Manitoba Law Reform Commission

ELDER ABUSE AND NEGLECT IN MANITOBA

CONSULTATION PAPER

June 2021

Elder Abuse and Neglect in Manitoba

Consultation Paper June 2021

The Manitoba Law Reform Commission was established by *The Law Reform Commission Act* in 1970 and began functioning in 1971.

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CONSULTATION PAPER

Comments on this Consultation Paper should reach the Manitoba Law Reform Commission ("the Commission") by **October 1, 2021.**

The Commission encourages you to provide your thoughts, comments and suggestions concerning this aspect of Manitoba's law. Please refer to the issue for discussion identified in this paper, and any other matters you think should be addressed.

Please submit your comments in writing by email, fax or regular mail to:

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Please note that the information provided in this Consultation Paper does not represent the views of those who have so generously assisted the Commission in this project.

EXECUTIVE SUMMARY

Based on the definition established by the World Health Organization, "elder abuse" is recognized widely as "a single or repeated act, or lack of appropriate action, occurring in any relationship where there is an expectation of trust that causes harm or distress to an older person." While it is a public health crisis that presents serious threats to the physical, psychological, social and financial wellbeing of older Canadians, it is an issue which is largely under-reported and under-studied, and which is defined and treated inconsistently by the legal systems of the Canadian provinces and territories. These deficits and inconsistencies pose challenges for academics, advocates, lawmakers and other interested parties who seek to ensure that older Canadians are safe from this type of abuse.

Accordingly, the Manitoba Law Reform Commission ("the Commission") has chosen to shine a light on elder abuse in Manitoba, with an eye to ascertaining whether and how this province can do better to protect older persons who are at risk. The Commission conducted research into how elder abuse is currently defined in Manitoba and how Manitoba compares to other provinces and jurisdictions in respect of how it currently addresses elder abuse, with the ultimate goal of determining whether law reform is indicated, and if so, how best to implement such reform.

This Consultation Paper is the first of a series of Papers which the Commission intends to publish on this subject. It presents a broad exploration of the topic of elder abuse in the province of Manitoba, touching on matters such as local and federal elder abuse and neglect research studies and statistics, current laws and non-legal elder abuse resources in Manitoba, and those in other jurisdictions, among other topics. This initial Paper is not only intended to provide contextual information to readers on the state of affairs in Manitoba with respect to this topic, but also to begin the process of identifying the major areas of concern in Manitoba with respect to the study, prevention, treatment, and rectification of the abuse and neglect of older adults.

The hope is that by providing this context and some insight into potential concerns regarding Manitoba's current response to elder abuse, community groups, stakeholders, members of the legal community and other interested individuals reading this Paper will be well-placed to identify gaps in the laws, policies, and legal and non-legal systems that are currently in place in the province to address elder abuse and neglect, warranting reform. The identification of these gaps will inform the Commission's ongoing exploration into the topic of elder abuse and neglect in the province, and will ultimately enable the Commission to craft recommendations for reform that might fill these gaps in subsequent Papers in this series.

As such, the Commission asks interested parties to read this initial Paper with an eye to identifying their major concerns with respect to Manitoba's current legal and non-legal efforts to address the abuse and neglect of older adults.

CHAPTER 1: INTRODUCTION

Since 2011, when the first Canadian Baby Boomers reached the age of 65, Canada has witnessed an extensive increase in its senior population.[1] In fact, older Canadians now represent Canada's fastest growing demographic, making up approximately 18% of our population[2], with projections predicting that one in four Canadians (23%) could be 65 years of age or older by the year 2031.[3] In light of this aging population, the abuse of older adults[4] is becoming increasingly recognized in Canada as a "public health crisis."[5] What's more, the COVID-19 pandemic, which took hold of Canada in March 2020, has not only presented higher risks to older adults in terms of contracting and dying from the virus, but it has placed this already vulnerable population at greater risk of suffering elder[6] abuse.[7]

In highlighting the hardships faced by older adults living in Canada, particularly those living in institutionalized settings such as long-term and personal care homes, the COVID-19 pandemic has caused many to turn their minds more keenly to the public health crisis that is elder abuse, and to question how and whether the Canadian provinces and territories are adequately ensuring the physical, psychological, social and financial wellbeing of older Canadians. This is certainly true of the Manitoba Law Reform Commission ("the Commission"), which, in this project, intends to shine a light on elder abuse in Manitoba, with an eye to ascertaining how Manitoba can do better to protect older persons who are at risk.

