcomes of Investigative Actions: This legislative framework provides for limited investigative outcomes. Under the *VDVA*, an emergency intervention order may be granted where domestic violence has occurred and because of seriousness or urgency, the order should be made immediately to protect the victim (section 3(1) and see section 3(3) for the provisions in an emergency intervention order). A victim’s assistance order may be granted where domestic violence has occurred (section 7(1), which also lists the provisions in a victim’s assistance order).

Manitoba

Applicable Legislation: *Protection for Persons in Care Act*, C.C.S.M., c.P144. (“*PPCA*”)
Vulnerable Persons Living with a Mental Disability Act, C.C.S.M. c. V90. (“*VPLMDA*”)

Designated/Investigative Agency: Under the *PPCA*, the Ministry of Health, Protection for Persons in Care Office is responsible for the investigation process (section 1).

Investigative Powers: The *PPCA* provides for a mandatory investigation process. Under the *PPCA*, the Minister must inquire into the report of abuse and consider whether a more extensive investigation is warranted (section 5(1)). The Minister shall appoint an investigator if there are reasonable grounds to believe that a patient is or is likely to be

abused (section 5(2)). The *VPLMDA* similarly provides for a mandatory investigation process (section 22(2)) and strong powers to investigate (sections 22-24).

Outcomes of Investigative Actions: Under the *PPCA*, the Minister may give the operator of the health facility any directions the Minister considers necessary to protect the patient from abuse upon receiving the investigator's report (section 8(1)). If the minister believes that a person has abused a patient or failed to report abuse, the Minister may refer the matter to the body or person that governs the person's professional status (section 7(2)). Like the *PPCA*, the *VPLMDA* offers a broad range of possible investigative outcomes (section 25). Following an investigation, possible actions can include providing support services for the vulnerable person (section 25(a)), requesting a law enforcement investigation (section 25(b)), taking emergency intervention (section 25(c)), and applying for the appointment, variation, or termination of a substitute decision-maker (section 25(d)(e)(f)).

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. ("*NHA*")
An Act Respecting Long-term Care Homes, 2nd Sess., 38th Leg., 2007 (third reading on 29 March 2007) ("*Bill 140*")

Note: The *NHA* will be repealed once Bill 140 comes into force.

Designated/Investigative Agency: Under the province's *NHA*, the Director at the Ministry of Health is the investigative authority (section 3(2)).

Investigative Powers: The present legislative framework in Ontario supports a mandatory system of investigation. The *NHA* provides that the Director must immediately investigate reported incidents of abuse or neglect upon receipt of the report, or a complaint from the licensee (section 25(7), section 26, and section 27). Despite this mandatory investigation scheme, the Act does not enumerate strong investigatory powers. Like the present legislative scheme, *Bill 140* supports a mandatory system of investigation (section 21). However, unlike the *NHA*, *Bill 140* incorporates strong powers to investigate (section 23). Among the enumerated powers include the ability to inspect or make inquiries regarding noncompliance under the Act regarding incidents of improper or incompetent treatment (section 23(1)(1)), misuse or misappropriation of a resident's money (section 23(1)(5)), and abuse or neglect of a resident (section 23(1)(2)).

Outcomes of Investigative Actions: Neither the *NHA* nor *Bill 140* offer a broad range of investigative outcomes.

Quebec

Applicable Legislation: *Charte de Droits et Libertés de la Personne*, L.R.Q., c.C-12. (“CDLP”)

Designated/Investigative Agency: Commission des Droits de la Personne et des Droits de la Jeunesse (section 57).

Investigative Powers: The *CDLP* provides for a permissive investigative scheme, with limited powers of investigation. In emergencies, the Commission may apply to a tribunal for an emergency measure capable of putting an end to the threat posed to the adult’s life or safety (section 81).

Outcomes of Investigative Actions: The Commission may support a settlement between the two parties (section 79), suggest arbitration (section 79), or refer any unsettled issue to a tribunal (section 80). The Commission also has the power to report to the Public Curator any case it becomes aware of where protective supervision within the jurisdiction of the Public Curator is required (section 71(3)).

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. (“*APA*”)
Protection for Persons in Care Act, S.N.S. 2004, c.33. (“*Bill 110*”)

Note: Although *Bill 110* passed third reading, it is still not proclaimed in force.

Designated/Investigative Agency: Under the *APA*, the Minister of Health is the designated investigative authority. Section 3(e) provides that the Minister of Community Services is responsible for the investigations process. In 2000, responsibility was transferred to the Minister of Health by Order in Council.

Investigative Powers: The *APA* provides for a mandatory investigation process and outlines strong investigatory powers (section 6 and section 8). According to the Act, the Minister must investigate when a report is received. The Minister may order and authorize a medical exam of the person (section 6). If the investigation is impeded or the adult refuses to cooperate, a court order for entry may be issued (section 8). Like the *APA*, *Bill 110* provides for a mandatory process of investigation (section 8(1)) and outlines strong powers to investigate (section 12(1)-(2)).

Outcomes of Investigative Actions: The *APA* offers a broad range of possible investigatory outcomes. If the adult is found to be in need of protection, the Minister must assist the person in obtaining appropriate services (section 7) and may apply to court for an order restraining third parties. If the person is not willing to accept help, and is found by the court to be mentally incompetent or refusing help because of duress, the court may order

provision of appropriate services (section 9). The court may authorize the Minister to provide the adult with services, such as placement in a care home or make an order regarding any person who the court considers to be a source of danger to the adult in need of protection.

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“*FSA*”)

Designated/Investigative Agency: Minister of Family and Community Services (section 1).

Investigative Powers: The *FSA* provides for a mandatory process of investigation (section 35(1)). The Minister must investigate if there is reason to believe a person is abused or neglected. The *FSA* also enumerates strong investigatory powers. The Minister may order and authorize medical exam and report; however, consent of the person being examined is not required. If the investigation is impeded or the adult refuses to cooperate, a court order for entry may be issued (section 35(1)-(3)). After an application regarding assistance for a mentally incapable neglected or abused adult, but pending final outcome, the court may order the person into hospital care (section 40(2)), where a medical practitioner certifies that it is necessary in the interests of the person’s health. If there is reason to believe that a person is neglected or abused because of the presence of another person, the Minister may apply for a warrant to remove the offending person, pending a final order (section 36(1)).

Outcomes of Investigative Actions: The *FSA* offers a broad range of possible investigative outcomes (section 37(1) and section 37(1.1)). If a person is found to be a neglected or abused adult, the Minister may provide social services to the person or refer the matter to another agency or service (section 37(1)). If the neglected or abused person is also found to be mentally incompetent, the Minister may apply for orders respecting residence, supervision, and care and control of property of the person, orders respecting the removal or restraint of third parties, and orders authorizing the Minister to give medical consent on behalf of the person (sections 37(1.1)) (under section 39(1) the court may also make any other order considered appropriate under the circumstances). Per section 40(1), if hospital treatment is necessary, an order under section 39(1) may include an order for hospitalization. If the person is also in danger (section 37.1(1)(a)-(h)), the security of a person may be affected for a number of reasons including: being without adequate care or supervision; living in unfit circumstances; likely to injure self or others, etc. If the person has refused services, they may be put under (temporary/emergency) protective care (sections 37(1.1)(b) and 37.1). Protective care under section 37.1 is an emergency measure that involves making adequate provision for the person’s care. The Minister may leave the person in the current residence, move the person to a new residence, or arrange for medical treatment without the consent of any other person. Within five days of putting a person under protective care under this section, the Minister must either release the person or apply for an order under section 39(1).

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“*APA*”)

Designated/Investigative Agency: Minister of Health and Social Services (section 1(j)).

Investigative Powers: Prince Edward Island’s *APA* provides for a permissive process of investigation (section 5). Upon receipt of a report or on reasonable grounds, the Minister may make a preliminary investigation and consider whether an extensive investigation or assessment is necessary (section 5). Any person involved with the adult being assessed must cooperate with the Minister; if cooperation is not adequate a court order may be made for the assessment (under section 7, a court order may be granted where the adult to be assessed does not consent to the assessment, if “evidently unable to make a reasonable judgment about giving consent”).

Outcomes of Investigative Actions: The *APA* offers a broad range of investigative outcomes (section 8(1)(b)). If the assessment indicates that the person is determined to be in need of assistance or protection, the Minister must formulate a “general case plan” of services and interventions that serve the needs of the person (section 8(1) and section 8(2) stress that the assessed person must be involved and informed as fully as possible in the making of the case plan). Assistance provided may include the provision, arrangement, or payment for health, social or other type of service that is determined necessary for the person’s welfare (section 10 lists a number of services that might be provided, such as physiotherapy, counselling, vocational training, legal counsel, and concludes with the catch-all category of any other service). The assessed adult must consent to the assistance (section 9 requires that any person apparently exercising supervisory responsibility does not object). Protective intervention orders are additionally available where consent to assistance is not given or the person has been determined by assessment to be in need of protection (sections 11 and 12(1)). Such orders may direct supervision by the Minister (section 12(2)), the restraint/removal of another person (section 12(3)), or the removal of the person (section 12(4)). An order for the provision of health care can be made regardless of the status of a protection application, if urgent (section 13). Where the person is unable to make reasonable judgments and it seems the need for assistance or protection will persist, a guardian may be appointed (sections 15 and 16). Temporary guardianship is available where the person’s inability is causing risk of harm to the person or estate (section 17). Temporary guardianship orders are for a maximum of thirty days, renewable upon application. They are limited in scope to matters of accommodation, health care and supervision of routine daily living requirements and financial management only for the purpose of immediate need and to prevent loss to the estate.

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Designated/Investigative Agency: Director of Neglected Adults (Ministry of Health and Community Services) (The Minister of Social Services is named in section 2(h), however responsibility is now with the Ministry of Health and Community Services. Per section 3, the responsibility for administration and enforcement of the Act falls to an appointed Director of Neglected Adults under the control and direction of the Minister).

Investigative Powers: The *NAWA* provides for a mandatory investigation scheme (section 5). Upon receipt of a report of suspected neglect, the director must make an investigation. The director may obtain a warrant for the investigation, if the adult or a person with custody or control of the person will not cooperate (section 5). The investigation may include ordering a medical examination and report. At any time pending a final determination, the court may order the removal of the adult to a hospital or other place immediately (section 8). A medical practitioner must certify that in his or her opinion such a move is necessary in the interest of the adult (section 8).

Outcomes of Investigative Actions: As evidenced by section 6 of the *NAWA*, the Act provides a limited range of possible investigative options. If, based on the investigation, the director finds the person to be a neglected adult, an application to court for declaration of neglect may be made (section 6(1)-(3)). The person who is the subject of the application or a person having custody or control of that person must be notified of the application. The judge may compel witnesses, however, the *NAWA* is silent regarding whether the affected adult must be heard. Under section 6(4), the court may order that a neglected adult: remain in the current living situation, subject to supervision by the director; be removed to a more suitable living situation, subject to supervision by the director; be committed to the care and control of the director; or order the adult’s placement in an institution. Per section 6(9), the court must not order the removal of a neglected adult to an institution unless the court is of the opinion that adequate care and attention cannot be provided in the premises in which the adult is living. At any time after the expiration of four weeks from the making of an order, the order may be varied or rescinded on application by the director or the neglected adult (section 6(4)). Hospitalization may also be ordered (section 6(10)). If the neglected adult is removed from the current living situation, the court may declare the adult to be a dependant. The person with care and control of the adult may then apply for an order for financial support (section 6(5)).

Yukon

Applicable Legislation: *The Adult Protection and Decision Making Act being Schedule A to the Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c.21, Part 4: Adult Protection. (“*APDMA*”)
Public Guardian and Trustee Act being Schedule C to the Decision-Making Support and Protection to Adults Act, S.Y. 2003, c.21. (“*PGTA*”)

Designated/Investigative Agency: Subject to regulations (section 84(1)(o))

Investigative Powers: The *APDMA* provides for a mandatory investigation process (section 62(1) and section 62(2)). An investigative authority must make an inquiry when a report is received (section 62(2)). Investigators have a duty to attempt to interview the adult (section 63). Investigators may additionally obtain any information that the circumstances require (section 65(e)). This includes reports from “a health care provider who has examined the adult,” “any agency that provides or has provided health or social services to the adult,” and “any person that manages the adult’s financial affairs, business or assets.” Investigators may apply for a court order for entry onto premises (section 64). The Act also outlines strong powers of investigation (section 65). Investigators have the right to request information without the adult or the guardian’s consent. Information is exempt from any claims of confidentiality or privilege, other than a claim based on solicitor client privilege (section 67). In emergencies, investigators may enter premises without a court order, remove the adult from the premises, provide the adult with emergency health care, and inform the Public Guardian and Trustee that the adult’s financial affairs need immediate protection (section 78). Unlike the *APDMA*, the *PGTA* provides for a permissive investigation process (section 9). The *PGTA* does, however, feature strong powers of investigation (section 10 and section 11).

Outcomes of Investigative Actions: The *APDMA* offers a broad range of possible investigative outcomes (section 69). Possible outcomes from investigations include: taking no further action (section 68); referring the adult to available services; reporting the situation to the Public Guardian and Trustee; reporting the matter to the Royal Canadian Mounted Police; referring the matter to a community process based on restorative justice principles; applying for an adult protection order; or applying for an order under the *Family Property and Support Act*, R.S.Y. 2002, c.83, for the adult’s maintenance (section 69). The Yukon’s *PGTA* also offers a broad range of investigative outcomes. Under section 11 of the Act, the Public Guardian and Trustee may initiate several actions including issuing a report to the designated agency under the *APDMA* (section 11(a)), making a report to the RCMP (section 11(b)), and applying for a temporary guardianship order (section 11(c)).

Northwest Territories

Applicable Legislation: *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24. (“*PAFVA*”)

Designated/Investigative Agency: Under the *PAFVA*, an emergency protection order may be made by a justice of the peace (section 4(1)). In addition, a protection order may be made by the Supreme Court (section 7(1)).

Investigative Powers: The legislation does not include a mandatory investigation process, or strong powers of investigation.

Outcomes of Investigative Actions: The *PAFVA* offers a limited range of possible investigative outcomes (section 4 and section 7). Under section 4(1), an emergency protection order may be made where family violence has occurred and because of seriousness or urgency the order should be made without delay to protect the person or property (see section 4(3) for the provisions in an emergency protection order). Under section 7(1), a protection order may also be made where family violence has occurred (see section 7(2) for the provisions in a protection order).

4) What are the remedies when abuse or neglect is discovered?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3. (“*AGA*”)

Available Remedies: Under section 51(1) of the *AGA*, the designated agency may do one or more of the following upon conclusion of an investigation as provided under section 47(3)(d): take no further action; refer the adult to available health care, social, or legal services; report the case to the Public Guardian and Trustee or another agency; assist the adult in obtaining a representative; apply to the court for an interim order requiring a person to restrict contact with the abused or neglected adult for a period of up to 30 days; apply to the court for maintenance under Part 7 of the *Family Relations Act*, R.S.B.C. 1996, c.129; or prepare a support and assistance plan for the abused or neglected adult.

Alberta

Applicable Legislation: *Protection for Persons in Care Act*, R.S.A. 2000, c.P-29. (“*PPCA*”)

Available Remedies: Under section 8(3) of the *APA*, the inspector must present a final report to the Minister making any one or more of the following recommendations: the agency’s governmental funding can be reviewed or altered; the agency involved can

discipline the employee or service provider; the complaint can be dismissed if it is malicious, or without reasonable grounds or sufficient evidence; and the investigator can take any other action they deem appropriate in the circumstances.

Saskatchewan

Applicable Legislation: *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02. (“*VDVA*”)
Public Guardian and Trustee Act, S.S. 1983, c. P-36. (“*PGTA*”)

Available Remedies: Three types of remedies are available to assist a victim under the *VDVA* (a “victim” is defined as a “cohabitant who has been subjected to domestic violence by another cohabitant” under section 2(i)). These remedies include emergency intervention orders, victim’s assistance orders and warrants of entry. Although these are civil remedies, a breach of any of these orders constitutes a criminal offence and offenders are subject to arrest and charges. Under the *PGTA*, there are two sections that provide remedies in circumstances of financial abuse. Section 40.5 authorizes a financial institution to suspend the withdrawal or the payment of funds from a person’s account for up to five business days if it has reasonable grounds to believe that the vulnerable adult is being financially abused by another person, or the vulnerable adult is unable to make reasonable judgments respecting their financial matters that could necessitate serious financial damage or loss. Section 40.6 further authorizes the Public Guardian and Trustee to require a financial institution to suspend the withdrawal or payment of funds from a person’s account and provide the Public Guardian and Trustee with any financial information respecting that person if there is reasonable grounds to believe that person is a vulnerable adult, and an allegation of financial abuse or serious financial mismanagement affairs has been made.

Manitoba

Applicable Legislation: *Protection for Persons in Care Act*, C.C.S.M., c.P144. (“*PPCA*”)
Vulnerable Persons Living with a Mental Disability Act, C.C.S.M. c. V90. (“*VPLMDA*”)

Available Remedies: Under the *PPCA*, the Minister is authorized to make certain directions or orders. Section 8(1) of the Act provides that the Minister can give any direction necessary to protect a patient from abuse to the health facility involved in the report. Section 3 further provides that if the Minister believes, on reasonable grounds, that a person has abused a patient or has failed to comply with a duty to report under the *PPCA*, the Minister may refer the matter to the governing body or person who oversees the person’s professional status, or who certifies, licenses, or authorizes the person to carry on work, an occupation, or profession (section 9(1)). The body that receives the report must then investigate whether disciplinary proceedings ought to be commenced, and advise the Minister of the results of that investigation (section 9(2)). Finally, section 12(1) of the *PPCA* states that a contravention of the Act is an offence, which on conviction results in a

fine not exceeding \$2, 000 for an individual, and a fine of no more than \$30, 000 for a corporation. Under the *VPLMDA*, the Executive Director is authorized to take any appropriate action to protect the vulnerable person following an investigation, including one or more of the following: providing or arranging for the vulnerable person's support services; requesting a law enforcement investigation; taking emergency intervention; applying for the appointment of a substitute decision maker; applying for an emergency appointment of a substitute decision maker, or for a suspension, variation or termination of a substitute decision maker (section 25). The Executive Director is also authorized to take emergency intervention to protect a vulnerable person if there is reasonable grounds that the vulnerable person is likely to be abused or neglected, and the vulnerable person is in immediate physical or psychological danger (section 26(1)). The Executive Director is authorized to take this emergency measure at any time and without obtaining a court order.

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. ("*NHA*")

Available Remedies: While the *NHA* does not enumerate discrete remedies, this legislation does provide that an individual who contravenes any provision of the Act (section 26(1)) or its regulations is guilty of an offence and liable (section 26(4)) for a fine of no more than \$25, 000 and/or a term of imprisonment not exceeding 12 months for a first offence, and a fine not exceeding \$50, 000 and/or a term of imprisonment no more than 12 months for a subsequent offence. Corporations are also liable to a fine not exceeding \$50, 000 for a first offence, and a fine no more than \$200, 000 for a subsequent offence. In addition to these penalties, the court may order that a person pay compensation or make restitution to any person who has suffered a loss as a result of the offences.

Quebec

N/A

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. ("*APA*")
Protection for Persons in Care Act, S.N.S. 2004, c.33. ("*Bill 110*")

Note: Although *Bill 110* passed third reading, it is still not proclaimed in force.

Available Remedies: The *APA* authorizes the Minister to apply to court if the Minister is satisfied, on the basis of an assessment, that there is reasonable and probable cause to believe that an adult is in need of protection (section 9(1)). Following a hearing, if the court finds that the adult is not mentally competent to decide whether or not to accept the Minister's assistance or the adult is refusing assistance because of duress, then the court is authorized to make the following orders in the best interests of the adult under section

9(3)(c)-(d): an order authorizing the Minister to provide the adult with services intended to enhance the adult's ability to care for themselves and protect themselves from abuse and neglect; a protective intervention order directed at the source of danger to the adult, which will require the person to leave the premises where the adult resides (unless that person owns or leases the premises), prohibit or limit that person from contacting or associating with the adult, and require that person to pay maintenance to the adult in the same manner and to the same extent as would be required under the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160, ss.15-17. The *APA* further provides that nothing in the Act limits an available remedy or affects an action that may be taken under another Act (section 14(1)). *Bill 110* outlines similar remedies in circumstances where an adult is in need of protection. Under section 12(1), if the Minister has reasonable cause to believe that a person has abused a patient or resident or has failed to comply with the statutory reporting requirement, then the Minister may refer the matter to the body or person that governs the person's professional status or that certifies, licenses or otherwise authorizes or permits the person to carry on that person's work, profession, or occupation. Further, a contravention of the Act is an offence (section 17(1)). While an individual is liable to a fine not exceeding \$2, 000 upon conviction (section 17(1)), a corporation is liable to a fine of not more than \$30, 000.

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. ("*FSA*")

Available Remedies: The *FSA* no longer contains discrete provisions setting out statutory remedies. The provision formerly detailing the powers of the court (section 29) was repealed.

