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Backgrounder

Provincial Strategy Document:

Vulnerability and Capability Issues in British Columbia

In British Columbia adult capability is one of the most pressing concerns of vulnerable adults and their advocates. It is an area of practice that brings together professionals working in diverse areas such as law, health, and social services. The work encompasses overlapping legal specializations (civil and criminal law, trusts, wills and estates, guardianship, immigration, housing), and the law is constantly evolving as a result of legislative reform. In spite of the multi-disciplinary nature of capability issues, few tools exist to support cross-disciplinary collaboration and strategy. Few resources exist to clarify the responsibilities of the various provincial agencies and practice areas in protecting the rights of vulnerable adults who may have diminished or diminishing capability.

The purpose of this *Provincial Strategy Document* (PSD) is to address this void by bringing together law and policy relevant to adult abuse and neglect and mental capability in BC. The PSD contains 6 sections, 17 recommendations and various digital appendices to support practice:

- Section 1 – *Introduction and Background* provides a background to the project
- Section 2 – *The Conceptual Framework* clarifies important but nebulous terms such as vulnerability, capability, and abuse
- Section 3 – *Values and Principles* compares adult abuse and neglect legislation across Canada and describes principles to guide practitioners who work with vulnerable adults
- Section 4 – *The Law of Capability in BC* provides a brief history of the law of capability in BC and summarizes the changes to be affected by the new amendments to the *Adult Guardianship Act* (Bill 29)
- Section 5 – *Responding to Capability Issues in BC* discusses barriers to access to justice faced by vulnerable adults and contains a table of interventions available to protect and support adults with capability issues under the current law
- Section 6 – *Where do we go from Here?* contains the recommendations of the study and explains how agencies can use the PSD to enhance their work.

Recommendations

This study recommends that:

1. A variety of “knowledge communities” be created and supported to provide leadership, education, and training around issues of adult abuse, capability, and vulnerability.
2. Best practice tools be developed to support the work of different knowledge communities working with vulnerable adults with capability issues.
3. Financial institutions create protocols and policies at both the head office and the branch office regarding persons with capability issues and/or vulnerable persons. Core professional competencies in dealing with documents which refer to vulnerable adults or adults with diminished capability should be established and routinely tested as part of a required professional knowledge base.
4. A thorough cross-disciplinary mapping of agencies that deal with adults who may have been assessed as incapable, or are suspected of diminished capacity, be undertaken.
5. Knowledge communities develop consistent visions and terminologies of key terms -- a shared lexicon.
6. Core agencies and organizations such as government, designated agencies, police, health care professions, lawyers, social workers, justice workers, housing agencies and financial agencies develop modules on adult abuse and neglect, and establish core professional competencies in these work areas.
7. Key Provincial ministries commit to advocating for funds to support BC’s abuse response prevention scheme.
8. People working with adults with capability challenges become culturally educated.
9. The *BC Adult Guardianship Act* regime be comprehensively evaluated, based on both quantitative and qualitative data to examine its effectiveness in terms of both process and outcomes.
10. A law reform project be undertaken to review statutes and court rules with a view to harmonizing use of terms which reference an adult’s capacity
11. Research in criminal law and procedural aspects of adult incapability be undertaken.
12. Criminal justice system workers develop their own internal procedures for dealing with this community.
13. Access to legal counsel for adults with capability related issues must be consistently and affordably provided.

14. Relevant rules and legislation confirm that adults whose capability is at issue have the right to instruct counsel.
15. Discriminatory language be eliminated from the materials of professional bodies, government policies, legislation, court rules and official documents pertaining to adults with capability issues.
16. Key stakeholders from a number of Provincial ministries be briefed on the work done to develop protocols and sit as active members of the BC Adult Abuse and Neglect Prevention Collaborative.
17. Provincial ministries develop internal and inter-agency protocols for coordinated responses to adult abuse, vulnerability and capability.

Digital Appendices

The appendices to the PSD include protocol development tools, legal resources, and research papers on immigration and housing issues in relation to capability. The document is organized such that readers may choose whether to review the whole booklet at once or only those sections of immediate interest. Each section is a self-contained resource.

It is a particularly exciting moment in the history of advocacy with and for vulnerable adults. At the time of writing the province has recently passed new adult guardianship legislation embodying a significant shift in thinking around adult protection, the culmination of twenty years of advocacy for law reform. The new legislation rejects the old absolutist framework according to which an individual is either completely mentally capable or incapable of all decisions in favour of a continuum model permitting partial or area-specific incapability. It is a change that potentially restricts the loss of independence affected by a finding of incapability, and hopefully allows adult support and protection measures to promote the well-being of vulnerable adults in a much broader sense than previously possible. The PSD is intended to create a shared, inter-disciplinary understanding of the meaning and implications of the capability continuum as it applies to the enforcement of different statutes. In anticipation of proclamation, we hope to harness some of the energy surrounding the birth of the new legislation and use this momentum to foster learning, collaboration, practice guideline creation and protocol development in this area so that all of us are more capable of espousing best practices in our work.

The PSD was planned and created in conjunction with the BC Adult Abuse / Neglect Prevention Collaborative. The membership of the Collaborative includes representatives of the designated agencies, the Ministry of Public Safety and Solicitor General, the Public Guardian and Trustee of BC, provincial non-profits working in the abuse response/ prevention field such as the BC Centre for Elder Advocacy and Support and the BC Association of Community Response Networks, researchers/academics, and other concerned community members.