Specifically, this project will begin with a broad exploration of the abuse and neglect of older adults living in the community in Manitoba (i.e. those not living in institutionalized settings such as personal care homes).[8] In conducting this broad exploration, the Commission acknowledges

[1] Statistics Canada, *Age and sex, and type of dwelling data: Key results from the 2016 Census,* 2017, in *The Daily*, Catalogue No. 11-001-X2 (Ottawa: Statistics Canada, 7 May 2017) at 3 [*Key results from the 2016 Census*].
[2] Statistics Canada, "Population and demography statistics: Key Indicators" (last modified 19 January 2021), online: *Statistics Canada* <www.statcan.gc.ca/eng/subjects-start/population_and_demography>.
[3] *Key results from the 2016 Census, supra* note 1 at 5.
[4] While generally, "older adults" or "seniors" refer to anyone over the age of 65, this number varies across different jurisdictions and disciplines, ranging anywhere from age 50-65 and above.
[5] Roger et al, "Media Scan of Older Adults in Canada during COVID-19 Pandemic: Impacts on Abuse of Older Adults living in the Community" (2020), online (pdf): <cnpea.ca/images/%C2%A0/media_scan_of_older_adults_in_canada_during_the_covid-19_pandemic_may26-2020.pdf >.
[6] The word "elder", as used in the term "elder abuse" and elsewhere throughout this Paper, refers to someone who is chronologically older, and should not be confused with the Indigenous term "Elder." The term "Elder" is used in Indigenous culture to "[reflect] individuals who have attained a particular status of honour, wisdom and respect achieved within some [Indigenous] groups regardless of age" (see Kathi Wilson, Mark W. Rosenberg & Sylvia Abonyi, "Aboriginal peoples, health and healing approaches: The effects of age and place on health" (2011) 72 Social Science and Medicine 355-364 at 357). "Elder" is capitalized when used in this context to indicate honour or a title, and is not capitalized when used to mean someone who is chronologically older.
[7] Bhinder Sajan, "Tenfold increase in elder abuse during COVID-19 pandemic, advocates say", *CTV News* (14 April 2020), online: <https://bc.ctvnews.ca/tenfold-increase-in-elder-abuse-during-covid-19-pandemic-advocates-say-1.4896176>.
[8] Given the overwhelming impacts of COVID-19 on older adults residing in personal care homes and other institutionalized settings, the Commission has considered the possibility that the political, judicial or administrative

that elder abuse does not exist in a vacuum of age alone, and rather, that it may be the outcome of intersections of different power relations, experiences, and social locations such as race, ethnicity, sexual and gender identity, disability, religion, class etc.[9] The Commission recognizes that while there is little Canadian research which exists in relation to elder abuse generally, there is even less so dedicated specifically to the abuse of older persons belonging to minority groups such as the LGBTQ2 community, Indigenous community, immigrant and refugee community, and people with disabilities, among others. Logically it follows that this underrepresentation in the elder abuse discourse would carry over into discussions on how to prevent and manage elder abuse. This can ultimately result in approaches which fail to recognize other forms of oppression which may be at play, the unique impacts that these other forms of oppression can have on abuse, and thus the most appropriate mechanisms to address abuse.