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. ("*APA*")

Available Remedies: Section 12(1) of the *APA* authorizes the Minister to apply for a protective intervention order if an assessment has determined that the person is in need of protection. In making this order, the court may direct that a person who is determined to be a source of harm or danger to the person refrain from contacting or communicating with the person in need of protection (section 12(4)). If the person who is a source of harm or danger has a legal obligation to contribute maintenance towards the person in need of protection, then the court can require that maintenance be given (section 12(4)). Section 12(4) can additionally impose any other restriction on the person who is determined to be a source of harm or danger to the person in need of protection.

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Available Remedies: The *NAWA* places a duty on the director to protect an adult’s property (section 10). However, this duty only applies in specific circumstances, including when: an adult is removed from the premises where the adult was residing; the director believes that there is a danger of loss or damage to the adult’s movable property; the adult is temporarily or permanently unable to deal with that property; and no other suitable arrangements have been made to protect that property. For the purpose of taking reasonable steps to protect the adult’s property, the director may enter the adult’s place of residence at reasonable times and may recover from the adult, or a person required to support the adult, reasonable expenses incurred in entering the adult’s property (section 10).

Yukon

Applicable Legislation: *The Adult Protection and Decision Making Act being Schedule A to the Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c.21, Part 4: Adult Protection. (“*APDMA*”)

Available Remedies: Section 72(1) of the *APDMA* authorizes a judge, on application by a designated agency, to issue an adult protection order. Section 72(2) provides that an adult protection order may require a person to do any one of the following: stop residing at and stay away from the premises where the adult lives; not to contact, communicate, harass, or interfere with the adult; not to have any association with the adult’s financial affairs; to give the adult possession of specified personal property (eg. a vehicle, cheque book, bank card, medical insurance card, identification documents, keys, or other personal effects). The *APDMA* also provides that a failure to comply with an adult protection order constitutes an offence under the Act (section 83(1)(c)). Section 83(2)-(3) further provides that a person is liable to a fine not exceeding \$2, 000 and/or a term of imprisonment not more than six months for a first offence, and a fine not more than \$5, 000 and/or a term of imprisonment not exceeding 12 months for a subsequent offence.

Northwest Territories

Applicable Legislation: *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24. (“*PAFVA*”)
Guardianship and Trusteeship Act, S.N.W.T. 1994, c. 29. (“*GTA*”)

Available Remedies: The *PAFVA* provides that a designated justice of the peace may make an emergency protection order (section 4(1)) that can contain any or all of the following provisions: restraining the respondent from communicating with or contacting

the applicant or another specified person; granting the applicant exclusive occupation of a residence; directing a peace officer to remove the respondent from a residence immediately or within a specified period of time; directing a peace officer to accompany the applicant, respondent, or other specified person to a residence or location and to supervise the removal of personal belongings; granting the applicant or respondent temporary possession and exclusive use of specified personal property; restraining the respondent from taking, converting, damaging, or otherwise dealing with property in which the applicant has an interest; requiring the respondent to pay compensation to the applicant for monetary losses suffered by the applicant as a direct result of family violence; requiring a respondent to surrender a weapon to a peace officer if the respondent used or threatened to use a weapon to commit family violence in addition to any authorizing documents for the weapon; requiring the respondent to attend counselling or therapy sessions; or any other provision that the court deems necessary for protection the applicant or other person at risk of harm (section 4(3)). The legislation further provides that an application for an emergency protection order does not diminish any existing right of action of the applicant or any other person who is the subject of family violence (section 15). Any person who fails to comply with the emergency order provisions under the *PAFVA* commits an offence, and if convicted, is liable to a fine not more than \$5, 000 and/or to a term of imprisonment not exceeding six months (section 18). Under the *GTA*, if there is no guardianship order in effect regarding an adult and that adult appears to be at risk of physical or mental abuse, neglect, or the deprivation of liberty or personal security, then a court may issue a temporary guardianship order (section 10(1)). The *GTA*, however, does not contain discrete provisions outlining statutory remedies applying to an order of temporary guardianship.

5) What are the regimes for requiring financial support or maintenance of vulnerable people?

British Columbia

Applicable Legislation: *Family Relations Act*, R.S.B.C. 1996, c.129. (“*FRA*”)

Regime for Financial Support/Maintenance: Section 90 of the *FRA* creates an obligation on adult children to provide parental support. Under section 90(1), a parent is defined as a “father or mother dependent on a child because of age, illness, infirmity or economic circumstances.” Section 90(2) states that an adult child is “liable to maintain and support a parent having regard to the other responsibilities and liabilities and the reasonable needs of the child.”

Alberta

N/A

Saskatchewan

N/A

Manitoba

Applicable Legislation: *Vulnerable Persons Living with a Mental Disability Act*, C.C.S.M. c. V90. (“*VPLMDA*”)

Regime for Financial Support/Maintenance: The *VPLMDA* includes a regime for financial support under sections 9-12 of the Act. Under section 9 of the Act, the minister may provide for or arrange support services for a vulnerable person. Section 10(1) further states that the Minister may make grants or payments to persons or organizations to provide support services for vulnerable persons. Sections 11-12 further provide for an individual planning process, whereby the executive director must create an individual plan for each vulnerable person receiving support under the *VPLMDA*.

Ontario

N/A

Quebec

Applicable Legislation: *Charte de Droits et Libertés de la Personne*, L.R.Q., c.C-12 (“*CDLP*”)

Regime for Financial Support/Maintenance: Section 48 of the *CDLP* appears to incorporate a regime for financial support. According to this “family protection” provision, aged persons are entitled to protection and security from their family, or from those who hold the place of it.

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. (“*APA*”)

Regime for Financial Support/Maintenance: Section 9(3)(d)(iii) creates the financial support regime under the *APA*. Under this provision, the Minister can make a protective intervention order against any person who is a source of danger to the adult in need of protection requiring that person to pay maintenance in the same manner and to the same extent as that person could be obligated to pay under the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160.

New Brunswick

N/A

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“*APA*”)

Regime for Financial Support/Maintenance: The *APA*’s maintenance regime is provided under section 10 of the Act. Under this section, the Minister may provide or arrange for assistance that includes: a) assessment and case planning; b) counselling and other social work; c) speech and hearing therapy; d) occupational therapy and physiotherapy; and e) respite care and day care.

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Regime for Financial Support/Maintenance: Sections 6(7) and 6(8) make up the *NAWA*’s support regime. Under sections 6(7) and 6(8) financial maintenance may be derived from a pension or income payable to the adult.

Yukon

N/A

Northwest Territories

N/A

6) How are issues of mental capability/capacity addressed for the purposes of these regimes?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3. (“*AGA*”)

Mental Competence/ Capacity regimes: The *AGA* applies to persons who are mentally capable, although there are no established mechanisms for determining capacity within the Act itself (assessments of incapability are, however, made by assessors designated by the Public Guardian and Trustee’s office pursuant to the *Adult Guardianship (Abuse and Neglect) Regulation*, B.C. Reg. 13/2000). The Public Guardian and Trustee’s *Practice*

Guidelines for Incapability Assessment pursuant to the province's Adult Guardianship legislation additionally assists with this determination (B.C. Reg. 13/2000 at section 3(2)).

Alberta

Applicable Legislation: *Protection for Persons in Care Act*, R.S.A. 2000, c.P-29.
("PPCA")
Dependent Adults Act, R.S.A. 2000, c.D-11. ("DAA")

Mental Competence/ Capacity regimes: Although the *PPCA* applies to mentally capable persons, it does not provide any mechanisms for making a capacity determination within the Act itself. However, the *DAA* does provide some source of guidance. Under section 70 of the Act, a facility may issue a certificate of incapacity if, after separate examinations of the adult resident, two physicians are of the opinion that the adult resident is unable to make reasonable judgments respecting any or all matters pertaining to the person's estate.

Saskatchewan

Applicable Legislation: *Public Guardian and Trustee Act*, S.S. 1983, c. P-36.
("PGTA")
Adult Guardianship and Co-decision-making Act, S.S. 2000, c. A-5.3 ("AGCA")

Mental Competence/ Capacity regimes: As derived from the *PGTA*'s definition of "vulnerable adult," this legislative regime applies to capable persons (section 40.5(c)). However, the Act does not provide further reference to issues of capacity/incapacity. Conversely, the *AGCA* does provide for an established mechanism for determining capacity. Section 12(1) of the *AGCA* provides that before a guardianship or co-decision-maker order may be made, an adult must undergo a capacity assessment. Under section 12(2), the court may require an adult with respect to whom this application is made submit to an examination by one or more health care professionals at any time or location that the court so directs.

Manitoba

Applicable Legislation: *Protection for Persons in Care Act*, C.C.S.M., c.P144. ("PPCA")
Vulnerable Persons Living with a Mental Disability Act,
C.C.S.M. c. V90. ("VPLMDA")

Mental Competence/ Capacity regimes: While the *PPCA* extends to mentally capable persons, it does not provide additional insight with respect to capacity issues or incapacity determinations within the legislation. Further issues are addressed under the province's *VPLMDA*, however. Section 2 provides that a vulnerable person will be presumed capable to retain and instruct counsel. Regarding personal care, section 46 states that a person is incapable of personal care if that person is unable to understand information that is relevant

to making decisions respecting his/her own health care, personal needs, or foreseeable consequences from those decisions.

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. (“*NHA*”)
An Act Respecting Long-term Care Homes, 2nd Sess., 38th Leg., 2007 (third reading on 29 March 2007) (“*Bill 140*”)
Note: The *NHA* will be repealed once Bill 140 comes into force.

Mental Competence/ Capacity regimes: While both the *NHA* and *Bill 140* applies to mentally capable persons, neither Act addresses further issues respecting determinations of incapacity or mechanisms for assessment. Ontario’s *Substitute Decisions Act*, 1992, S.O. 1992, c. 30, does however provide a means of addressing capacity determinations in such situations (section 16). Under this regime, capacity assessors (persons from the province’s Community Care and Access Centres or physicians) are used to make capacity determinations.

Quebec

Applicable Legislation: *Charte de Droits et Libertés de la Personne*, L.R.Q., c.C-12 (“*CDLP*”)

Mental Competence/ Capacity regimes: Although the *CDLP* applies to mentally capable persons, the Act does not contain any further provisions respecting this regime.

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. (“*APA*”)
Protection for Persons in Care Act, S.N.S. 2004, c.33. (“*Bill 110*”)
Note: Although *Bill 110* passed third reading, it is still not proclaimed in force.

Mental Competence/ Capacity regimes: The *APA* applies to adults who are physically or mentally incapable and not living in a care facility (while the *Homes for Special Care Act*, R.S.N.S. 1989, c. 203 covers care facilities, this legislation is silent on the subject of abuse in care facilities). Neither the *APA* nor *Bill 110* delineate further into this regime.

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“*FSA*”)

Mental Competence/ Capacity regimes: The *FSA* applies to adults who meet the definition of a “neglected adult” or “abused adult.” Only “elderly” or “disabled” persons come under these definitions (although elderly persons need not be mentally or physically impaired to meet this definitional requirement). In addition to applying to mentally capable persons, the *FSA* provides further mechanisms for determining capacity. Under section 37.1(2)(b), it is the Minister and a “professional person” that determine whether an adult is incapable and in need of protective care. Section 37.3(2) additionally states that an examination report must explain and evaluate the nature and degree of the adult’s mental incompetency.

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“*APA*”)

Mental Competence/ Capacity regimes: The *APA* applies to adults who are physically, mentally, or otherwise incapable. The *Act* also provides for an established means of capacity assessment. Under section 6(1), if preliminary investigations support the belief that a person is in need of assistance or protection, the Minister may order an in-depth assessment to determine the nature and extent of the apparent need. Section 6(2) further provides that the assessment must be a comprehensive investigation that considers the person’s conditions, circumstances and needs and includes such factors as health, social, residential, economic, vocational, educational, and other conditions related to the person’s functional abilities to cope with particular circumstances and decisions.

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Mental Competence/ Capacity regimes: The *NAWA* applies to adults who are mentally or physically incapable of caring properly for themselves, but who are not suitable for placement in a treatment facility under the province’s mental health legislation. The *NAWA* does not contain any further provisions respecting capacity/incapacity determinations. However, service providers do have a provincial resource to consult when addressing capacity issues in cases of elder abuse or neglect, the defining criterion of which is whether or not the senior understands the consequences of his or her decisions (Seniors Resource Centre Association of Newfoundland, “Looking Beyond the Hurt: A Service Provider’s Guide to Elder Abuse” (May 2006), online: Seniors Resource Centre of Newfoundland and Labrador <<http://www.seniorsresource.ca/beyond.htm>> at 48).

Yukon

Applicable Legislation: *The Adult Protection and Decision Making Act being Schedule A to the Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c.21, Part 4: Adult Protection. (“*APDMA*”)

Mental Competence/ Capacity regimes: The *APDMA* applies to mentally capable persons, but does not provide further insight regarding capacity assessments or determinations of incapacity within this regime.

Northwest Territories

Applicable Legislation: *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24. (“*PAFVA*”)

Mental Competence/ Capacity regimes: Although the *APDMA* applies to mentally capable persons, this legislation does not make further reference to capacity/incapacity under this regime.

7) What mechanisms for determining capability/capacity are used?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3. (“*AGA*”)

Legislated Mechanisms: Although there are no established mechanisms for determining capacity within the Act itself, incapability assessments are made by assessors designated by the Public Guardian and Trustee’s office pursuant to the *Adult Guardianship (Abuse and Neglect) Regulation*, B.C. Reg. 13/2000). The Public Guardian and Trustee’s *Practice Guidelines for Incapability Assessment* pursuant to the province’s Adult Guardianship legislation additionally assists with this determination (B.C. Reg. 13/2000 at section 3(2)).

Alberta

Applicable Legislation: *Dependent Adults Act*, R.S.A. 2000, c.D-11. (“*DAA*”)

Mental Competence/ Capacity regimes: The *DAA* provides some source of guidance regarding capacity/incapacity assessments, however specific mechanisms are not identified under the Act itself. Section 70 of the Act states that a facility may issue a certificate of incapacity if, after separate examinations of the adult resident, two physicians are of the opinion that the adult resident is unable to make reasonable judgments respecting any or all matters pertaining to the person’s estate.

Saskatchewan

Applicable Legislation: *Adult Guardianship and Co-decision-making Act*, S.S. 2000, c. A-5.3 (“AGCA”)

Mental Competence/ Capacity regimes: Under the Saskatchewan regime, the *AGCA* provides for an established mechanism for capacity determinations. Section 12(1) of the *AGCA* provides that before a guardianship or co-decision-maker order may be made, an adult must undergo a capacity assessment. Under section 12(2), the court may require an adult with respect to whom this application is made submit to an examination by one or more health care professionals at any time or location that the court so directs.

Manitoba

Applicable Legislation: *Vulnerable Persons Living with a Mental Disability Act*, C.C.S.M. c. V90. (“VPLMDA”)

Mental Competence/ Capacity regimes: Under section 2 of the *VPLMDA*, a vulnerable person will be presumed capable to retain and instruct counsel. Regarding personal care, section 46 states that a person is incapable of personal care if that person is unable to understand information that is relevant to making decisions respecting his/her own health care, personal needs, or foreseeable consequences from those decisions. When a vulnerable person needs decisions to be made and is incapable of making them (alone or with the assistance of a support network), then the Vulnerable Person’s Commissioner (appointed under section 53(1)) can appoint substitute decision-maker. The Commission and a hearing panel will later consider the vulnerable person’s capabilities when making recommendations regarding the appointment.

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. (“NHA”)
An Act Respecting Long-term Care Homes, 2nd Sess., 38th Leg., 2007 (third reading on 29 March 2007) (“Bill 140”)
Note: The *NHA* will be repealed once Bill 140 comes into force.

Mental Competence/ Capacity regimes: Neither the *NHA* nor *Bill 140* reference mechanisms for making capacity/incapacity assessments. Ontario’s *Substitute Decisions Act*, 1992, S.O. 1992, c. 30, does offer a means of addressing capacity determinations in such situations, and particularly in regards to financial abuse (section 16). Under this regime, capacity assessors (persons from the province’s Community Care and Access Centres or physicians) are used to make capacity determinations. Under section 16(1), a person may request a capacity assessment for themselves or for another person.

Quebec

N/A

Nova Scotia

N/A

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“*FSA*”)

Mental Competence/ Capacity regimes: Under section 37.1(2)(b), the Minister and a “professional person” determine whether an adult is incapable and in need of protective care. Section 37.3(2) states that an examination report must explain and evaluate the nature and degree of the adult’s mental incompetency.

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“*APA*”)

Mental Competence/ Capacity regimes: Section 6(1) and section 6(2) delineate the *APA*’s mechanisms for assessing capacity. Under section 6(1), if preliminary investigations support the belief that a person is in need of assistance or protection, the Minister may order an in-depth assessment to determine the nature and extent of the apparent need. Section 6(2) further provides that the assessment must be a comprehensive investigation that considers the person’s conditions, circumstances and needs and includes such factors as health, social, residential, economic, vocational, educational, and other conditions related to the person’s functional abilities to cope with particular circumstances and decisions.

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Mental Competence/ Capacity regimes: The *NAWA* does not contain specific provisions respecting capacity/incapacity determinations. However, service providers do have a provincial resource to consult when addressing capacity issues in cases of elder abuse or neglect, the defining criterion of which is whether or not the senior understands the consequences of his or her decisions (Seniors Resource Centre Association of Newfoundland, “Looking Beyond the Hurt: A Service Provider’s Guide to Elder Abuse”)

(May 2006), online: Seniors Resource Centre of Newfoundland and Labrador <<http://www.seniorsresource.ca/beyond.htm>> at 48).

Yukon

N/A

Northwest Territories

N/A

8) Can capable people refuse assistance?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3. (“*AGA*”)

Right to Refuse Assistance: The *AGA*’s guiding principles effectively codify the right of a competent person to refuse assistance. According to the first guiding principle, the *AGA* is to be administered in a manner that respects an adult’s right to self-determination and independent decision-making. Inherent in this principle is the recognition that an adult may elect to remain in an abusive or neglectful situation. That is, adults are enabled to live in “the manner they wish and to accept or refuse support, assistance or protection” (section 2(a)).

Alberta

N/A

Saskatchewan

N/A

Manitoba

Applicable Legislation: *Vulnerable Persons Living with a Mental Disability Act*, C.C.S.M. c. V90. (“*VPLMDA*”)

Right to Refuse Assistance: The *VPLMDA*’s guiding principles effectively entrench a vulnerable person’s right to refuse assistance, within certain limits. As stated in the preamble to the Act, vulnerable persons are presumed to have the capacity to make personal decisions unless otherwise demonstrated. The preamble also recognizes that vulnerable persons should be encouraged to make their own decisions, and that assisted

decision-making should be provided in the least restrictive manner possible. Such recognition would appear to support the right of the vulnerable person to refuse outside assistance or protection.

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. (“*NHA*”)
An Act Respecting Long-term Care Homes, 2nd Sess., 38th Leg., 2007 (third reading on 29 March 2007) (“*Bill 140*”)
Note: The *NHA* will be repealed once Bill 140 comes into force.

Right to Refuse Assistance: Section 2(2)(6)(ii) of the *NHA* states that every resident has the right to refuse treatment, including medication, in accordance with the law and to be informed of the consequences of refusing consent. Section 3(1)(11)(ii) of *Bill 140* similarly provides residents with the right to give or refuse consent to any treatment, care or services for which his or her consent is required by law and to be informed of the consequences of giving or refusing that consent. While both of these sections provide residents with the right to refuse medical care, it is uncertain whether these provisions permit residents to refuse assistance or services regarding cases of abuse or neglect.

Quebec

N/A

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. (“*APA*”)
Protection for Persons in Care Act, S.N.S. 2004, c.33. (“*Bill 110*”)
Note: Although *Bill 110* passed third reading, it is still not proclaimed in force.

Right to Refuse Assistance: Nova Scotia’s adult protection legislation does not afford capable adults the right to refuse assistance. According to section 3(b)(i) and (ii) of the *APA*, an “adult in need of protection” includes persons who refuse and delay protective measures. Section 8(1) further provides that the Minister may apply to the provincial court for an order authorizing entry into any premises for the purpose of making an assessment in circumstances where “the adult who is being assessed refuses to consent to the assessment.” *Bill 110* similarly does not provide capable adults with the right to refuse assistance.

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“*FSA*”)

Right to Refuse Assistance: The *FSA* does not provide capable adults with the right to refuse assistance. Section 34(1) of the *FSA* states that elderly adults that are mentally *or* physically incapable of taking proper care of themselves (section 34(1)(a)), and refuses, delays, or is unable to make provision for their proper care and attention (section 34(1)(b)) is a neglected adult for the purpose of the *FSA*.

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“*APA*”)

Right to Refuse Assistance: The *APA*’s guiding principles as expressed under section 3 of the Act recognize a competent adult’s right to refuse assistance. According to section 3(c), adults have a need for self-determination and to have their person, estate, and civil rights protected, even despite diminished capacity (section 3(c)). Section 3(d) further states that an adult is entitled to live in the manner he or she wishes and to accept or reject assistance, provided that this choice does not cause harm to others.