While it is beyond the scope of this Paper to consider the unique circumstances facing each group when it comes to the abuse of older persons, it is acknowledged that there is intersectionality when it comes to different types of disadvantage, and the challenges facing those experiencing elder abuse is exacerbated when groups are dealing with multiple layers of marginalization and disadvantage. Recognizing that this is a limitation of this Paper, the Commission acknowledges that any future recommendations contemplated in the course of this multi-pronged project will need to be considered through this lens.

Against the backdrop of Manitoba's legal elder abuse landscape, this Paper will attempt to inform readers about the state of affairs in Manitoba with respect to elder abuse and neglect, touching on local elder abuse and neglect research studies which address matters such as the most prevalent types of abuse committed against older adults living in the community, risk factors associated with abuse and neglect, measures of elder abuse prevalence, and barriers to reporting abuse and neglect. This Paper will also outline legal and non-legal elder abuse resources currently available in Manitoba, setting the stage for future considerations by the Commission of how these resources might be supplemented or improved.

In releasing an initial Paper of this nature, the Commission's intention is not only to provide contextual information to readers, but also to identify the major areas of concern in Manitoba with respect to the study, prevention, treatment, and rectification of the abuse and neglect of older adults. With this in mind, the hope is that the Commission will be equipped in follow-up reports to identify the gaps in the laws, policies, and legal systems that are currently in place in Manitoba that address elder abuse and neglect, and ultimately to recommend mechanisms of law reform that can fill these gaps.

processes might address the issues of abuse and neglect in such institutionalized settings in the near future. As such, the Commission has decided to narrow the scope of this project to focus only on older adults living in the community, and to exclude older adults living in these institutionalized settings.

[9] Olena Hankivsky, *Intersectionality 101* (The Institute for Intersectionality Research & Policy, SFU, 2014) at 2.

Accordingly, this Consultation Paper invites readers to provide their comments on one broad issue for discussion: Manitoba's current efforts to address the abuse and neglect of older adults. This issue requires input from interested organizations and individuals so that the Commission can ultimately craft recommendations that will be practical and meaningful to those affected by any contemplated changes to policy or legislation.

Chapter 2 provides background material on elder abuse and neglect in Canada and within Manitoba specifically. Chapter 3 explores the legal landscapes of elder abuse and neglect in other jurisdictions. Chapter 4 summarizes the overarching issue for discussion, touching on important considerations that are intended to inform the Commission's ongoing exploration into the topic of elder abuse and neglect in its subsequent reports on this subject.

CHAPTER 2: BACKGROUND

There are many troubling forms of interpersonal violence within our contemporary society. Among these are homicide, genocide, human trafficking, bullying, child abuse, intimate partner violence, and elder abuse.[10] The focus in this Paper is on the latter of these issues, the mistreatment of older persons. This chapter provides background material on this particular form of abuse, including a review of its origins and development in the public health realm, academia, and the public consciousness, generally. This chapter also provides an overview of the legal and non-legal mechanisms that are currently in place in Manitoba to address elder abuse and neglect.

A. Origins and Definitions of Elder Abuse and Neglect

Following discoveries of child physical abuse, child sexual abuse, and spousal abuse in family violence research in the early 1960s and 70s, elder abuse, or "granny battering", as it was first known, was identified by scholars in the field of medicine in and around 1975.[11] In a brief letter to the editor of the British Medical Journal in that year, Dr. G.R. Burston urged the medical community to realize that similar to women and children, "elderly people too are at times deliberately battered."[12] Suggesting that the battering of older persons was a manifestation of the inadequate care offered by the medical profession both to older persons and to the family members tasked with "coping with them unaided and unsupported," Burston called on the medical community to "become as conscious of granny-battering as they [were then] aware of baby-battering."[13]

In 1978, elder abuse emerged further into the public consciousness when it was the subject of testimony before a United States House subcommittee investigating family violence. In her testimony, Suzanne K. Steinmetz of the Coalition of Family Organizations predicted that just as the 1960s was viewed as the decade of interest on child abuse, and the 1970s, the decade of wife abuse studies, "the generally increasing concern for the elderly and more specifically concern of abuse of elderly in public institutions" would make the 1980s "the decade of the Battered Parent."[14] Like Burston, Steinmetz linked the battering of older persons to the stresses placed on their unsupported caregivers. She explained:

> There are several parallels between the battered child and battered parent. First, both are in a dependent position – relying on their caretaker for basic survival needs. Second, both are assumed to be protected by virtue of the love, gentleness, and caring which we assumed that the family provides. A third point is both the dependent child and the

[10] Amanda Phelan, ed, *Advances in Elder Abuse Research: Practice, Legislation and Policy,* 24th ed (Cham, Switzerland: Springer Nature Switzerland AG, 2020) at 1.
[11] Manitoba Law Reform Commission, "Report on adult protection and elder abuse", Report 103, December 1999.
[12] GR Burston, "Granny-battering" (1975) 3 BMJ 592.
[13] *Ibid.*
[14] US, Senate Sub-Committee on Child and Human Development, 95th Cong, *Domestic Violence, 1978* (Washington, DC, US Government Printing Office, 1978) at 314.

> dependent elderly adult can be a source of emotional, physical and financial stress to the care-taker. While the costs of caring for one's children are at least a recognized burden, the emotional and economical responsibility for the care of one's elderly parents over a prolonged period (a problem not likely to be faced by most families in the past) has not been acknowledged.[15]

Based on population and economic trends of the time, Steinmetz speculated that the U.S would witness an increase in conflict between the needs of older parents and the goals of their caretaking children. This, she argued, would result in "an increase in the amount of violence children use to control their elderly parents unless adequate support systems [became] available."[16]

Around this same time, in the late 1970s, elder abuse began to emerge on the reform agenda in Canada as well, primarily due to the work of seniors' groups, caregivers, and gerontologists.[17] Reform efforts included the creation of special adult protection services, systems of support and advocacy for seniors and their caregivers, preventative abuse services, and major research projects.[18] In the legal realm, many Canadian provinces and territories started to witness the reform of adult guardianship and substitute decision-making legislation, and the creation of adult protection legislation. Among other things, this adult protection legislation was intended to provide needful adults with care and assistance, to relieve the pain and suffering of abuse or neglect, and to protect adults from financial exploitation.[19]

While in these early stages of study, much emphasis was placed on the hardships faced by the abusive caretaker, and abuse tended to be viewed as more of "an uncommon condition of neglect or physical harm to frail elderly persons", academics and professionals came to learn that elder abuse fits into a more widespread pattern of vulnerability among older persons.[20] Having said that, since its introduction into the public eye, defining elder abuse has proven to be difficult, given that definitions vary both between and within jurisdictions, and the various professional fields involved in the interdisciplinary elder abuse framework.[21] While there appears to be a general consensus as to the major underlying concepts and what constitutes the broad categories of elder abuse (physical abuse, sexual abuse, emotional/psychological abuse, financial abuse, and neglect), there does not appear to be one definition accepted by all.

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[15] *Ibid.*
[16] *Ibid* at 314-315.
[17] *Manitoba Law Reform Commission, supra* note 11 at 6.
[18] Robert M. Gordon, "Adult Protection Legislation in Canada: Models, Issues and Problems" (2001) 24 International Journal of Law and Psychiatry 117-134 at 117.
[19] *Ibid* at 131.
[20] Eloise Rathbone-McCuan, "Elder Abuse within the Context of Intimate Violence" (2000) 69:1 UMKC L Rev 215.
[21] Department of Justice Canada, "Legal Definitions of Elder Abuse and Neglect" (3 March 2015), online: <www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/elder-aines/def/p23.html>.