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Right to Refuse Assistance: The *NAWA* does not provide adults with the right to refuse assistance. Under section 2(i)(iv) of the Act, a neglected adult is defined as an adult who “refuses, delays or is unable to make provision for proper care and attention for himself or herself.” Section 5 further provides that where the neglected adult refuses to cooperate with the director in pursuance to an investigation made, the director, social worker or person authorized by the director may apply to a judge for warrant to proceed with the investigation.

Yukon

Applicable Legislation: *The Adult Protection and Decision Making Act being Schedule A to the Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c.21, Part 4: Adult Protection. (“*APDMA*”)

Right to Refuse Assistance: Section 2 of the *APDMA* outlines a statement of guiding principles for this legislation. Included in these principles is the express recognition that capable adults have the right to refuse support, assistance, and protection. Section 2(a) states that all adults are entitled to live in the manner they wish and to accept or refuse

support, assistance or protection so long as they are capable of making these decisions and their choice does not cause harm to others. Section 2(c) further states that all adults should receive the most effective but least intrusive form of support, assistance, and protection when they are incapable of caring for themselves or managing their affairs (section 2(c)). Finally, the Act states that the Supreme Court should not be asked to appoint and should not appoint a guardian unless alternative modes of assistance have been carefully considered (section 2(d)).

Northwest Territories

Applicable Legislation: *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24. (“*PAFVA*”)

Right to Refuse Assistance: The *PAFVA* does not include a provision that provides capable adults with the right to refuse assistance. It does, however, include a section that appears to operate against such a right. Sections 17(2)(b) and (c) and 17(3) of the *PAFVA* provides that a designated justice may issue a warrant to authorize authorities to assist, examine, and remove persons who may be or have been the subject of family violence if access has been otherwise refused.

9) Are guiding principles or “Bills of Rights” included in these regimes?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3. (“*AGA*”)

Guiding Principles: British Columbia’s *AGA* is to be administered according to three central principles (section 2). The first principle is to respect an adult’s right to self-determination and independent decision-making. Inherent in this principle is the recognition that an adult may elect to remain in an abusive or neglectful situation (section 2(a)). The second guiding principle is to protect adults from unnecessary intrusion. Section 2(b) states that “all adults should receive the most effective, but least restrictive and intrusive form of support, assistance or protection.” The final guiding principle under the *AGA* is that court-appointed decision-makers should only be used as a last-resort. Specifically, all other alternatives must be “tried or carefully considered” before instituting a substitute decision-maker (section 2(c)).

Alberta

N/A

Saskatchewan

N/A

Manitoba

Applicable Legislation: *Vulnerable Persons Living with a Mental Disability Act*, C.C.S.M. c. V90. (“*VPLMDA*”)

Guiding Principles: The *VPLMDA*’s guiding principles are located in the preamble to the Act. Among the principles identified include the recognitions that: vulnerable persons are presumed to have the capacity to make personal decisions unless otherwise demonstrated; vulnerable persons should be encouraged to make their own decisions; a vulnerable person’s social support network should be encouraged to assist them in making personal decisions and exercising self-determination; assisted decision-making should be provided in the least restrictive manner that respects the vulnerable person’s dignity and privacy; and that substitute decision-making should only be invoked as a last resort.

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. (“*NHA*”)
An Act Respecting Long-term Care Homes, 2nd Sess., 38th Leg., 2007 (third reading on 29 March 2007) (“*Bill 140*”)
Note: The *NHA* will be repealed once Bill 140 comes into force.

Guiding Principles: Both the *NHA* and *Bill 140* contain statements of guiding principles. A statement of guiding principles is expressed in section 2(1) and section 2(2) of the *NHA*. Section 2(1) states that the “fundamental principle to be applied in the interpretation of this Act, the regulations and a service agreement between the Crown in right of Ontario and a licensee is that a nursing home is primarily the home of its residents and as such it is to be operated in such a way that the physical, psychological, social, cultural and spiritual needs of each of its residents are adequately met and that its residents are given the opportunity to contribute, in accordance with their ability, to the physical, psychological, social, cultural and spiritual needs of others.” Section 2(2) of the *NHA* includes a “Resident’s bill of rights,” and enumerates 19 separate rights. Among the enumerated rights including the right to live in a safe and clean environment (section 2(2)(18)), the right to be properly sheltered, fed, clothed, groomed and cared for in a manner consistent with his or her needs (section 2(2)(2)), and the right to be afforded privacy in treatment and in caring for his or her personal needs (section 2(2)(4)). Like the *NHA*, *Bill 140* contains a statement of guiding principles. While a statement of general principles are provided in the preamble, further statements are included in section 1, Part 1 and section 17, Part 2 of the Act. Section 1 states that the “fundamental principle to be applied in the interpretation of this Act and anything required or permitted under this Act is that a long-term care home is primarily the home of its residents and is to be operated so that it is a place where they may live with dignity and in security, safety and comfort and have their physical, psychological, social, spiritual and cultural needs adequately met.” Section 17 further provides that every resident has the right to raise concerns or recommend changes regarding policies and services without fear of coercion, discrimination or reprisal.

Quebec

Applicable Legislation: *Charte de Droits et Libertés de la Personne*, L.R.Q., c.C-12 (“CDLP”)

Guiding Principles: A statement of guiding principles is expressed in the *CDLP*’s preamble, section 4, and section 48. As stated in the preamble, every person is entitled to equal protection under the law and is worthy of dignity and respect. Section 4 further provides that every person possesses the “right to the safeguard of his dignity, honour and reputation.” Under section 48, aged persons and persons with disabilities retain the right to be free of any form of exploitation, and have the right to “protection and security that must be provided to him by his family or persons acting in their stead.”

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. (“*APA*”)

Guiding Principles: The *APA*’s statement of guiding principles are encapsulated in section 2 of the Act. Under section 2, the purpose of the *APA* is to “provide a means whereby adults who lack the ability to care and fend adequately for themselves can be protected from abuse and neglect by providing them with access to services which will enhance their ability to care and fend for themselves or which will protect them from abuse or neglect.”

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“*FSA*”)

Guiding Principles: A statement of guiding principles is contained in the preamble to the *FSA*. Among the many principles listed under the preamble include the specific recognition that older adults are entitled to protection and can benefit from social services that ensure opportunities for their personal development.

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“*APA*”)

Guiding Principles: The *APA*’s guiding principles are contained in sections 3(a)-(f) of the Act. Among the enumerated principles include the recognitions that: society has an obligation to ensure that its citizens have the necessities of life (section 3(a)); persons afflicted with a disability that impairs their capacity deserve care and treatment that is of the most effective and least intrusive nature (section 3(b)); despite diminished capacity, adults have a need for self-determination and to have their person, estate, and civil rights protected (section 3(c)); an adult is entitled to live in the manner he or she wishes and to

accept or reject assistance, provided that this choice does not cause harm to others (section 3(d)); any intervention to assist or protect a person should be designed to meet the specific needs of the individual, be limited in scope, and remain subject to review or revision as the person's condition and needs change (section 3(e)); and that the best interests of the individual is paramount to any intervention to assist or protect that individual (section 3(f)).

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Guiding Principles: The *NAWA* contains a statement of guiding principles under section 17 of the Act. According to section 17, the *NAWA* should be subject to liberal interpretation. Specifically, the care of adults coming under the Act must “approximate as nearly as possible that which should be given by dutiful children.”

Yukon

Applicable Legislation: *The Adult Protection and Decision Making Act being Schedule A to the Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c.21, Part 4: Adult Protection. (“*APDMA*”)

Guiding Principles: Section 2 of the *APDMA* outlines a statement of guiding principles for this legislation. Section 2 states that the *APDMA* is to be administered and interpreted in light of the following principles: all adults are entitled to live in the manner they wish and to accept or refuse assistance or protection so long as they are capable of making these decisions and their choice does not cause harm to others (section 2(a)); adults are entitled to be informed about and participate in the management of their affairs to the best of their ability (section 2(b)); all adults should receive the most effective but least intrusive form of assistance and protection when they are incapable of caring for themselves or managing their affairs (section 2(c)); the Supreme Court should not be asked to appoint and should not appoint a guardian unless alternative modes of assistance have been carefully considered (section 2(d)); and the adult's values, beliefs, wishes, and cultural norms and traditions should be respected in managing an adult's affairs (section 2(e)).

Northwest Territories

N/A

10) Do these regimes apply to hospitals, Long-term Care (LTC), or group homes in addition to private homes?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3. (“AGA”)

Application to Hospitals, LTC, Group Homes, or Private Residences: As stated in section 45(1), Part 3 of the *AGA* applies to adults who are abused or neglected in a public place, in the adult’s home, a care facility, or any other place except for a correctional centre. That is, the province’s adult protection legislation uniformly applies to British Columbia’s LTC facilities, group home environments, private accommodations, hospitals, and the community at large.

Alberta

Applicable Legislation: *Protection for Persons in Care Act*, R.S.A. 2000, c.P-29. (“PPCA”)

Application to Hospitals, LTC, Group Homes, or Private Residences: Section 1(b) of the *PPCA* provides that the Act applies to Long-term Care facilities (section 1(b)(i)), group home environments (section 1(b)(ii)(iv)(v)), private care accommodations (section 1(b)(ii)(iv)(v)), and hospitals (section 1(b)(i)). The *PPCA* does not, however, extend to the entire community.

Saskatchewan

Applicable Legislation: *Public Guardian and Trustee Act*, S.S. 1983, c. P-36. (“PGTA”)

Application to Hospitals, LTC, Group Homes, or Private Residences: The *PGTA* is not limited in application, and applies to Long-term Care facilities, group home environments, private care accommodations, hospitals, and the entire community.

Manitoba

Applicable Legislation: *Protection for Persons in Care Act*, C.C.S.M., c.P144. (“PPCA”) *Vulnerable Persons Living with a Mental Disability Act*, C.C.S.M. c. V90. (“VPLMDA”)

Application to Hospitals, LTC, Group Homes, or Private Residences: The *PPCA* applies to Long-term Care facilities (section 1(b)), group home environments (section 1(b) or section 1(c)), and hospitals (section 1(a)). However, this legislation does not extend to private care accommodations or the entire community. Like the *PPCA*, the *VPLMDA*

applies to Long-term Care facilities and group home environments. However, this legislation does not apply to private accommodations or to the entire community.

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. (“*NHA*”)
An Act Respecting Long-term Care Homes, 2nd Sess., 38th Leg., 2007 (third reading on 29 March 2007) (“*Bill 140*”)
Note: The *NHA* will be repealed once Bill 140 comes into force.

Application to Hospitals, LTC, Group Homes, or Private Residences: The *NHA* and *Bill 140* specifically apply to the Long-term Care setting. Neither Act applies to group home environments, private accommodations, hospitals, or the community at large.

Quebec

Applicable Legislation: *Charte de Droits et Libertés de la Personne*, L.R.Q., c.C-12 (“*CDLP*”)

Application to Hospitals, LTC, Group Homes, or Private Residences: The *CDLP* is not restricted in its application, and applies to the province’s Long-term Care facilities, group home environments, private care accommodations, hospitals, and the entire community.

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. (“*APA*”)
Protection for Persons in Care Act, S.N.S. 2004, c.33. (“*Bill 110*”)
Note: Although *Bill 110* passed third reading, it is still not proclaimed in force.

Application to Hospitals, LTC, Group Homes, or Private Residences: Nova Scotia’s *APA* does not apply to hospitals, Long-term Care facilities (section 3(b)), or group home environments (section 3(b)). It is also uncertain as to whether this legislation extends to private accommodations in relation to section 3(b) of the Act. Conversely, *Bill 110* applies to Long-term Care facilities (section 2(a)(iii)), group home environments (section 2(a)(ii) or (iii)), and hospitals (section 2(a)(i)). This legislation does not apply to private accommodations or to the community at large.

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“*FSA*”)

Application to Hospitals, LTC, Group Homes, or Private Residences: In light of the legislation’s silence in this area, it can be presumed that the *FSA* does apply to Long-term Care Facilities, hospitals, group homes, private accommodations, and the general community.

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“*APA*”)

Application to Hospitals, LTC, Group Homes, or Private Residences: The *APA* does not reference any such limitations to its application, so it appears that this Act would apply to Long-term Care facilities, group home environments, private care accommodations, hospitals, and the entire community.

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Application to Hospitals, LTC, Group Homes, or Private Residences: The *NAWA* remains silent regarding its application to hospitals, Long-term Care facilities, group homes, private care accommodations, and the general community. It can be therefore assumed that this Act is not restricted in its application to these areas.

Yukon

Applicable Legislation: *The Adult Protection and Decision Making Act being Schedule A to the Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c.21, Part 4: Adult Protection. (“*APDMA*”)

Application to Hospitals, LTC, Group Homes, or Private Residences: As provided by section 60(1) of this Act, the *APDMA* applies to Long-term Care facilities, group home environments, private care accommodations, hospitals, and the entire community.

Northwest Territories

Applicable Legislation: *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24. (“*PAFVA*”)

Application to Hospitals, LTC, Group Homes, or Private Residences: The *PAFVA* does not expressly apply to hospitals, Long-term Care facilities, group home environments, or private care residences.

11) What co-decision-making and supportive decision-making regimes exist in Canada?

British Columbia

N/A

Alberta

N/A

Saskatchewan

Applicable Legislation: *Adult and Co-decision-making Act*, S.S. 2000, c. A-5.3 (“*ACA*”)

Co-decision-making / Supportive decision-making Regime: The *ACA* creates a formal method for assisting adults in making decisions. Section 3 of the *ACA* outlines six principles to be used in interpreting and administering the Act: the adult’s best interests are to be given paramount consideration (section 3(a)); adults are presumed to have capacity unless otherwise demonstrated (section 3(b)); adults are entitled to choose the way they live, and to accept or refuse support, assistance, and protection as long as they do not harm themselves or others and are capable of making decisions regarding these matters (section 3(c)); adults are entitled to receive the most effective and least restrictive form of support, assistance, or protection when they are unable to care for themselves or for their estate (section 3(d)); adults who have difficulty communicating because of mental or physical disability are entitled to communicate by any means that enable them to be understood (section 3(e)); and adults are entitled to be informed about and participate in decisions affecting them, to the best of their ability (section 3(f)). The *ACA* covers personal or property guardianship orders, and additionally permits the appointment of a personal or property co-decision-maker (or both) (section 2(e)(h)(l)). Co-decision-makers are required to advise the adult who is the subject of the order. Following the enumerated principles of application and interpretation, co-decision-makers are also required to acquiesce in any

decision made by the adult provided that a reasonable person could have made that decision, and the decision is not likely to cause loss to the adult's estate (section 42(2)).

Manitoba

Applicable Legislation: *Vulnerable Persons Living with a Mental Disability Act*, C.C.S.M. c. V90. ("*VPLMDA*")

Co-decision-making / Supportive decision-making Regime: The purpose of the *VPLMDA* is to assist persons with intellectual challenges, and to ensure that these individuals retain the broadest possible control over their independent decision-making (preamble). The *VPLMDA* contains many features of older legislation, including the desire to move beyond a guardianship or substitute decision-making regime, and adopt a framework that supports assisted decision-making. Section 6(1) defines supported decision-making as a process in which a vulnerable person is enabled to make and communicate personal care or property decisions through the advice, support, or assistance of their support network. Under section 1 of the *VPLMDA*, a support network is defined to include the vulnerable person's spouse, common-law partner, family members, or others chosen by the vulnerable person. Section 6(2) further states that the supportive decision-making process is an "important means of enhancing the self-determination, independence and dignity of a vulnerable person."

Ontario

N/A

Quebec

N/A

Nova Scotia

N/A

New Brunswick

N/A

Prince Edward Island

N/A

Newfoundland

N/A

Yukon

Applicable Legislation: *Decision-making, Support and Protection to Adults Act*, S.Y. 2003, c.21. (“*DSPA*”)

Co-decision-making / Supportive decision-making Regime: The *DSPA* is nearly a complete code on supported decision-making in the province. The purpose of the regime is to enable trusted friends and relatives to assist adults who do not require guardianship and who are substantially able to manage their affairs, but whose ability to communicate those decisions is impaired (section 4(a)). Any adult may enter into a supported decision-making agreement, so long as they understand the nature and the effect of the agreement (section 6). Section 4(b) of the *DSPA* further provides that the intention of the scheme is to provide persons who engage in supported decision-making the requisite legal status to be with the adult and participate in discussions with others when the adult is obtaining information or making decisions. Indeed, the *DSPA* recognizes the decisions made or communicated with the assistance of an associate decision-maker as the decision of the adult for the purposes of any provision of law, subject to fraud, misrepresentation, and undue influence (section 11). If an the adult’s associate decision-maker is not consulted, then the adult or the adult’s associate decision-maker may apply to the Supreme Court to have an agreement between the adult and that other person declared void where the subject matter is within the associate decision-maker’s responsibilities, or when the adult entered into the agreement without consulting the associate decision-maker. Section 5(1) of the Act outlines the responsibilities of an associate decision-maker. According to this provision, the responsibilities of the associate decision-maker include assisting the adult with making express decisions, assisting the adult in obtaining relevant information, advising the adult by explaining relevant information, ascertaining and communicating the adult’s wishes and decisions, and ensuring that the adult’s decisions are implemented (section 5(1)(a)-(e)). The *DSPA* additionally precludes particular persons from acting as an associate decision-maker. Section 7 states that, except as permitted by regulation, the following persons are prohibited: the adult’s employer or employee (section 7(a)); or a person against whom an order has been made under the *Family Violence Prevention Act*, R.S.Y. 2002, c. 84 or Part 4 of the *DSPA*. The *DSPA* also outline specific formalities that must be followed when making a valid supported decision-making agreement (section 8), as well as the necessary contents of a valid supported decision-making agreement (section 9). The *DSPA* further outlines and restricts the associate decision-maker’s access to information (section 10). Under the Yukon’s substitute decision-making regime, the associate decision-maker is not liable for the adult’s death, injury, or financial loss so long as the associate decision-maker acted in honesty and good faith in the adult’s best interests (section 13(1)(a)), and exercised care, diligence, and skill of a reasonably prudent person (section 13(1)(b)). Likewise, the associate decision-maker is not liable for a decision made by the adult if the decision-maker did not agree with that decision and advised the adult not to make it (section 13(2)).

Northwest Territories

N/A

12) What whistle-blowing protections exist?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3. (“*AGA*”)

Whistleblower Protection: British Columbia’s *AGA* does provide protection for whistleblowers. Under section 46(2) of the Act, a person must not disclose or be compelled to disclose the identity of a person who makes a report of abuse or neglect under section 46(1). Section 46(3) further states that “[n]o action for damages may be brought against a person for making a report under this section or for assisting in an investigation under this Part, unless the person made the report falsely or maliciously.” Under section 46(4), persons who make a report or assist in an investigation under Part 3 of the *AGA* are also afforded employment security (section 46(4)(a)(b)(c)) as well as protection against intimidation, coercion, or disciplinary penalty (section 46(4)(d)).

Alberta

Applicable Legislation: *Protection for Persons in Care Act*, R.S.A. 2000, c.P-29. (“*PPCA*”)

Whistleblower Protection: The *PPCA* provides whistleblower protection under section 4. Under section 4(1), no action will lie against a complainant unless the complaint is made maliciously or without reasonable grounds. Section 4(2) provides that “[n]o agency shall take adverse employment action against a service provider or an employee of an agency because that person is a complainant.” Section 4(4) further provides that anyone who contravenes subsection (3) is guilty of an offence and liable to a fine not exceeding \$5,000 (in the case of an individual) and a fine not more than \$25, 000 (in the case of an agency).

Saskatchewan

N/A

Manitoba

Applicable Legislation: *Protection for Persons in Care Act*, C.C.S.M., c.P144. (“PPCA”)

Whistleblower Protection: Section 11 of the *PPCA* provides whistleblower protection for persons who report incidents of abuse in good faith. Under section 11(1), “[n]o operator of a health facility shall take adverse employment action against a service provider of the facility because that person made a report of good faith under this Act.” Section 11(2) further provides that persons and operators of health facilities are prohibited from interrupting, threatening to alter, or discontinuing service to a patient, relative or other person who has made a report of abuse under this Act.

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. (“NHA”)
An Act Respecting Long-term Care Homes, 2nd Sess., 38th Leg.,
2007 (third reading on 29 March 2007) (“Bill 140”)

Note: The *NHA* will be repealed once Bill 140 comes into force.

Whistleblower Protection: Under section 25(2) of the *NHA*, persons who report incidents of abuse or neglect in good faith receive protection from dismissal, discipline, or penalty. Section 25(3) also provides that “[n]o person shall coerce, intimidate or attempt to coerce or intimidate another person” for reporting abuse or neglect to the Director. Like the *NHA*, *Bill 140* also includes whistleblower protection. Section 24 prohibits persons from retaliating against persons for making a report, whether by action, omission, or threat. Persons are specifically prohibited from: dismissing, suspending, or disciplining a staff member; imposing a penalty upon any person; or intimidating, coercing, or harassing any person (section 24(2)). *Bill 140* further provides that no person (including licensees of a Long-term Care home and staff members) may discourage individuals from reporting (section 24(5)), or encourage an individual’s failure to report (section 24(6)). Under section 24(8), it is an offence to breach subsections (5) and (6).

Quebec

N/A

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. (“*APA*”)
Protection for Persons in Care Act, S.N.S. 2004, c.33. (“*Bill 110*”)

Note: Although *Bill 110* passed third reading, it is still not proclaimed in force.

Whistleblower Protection: Section 5(2) of the *APA* states that no action will lie against any person who makes a report under section 5(1), unless the report is done maliciously or is without reasonable or probable cause. Like the *APA*, *Bill 110* provides whistleblower protection for persons who make a report under the Act. Section 14(1) expressly prohibits administrators of a health facility to take adverse employment action against a service provider because that person made a report of good faith under the Act. Section 14(2) additionally prohibits administrators of a health facility or any other person from altering, interrupting, discontinuing (or threatening to alter, interrupt, or discontinue) service to a patient, relative, or resident who has made a report under the Act in good faith.

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“*FSA*”)

Whistleblower Protection: Section 35.1 appears to provide some degree of whistleblower protection for those who elect to report under the *FSA*. Under section 35.1(2), no action lies against a professional person who makes a report to the Minister in good faith.

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“*APA*”)

Whistleblower Protection: Under section 4(2) of the *APA*, individuals who make a report to the Minister are entitled to identity protection. Section 4(2) states that “[n]o person shall reveal or be compelled to reveal the identity of a person who reports a case of suspected need of assistance or protection.”

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Whistleblower Protection: Section 4(2) of the *NAWA* provides some extent of whistleblower protection. Under this provision, an action does not lie against a person who reports that an adult is being neglected, unless that report is given maliciously or without reasonable cause.

Yukon

Applicable Legislation: *The Adult Protection and Decision Making Act being Schedule A to the Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c.21, Part 4: Adult Protection. (“*APDMA*”)

Whistleblower Protection: The *APDMA* does provide whistleblower protection for individuals who elect to report circumstances of abuse or neglect. Section 61(3) states that a person must not disclose or be compelled to disclose the identity of a person who issues a report under subsection (1). Subsection (4) further states that no legal action of any kind, “including professional disciplinary action, may be brought against a person for making a report under subsection (1) or for assisting in the making of inquiries under this Part, unless the person acted falsely or maliciously.” Section 61(5) also provides that a person must not: refuse to employ a person for making a report under section 61(1) (section 61(5)(a)); threaten dismissal or otherwise threaten the other person (section 61(5)(b)); discriminate against the other person respecting their employment or membership in a professional trade union (section 61(5)(c)); or intimidate, coerce, discipline, or impose a pecuniary or other penalty on the other person (section 61(5)(d)).

Northwest Territories

N/A

13) What are the sanctions for failing to report abuse and neglect?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3. (“*AGA*”)

Failure to Report Incidents of Abuse and Neglect: Under the *AGA*, reporting is generally voluntary (section 46(1)), and as such there is no corresponding penalty for failing to report incidents of abuse or neglect. For example, members of the community would not be subject to any sanction under the *AGA*. Although designated agencies do have a duty to report criminal offences, and members of the health sector or government are subject to a mandatory reporting requirement (section 50), the Act does not identify any penalties for failure to perform this obligation.

Alberta

Applicable Legislation: *Protection for Persons in Care Act*, R.S.A. 2000, c.P-29.
 (“PPCA”)

Failure to Report Incidents of Abuse and Neglect: Section 2(5) of the *PPCA* states that any person who fails to comply with the reporting requirement as provided under section 2(1) is guilty of an offence and liable to a fine not exceeding \$2,000 or a term of imprisonment not more than 6 months.

Saskatchewan

N/A

Manitoba

Applicable Legislation: *Protection for Persons in Care Act*, C.C.S.M., c.P144. (“PPCA”)

Failure to Report Incidents of Abuse and Neglect: Section 12(1) of the *PPCA* states that a person who contravenes the Act is guilty of an offence and is liable on summary conviction. In the case of an individual, liability constitutes a fine not exceeding \$2,000 (section 12(1)(a)). In the case of a corporation, liability constitutes a fine not more than \$30, 000 (section 12(1)(b)). It is also an offence to knowingly make a false report of abuse. Under the *PPCA*, individuals who knowingly make a false report of abuse is guilty of an offence and liable on summary conviction to a fine not exceeding \$2,000.

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. (“NHA”)
 An Act Respecting Long-term Care Homes, 2nd Sess., 38th Leg.,
 2007 (third reading on 29 March 2007) (“Bill 140”)

Note: The *NHA* will be repealed once Bill 140 comes into force.

Failure to Report Incidents of Abuse and Neglect: Under section 36(1) of the *NHA*, an individual who contravenes the reporting provision is guilty of an offence and on conviction is liable to a fine not exceeding \$25, 000 and/or imprisonment for a term of not more than 12 months for a first offence (section 36(1)(a)). Section 36(1)(b) states that an individual who commits a subsequent offence under the *NHA* is liable to a fine of not more than \$25, 000 and/or imprisonment for a term not exceeding 12 months. Conversely, corporations in contravention of the Act are liable to a fine not exceeding \$50, 000 for a first offence, and a fine of not more than \$200, 000 for a subsequent offence (section 36(2)). In addition, section 36(3) provides that a court that convicts a person of an offence under this section may, in addition to any other penalty, order that the person pay

compensation or make restitution to any person who suffered loss as a result of the offence. Under section 22(5), it is an offence to fail to report abuse or neglect. This provision extends to several persons, including managers or licensees of a Long-term Care facility, staff members, and professional health or social service workers (section 22(5)). It is also an offence to knowingly make a false report to the Director under section 22(2).

Quebec

N/A

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. (“*APA*”)
Protection for Persons in Care Act, S.N.S. 2004, c.33. (“*Bill 110*”)

Note: Although *Bill 110* passed third reading, it is still not proclaimed in force.

Failure to Report Incidents of Abuse and Neglect: Section 16(1) of the *APA* makes it an offence for failing to make a report. Under this section, every person who has information (including confidential and privileged information) and who fails to report that information to the Minister is guilty of an offence under the Act. Section 17 further provides that every person in violation of the Act is guilty of an offence that is punishable on summary conviction and is liable to a fine not exceeding \$1, 000 and/or to a term of imprisonment not more than one year. Similarly, under section 17(1) of *Bill 110*, it is an offence to contravene the reporting provision. Any person who contravenes the Act is guilty of an offence and is liable on summary conviction to a fine not exceeding \$2, 000 (for individuals), and to a fine of not more than \$30, 000 (for corporations). It is also an offence to knowingly make a false report under the Act. Persons who knowingly make a false report are guilty of an offence and liable on summary conviction to a fine not exceeding \$2, 000 (section 17(2)).

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“*FSA*”)

Failure to Report Incidents of Abuse and Neglect: The *FSA* provides for a permissive reporting scheme. As such, the Act does not include an offence for failing to report incidents of abuse or neglect.

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“*APA*”)

Failure to Report Incidents of Abuse and Neglect: Prince Edward Island’s legislative framework provides for a voluntary reporting scheme. Accordingly, it is not an offence for failing to report incidents of abuse or neglect under the *APA*.

Newfoundland

Applicable Legislation: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3. (“*NAWA*”)

Failure to Report Incidents of Abuse and Neglect: Section 4(3) states that a person who contravenes the reporting requirement in subsection (1) is guilty of an offence. Section 15 further states that a person who contravenes the *NAWA* or its regulations is guilty of an offence. Subsection (2) provides that when a penalty is not provided for a breach of this Act (as in section 4(3)), a person committing the breach is liable on summary conviction to a fine not exceeding \$200 and/or imprisonment for a term no longer than 2 months.

Yukon

Applicable Legislation: *The Adult Protection and Decision Making Act being Schedule A to the Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c.21, Part 4: Adult Protection. (“*APDMA*”)

Failure to Report Incidents of Abuse and Neglect: Under the Yukon’s framework of voluntary reporting, there are no offences for failing to report incidents of abuse or neglect under the *APA*.

Northwest Territories

N/A

14) What protection from liability exists for officials and for others working in the system?

British Columbia

Applicable Legislation: *Adult Guardianship Act*, R.S.B.C. 1996, c.6, Part 3. (“*AGA*”)

Protection from Liability: Section 46 (3) provides that no action for damages may be brought against anyone who reports circumstances of abuse or neglect to a designated

agency, or assists in an investigation under Part 3 of the *AGA*. This protection is not extended to persons who make malicious or false reports (section 46(3)). Section 60.1(1) further states that a “person acting on behalf of or under the direction of a designated agency is not personally liable for anything done or omitted in good faith in the exercise or performance or the intended exercise or performance of a power, duty or function conferred under this Part on a designated agency.” This protection from liability does not, however, absolve a designated agency or government from being held vicariously liable for an act or omission (section 60.1(2)).

Alberta

Applicable Legislation: *Protection for Persons in Care Act*, R.S.A. 2000, c.P-29.
 (“*PPCA*”)

Protection from Liability: Under section 4 of the *PPCA*, persons who report circumstances of abuse or neglect are protected from liability. Section 4(1) states that no action will lie against a complainant unless the complaint is made maliciously or without reasonable and probable grounds for the belief. Section 11 further provides that no action lies against an investigator or committee, body, or person to whom a complaint is referred to for anything done in good faith.

Saskatchewan

Applicable Legislation: *Public Guardian and Trustee Act*, S.S. 1983, c. P-36. (“*PGTA*”)

Protection from Liability: Section 40.5(5) provides financial institutions from liability when performing duties under the Act. Section 40.5(5) states that a financial institution’s actions in accordance with this section are “not in breach of any other Act.”

Manitoba

Applicable Legislation: *Protection for Persons in Care Act*, C.C.S.M., c.P144. (“*PPCA*”)

Protection from Liability: The *PPCA* provides protection for persons who report. Section 10 states that no action or other proceeding may be brought against a person for making a report of abuse under the *PPCA*. This protection is only afforded to reports made in good faith.

Ontario

Applicable Legislation: *Nursing Homes Act*, R.S.O. 1990, c. N.7. (“*NHA*”)
An Act Respecting Long-term Care Homes, 2nd Sess., 38th Leg.,
2007 (third reading on 29 March 2007) (“*Bill 140*”)
Note: The *NHA* will be repealed once Bill 140 comes into force.

Protection from Liability: Under section 25(5) of the *NHA*, practitioners or persons who make a report are protected from action so long as the report was made without malice or unreasonable grounds for suspicion. *Bill 140* also provides for protection from liability. Section 22(4) states that no action or other proceeding shall be commenced against a person who makes a report unless the person acts maliciously or without reasonable grounds for the suspicion. Practitioners protected from liability include physicians, drugless practitioners, or members of the Ontario College of Social Workers and Social Service Workers. Section 24(7) further states that no action or proceeding will lie against a person who discloses information to an inspector, reports to the Director, or provides evidence in a proceeding under the Act unless the person acted with malice or in bad faith.

Quebec

N/A

Nova Scotia

Applicable Legislation: *Adult Protection Act*, R.S.N.S. 1989, c. 2. (“*APA*”)
Protection for Persons in Care Act, S.N.S. 2004, c.33. (“*Bill 110*”)
Note: Although *Bill 110* passed third reading, it is still not proclaimed in force.

Protection from Liability: Section 5(2) of the *APA* states that no action lies against individuals who report information (whether confidential or privileged) unless the information is given out of malice or without reasonable and probable cause. *Bill 110* also provides protection from liability. Section 13 provides that no action or proceeding may be brought under this Act against a person for making a report of abuse in good faith. Section 16 additionally provides that no action for damages or other proceeding may be brought against the Minister, an investigator, or any other person acting as an authority under the Act in good faith.

New Brunswick

Applicable Legislation: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“FSA”)

Reporting Requirement: Section 35.1 protects professionals who, in good faith, disclose information about a possibly neglected or abused adult to the Minister, including information obtained in their professional capacity. “Professional” is defined in s. 35.1(5) as meaning “a worker in any adult day care center or residential or institutional facility, a vocational counsellor or trainer, an educator, a physician, a nurse, dentist or other health or mental health professional, a hospital administrator, a social work administrator, social worker or other social service professional, a police or law enforcement officer, a psychologist, a guidance counsellor or a recreational services administrator or worker and includes any other person who by virtue of his employment or occupation has a responsibility to discharge a duty of care towards an elderly person or a disabled adult.” The Act is silent regarding non-professional people reporting suspected cases of abuse or neglect.

Prince Edward Island

Applicable Legislation: *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5. (“APA”)

Protection from Liability: Under section 4(3) of the *APA*, a person who makes a report or who does anything to assist in an investigation or assessment is not liable to any civil action unless the report or assistance was rendered maliciously or without reasonable and probable cause. Section 29 further states that no action lies against a healthcare professional or institution (including its staff) for giving necessary treatment in good faith and without negligence in circumstances that appear to warrant urgent assistance or protective measures.

Newfoundland

N/A

Yukon

Applicable Legislation: *The Adult Protection and Decision Making Act being Schedule A to the Decision-Making Support and Protection to Adults Act*, S.Y. 2003, c.21, Part 4: Adult Protection. (“APDMA”)

Protection from Liability: The *APDMA* does provide protection from liability when reporting cases of abuse and neglect. Under section 61(4), “[n]o legal action of any kind, including professional disciplinary action, may be brought against a person for making a

report under subsection (1) or for assisting in the making of inquiries under this Part, unless the person acted falsely and maliciously.”

Northwest Territories

Applicable Legislation: *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24.
 (“*PAFVA*”)

Protection from Liability: Section 16 states that no action will lie against a peace officer, a court clerk, or any other person for anything done or omitted by that person in good faith in the following circumstances: the exercise of a power or the performance of a duty under the *PAFVA* (section 16(a)); or the exercise of a duty to carry out the provisions of an order made under the *PAFVA* (section 16(b)).

APPENDIX B: CANADIAN ABUSE AND NEGLECT MATRIX

<u>Legislation (w/ Citation):</u>	<u># YES (Broad)</u>	<u>#YES (Ind.)</u>	<u>#NO (Narrow)</u>	<u>#NO (Prot.)</u>	<u>Plot X-Axis</u>	<u>Plot Y-Axis</u>
BC: <i>Adult Guardianship Act</i> , R.S.B.C. 1996 c.6 Part 3	10	20	1	3	3.5	8.5
AB: <i>Protection for Persons in Care Act</i> , R.S.A. 2000, c.P-29	7	14	4	9	0.5	2.5
SK: <i>Public Guardian and Trustee Act</i> , S.S. 1983, c.P-36	9	7	2	14	2.5	-4.5
MN1: <i>Protection for Persons in Care</i> , C.C.S.M., c. P144	6	11	5	12	-0.5	-0.5
MN2: <i>Vulnerable Persons Living with a Mental Disability Act</i> , C.C.S.M. c. V90	10	12	1	11	3.5	0.5
ON1: <i>Nursing Home Act</i> , R.S.O. 1990 c.N1	6	10	5	13	-0.5	-1.5
ON2: <i>An Act Respecting Long-term Care Homes</i> , (Bill 140), 2007 (not in force)	6	15	5	7	-0.5	3.5
QC: <i>Charte des Droits et Libertes de la Personne</i> , L.R.Q. C-12	8	13	3	10	1.5	1.5
NB: <i>Family Services Act</i> R.S.N.B. 1980, c.F-22	10	13	1	10	3.5	1.5
PE: <i>Adult Protection Act</i> , R.S.P.E.I. 1988, c.C-13	10	15	1	8	3.5	3.5
NS1: <i>Adult Protection Act</i> , R.S.N.S. 1989, c.2	6	10	5	13	-0.7	-1.5
NS2: <i>Protection for Persons in Care Act</i> , S.N.S. 2004, c.33 (Not In Force)	6	8	5	14	-0.5	-3.5
NL: <i>Neglected Adults Welfare Act</i> , R.S.N.L. 1990, c.N-3	8	5	2	18	1.5	-6.5
YK: <i>Decision Making, Support and Protection to Adults Act</i> , S.Y. 2003 c.21	10	21	1	2	3.5	9.5
NT: <i>Protection Against Family Violence Act</i> , S.N.W.T. 2003, c.24 & <i>Guardianship and Trustee Act</i> , S.N.W.T. 1994,c.29	4	8	7	15	-2.5	-3.5

NAME of ACT: *Adult Guardianship Act*, R.S.B.C. 1996 c.6, Part 3

JURISDICTION: BRITISH COLUMBIA

List of Indicia: Broad-Narrow Axis:

(bold) Comment:

1. Does the legislation apply to long-term care facilities?	Yes	No	s.45(1)
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	s.45(1)
3. Does the legislation apply to people in private care accommodations?	Yes	No	s.45(1)
4. Does the legislation apply to the entire community?	Yes	No	s.45(1)
5. Does the legislation apply to hospitals?	Yes	No	s.45(1)
6. Does the legislation cover neglect?	Yes	No	s.1
7. Does the legislation cover abuse?	Yes	No	s.1
8. Does the legislation cover self-neglect?	Yes	No	s.1
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	s.1
10. Does the legislation apply to people who are vulnerable?	Yes	No	s.44
11. Does the legislation apply to people who are mentally capable?	Yes	No	

TOTALS: 10 1

List of Indicia: Protectionist – Independence Axis:

(bold) Comment:

1. Does the definition in the legislation include physical abuse?	Yes	No	s.1(a)-(b)
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2. Does the definition in the legislation include financial abuse?	Yes	No	s.1(b)
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	s.1(a)-(b)
4. Does the definition in the legislation include sexual abuse?	Yes	No	s.1(b)
5. Does the definition in the legislation include chemical abuse?	Yes	No	s.1(b)
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	s.1(b)
8. Is there protection for whistleblowers?	Yes	No	s.46(2)-(5)
9. Is there protection from liability?	Yes	No	s.46(2)-(5) & s.60.1
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	
11. Is there more than one place to report incidents of abuse?	Yes	No	s.46(1)
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	s.44
13. Is reporting voluntary for community members?	Yes	No	s.46(1)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s.50
15. Are there mandatory investigation processes in the legislation?	Yes	No	s.47(1)
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	s.47(3) & s.51
17. Do investigators have strong powers to investigate?	Yes	No	s.48 & s.49

18. Is there a process of community support or networks identified?	Yes	No	s.61(b)
19. Is there system which allows the freezing or other protection of assets?	Yes	No	<i>Public Guardian and Trustee Act</i> RSBC 1996, C.383 ("PGTA") s.19
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	s.48(1)-(2) & s.52
21. Is there a statement of guiding principles in the legislation?	Yes	No	s.2
22. Is there a regime for financial support?	Yes	No	s.90, <i>Family Relations Act</i>
23. Is there an established mechanism for determining capacity?	Yes	No	But see <i>PGTA</i> guidelines
TOTALS:	20	3	

NAME of ACT(S): *Protection for Persons in Care Act*, R.S.A. 2000, c.P-29

JURISDICTION: ALBERTA

List of Indicia: Broad-Narrow Axis:

	(bold)	Section:
1. Does the legislation apply to long-term care facilities?	Yes	No s. 1(b)(iii)
2. Does the legislation apply to people receiving care or who are in "group home" environments?	Yes	No s. 1(b)(ii)(iv)(v)
3. Does the legislation apply to people in private care accommodations?	Yes	No s. 1(b)(ii)(iv)(v)
4. Does the legislation apply to the entire community?	Yes	No
5. Does the legislation apply to hospitals?	Yes	No s. 1(b)(i)

6. Does the legislation cover neglect?	Yes	No	s. 1(a)(vi)
7. Does the legislation cover abuse?	Yes	No	s. 1(a)
8. Does the legislation cover self-neglect?	Yes	No	
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	s. 1(a)(i)(ii)(iii)(v)(vi)
10. Does the legislation apply to people who are vulnerable?	Yes	No	
11. Does the legislation apply to people who are mentally capable?	Yes	No	
TOTALS:	7	4	

List of Indicia: Protectionist – Independence Axis:

	(bold)	Section:	
1. Does the definition in the legislation include physical abuse?	Yes	No	s. 1(a)(i)
2. Does the definition in the legislation include financial abuse?	Yes	No	s. 1(a)(v)
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	s. 1(a)(ii)
4. Does the definition in the legislation include sexual abuse?	Yes	No	s. 1(a)(iv)
5. Does the definition in the legislation include chemical abuse?	Yes	No	s. 1(a)(iii)
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	
8. Is there protection for whistleblowers?	Yes	No	s. 4

9. Is there protection from liability?	Yes	No	s. 4, s.11
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	s. 12
11. Is there more than one place to report incidents of abuse?	Yes	No	s. 2(1)
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	
13. Is reporting voluntary for community members?	Yes	No	s. 2
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s. 2(1)-(6)
15. Are there mandatory investigation processes in the legislation?	Yes	No	s. 6(1)
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	s. 8(3)(4)
17. Do investigators have strong powers to investigate?	Yes	No	ss. 7-8
18. Is there a process of community support or networks identified?	Yes	No	
19. Is there system which allows the freezing or other protection of assets?	Yes	No	
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	
21. Is there a statement of guiding principles in the legislation?	Yes	No	
22. Is there a regime for financial support?	Yes	No	
23. Is there an established mechanism for determining capacity?	Yes	No	(See: section 70, <i>Dependent Adults Act</i> , R.S.A. 2000, c.D-11)
TOTALS:	14	8	

NAME of ACT(S): *Public Guardian and Trustee Act, S.S. 1983, c.P-36*

JURISDICTION: SASKATCHEWAN

List of Indicia: Broad-Narrow Axis:

(bold) Section:

1. Does the legislation apply to long-term care facilities?	Yes	No	
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	
3. Does the legislation apply to people in private care accommodations?	Yes	No	
4. Does the legislation apply to the entire community?	Yes	No	
5. Does the legislation apply to hospitals?	Yes	No	
6. Does the legislation cover neglect?	Yes	No	
7. Does the legislation cover abuse?	Yes	No	s. 40.7(1)(a)
8. Does the legislation cover self-neglect?	Yes	No	
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	
10. Does the legislation apply to people who are vulnerable?	Yes	No	s. 40.5(c)
11. Does the legislation apply to people who are mentally capable?	Yes	No	s. 40.5(c)

9 2

TOTALS:

List of Indicia: Protectionist – Independence Axis:

(bold) Section:

1. Does the definition in the legislation include physical abuse?	Yes	No	
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2. Does the definition in the legislation include financial abuse?	Yes	No	s. 40.5
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	
4. Does the definition in the legislation include sexual abuse?	Yes	No	
5. Does the definition in the legislation include chemical abuse?	Yes	No	
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	
8. Is there protection for whistleblowers?	Yes	No	
9. Is there protection from liability?	Yes	No	s. 40.5(5)
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	
11. Is there more than one place to report incidents of abuse?	Yes	No	s.40
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	
13. Is reporting voluntary for community members?	Yes	No	s. 40 (only financial institutions)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	N/A
15. Are there mandatory investigation processes in the legislation?	Yes	No	s. 40.7(1) The PGT “may investigate,” which makes the investigation voluntary.
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	
17. Do investigators have strong powers to investigate?	Yes	No	ss.40.8-40.9

18. Is there a process of community support or networks identified?	Yes	No	
19. Is there system which allows the freezing or other protection of assets?	Yes	No	ss.40.5-40.6
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	
21. Is there a statement of guiding principles in the legislation?	Yes	No	
22. Is there a regime for financial support?	Yes	No	
23. Is there an established mechanism for determining capacity?	Yes	No	(See: s.12, <i>Adult Guardianship and Co-decision-making Act</i> , S.S. 2000, c.A-5.3)
TOTALS:	7	13	

NAME of ACT(S): *Protection for Persons in Care*, C.C.S.M., c. P144

JURISDICTION: MANITOBA

List of Indicia: Broad-Narrow Axis:

	(bold)	Section:
1. Does the legislation apply to long-term care facilities?	Yes	No s. 1(b)
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No s. 1(b)-(c)
3. Does the legislation apply to people in private care accommodations?	Yes	No
4. Does the legislation apply to the entire community?	Yes	No

5. Does the legislation apply to hospitals?	Yes	No	s. 1(a)
6. Does the legislation cover neglect?	Yes	No	
7. Does the legislation cover abuse?	Yes	No	s. 1
8. Does the legislation cover self-neglect?	Yes	No	
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	
10. Does the legislation apply to people who are vulnerable?	Yes	No	
11. Does the legislation apply to people who are mentally capable?	Yes	No	
TOTALS:	6	5	

List of Indicia: Protectionist – Independence Axis:

(bold) Section:

1. Does the definition in the legislation include physical abuse?	Yes	No	s. 1
2. Does the definition in the legislation include financial abuse?	Yes	No	s. 1
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	s. 1
4. Does the definition in the legislation include sexual abuse?	Yes	No	s. 1
5. Does the definition in the legislation include chemical abuse?	Yes	No	
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	

8. Is there protection for whistleblowers?	Yes	No	s. 11(1)-(2)
9. Is there protection from liability?	Yes	No	s. 10
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	s. 12(2)
11. Is there more than one place to report incidents of abuse?	Yes	No	
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	
13. Is reporting voluntary for community members?	Yes	No	s. 3(1)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s. 3(1)
15. Are there mandatory investigation processes in the legislation?	Yes	No	s. 5(1)
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	
17. Do investigators have strong powers to investigate?	Yes	No	
18. Is there a process of community support or networks identified?	Yes	No	
19. Is there system which allows the freezing or other protection of assets?	Yes	No	
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	s. 7(2)
21. Is there a statement of guiding principles in the legislation?	Yes	No	
22. Is there a regime for financial support?	Yes	No	
23. Is there an established mechanism for determining capacity?	Yes	No	

TOTALS: 10 12

NAME of ACT(S): *Vulnerable Persons Living with a Mental Disability Act, C.C.S.M., c. V90*

JURISDICTION: MANITOBA

List of Indicia: Broad-Narrow Axis:

(bold) Section:

1. Does the legislation apply to long-term care facilities?	Yes	No	
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	
3. Does the legislation apply to people in private care accommodations?	Yes	No	
4. Does the legislation apply to the entire community?	Yes	No	
5. Does the legislation apply to hospitals?	Yes	No	
6. Does the legislation cover neglect?	Yes	No	s. 1
7. Does the legislation cover abuse?	Yes	No	s. 1
8. Does the legislation cover self-neglect?	Yes	No	
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	
10. Does the legislation apply to people who are vulnerable?	Yes	No	s. 1
11. Does the legislation apply to people who are mentally capable?	Yes	No	
TOTALS:	10	1	

List of Indicia: Protectionist – Independence Axis:

(bold) Section:

1. Does the definition in the legislation include physical abuse?	Yes	No	s. 1
2. Does the definition in the legislation include financial abuse?	Yes	No	s. 1
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	s. 1
4. Does the definition in the legislation include sexual abuse?	Yes	No	s. 1
5. Does the definition in the legislation include chemical abuse?	Yes	No	
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	
8. Is there protection for whistleblowers?	Yes	No	
9. Is there protection from liability?	Yes	No	
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	
11. Is there more than one place to report incidents of abuse?	Yes	No	s.21(1)
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	
13. Is reporting voluntary for community members?	Yes	No	
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s. 21(1)
15. Are there mandatory investigation processes in the legislation?	Yes	No	s. 22(2)
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	s. 25
17. Do investigators have strong powers to investigate?	Yes	No	s. 22-24

18. Is there a process of community support or networks identified?	Yes	No	
19. Is there system which allows the freezing or other protection of assets?	Yes	No	
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	s. 28(1)
21. Is there a statement of guiding principles in the legislation?	Yes	No	Preamble
22. Is there a regime for financial support?	Yes	No	s. 9-12
23. Is there an established mechanism for determining capacity?	Yes	No	To a certain degree

TOTALS: 12 11

NAME of ACT: *Nursing Home Act*, R.S.O. 1990 c.N1

JURISDICTION: ONTARIO

List of Indicia: Broad-Narrow Axis:

(bold)

Comment:

1. Does the legislation apply to long-term care facilities?	Yes	No	
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	
3. Does the legislation apply to people in private care accommodations?	Yes	No	
4. Does the legislation apply to the entire community?	Yes	No	
5. Does the legislation apply to hospitals?	Yes	No	
6. Does the legislation cover neglect?	Yes	No	s.2(2)

7. Does the legislation cover abuse?	Yes	No	s.2(2)
8. Does the legislation cover self-neglect?	Yes	No	s.2(<u>2</u>)
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	
10. Does the legislation apply to people who are vulnerable?	Yes	No	
11. Does the legislation apply to people who are mentally capable?	Yes	No	
	6	5	
TOTALS:			

List of Indicia: Protectionist – Independence Axis:

	(bold)		Comment:
1. Does the definition in the legislation include physical abuse?	Yes	No	s.2(1), s.2(2)
2. Does the definition in the legislation include financial abuse?	Yes	No	
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	s.2(1), s.2(2)
4. Does the definition in the legislation include sexual abuse?	Yes	No	
5. Does the definition in the legislation include chemical abuse?	Yes	No	
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	s.2(1)
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	s.2
8. Is there protection for whistleblowers?	Yes	No	s.25(2)
9. Is there protection from liability?	Yes	No	s.25(5)

10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	s.25(4)
11. Is there more than one place to report incidents of abuse?	Yes	No	s.3(1)-(2)
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	
13. Is reporting voluntary for community members?	Yes	No	s.25(1)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s.25(2)
15. Are there mandatory investigation processes in the legislation?	Yes	No	s.25(7) & s.27
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	
17. Do investigators have strong powers to investigate?	Yes	No	
18. Is there a process of community support or networks identified?	Yes	No	
19. Is there system which allows the freezing or other protection of assets?	Yes	No	
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	
21. Is there a statement of guiding principles in the legislation?	Yes	No	s.2(1) & s.2(2)
22. Is there a regime for financial support?	Yes	No	
23. Is there an established mechanism for determining capacity?	Yes	No	
TOTALS: 10 13			

NAME of ACT: *An Act Respecting Long-term Care Homes*, (Bill 140), 2007 (not in force)

JURISDICTION: ONTARIO

List of Indicia: Broad-Narrow Axis:

(bold) Comment:

1. Does the legislation apply to long-term care facilities?	Yes	No	
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	
3. Does the legislation apply to people in private care accommodations?	Yes	No	
4. Does the legislation apply to the entire community?	Yes	No	
5. Does the legislation apply to hospitals?	Yes	No	
6. Does the legislation cover neglect?	Yes	No	Pt. II, s.3(1)
7. Does the legislation cover abuse?	Yes	No	Pt. II, s.3(1)
8. Does the legislation cover self-neglect?	Yes	No	Pt. II, s.3(1)
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	
10. Does the legislation apply to people who are vulnerable?	Yes	No	
11. Does the legislation apply to people who are mentally capable?	Yes	No	
TOTALS:	6	5	

List of Indicia: Protectionist – Independence Axis:

(bold) Comment:

1. Does the definition in the legislation include physical abuse?	Yes	No	Pt. I, s.1 – s.2(1)
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2. Does the definition in the legislation include financial abuse?	Yes	No	Pt. I, s.1 – s.2(1)
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	Pt. I, s.1 – s.2(1)
4. Does the definition in the legislation include sexual abuse?	Yes	No	Pt. I, s.1 – s.2(1)
5. Does the definition in the legislation include chemical abuse?	Yes	No	s.1
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	s.1
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	s.1
8. Is there protection for whistleblowers?	Yes	No	s.24
9. Is there protection from liability?	Yes	No	s.22(4) –s.24(7)
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	s.22(2)
11. Is there more than one place to report incidents of abuse?	Yes	No	
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	
13. Is reporting voluntary for community members?	Yes	No	s.22(1)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s.22(1)
15. Are there mandatory investigation processes in the legislation?	Yes	No	s.21
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	
17. Do investigators have strong powers to investigate?	Yes	No	s.23
18. Is there a process of community support or networks identified?	Yes	No	

19. Is there system which allows the freezing or other protection of assets?	Yes	No	
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	s.3(9)
21. Is there a statement of guiding principles in the legislation?	Yes	No	Pt. I, s.1 & Pt II, s.17
22. Is there a regime for financial support?	Yes	No	
23. Is there an established mechanism for determining capacity?	Yes	No	
TOTALS:		15	8

NAME of ACT: *Charte des Droits et Libertés de la Personne, L.R.Q. C-12*

JURISDICTION: QUEBEC

List of Indicia: Broad-Narrow Axis:

(bold)

Comment:

1. Does the legislation apply to long-term care facilities?	Yes	No	
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	
3. Does the legislation apply to people in private care accommodations?	Yes	No	
4. Does the legislation apply to the entire community?	Yes	No	
5. Does the legislation apply to hospitals?	Yes	No	
6. Does the legislation cover neglect?	Yes	No	
7. Does the legislation cover abuse?	Yes	No	Using a broad interpretation of “toute forme

d'exploitation" in s.48

8. Does the legislation cover self-neglect?	Yes	No
9. Does the legislation avoid the concept of "intention" or a <i>mens rea</i> requirement?	Yes	No
10. Does the legislation apply to people who are vulnerable?	Yes	No
11. Does the legislation apply to people who are mentally capable?	Yes	No

8 3

TOTALS:

List of Indicia: Protectionist – Independence Axis:

(bold) Comment:

1. Does the definition in the legislation include physical abuse?	Yes	No	s.48
2. Does the definition in the legislation include financial abuse?	Yes	No	s.48
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	s.48
4. Does the definition in the legislation include sexual abuse?	Yes	No	s.48
5. Does the definition in the legislation include chemical abuse?	Yes	No	s.48
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	s.48
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	s.48
8. Is there protection for whistleblowers?	Yes	No	s.46(2)-(5)
9. Is there protection from liability?	Yes	No	
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	

11. Is there more than one place to report incidents of abuse?	Yes	No	s.57
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	
13. Is reporting voluntary for community members?	Yes	No	
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	
15. Are there mandatory investigation processes in the legislation?	Yes	No	
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	
17. Do investigators have strong powers to investigate?	Yes	No	
18. Is there a process of community support or networks identified?	Yes	No	
19. Is there system which allows the freezing or other protection of assets?	Yes	No	
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	
21. Is there a statement of guiding principles in the legislation?	Yes	No	s.4, s.48 & preamble
22. Is there a regime for financial support?	Yes	No	s.48
23. Is there an established mechanism for determining capacity?	Yes	No	
	12	11	
TOTALS:			

NAME of ACT: *Adult Protection Act*, R.S.N.S. 1989, c.2

JURISDICTION: NOVA SCOTIA

List of Indicia: Broad-Narrow Axis:

(bold) Comment:

1. Does the legislation apply to long-term care facilities?	Yes	No	s.3(b)
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	s.3(b)
3. Does the legislation apply to people in private care accommodations?	Yes	No	s.3(b) But this is uncertain since it is not defined and left to the courts
4. Does the legislation apply to the entire community?	Yes	No	
5. Does the legislation apply to hospitals?	Yes	No	
6. Does the legislation cover neglect?	Yes	No	s.3(b)
7. Does the legislation cover abuse?	Yes	No	s.3(b)
8. Does the legislation cover self-neglect?	Yes	No	s.3(b)
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	
10. Does the legislation apply to people who are vulnerable?	Yes	No	“Adult in need of protection”
11. Does the legislation apply to people who are mentally capable?	Yes	No	
TOTALS:		6	5

List of Indicia: Protectionist – Independence Axis:

(bold) Section:

1. Does the definition in the legislation include physical abuse?	Yes	No	s.3(b)(i)
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2. Does the definition in the legislation include financial abuse?	Yes	No	
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	s.3(b)(ii)
4. Does the definition in the legislation include sexual abuse?	Yes	No	s.3(b)(ii)
5. Does the definition in the legislation include chemical abuse?	Yes	No	
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	
8. Is there protection for whistleblowers?	Yes	No	
9. Is there protection from liability?	Yes	No	s.5(2)
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	
11. Is there more than one place to report incidents of abuse?	Yes	No	
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	s.3
13. Is reporting voluntary for community members?	Yes	No	s.5(1)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s.5(2)
15. Are there mandatory investigation processes in the legislation?	Yes	No	s.6
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	
17. Do investigators have strong powers to investigate?	Yes	No	

18. Is there a process of community support or networks identified?	Yes	No	
19. Is there system which allows the freezing or other protection of assets?	Yes	No	
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	
21. Is there a statement of guiding principles in the legislation?	Yes	No	s.2
22. Is there a regime for financial support?	Yes	No	s.9(3)(d)(iii)
23. Is there an established mechanism for determining capacity?	Yes	No	
TOTALS:	10	13	

NAME of ACT(S): *Protection for Persons in Care Act*, S.N.S. 2004, c.33 (Not In Force)

JURISDICTION: NOVA SCOTIA

List of Indicia: Broad-Narrow Axis:

	(bold)	Section:
1. Does the legislation apply to long-term care facilities?	Yes	No s.2(a)(ii)
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No s.2(a)(ii) or s.2(a)(iii)
3. Does the legislation apply to people in private care accommodations?	Yes	No
4. Does the legislation apply to the entire community?	Yes	No
5. Does the legislation apply to hospitals?	Yes	No s.2(a)(i)
6. Does the legislation cover neglect?	Yes	No

7. Does the legislation cover abuse?	Yes	No	s.4(1)
8. Does the legislation cover self-neglect?	Yes	No	
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	
10. Does the legislation apply to people who are vulnerable?	Yes	No	Everyone in care
11. Does the legislation apply to people who are mentally capable?	Yes	No	
	6	5	
TOTALS:			

List of Indicia: Protectionist – Independence Axis:

	(bold)	Section:
1. Does the definition in the legislation include physical abuse?	Yes No	Uncertain. The term “abuse” isn’t defined.
2. Does the definition in the legislation include financial abuse?	Yes No	Uncertain. The term “abuse” isn’t defined.
3. Does the definition in the legislation include emotional / psychological abuse?	Yes No	Uncertain. The term “abuse” isn’t defined.
4. Does the definition in the legislation include sexual abuse?	Yes No	Uncertain. The term “abuse” isn’t defined.
5. Does the definition in the legislation include chemical abuse?	Yes No	Uncertain. The term “abuse” isn’t defined.
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes No	Uncertain. The term “abuse” isn’t defined.
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes No	
8. Is there protection for whistleblowers?	Yes	No s.14(1) & s.14(2)
9. Is there protection from liability?	Yes	No s.13 & s.16

10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	s.17
11. Is there more than one place to report incidents of abuse?	Yes	No	Unsure in practice how the “Minister” will delegate authority.
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	
13. Is reporting voluntary for community members?	Yes	No	s.6(1)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s.5(1) & s.4(2)
15. Are there mandatory investigation processes in the legislation?	Yes	No	s.8(1)
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	
17. Do investigators have strong powers to investigate?	Yes	No	s.12(1)-(2)
18. Is there a process of community support or networks identified?	Yes	No	
19. Is there system which allows the freezing or other protection of assets?	Yes	No	
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	s.10(2)
21. Is there a statement of guiding principles in the legislation?	Yes	No	
22. Is there a regime for financial support?	Yes	No	
23. Is there an established mechanism for determining capacity?	Yes	No	
TOTALS:	8	14	

NAME of ACT: *Family Services Act*, S.N.B. 1980, c. F-22, Part III. (“FSA”)

JURISDICTION: NEW BRUNSWICK

List of Indicia: Broad-Narrow Axis:

(bold) Section:

1. Does the legislation apply to long-term care facilities?	Yes	No	
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	
3. Does the legislation apply to people in private care accommodations?	Yes	No	
4. Does the legislation apply to the entire community?	Yes	No	
5. Does the legislation apply to hospitals?	Yes	No	
6. Does the legislation cover neglect?	Yes	No	s.34(1)
7. Does the legislation cover abuse?	Yes	No	s.34(2)
8. Does the legislation cover self-neglect?	Yes	No	s.34(1)(a)-(b)
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	
10. Does the legislation apply to people who are vulnerable?	Yes	No	s.34: disabled, elderly or specified group.
11. Does the legislation apply to people who are mentally capable?	Yes	No	

TOTALS: 10 1

List of Indicia: Protectionist – Independence Axis:

(bold) Section:

1. Does the definition in the legislation include physical abuse?	Yes	No	s.34(2)(a)
2. Does the definition in the legislation include financial abuse?	Yes	No	But intervention guidelines mention it.
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	s.34(2)(c)
4. Does the definition in the legislation include sexual abuse?	Yes	No	s.34(2)(b)
5. Does the definition in the legislation include chemical abuse?	Yes	No	
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	
8. Is there protection for whistleblowers?	Yes	No	s.35.1 to a limited extent
9. Is there protection from liability?	Yes	No	Only for professionals under s.35.1
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	
11. Is there more than one place to report incidents of abuse?	Yes	No	Access Assessment unit of the Dept of Health
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	
13. Is reporting voluntary for community members?	Yes	No	s.35.1(1)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s.35.1(1)
15. Are there mandatory investigation processes in the legislation?	Yes	No	s.35(1)
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	s.37(1) & s.37(1.1)

17. Do investigators have strong powers to investigate?	Yes	No	s.36
18. Is there a process of community support or networks identified?	Yes	No	
19. Is there system which allows the freezing or other protection of assets?	Yes	No	
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	s.36.1(1)-(5)
21. Is there a statement of guiding principles in the legislation?	Yes	No	Preamble
22. Is there a regime for financial support?	Yes	No	
23. Is there an established mechanism for determining capacity?	Yes	No	s.37.1(2)(b) & s.37.3(2)
TOTALS:	13	10	

NAME of ACT: *Adult Protection Act*, R.S.P.E.I. 1988, c.C-13

JURISDICTION: PRINCE EDWARD ISLAND

List of Indicia: Broad-Narrow Axis:

(bold) Comment:

1. Does the legislation apply to long-term care facilities?	Yes	No	
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	
3. Does the legislation apply to people in private care accommodations?	Yes	No	
4. Does the legislation apply to the entire community?	Yes	No	
5. Does the legislation apply to hospitals?	Yes	No	
6. Does the legislation cover neglect?	Yes	No	s.1(i)(i)

7. Does the legislation cover abuse?	Yes	No	s.1(a) & s.1(i)(i)
8. Does the legislation cover self-neglect?	Yes	No	s.1(i)(i)
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	
10. Does the legislation apply to people who are vulnerable?	Yes	No	“in need of assistance”
11. Does the legislation apply to people who are mentally capable?	Yes	No	
	10	1	
TOTALS:			

List of Indicia: Protectionist – Independence Axis:

(bold)

Comment:

1. Does the definition in the legislation include physical abuse?	Yes	No	s.1(a)
2. Does the definition in the legislation include financial abuse?	Yes	No	s.1(a)
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	s.1(a)
4. Does the definition in the legislation include sexual abuse?	Yes	No	s.1(a)
5. Does the definition in the legislation include chemical abuse?	Yes	No	
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	
8. Is there protection for whistleblowers?	Yes	No	s.4(2)
9. Is there protection from liability?	Yes	No	s.4(3) & s.29

10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	But maybe indirectly under s.31
11. Is there more than one place to report incidents of abuse?	Yes	No	s.1(j)
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	s.11
13. Is reporting voluntary for community members?	Yes	No	s.4(1)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s.4(1)
15. Are there mandatory investigation processes in the legislation?	Yes	No	s.5 is permissive
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	s.8(1)(b)
17. Do investigators have strong powers to investigate?	Yes	No	Including s.31
18. Is there a process of community support or networks identified?	Yes	No	
19. Is there system which allows the freezing or other protection of assets?	Yes	No	s.24(1) via guardianship or other order
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	s.8(2)(a)-(d)
21. Is there a statement of guiding principles in the legislation?	Yes	No	s.3(a)-(f)
22. Is there a regime for financial support?	Yes	No	s.10
23. Is there an established mechanism for determining capacity?	Yes	No	Assessment of function s.6(1) & s.6(2)
TOTALS:		15	8

NAME of ACT: *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3

JURISDICTION: NEWFOUNDLAND & LABRADOR

List of Indicia: Broad-Narrow Axis:

(bold) Comment:

1. Does the legislation apply to long-term care facilities?	Yes	No	Silent. Assumed “yes.”
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	Silent. Assumed “yes.”
3. Does the legislation apply to people in private care accommodations?	Yes	No	Silent. Assumed “yes.”
4. Does the legislation apply to the entire community?	Yes	No	Silent. Assumed “yes.”
5. Does the legislation apply to hospitals?	Yes	No	
6. Does the legislation cover neglect?	Yes	No	s.2(i)
7. Does the legislation cover abuse?	Yes	No	
8. Does the legislation cover self-neglect?	Yes	No	s.2(i)(iii)-(iv)
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	
10. Does the legislation apply to people who are vulnerable?	Yes	No	
11. Does the legislation apply to people who are mentally capable?	Yes	No	
TOTALS:	8	2	

List of Indicia: Protectionist – Independence Axis:

(bold) Comment:

1. Does the definition in the legislation include physical abuse?	Yes	No	
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2. Does the definition in the legislation include financial abuse?	Yes	No	
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	
4. Does the definition in the legislation include sexual abuse?	Yes	No	
5. Does the definition in the legislation include chemical abuse?	Yes	No	
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	
8. Is there protection for whistleblowers?	Yes	No	s.4(2)
9. Is there protection from liability?	Yes	No	
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	
11. Is there more than one place to report incidents of abuse?	Yes	No	
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	s.2(i)(iii) & s.5(2)
13. Is reporting voluntary for community members?	Yes	No	s.4(1)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s.4(1)
15. Are there mandatory investigation processes in the legislation?	Yes	No	s.5
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	s.6
17. Do investigators have strong powers to investigate?	Yes	No	
18. Is there a process of community support or networks identified?	Yes	No	

19. Is there system which allows the freezing or other protection of assets?	Yes	No	s.10
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	
21. Is there a statement of guiding principles in the legislation?	Yes	No	s.17
22. Is there a regime for financial support?	Yes	No	s.6(7) & s.6(8)
23. Is there an established mechanism for determining capacity?	Yes	No	
	5	18	
TOTALS:			

NAME of ACT: *Decision Making, Support and Protection to Adults Act*, S.Y. 2003 c.21

JURISDICTION: YUKON

List of Indicia: Broad-Narrow Axis:

(bold) Comment:

1. Does the legislation apply to long-term care facilities?	Yes	No	s.60(1)
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	s.60(1)
3. Does the legislation apply to people in private care accommodations?	Yes	No	s.60(1)
4. Does the legislation apply to the entire community?	Yes	No	s.60(1)
5. Does the legislation apply to hospitals?	Yes	No	s.60(1)
6. Does the legislation cover neglect?	Yes	No	s.58(b)
7. Does the legislation cover abuse?	Yes	No	s.58(a)

8. Does the legislation cover self-neglect?	Yes	No	s.58(b)
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	s.58. There is some debate on whether this is deliberate.
10. Does the legislation apply to people who are vulnerable?	Yes	No	s.59(b)
11. Does the legislation apply to people who are mentally capable?	Yes	No	
TOTALS:	10	1	

List of Indicia: Protectionist – Independence Axis:

	(bold)		Comment:
1. Does the definition in the legislation include physical abuse?	Yes	No	Part 4, s.58
2. Does the definition in the legislation include financial abuse?	Yes	No	s.58(b)
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	s.58(a)
4. Does the definition in the legislation include sexual abuse?	Yes	No	s.58(b)
5. Does the definition in the legislation include chemical abuse?	Yes	No	s.58(b)
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	s.58(b)
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	s.58(b)
8. Is there protection for whistleblowers?	Yes	No	s.61(3) & s.61(4)
9. Is there protection from liability?	Yes	No	s.61(4)
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	s.83(1)-s.83(3)

11. Is there more than one place to report incidents of abuse?	Yes	No	s.61(4) & s.61(5)
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	
13. Is reporting voluntary for community members?	Yes	No	s.61(1)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s.61(1)
15. Are there mandatory investigation processes in the legislation?	Yes	No	s.62(1), s.62(2). However, the <i>Public Guardian and Trustee Act</i> being <i>Schedule C to the Decision-Making Support and Protection to Adults Act</i> , S.Y. 2003, c.21, (“PGTA”), s.9 provides a voluntary scheme.
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	s.69 & TA s.11
17. Do investigators have strong powers to investigate?	Yes	No	s.65 & PGTA s.10-11
18. Is there a process of community support or networks identified?	Yes	No	s.69
19. Is there system which allows the freezing or other protection of assets?	Yes	No	PGTA s.12 & s.18
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	s.63 & s.66
21. Is there a statement of guiding principles in the legislation?	Yes	No	s.2
22. Is there a regime for financial support?	Yes	No	
23. Is there an established mechanism for determining capacity?	Yes	No	
TOTALS:	21	2	

NAME of ACT: *Protection Against Family Violence Act*, S.W.N.W.T. 2003, c.24,²⁰⁴ *Guardian Trustee Act*, S.N.W.T. 1994,c.29
 (“GTA”)¹

JURISDICTION: NORTHWEST TERRITORIES

List of Indicia: Broad-Narrow Axis:

(bold)

Comment:

1. Does the legislation apply to long-term care facilities?	Yes	No	
2. Does the legislation apply to people receiving care or who are in “group home” environments?	Yes	No	
3. Does the legislation apply to people in private care accommodations?	Yes	No	
4. Does the legislation apply to the entire community?	Yes	No	
5. Does the legislation apply to hospitals?	Yes	No	
6. Does the legislation cover neglect?	Yes	No	s.1(2)
7. Does the legislation cover abuse?	Yes	No	s.1(2)
8. Does the legislation cover self-neglect?	Yes	No	
9. Does the legislation avoid the concept of “intention” or a <i>mens rea</i> requirement?	Yes	No	
10. Does the legislation apply to people who are vulnerable?	Yes	No	
11. Does the legislation apply to people who are mentally capable?	Yes	No	

4 7

TOTALS:

²⁰⁴ This act is not Adult Protection legislation; however, both pieces of legislation cover the field to some extent.

List of Indicia: Protectionist – Independence Axis:

(bold) Comment:

1. Does the definition in the legislation include physical abuse?	Yes	No	s.1(2)(a) & <i>GTA</i> s.10(1)(a)
2. Does the definition in the legislation include financial abuse?	Yes	No	s.1(2)(a), s.1(2)(e) & <i>GTA</i> s.10(1)
3. Does the definition in the legislation include emotional / psychological abuse?	Yes	No	s.1(2)(e) & <i>GTA</i> s.10(1)(a)
4. Does the definition in the legislation include sexual abuse?	Yes	No	s.1(2)(c) but NOT in the <i>GTA</i>
5. Does the definition in the legislation include chemical abuse?	Yes	No	
6. Does the definition in the legislation include spiritual abuse (religious or cultural)?	Yes	No	
7. Does the definition of abuse include a component which mentions violation of other rights?	Yes	No	s.1(2)(d) and & <i>GTA</i> s.10(1)(c)
8. Is there protection for whistleblowers?	Yes	No	
9. Is there protection from liability?	Yes	No	s.16
10. Is there a system to deal with false claims, such as making it an offence?	Yes	No	
11. Is there more than one place to report incidents of abuse?	Yes	No	
12. Does the legislation avoid a “best interests” test for capable adults?	Yes	No	
13. Is reporting voluntary for community members?	Yes	No	s.2(1)
14. Is reporting voluntary for members of the health care sector or government?	Yes	No	s.2(2)
15. Are there mandatory investigation processes in the legislation?	Yes	No	

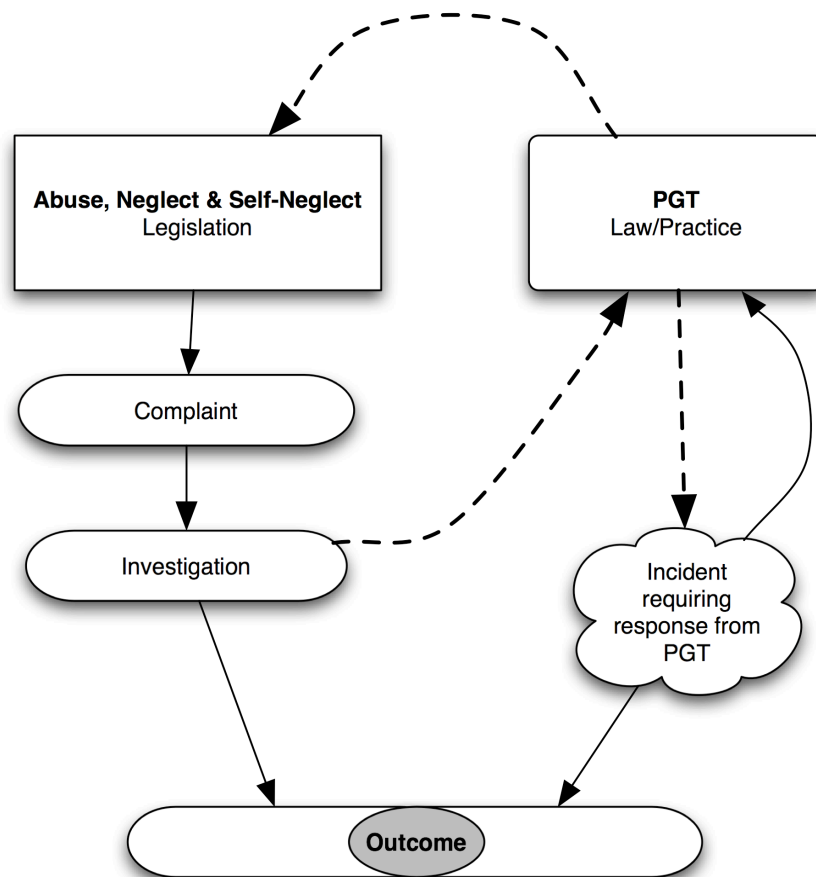
16. Is there a broad range of possible outcomes to the investigation available?	Yes	No	s.4 & s.7
17. Do investigators have strong powers to investigate?	Yes	No	
18. Is there a process of community support or networks identified?	Yes	No	
19. Is there system which allows the freezing or other protection of assets?	Yes	No	
20. Does the adult have to be consulted to the greatest extent possible?	Yes	No	
21. Is there a statement of guiding principles in the legislation?	Yes	No	
22. Is there a regime for financial support?	Yes	No	
23. Is there an established mechanism for determining capacity?	Yes	No	
TOTALS:	8	15	

APPENDIX C: PUBLIC GUARDIAN AND TRUSTEE FLOWCHART

The flowchart below is intended as a generalized illustration typifying the interaction between the body responsible for administering adult abuse and neglect legislation with the office of the Public Guardian and Trustee (PGT) or equivalent official.

The solid lines indicate steps mandated by legislation, either the abuse and neglect legislation or the PGT's governing statute. The broken lines represent steps involving the PGT's Office that may or may not occur as a result of the process contemplated by abuse and neglect legislation. For example, facts emerging from an abuse and neglect investigation may be referred to the PGT's office, which may respond by assisting the agency responsible for the investigation in various ways through its expertise or by exercising statutory powers (e.g., arranging a mental capacity assessment, advice regarding suspected financial abuse, freezing of bank accounts to prevent financial abuse, etc.).

A matter may come to light as a result of an abuse and neglect investigation that is also one to which the PGT is obliged to respond in order to carry out its own statutory mandate. For example, an abuse and neglect investigation may reveal that the victim lacks mental capacity, which may lead to an application by the PGT to be appointed the victim's guardian of the person and/or estate if no other qualified person is available and willing to be appointed.



APPENDIX D: ANNOTATED BIBLIOGRAPHY (submitted March 30, 2007)

This literature review is divided into seven parts. Section 1 (“Legislation Pros and Cons”) lists and annotates articles that either look at particular pieces of legislation or compare pieces of Canadian legislation. Section 2 (“Law Reform Reports”) describes a handful of national and international law reform projects in the area of guardianship and adult protection. Section 3 (“The Definition of Abuse, Neglect and Self-Neglect”) contains a list of annotated articles that explore the definitions of abuse, and articles on financial abuse are included in this category. Section 4 (“Vulnerabilities”) lists articles that examine the ways older adults become vulnerable. The remaining sections are self-explanatory, and include: Section 5 (“Elder Abuse, General”; Section 6 (“Other Studies and Government Reports”; and Section 7 (“Additional Bibliographies and Literature Reviews”).

1. Legislation Pros and Cons:

Advocacy Centre for the Elderly. “Long-Term Care Facility Admissions Contracts: The Desperate Need for Consumer Protection Legislation” (Fall 1997) 2:2 Ace Newsletter 1.

This article examines the need for legislation governing long-term care admissions contracts in Ontario. Among the enumerated reasons for enacting new legislation include the residents’ apparent lack of knowledge surrounding contract law, as well as the associated vulnerabilities of acquiring long-term care residency. The article also reviews problematic provisions that often accompany long-term care agreements.

Boyack, Virginia. *Golden Years – Hidden Fears: A Handbook for Front-line Helpers Working with Seniors*. (Calgary: Kerby Centre, 1997).

While this book is written for primary care-givers, it also contains an informative discussion of legal issues. This piece is heavily based on Alberta legislation.

Carlson, Eric M. *Protecting Rights or Waiving Them? Why “Negotiated Risk” Should Be Removed from Assisted Living Law* (Berkeley, CA: The Berkeley Electronic Press, paper No. 1585, 2006).

This Article recommends that negotiated risk be abandoned, and that all references to negotiated risk be eliminated from American state laws. Negotiated risk is, in fact, not necessary for a resident to act against facility advice. In nursing homes and other long-term care facilities, a resident undisputedly has the right to act against facility advice, with no need to negotiate an agreement with the facility. Also, any waiver of facility liability is unenforceable as a violation of public policy. In health care settings, courts uniformly refuse to enforce a consumers’ waiver of a provider’s liability. Finally, the term “negotiated risk” is too compromised to be of any further use. Negotiated risk has no settled definition, and most American state law definitions are generally vague enough to accommodate both the against-facility-advice scenario and the inadequate care scenario.

Coughlan, Stephen G., Barbara Downe-Wamboldt, Robert G. Elgie, and Joan Harbison. "Mandatory Reporting of Suspected Elder Abuse and Neglect: A Practical and Ethical Evaluation" (1996) 19 Dalhousie L.J. 45.

This article critiques Nova Scotia's *Adult Protection Act*, R.S.N.S. 1989 c.2. The authors canvass sociological research and raise serious ethical and practical concerns about the legislation. Much of the article focuses on the efficacy and desirability of mandatory reporting. The authors conclude that mandatory reporting provisions in Nova Scotia's Act cannot be justified on either practical or ethical grounds.

Firbank, O. "Human Rights Enforcement Agencies and the Protection of Older Workers Against Discrimination: The Case of the Quebec Human Rights Commission" (2001) 12: 3 Journal of Aging & Social Policy 65.

This article analyzes how the Quebec Human Rights Commission ("QHRC") processes cases of age discrimination in the employment sector. Quebec has led Canada in protecting older employees against age discrimination since the enactment of legislation that abolished mandatory retirement in 1982. This research provides an in-depth analysis of thirty closed cases (approximately one-third of all cases closed between 1991 and 1996) to explore the QHRC's methods of investigation and determination.

Gordon, Robert M. "Adult Protection Legislation in Canada: Models, Issues and Problems" (2001) 24 Int'l J. L. & Psychiatry 117.

This article contains a brief overview of the historical development of Adult Protection Legislation and then compares three Canadian models: the Atlantic Provinces model, the Ontario model, and the British Columbia model. The article concludes by mentioning that the Ontario model has some appeal because it has been adopted in Saskatchewan, but suggests that fiscal considerations may make the British Columbia model more attractive.

Harbison, Joan, S. Coughlan, J. Karbanow, & M. VanderPlaat. "A Clash of Cultures: Rural Values and Service Delivery to Mistreated and Neglected Older People in Eastern Canada" (2005) 17:4 Practice 229.

In this exploratory study, the authors examine strategies for service delivery to abused and neglected older individuals from rural communities in eastern Canada. Among the themes noted across localities was the desire of older individuals to maintain autonomy and privacy regarding family matters, including abuse. Participants echoed the desire to respect the rights and wishes of their clients while offering assistance. A discussion of the legal mandate governing the reporting of elder abuse is also presented.

Harbison, Joan & Marina Morrow. "Re-examining the Social Construction of 'Elder

Abuse and Neglect’: A Canadian Perspective,” (1998) 18 Ageing and Society 691.

Harbison and Morrow examine the policies underlying Adult protection legislation. They find that sociological research indicates that older people want to maintain as much autonomy and independence as possible. However, the underlying policy behind adult protection legislation in most American states and in the Atlantic Provinces is overly paternalistic. It is based on a child welfare / child protection model that automatically assumes that older adults become “adults in need.”

Levine, Jeffrey M. “Elder Neglect and Abuse: A Primer for Primary Care Physicians” (2003) 58:10 Geriatrics 37.

This short article is written for American doctors, who are required to report incidents of elder abuse since most adult protection statutes in the USA have mandatory reporting provisions. The author conflates all forms of abuse with neglect and self-neglect. Primary caregivers have trouble identifying elder abuse—despite the mandatory reporting provision in many statutes.

Robertson, Gerald B. “Legal Approaches to Elder Abuse and neglect in Canada” in Abuse and Neglect of Older Canadians: Strategies for Change, ed. by Michael J. MacLean (Ottawa: Canadian Association on Gerontology, 1995).

This essay makes three key points. First, the mistreatment of elders gets considerable media attention—enough to prompt legislators to act. Second, there is a tendency for legislators to apply “quick fixes” by taking legal models from other areas and apply them to the elder law context. Third, the legal response cannot be the only response; support services and community programs need adequate funding. The essay concludes by predicting that the promising legal developments in British Columbia will be a precursor to future legal development in adult protection legislation across the country.

Rodríguez, Michael A., Steven P. Wallace, Nicholas H. Woolf, & Carol M. Mangione. “Mandatory Reporting of Elder Abuse: Between a Rock and a Hard Place” (2006) 4 Annals of Family Medicine 403.

Despite mandated reporting laws that require physicians to report elder abuse, physicians have low rates of reporting. The purpose of this study was to identify physician’s perspectives on mandated reporting of elder abuse. Individual, semi-structured interviews were conducted with 20 primary care physicians practicing in a variety of settings and caring for a diverse patient population in the Los Angeles area. Mandatory reporting was related to both perceptions of increases and decreases in physician-patient rapport, patient quality of life, and physician control or ability to decide what is in the best interest of the patient. These paradoxes appear to be primarily hidden or unconscious, yet they influence the conscious decision to report. Primary care physicians appear to be subject to paradoxes of reporting that contribute to the underreporting of elder abuse. These paradoxes and alternative modes of managing paradoxes are important and should be addressed in educational and training programs for physicians, and systematic evaluation.

Scourfield, Peter. “Helping Older People in Residential Care Remain Full Citizens” (2006) *British Journal of Social Work* 1, online

<<http://bjsw.oxfordjournals.org/cgi/reprint/bcl086v1>>.

This article comments on bureaucratic incompetence, in particular, the failure by Social Services Departments to provide information to caregivers about their rights. Scarcity of resources is a theme that permeates most explanations for this incompetence. While these explanations certainly have some validity, this paper argues that for many practitioners, the very nature of the relationship with caregivers is a problematic one, containing several interrelated areas of confusion, ambiguity and tension that often go unacknowledged—particularly by policy makers, politicians and senior managers whose ideas about caregivers are often based on idealizations of what a caregiver is. This paper discusses some of the major concerns and argues that the tensions, ambiguities and confusion experienced might explain why there is a disconnection between practice and government policy.

Stewart, S. “‘A Tapestry of Voices’: Using Elder Focus Groups to Guide Applied Research Practice” (2003) 42:1 *Journal of Social Gerontology* 77.

In this qualitative study, designed to elicit the input of older individuals in determining a research agenda not based solely on the medical model, fifteen focus groups of elders and caregivers of cognitively impaired individuals were conducted. Participants represented various ethnic backgrounds, social and living circumstances, and geographic regions of Ontario, Canada. While a number of themes emerged that were related to specific life circumstances, general themes also emerged: the need for adaptations to the physical environment that would allow elders to maintain greater independence; affordable housing alternatives; reducing barriers between generations; and reducing the prevalence of ageism. These themes relate to quality of life.

Zaidi, Kamaal. “Elder Abuse and Neglect in Institutional Settings: A Recent Overview of Adult Protection Legislation and Related Initiatives in Canada.” (Working Paper, 2006) BePress Legal Repository, online: ExpressO Preprint Series <<http://law.bepress.com/expresso/eps/911/>>.

This working paper compares many of the recent developments in elder abuse and neglect legislation across Canada, with Part IV focusing on a jurisdiction by jurisdiction analysis. According to the author, the core elements of elder abuse and neglect legislation include the definitions of abuse and neglect, the existence of mandatory reporting provisions, the spectrum of rights afforded to elderly residents, the methods of investigating complaints against institutional care facilities, the intervention strategies and the use of traditional legal tools such as guardianships and trusteeships. The author suggests that modern adult protection regimes in Canada tend to replace these traditional legal tools with integrated and multidisciplinary networks that integrate government, health care providers, community-based groups, and operators of institutional care facilities.

2. Law Reform Reports:

Alberta, Canada. Alberta Law Reform Institute. *Non-resident Trustees under the Dependent Adults Act: Final Report No. 86* (2002).

The Alberta Law Reform Institute recognizes that nuclear families are shrinking and realizes that, in a small minority of incidents, a capable trustee could be disqualified if they become non-residents. They suggest that the best policy is to encourage non-resident family members to become trustees even though an Alberta court could neither compel a non-resident trustee to act nor enforce an Alberta judgment in another jurisdiction. The Alberta Law Reform Commission recommends reforming the *Dependent Adults Act*, R.S.A. 2000, c. D-11 to allow residents of any Canadian province or territory to act as trustees.

England. The Law Commission. *Consultation paper No. 128: Mentally Incapacitated Adults and Decision-Making: A New Jurisdiction*. (London: HMO, 1993).

This consultation paper addresses law reform in the private law sphere. The English Law Commission notes that there is a need for legislation dealing with guardianship. They explore various cognitive capacity tests and look at the laws of enduring powers of attorney.

England. The Law Commission. *Consultation paper No. 129: Mentally Incapacitated Adults and Decision-Making: Medical Treatment and Research*. (London: HMO, 1993).

This consultation paper looks at the “nearest relative” provision in the *Health Act* of 1983 and suggests that a patient can name any person to be the “nearest relative” for the purpose of a physician’s duty to consult. The English Law Commission noted that in 1983, England became one of the few jurisdictions where a guardian cannot make substitute health care decisions for an incapacitated adult.

England. The Law Commission. *Consultation paper No. 130: Mentally Incapacitated Adults and Decision-Making: Public Law Protection*. (London: HMO, 1993).

This consultation paper mentions that abuse of the elderly has been a concern since the mid 1970s. The English Law Commission explores ways to strike a balance between protecting vulnerable adults and maximizing freedom of choice or autonomy. They stress that capable adults have the right to decline assistance even if it leaves them in a harmful environment.

Ireland. The Law Reform Commission. *Consultation Paper on Vulnerable Adults and the Law: Capacity (LRC CP 37-2005)* Dublin: The Law Reform Commission (2005).

In this consultation paper, the Irish Law Reform Commission recommends taking a functional approach to the issue of legal capacity—one that focuses on an adult’s cognitive ability to understand the nature and consequences of a decision in the

context of available choices. They also recommend adopting a statutory definition of capacity as well as adopting a rebuttable presumption of capacity.

Manitoba, Canada. Law Reform Commission. #103: *Report on Adult Protection and Elder Abuse* (1999).

The authors recognize that adult protection, guardianship and issues of competency intertwine. They argue that child protection regimes may be justified under section 1 of the *Charter* but are not likely to be acceptable to the courts or the public. The Manitoba Law Reform Commission espouses an approach that balances individual autonomy with victim protection. They favor broadening the definition of “domestic violence” in *The Domestic Violence and Stalking Prevention, Protection and Compensation Act*. They did not recommend enacting a comprehensive adult protection regime because they argued that these regimes bring about an invariable loss of liberty and significant legal repercussions to those subjected to them.

Scotland, Commonwealth. Scottish Law Commission. *Scot Law Com No 158: Report on Vulnerable Adults*. Edinburgh: The Stationery Office (1996).

The Scottish Law Commission recommends putting a new duty on a local authority to find out whether the welfare or property of a vulnerable adult needs to be protected. They suggest giving local authorities added powers to enter premises and conduct investigations. They define “vulnerable adult” as someone over the age of sixteen who is “substantially handicapped by any disability,” or “suffering from illness or mental disorder,” or “in need of care and attention arising out of age or infirmity.” They argue that state intervention should be authorized if the local authorities “reasonably believe that the adult is vulnerable” and permitted even if the adult objects to the intervention.

New Zealand, Commonwealth. Law Commission. Report 71: *Misuse of Enduring Powers of Attorney* (2001).

In this report, New Zealand’s Law Commission recommends adding safeguards to the *Protection of Personal and Property Rights Act* of 1988 that would apply to persons over the age of 68 who are resident to hospitals or institutional care homes. Another key recommendation is the suggestion that the government amend s. 94 of their Act by incorporating a presumption of competence.

3. *The Definition of Abuse, Neglect and Self-Neglect:*

Beaulieu, M. & N. Leclerc. “Ethical and Psychosocial Issues Raised by the Practice in Cases of Mistreatment of Older Adults” (2006) 46(3/4) *Journal of Gerontological Social Work* 161.

In this qualitative study, sixteen social work practitioners working with older, mistreated adults were interviewed regarding ethical issues and other dilemmas

encountered through their psychosocial practice. Complexities arise not only in response to the needs of the client, but also because the practitioner is often working with the abuser within a family context. The following five themes emerged: the need for ethical reflection and self-awareness; the need to evaluate the victim's capacity to make decisions on his or her behalf; the need to balance confidentiality versus collaboration among practitioners and across agencies; the need to balance social and family responsibilities; and the need to weigh competing values in practice. Excerpts from the interviews illustrate the practical aspects of these issues.

Beaulieu, Marlene & Charmaine Spencer. "The Emergence of Older Adults' Personal Relationships in Canadian Law" (2001) 24 Int'l J. L. & Psychiatry 213.

The authors state that many laws aimed at serving the elderly begin with the presumption that the elderly are vulnerable when, in fact, sociological data indicates that few elderly people are actually vulnerable. This presumption, moreover, affects the degree of autonomy afforded to the elderly. The article concludes by warning us that a paternalistic approach may mean that the state intervenes even though elderly persons have the capacity to make their own decisions.

Bond, J.B. Jr, R. Cuddy, G.L. Dixon, K.A. Duncan, & D.L. Smith, "The Financial Abuse of Mentally Incompetent Older Adults: A Canadian Study" (1999) 11:4 J. Elder Abuse Neglect 23.

This article reports the results of a pilot study on the financial abuse of mentally incompetent seniors. The study looks at incidents of abuse reported to the Office of Public Trustee, Province of Manitoba and found that about twenty percent of the cases opened in a one year period were under suspicion of abuse. The findings show an over-representation of women over the age of eighty as victims of financial abuse. The authors provide a list of indicators of financial abuse.

Cohen, C. "Consumer Fraud and the Elderly: A Review of Canadian Challenges and Initiatives" (2006) 46:3/4 Journal of Gerontological Social Work 137.

This article reviews the available data on consumer fraud affecting elders in Canada. Risk factors are considered. Promising practices, model programs and legislative initiatives are also highlighted.

Dauvergne, Mia. "Family Violence Against Seniors," (2003) 68 Canadian Social Trends 10. (Statistics Canada — Catalogue No. 11-008, online <<http://dsp-psd.tpsgc.gc.ca/Collection-R/Statcan/11-008-XIE/0040211-008-XIE.pdf>>).

This short article summarizes and categorizes types of violence many victims of elder abuse face. Most of the victims tend to be abused by adult children in the thirty-three to forty-five year old age range, although there are significant numbers of reported incidents of abuse from spouses in the over sixty-five year-old category.

Etkin, M. "The 'Hidden Crime' of Elder Abuse" (2005) 16:1 Canadian Nursing Home

23.

Recent Canadian statistics indicate that twenty-four percent of elder mistreatment is being perpetrated by unrelated caregivers. This article examines factors that place residents with dementia at risk for elder abuse and neglect. Care staff are instructed to ask to see the facility's policy regarding abuse and neglect and are reminded that having a cognitive impairment does not mean that a resident is not credible or capable of disclosing mistreatment.

Gordon, Robert M. & Deborah Brill. "Abuse and Neglect of the Elderly" (2001) 24 Int'l J. L. & Psychiatry 183.

The authors state that contemporary societal interest in abuse and neglect of older people emerges from the research exploring family violence in the 1960s. The paper summarizes the debate over the definitions of abuse and mentions that the debate was resolved when researchers focused on a functional definition that encompasses different types of abuse, such as physical abuse, emotional abuse, sexual abuse and financial abuse. The authors then explore numerous theories concerning the underlying causes of abuse and neglect.

Hall, Margaret Isabel. "Equitable Fraud: Material Exploitation in Domestic Settings" (2005) 4 Elder L. R., 1, online, Social Science Research network <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=887166>.

The security and well-being of older adults in the "grey zone," those that are not incapable but more vulnerable, is a key area of concern among practitioners and legislators. The diminished capability associated with disease may be gradual and spotty, resulting in a "grey zone" that can last for years. Protecting the interests of the vulnerable but capable adults has been considered in terms of protection from abuse as well as in terms of capacity. Unless a very narrow definition of "abuse" is used (essentially replicating the criminal offences dealing with assault and theft) adult protection legislation can incorporate inappropriately paternalistic aspects. Ethically, older adults are entitled to make objectively foolish choices, take risks, or prefer new, disreputable friends over older, staid ones. Older adults do not require protection from the consequences of their own choices, freely made. In reality neither paradigm—abuse or capacity—realistically captures or appropriately responds to the range of situations in which the vulnerable but capable adult requires the assistance and support of the law. Those situations are most accurately understood with reference to the conceptual framework of equitable fraud.

Lachs, Mark S. & Karl Pillemer. "Elder Abuse" (2004) 364 The Lancet 1263.

Elder abuse has received increasing attention over the past decade as a common problem with serious consequences for the health and wellbeing of old people. The authors summarize recent international research and clinical findings about elder abuse. This seminar paper includes issues of definition and frequency of elder abuse and a summary of major known risk factors. The advantages and disadvantages of screening for elder abuse are discussed. Suggestions for treatment are offered on the basis that elder abuse is multifactorial and needs individual medical and social intervention strategies, preferably in the context of a multidisciplinary team.

Lauder, W., I. Anderson & A. Barclay. "A Framework for Good Practice in Interagency Interventions with Cases of Self-Neglect" (2005) 12:2 J. of Psychiatric & Mental Health Nursing 192.

Self-neglect is probably more common than has generally been thought and gives rise to a number of difficult conceptual, identification and intervention problems for health and social care workers. These patient management issues are compounded by the lack of any evidence-base for practice which nurses can draw on when faced with managing people who self-neglect. Nurses working with self-neglecters operate in an interdisciplinary context which includes professional groups, such as environmental health officers, who do not normally figure within health and social care teams. In the absence of such an evidence-base, a pragmatic solution in the form of a framework for interagency practice has been proposed. The background underpinning this framework, including a research study of housing in self-neglect and interagency responses, is briefly outlined in this paper.

Sauvageau, A. & S. Racette. "Fatal Neglect of the Elderly by a Spouse: A Case Report" (2006) 46:2 Medicine, Science, and the Law 173.

Neglect is one of the most common forms of elder abuse, along with physical and psychological abuse. It is defined as an elderly person alone who is not able to provide for him or herself the services necessary to maintain physical and mental health, or who is not receiving those services from a responsible caregiver. The authors present an unusual case of neglect where a sixty-nine year-old diabetic man was left lying on the ground by his spouse after a sudden fall from a cerebral stroke. The man was not able to move or to get up and his spouse, unable to lift him up, did not seek help. Although the victim's spouse reported having taking care of him, the man died four days later from a fatal hyperglycemia.

Spencer, Charmaine. "Abuse and Neglect of Older Adults in Rural Communities," (2000) 19:1 GRC News 7 (Gerontology Research Centre, Simon Fraser University, online < http://www.sfu.ca/grc/grcn_pdfs/vol19no1.pdf >).

In this article, Charmaine Spencer observes that sociological research indicates that there are no perceptible differences in the rates of elder abuse in rural and urban communities. However, there are challenges unique to rural areas such as the scarcity of law enforcement and legal services.

Spencer, Charmaine. *Diminishing Returns*. (Vancouver, British Columbia: Gerontology Research Centre, Simon Fraser University, 1996).

This book examines financial responsibility, decision-making and financial abuse among older adults.

Straka, S. & L. Montminy. "Responding to the Needs of Older Women Experiencing Domestic Violence" (2006) 12:3 Violence Against Women 251.

This overview describes the response and limitations of both the domestic violence field and the elder abuse field in addressing the needs of older women experiencing victimization. The response to elder abuse was originally based on the child

protection model and viewed as primarily relating to caregiver issues, but this view is incongruent with the power and control theory of domestic violence. The authors briefly describe current research initiatives designed to foster dialogue across these two fields in order to develop integrated services.

4. Vulnerabilities:

Brotman, Shari, Bill Ryan, & Robert Cormier. “The Health and Social Service Needs of Gay and Lesbian Elders and Their Families in Canada” (2003) 43 The Gerontologist 192.

This article reports the findings of a study, undertaken in 2000, whose purpose was to gather information about the experiences and realities of gay and lesbian seniors and their families from across Canada in accessing a broad range of health and social services in the community. The study made specific reference to the impact of discrimination on the health and access to health services of these populations. This article identifies issues relating to invisibility, historic and current barriers to care, and the nature of service options. Recommendations for change are highlighted, including those related to best practice programs and policies in the long-term care sector.

Bergeron, L. Rene & Betsey Gray. “Ethical Dilemmas of Reporting Suspected Elder Abuse” (2003) 48:1 Social Work 96.

Contrary to the beliefs of a number of people in the United States, many frail or sick elderly people remain in their homes and are cared for by family members, mostly women, often spouses. Advances in medical technology may result in people in living longer, although not necessarily healthier, lives. Caregivers are often confronted with financial, emotional, and physical strain related to the care-giving responsibilities. Common feelings described by caregivers are isolation and loneliness. Frequently, a lack of community resources adds to the frustrations they feel in providing care. Social workers have been advocates in developing and facilitating support groups to help family caregivers of older adults. In such groups caregivers can share their experiences in a confidential atmosphere guided by trained social work facilitators. Professional-led groups differ from mutual aid, peer-led groups in that professional facilitators should have a higher level of expertise and knowledge about aging, group dynamics, and human resources in addition to assessment.

Fisher, Colleen. “The Invisible Dimension: Abuse in Palliative Care Families” (2003) 6:2 J. of Palliative Medicine 257.

The author notes that the family is the unit of care that underpins the philosophy and practice of palliative care. The research on palliative care families to date, however, constructs the family unit as functional, articulate, cohesive and able to adapt to the impact of a terminal diagnosis—albeit with professional intervention if required. This notion of the family as monolithic and unproblematic masks the

existence of family issues that have the potential to impact negatively on the care that patients receive, and thus constrains the palliative health professional in facilitating quality end-of-life care. Through a review of current literature, this paper identifies abusive family relationships, which has been hitherto neglected in palliative care research. The continued invisibility of this issue does not resolve the problem of abuse and could result in the implementation or continuation of practices that may in fact be damaging.

Hightower, J., M.J Smith, C. Ward-Hall, & H. Hightower. "Meeting the Needs of Abused Older Women? A British Columbia and Yukon Transition House Survey" (1999) 11:4 J. Elder Abuse & Neglect 39.

This article presents the results of a survey of domestic violence services in British Columbia and the Yukon with regard to the services they provide to women between the ages of fifty and fifty-nine and to women over sixty. The results suggest that older victims of violence are more often categorized as victims of elder abuse instead of victims of family violence. Often, the needs of older victims of family violence are not met by social and health agencies alone, and better interaction is needed between these agencies and providers of support and advocacy for abused women.

Jayawardena, Solomon Liao & K. Maya. "Elder Abuse at End of Life" (2006) 9:1 J. of Palliative Medicine 127.

The authors state that patients at the end of life, by the nature of their clinical and social circumstances, are at high risk for elder abuse. Underreporting of elder abuse is a growing concern. The clinical presentation of abuse may overlap with the natural dying process, further compounding the problem. They found that multidisciplinary teams have been shown to be the most effective forms of intervention for the assessment and prevention of abuse. Most abuse occurs at home by family members, and the hospice team may be the only outside professionals coming into the home. Caregiver stress and victim dependency increase the risk for abuse. Although physical abuse is most commonly envisioned, neglect is the most common form of abuse. Financial abuse is often the underlying motivation for other forms of abuse.

Montminy, L. "Older Women's Experiences of Psychological Violence in Their Marital Relationships" (2005) 46:2 J. of Gerontological Social Work 3.

This qualitative research analyzes the types of psychologically violent behaviors experienced by fifteen women aged sixty to eighty-one. Participants were recruited by practitioners who worked with older women who had experienced domestic violence. Content analysis of the interviews suggests that psychologically violent behaviors could be categorized into the following broad groups: control; denigration; deprivation; intimidation; threats; abdication of responsibility; manipulation; blame; harassment; negation of reality; indifference; inducing guilt; sulking; and infantilization. Control behaviors appeared predominant and increased during significant life transitions: upon retirement; when children left home; and when husbands experienced a decline in health status. Clinical implications

underscore the need for early intervention and to talk with older women about gender roles.

Podnieks, Elizabeth & Sue Wilson. "An Exploratory Study of Responses to Elder Abuse in Faith Communities" (2005) 15: 3-4 Journal of Elder Abuse & Neglect 137.

This study examines faith leaders' perceptions of elder abuse, the actions taken by them in response to suspected or disclosed situations of elder abuse, and their knowledge and understanding of resources and services available for elder abuse intervention. The results of the study revealed that two-thirds of the clergy interviewed knew of, or suspected elder mistreatment among their parishioners. Faith leaders identified lack of education about elder mistreatment, lack of knowledge and/or skill in intervention techniques and confidentiality issues as barriers to responding effectively to the abuse of elders.

Podnieks, Elizabeth & Sue Wilson. "Elder Abuse Awareness in Faith Communities: Findings from a Canadian Pilot Study" (2005) 15:3-4 Journal of Elder Abuse & Neglect, 121.

Faith communities can play a critical role in the prevention of elder abuse and neglect by fostering heightened public awareness of elder mistreatment, as well as providing services to abused elders in the community. Faith leaders are among the most likely groups of caregivers to encounter cases of elder abuse, but unfortunately not all are aware of ways of identifying and effectively dealing with abuse. Religious leaders require training to educate themselves about elder abuse issues to better identify the important roles they can play in prevention, intervention and treatment. Pastoral workers and theology students should also be exposed to educational concepts regarding this problem. In an age of ecumenism and interfaith movements, religious leaders must become a conduit for the well-being and safety of older adults. This paper discusses exploratory work undertaken in Ontario, funded by Health Canada (Ontario Region), the Ontario Trillium Foundation, and Justice Canada to begin to uncover the extent to which faith leaders are aware of instances of elder abuse, and what they might see as their role in addressing such problems in their faith communities.

Tam, S. & Neysmith, S. "Disrespect and Isolation: Elder Abuse in Chinese Communities Canadian" (2006) 25:2 Journal on Aging 141.

This qualitative study of home care workers focuses on the social context of mistreatment among Chinese elders in Canada. Four focus groups were conducted with forty participants, Chinese home care professionals and program coordinators who, while providing services, were exposed to suspected or actual cases of elder mistreatment. They described the prominence of disrespect, considered abusive because it violates traditional Chinese cultural values, exhibited as verbal abuse, ignoring the elder, scolding, nagging, name-calling, threatening to institutionalize, and talking or joking about death. It was also manifested by isolating and restricting the elder, ignoring psychological and social needs, and limiting food choices. Dependency issues of the Chinese elderly immigrants were perceived, to a

significant degree, to be related to social exclusion and the marginalization of this group in Canadian society.

Wiles, Janine. “Conceptualizing Place in The Care of Older People: The Contributions of Geographical Gerontology” (2005) 14:2 J. of Clinical Nursing 100.

This paper introduces the subdiscipline of geographical gerontology to the readers of International Journal of Older People Nursing. This piece specifically examines the ways in which geographers and others have conceptualized “place” in relation to the experiences of older people, and their health and well-being.

5. Elder Abuse, General:

Advocacy Centre for the Elderly. *Elderly Abuse—The Hidden Crime* (Toronto: Advocacy Centre for the Elderly, 1988).

This module on elder abuse is written for Police officers. It teaches them how to spot violence against the elderly, and it encourages them to get involved in these cases in order to reduce the likelihood of repetitive violence and financial exploitation of elderly victims.

Biggs, Simon, Chris Phillipson, and Paul Kingston. *Elder Abuse in Perspective*. (Buckingham: Open University Press, 1995).

This book is a useful primer on the subject written by three well-known British experts.

Brogden, Mike, and Preet Nijhar. *Crime, Abuse and the Elderly*. (Devon: Willan, 2000).

This book analyzes the failure to emphasize abuse as a problem of social justice, reason and rights. It assesses mythologies and stereotypes of victimization. It also explores social theories about the causes of elder abuse and the types of available resolutions.

Brogdan, Mike. 2001. *Geronticide: Killing the Elderly*. (London: Kingsley, 2001).

This book is an exploration of the political economy of elderly homicide and euthanasia, including the “bureaucratization of death” in care institutions as well as the *Shipman* case in Great Britain.

Carp, Francis M. *Elder Abuse in the Family: an Interdisciplinary Model for Research*. (New York, NY: Springer Publishing, 2000).

This book uses an interdisciplinary model for the study of domestic elder abuse and neglect. It integrates research and practice literature.

Clough, Roger. *The Abuse of Care in Residential Institutions*. (London: Whiting and Birch, 1996).

This British publication combines academics analysis with commentary from experienced practitioners, consultants and policymakers who understand and care about practice in residential and nursing homes.

Holland, Louise. "The Dance Between Autonomy and Abandonment: It Contributes to Moral Distress in Social Work Practice" (2006) 28:4 Perspectives 6, online: BC Association of Social Workers <<http://www.bcasw.org/Images/PDFs/Sept06.pdf>>.

In this article, Louise Holland describes the tension many Social Workers feel in practice. There is a desire to help and a desire to respect individual autonomy. Sometime social workers feel like they are abandoning someone when they are, in fact, just respecting an individual's autonomy.

Groh, Arlene. *A Healing Approach to Elder Abuse and Mistreatment: The Restorative Justice Approaches to Elder Abuse Project* (Kitchener, ON: Community Care Access Centre of Waterloo Region, 2003).

This book addresses the problem of underreporting of elder abuse and describes the intersection between abused elders and the criminal law justice system.

MacLean, Michael J., ed. *Abuse and Neglect of Older Canadians: Strategies for Change*. (Ottawa: Canadian Association on Gerontology, 1995).

Twenty-seven Canadian authors contributed to this important study that analyzes practice, education, policy and research in the field. It includes a twenty-page bibliography.

McDonald, P. Lynn, ed. *Elder Abuse and Neglect in Canada*. (Toronto: Butterworths, 1991).

Although this book was published in the early 1990s as part of the Butterworth series, it is still indispensable for its Canadian perspective.

Mezzullo, Louis A. & Mark Woolpert. Eds. *Advising the Elderly Client*, looseleaf (New York, NY: Thomson Legal Publishing, 1992).

This three volume looseleaf deals with American law, but covers the full gamut of legal issues facing elderly clients. The first chapter is an introduction to elder law, and the second chapter deals with ethical considerations. Parts of the fourth chapter may be useful since it deals with daily living concerns facing the elderly.

Powell, Jason L. "Aging and Family Policy: A Sociological Excursion" (2005) 32 J. of Sociology & Social Welfare #.

The contemporary focus on family policy and old age has become increasingly important in social discourses on aging both within the discipline of Sociology and social policy practices of welfare institutions that attempt to define later life. Using the United Kingdom as a case study sheds light on wider current trends associated with aging in the United States, Canada, Europe and Australia. Social welfare is a

pivotal domain where social discourses on aging have become located. Narratives are “played out” with regard to the raw material supplied by family policy for identity performance of older people. Therefore, grounding developments in “narrativity” provides a sociological framework to assess the changing discourses associated with family policy and older people as advanced through different policy positions.

Reis, M, and D Nahmiash. “When Seniors Are Abused: an Intervention Model” (1995) 35:5 Gerontologist 666.

An intervention model to combat abuse/neglect of seniors is outlined in this article. The elements of the model consist of a "tool package": teams to design and execute intervention strategies; advisors who focus on health, financial, and criminal/legal problems; "volunteer buddies" to listen, monitor for abuse, and assist; a victims' empowerment group; and a community abuse committee for community advocacy/education. Three innovative elements, the tool package, volunteer buddies, and the empowerment group, are described in greater detail. Strengths of the model include its low cost and its multidisciplinary, collaborative approach.

Ward-Hall, C. “Educating Seniors and Others About Abuse: A Decade of Experience from a Provincial Organization” Presentation at International Association on Gerontology. 17th World Congress, Vancouver, BC, July 1-6, 2001.

The B.C. Coalition to Eliminate Abuse of Seniors has been providing seniors, service providers, industry, and the public with information and education materials on abuse and neglect issues affecting seniors for over ten years. This presentation describes the different prevention education approaches used by the provincial organization during three projects to reach specific target audiences. Staff in private industry such as banks often have only a narrow window of opportunity (eg. ten minutes before work) to receive information of any kind—whether that is client relations, or improving awareness of financial abuse. Those working in rental housing often work in isolation with few opportunities to upgrade their skills in dealing with and helping older tenants. Both situations can make it challenging to get abuse prevention information to the places where it may be much needed

6. Other Studies and Government Reports:

Aitken, Lynda, and Gabriele Griffin. *Gender Issues in Elder Abuse* (London: Sage, 1996).

A.R.A Consultants, & Canada. *Older Canadians and the Abuse of Seniors: A Continuum from Participation to Empowerment*. (Ottawa: The Division, 1994).

Beaulieu, M., Robert M. Gordon and Charmaine Spencer. *An Environmental Scan of*

- Abuse and Neglect in Later Life in Canada: What's Working and Why.* (Ottawa: September 2003) Prepared for Federal/Provincial/Territorial Working Group on Seniors' Safety and Security.
- Bennett, Gerald A., and Paul Kingston. *Elder Abuse: Concepts, Theories and Interventions.* (London: Chapman & Hall, 1993).
- Brillon, Yves. *Victimization and Fear of Crime Among the Elderly.* (Toronto: Butterworths, 1987).
- British Columbia. "Abuse in Later Life" in *A Profile of Seniors in British Columbia* (Victoria, BC: Ministry of Health Services: Children's, Women's and Seniors' Health Division, 2004), online: <http://www.hlth.gov.bc.ca/seniors/publications/profile_of_seniors.pdf>.
- California Department of Justice. *Citizen's Guide to Preventing and Reporting Elder Abuse.* (California: Bureau of Medi-Cal Fraud and Elder Abuse, and Crime and Violence Prevention Centre, 2002).
- Canada. The Department of Justice Canada, Family Violence Initiative & Alberta Solicitor General, Victims of Crime Fund. *The Response to Elder Abuse in Alberta: Legislation and Victim Focused Services Final Report* by Monica Pauls & Leslie MacRae (Calgary, AB: Canadian Research Institute for Law and the Family, 2006).
- Canada. Family Violence Prevention Unit, Health Canada. *Preventing and Responding to Abuse in Long-Term Care Facilities: Lessons Learned from the Abuse Prevention in Long-Term Care (APLTC) Project* by Liz Hart and Wanda Jamieson (Ottawa: Health Canada, 2004), online: <http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/pdfs/Long-Term%20Care_e.pdf>.
- Canada. Family Violence Prevention Unit. *Returning Home: Fostering a Supportive and Respectful Environment in the Long-Term Care Setting* by Jean Kozak and Teresa Lukawiecki (Ottawa: Health Canada, 2001).
- Canada. Family Violence Prevention Unit, Health Canada. *Stand By Me: Preventing Abuse and Neglect of Residents in Long-Term Care Settings* by Jean Kozak and Teresa Lukawiecki (Ottawa: Health Canada, 2001).
- Canada. Family Violence Prevention Unit, Health Canada. *When Home Is Not a Home: Abuse and Neglect in Long-Term Care: A Resident's Perspective* by Jean Kozak and Teresa Lukawiecki (Ottawa: Health Canada, 2001).
- Canada. Family Violence Prevention Unit and National Clearinghouse on Family Violence. *Community Awareness and Response: Abuse and Neglect of Older Adults.* (Ottawa: Health Canada, 2002), online: <http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/html/agecommuni_e.html>.

- Canada. First Nations and Inuit Health Branch, Health Canada. *Clinical Practice Guidelines for Nurses in Primary Care*. (Ottawa: Health Canada, 2000), online: <http://www.hc-sc.gc.ca/fnih-spni/alt_formats/fnihb-dgspni/pdf/pubs/nursing-infirm/2000_clin-guide_e.pdf>.
- Canada. Mental Health Division and National Clearinghouse on Family Violence. *Abuse and Neglect of Older Adults: Awareness Information for People in the Workplace*. (Ottawa: Health Canada, 1994), online: <<http://dsp-psd.pwgsc.gc.ca/Collection/H72-21-120-1994E.pdf>>.
- Canada. Mental Health Division, Health Canada. *Resource and Training Kit for Service Providers: Abuse and Neglect of Older Adults*. (Ottawa: Health Canada, 1994), online: <http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/html/agekit_e.html>.
- Canada. National Advisory Council on Aging. *Elder Abuse: Major Issues from a National Perspective*. (Ottawa: National Advisory Council on Aging, 1991).
- Canada. National Advisory Council on Aging. 1992. *A Shared Concern: an Overview of Canadian Programs Addressing the Abuse of Seniors*. (Ottawa: National Advisory Council on Aging/Family Violence Prevention Division, 1992).
- Canada. Public Health Agency of Canada, "Self-Neglect by Older Adults" (The National Clearing House on Family Violence, 2005), online: Public Health Agency of Canada <http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/html/age_snegl_e.html>.
- Canada. Special Senate Committee on Aging First Interim Report: Embracing the Challenge of Aging. (Ottawa: The Senate, 2007), online" <<http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/agei-e/rep-e/repintfeb07-e.pdf>>.
- Canadian Pensioners Concerned Incorporated. *Battered and Betrayed: Facing Up to Abuse of the Elderly in Nova Scotia* by Roberta Way-Clark (Halifax, 1994).
- Canadian Research Institute for Law and the Family, "Review of Yukon's Family Violence Prevention Act," by Nicholas C. Bala and Erika L. Ringseis. (Whitehorse, YK: Victim Services Office of the Department of Justice, Yukon Territory, 2004), online: <http://www.justice.gov.yk.ca/pdf/fvpa_report.pdf>.
- CLSC Ren-Cassin. *Elder Abuse Protocol and Intervention Guide*. (Montreal: University Institute of Social Gerontology of Quebec, 1993).
- CLSC René-Cassin. *"Not in Our Community" - Preventing Mistreatment of Seniors: A*

- Guide for Ethnocultural Communities*. (Montreal: University Institute of Social Gerontology of Quebec, 1997).
- CLSC René-Cassin. *Working with Mistreated Seniors from Ethnocultural Communities and Their Families: A Guide for Service Providers* (Montreal: University Institute for Social Gerontology of Quebec, 1977).
- The Council on Aging — Ottawa-Carleton. *An Elder Abuse Resource and Intervention Guide*. (Ottawa, 1995).
- Department of Justice, Canada. “Abuse of Older Adults: A fact sheet from the Department of Justice Canada,” (last updated: 2007-03-07), online: <<http://www.justice.gc.ca/en/ps/fm/adultsfs.html>>.
- EKOS Research, “Public Attitudes Towards Family Violence: A Syndicated Study (Ottawa: EKOS Research Associates Inc., 2002), online : <<http://www.ekos.com/admin/articles/family31may02.pdf>>.
- Elder Abuse Resource Centre. *Abuse of Older Adults: A Training Program for Senior Advocates*. (Winnipeg, 1994).
- Elder Abuse Task Force of the Niagara Region. *Helping the Victim of Elder Abuse*. (Niagara, 1996).
- Family Violence Prevention Initiative, Nova Scotia. *Elder Abuse: Procedures Manual for a Co-ordinated Response*. (Nova Scotia, 1996).
- Gnaedinger, Nancy. *Elder Abuse: a Discussion Paper*. (Ottawa: National Clearing House on Family Violence, 1989).
- Gorkoff, Kelly. *Prevention of the Abuse of Seniors: Canadian Training Guides*. (Ottawa: Health Canada, 2000).
- Harbison, Joan. *Mistreating Elderly People: Questioning the Legal Response to Elder Abuse and Neglect*. (Halifax, NS: Health Law Institute, Dalhousie University, 1995).
- Health Canada, “Abuse and Neglect of Older Adults: A Discussion Paper,” by L. McDonald and A. Collins, (Ottawa: Public Health Agency of Canada, 2000), online: <<http://www.phac-aspc.gc.ca/ncfvcnivf/familyviolence/pdfs/Abuse%20and%20Neglect.pdf>>.
- Herring, Rachel & Betsy Thom, “The Right to Take Risks: Alcohol and Older People” (1997) 31:3 *Social Policy & Administration* 233.
- Hightower, Jill, M.J. (Greta) Smith & Henry Hightower. *Silent and Invisible: A Report On*

- Abuse and Violence in the Lives of Older Women in British Columbia and Yukon* (Vancouver: B.C./Yukon Society of Transition Houses, 2001).
- Jill Hightower, Jill & M.J. (Greta) Smith. *Silent and Invisible: What's Age Got to Do with It? A Handbook for Service Providers on Working with Abused Older Woman in British Columbia and Yukon* (Vancouver: B.C./Yukon Society of Transition Houses, 2002).
- Home Support Canada (now Canadian Association for Community Care). *Responding to Elder Abuse: A Guide for the Development of Agency Protocols for the Home Care and Community Support Sector*. (Ottawa, 1994).
- Interhospital Domestic Violence Committee-Saskatchewan. *Institutional Abuse Prevention Project: A Learning Resource Manual*. (Saskatchewan, 1995).
- Law Commission of Canada, "Older Adults' Relationships and the Law in Canada—Legal, Psycho-social and Ethical Aspects" by Charmaine Spencer and Marie Beaulieu. (Ottawa: Law Commission of Canada, 1999).
- Manitoba Council on Aging. *Protection of the Elderly: a Study of Elder Abuse*. (Winnipeg: Manitoba Council on Aging, 1982).
- McDonald, P. Lynn. *Abuse and Neglect of Older Adults: a Discussion Paper*. (Ottawa: Health Canada, 2000).
- McKenize, Pearl. *Guide to Legal Issues in Elder Abuse Intervention*. (North Vancouver: North Shore Community Resources Society, B.C., 2002).
- Mount Sinai/Victim Services Agency Elder Abuse Project. *Elder Mistreatment Guidelines for Health Care Professionals: Detection, Assessment and Intervention*. (New York, 1988).
- Murphy, Nancy. 1994. *Resource and Training Kit for Service Providers: Abuse and Neglect of Older Adults*. Ottawa: Mental Health Division, Health Canada. 189 p.
- Ontario. Advisory Council on Senior Citizens. *Denied Too Long: the Needs and Concerns of Seniors Living in First Nations*. (Toronto: Ontario Advisory Council on Senior Citizens, 1993).
- Ontario Association of Social Workers. *Elder Abuse: A Practical Handbook for Service Provider* (Toronto: Ontario Association of Social Workers, 1992).
- Pay, Daphne S. *Ask the Question: A Resource Manual on Elder Abuse for Health Care Personnel* (Vancouver: BC Institute on Family Violence, 1993).
- Podnieks, Elizabeth. "Elder Abuse: It's Time We Did Something About It" (1985) 81:11

- The Canadian Nurse.
- Public Guardian and Trustee of British Columbia. *Adult Guardianship Act Part 3: A Guide for Communities*. Vancouver: Office of the Public Guardian and Trustee, 2001.
- Reis, Myrna and Daphne Nahmiash. *When Seniors Are Abused: A Guide to Intervention* (North York: Captus Press, 1995).
- Seniors Resource Centre of Newfoundland and Labrador. *Elder Abuse Awareness Project: Training Manual for The Speakers Bureau*. (St. John's, 1997).
- Poirier, Donald. *Why Is It So Difficult to Combat Elder Abuse and, in Particular, Financial Exploitation of The Elderly?* (Ottawa.: Law Commission of Canada, 1999).
- Shell, Donna J. *Protection of the Elderly: A Study of Elder Abuse 1982* (Ottawa: Supply and Services, 1989).
- Spencer, Charmaine. *Abuse And Neglect Of Older Adults In Institutional Settings: A Discussion Paper Building From English-Language Resources*. (Ottawa: Health Canada, 1995).
- Spencer, Charmaine. *Diminishing Returns: An Examination of Financial Abuse of Older Adults in British Columbia*. (Vancouver: Gerontology Research Centre, Simon Fraser University, 1996).
- Statistics Canada, "A Portrait of Seniors in Canada" by Grant Schellenberg & Martin Turcotte, Statistics Canada. (Ottawa: Statistics Canada Catalogue no. 89-519-XIE, 2006), online:
<<http://www.statcan.ca/english/freepub/89-519-XIE/89-519-XIE2006001.pdf>>.
- Statistics Canada, "Family Violence in Canada: A Statistical Profile" edited by Lucie Ogrodnik, Canadian Centre for Justice Statistics, (Ottawa: Statistics Canada Catalogue no. 85-224-XIE, 2006), online:
<<http://www.statcan.ca/english/freepub/85-224-XIE/85-224-XIE2006000.pdf>>.
- Statistics Canada, "Family Violence Against Older Adults" by Kathy AuCoin in Family Violence in Canada: A Statistical Profile (2005) at 78, Canadian Centre for Justice Statistics (Ottawa: Statistics Canada Catalogue no. 85-224-XIE, 2005), online:
<<http://www.statcan.ca/english/freepub/85-224-XIE/85-224-XIE2005000.pdf>>.
- Stones, M.J. and Michel Bédard. "Higher Thresholds for Elder Abuse with Age and Rural Residence" (2002) 21:4 Canadian Journal on Aging 577.
- Swanson, Susan M. *Abuse and Neglect of Older Adults*. (Ottawa: Health Canada and the National Clearinghouse on Family Violence, 1999).

Vancouver Coastal Health Authority, *Re:act: Act on Adult Abuse and Neglect*.
Vancouver: Vancouver Coastal Health Authority, n.d. VCHA staff manual.

Wahl, Judith. *Elder Abuse: The Hidden Crime*. (Toronto: Community Legal Education Ontario, 2002).

Wolf, Rosalie. "Risk Assessment Instruments." National Center on Elder Abuse Newsletter (September 2000), online
<<http://www.elderabusecenter.org/default.cfm?p=riskassessment.cfm>>.

Wyllie, Karen, Leslie Tutty, Tracey Braun, & Deborah Jesso. The Action Group on Elder Abuse Initiative: Building Capacity to Respond to the Abuse of Older Adults – An Evaluation of Phase 1, (Calgary, AB: Report Prepared for the Action Group on Elder Abuse, 2006).

7. Additional Bibliographies and Literature Reviews:

Chaulk, Paul, Amanda Parriag, Olive Bryanton, and Evelyn McQuaid. Abuse of Older Adults: Canadian Education Resources (Ottawa: Health Canada, 2004), online:
<http://www.phacaspc.gc.ca/ncfvcnivf/familyviolence/pdfs/aoaeducationres_e.pdf>

This document provides information describing all training resources currently available in Canada that address the issue of abuse of older adults. This inventory will be helpful to professionals and volunteers who wish to support or upgrade training efforts in this field and thereby help to prevent and/or respond to abuse of the elderly. It describes the items briefly and lists the price, ordering information and audience it targets.

Hudson, Margaret F., and Tanya F. Johnson. 1986. "Elder Neglect and Abuse: a Review of the Literature" in *Annual Review of Gerontology and Geriatrics*, vol. 6. Ed. Carl Eisdorfer. (New York: Springer Publishing, 1986).
This is one of the first annotated bibliographies in the field.

McCreadie, Claudine. *Elder Abuse: Update on Research*. (London: King's College, Age Concern Institute of Gerontology, 1996).
This 123 page bibliography contains a useful summary of research in the United Kingdom.

Schlesinger, Benjamin, and Rachel Schlesinger. 1988. *Abuse of the Elderly: Issues and Annotated Bibliography*. (Toronto: University of Toronto, 1988).
This 188 page work is dated now, but notable for setting the Canadian standard in this field.

Spencer, Charmaine, Maureen Ashfield, and Anne Vanderbilj. *Abuse and Neglect of Older Adult in Community Settings: an Annotated Bibliography*. (Vancouver, B.C.: Gerontology Research Centre, Simon Fraser University, 1996).

This 247 page resource is a valuable successor to the Schlesinger bibliography.

Wilber, Kathleen, and Dennis P. McNeilly. 2001. "Elder Abuse and victimization" in *Handbook of the Psychology of Aging*. 5th ed. (San Diego: Academic Press, 2001).

This recent bibliography is an excellent survey of current research.