In accordance with the *Toronto Declaration on the Global Prevention of Elder Abuse* (the "*Toronto Declaration*") authored by the World Health Organization ("WHO"), the University of Toronto, and the International Network for the Prevention of Elder Abuse ("INPEA"), elder abuse is commonly recognized in Canada and elsewhere as "a single or repeated act, or lack of appropriate action, occurring in any relationship where there is an expectation of trust that causes harm or distress to an older person."[22] This characterization is based on the definition originally developed by a United Kingdom organization known as Action on Elder Abuse. It is used to describe elder abuse in Canada's latest National Seniors Strategy,[23] and forms the basis for definitions offered by organizations such as Age & Opportunity ("A & O")[24] and Prevent Elder Abuse Manitoba ("PEAM"),[25] two notable resources dedicated to the prevention and treatment of elder abuse in this province.

For instance, A & O defines elder abuse as "any action or inaction by a person in a relationship of trust which jeopardizes the health or well-being of an older person", including physical abuse, sexual abuse, emotional/psychological abuse, financial abuse and neglect.[26] PEAM adopts the *Toronto Declaration* definition, explaining further that elder abuse is mainly categorized as physical, financial, verbal, sexual, or emotional abuse. PEAM explains:

> Physical abuse is defined as the use of physical force that may result in bodily injury, physical pain, or impairment. Physical abuse may include such acts of violence as striking (with or without an object), hitting, beating, pushing, shoving, shaking, slapping, kicking, pinching, and burning. Inappropriate use of drugs and physical restraints, force-feeding, and physical punishment of any kind are also examples of physical abuse […]
>
> Financial abuse is the most common form of abuse of older adults. It can involve illegally or improperly using a person's money, assets, or property without the person's permission or knowledge. It is often a form of theft or fraud. Examples of financial abuse include:

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[22] World Health Organization, University of Toronto, and International Network for the Prevention of Elder Abuse, *The Toronto Declaration on the Global Prevention of Elder Abuse* (2002), online: <www.who.int/ageing/projects/elder_abuse/alc_toronto_declaration_en.pdf?ua=1>.

[23] National Institute on Aging, "An Evidence Informed National Seniors Strategy for Canada" (2020), online (pdf): *National institute on Aging: National Seniors Strategy* < nationalseniorsstrategy.ca/wp-content/uploads/2020/09/NSS_2020_Third_Edition.pdf>.

[24] Age & Opportunity provides direct elder abuse prevention services and receives referrals for consulting around elder abuse issues, one-on-one support and counselling, Safe Suite Program referrals, communication support group for older parents / grandparent, assistance with Protection Orders and more (see A & O Support Services for Older Adults, "Elder Abuse Prevention Services" online: <www.aosupportservices.ca/our-three-pillars/safety-security/elder-abuse-prevention-services/> [*A & O*]).

[25] Prevent Elder Abuse Manitoba is a partnership of Manitoba-based organizations dedicated to supporting regional and community initiatives to prevent abuse of older adults and to raise public awareness of elder abuse throughout the province (see PEAM, "About Us", online: < www.peam.ca/>).

[26] *A & O*, *supra* note 24.

> pressuring for money, goods or property; using property or money without the person's knowledge and consent; and misusing a power of attorney […][27]
>
> There is no universally accepted definition of emotional abuse. Like other forms of violence in relationships, emotional abuse is based on power and control. The following are widely recognized as forms of emotional abuse:
>
> - Rejecting: refusing to acknowledge a person's presence, value or worth; communicating to a person that she or he is useless or inferior; devaluing her/his thoughts and feelings
> - Degrading: behaviour which diminishes the identity, dignity and self-worth of the person.
> - Terrorizing: inducing terror or extreme fear in a person; coercing by intimidation; placing or threatening to place a person in an unfit or dangerous environment.
> - Isolating: physical confinement; restricting normal contact with others; limiting freedom within a person's own environment. Examples: excluding an older person from participating in decisions about her or his own life; refusing access to a person's own money and financial affairs; withholding contact with grandchildren; depriving a person of mobility aids or transportation.
>
> Sexual abuse is the non-consensual sexual contact with an older person. It can mean using coercion such as threats, force, deceptions or contact with elders who are unable to grant consent […]
>
> Verbal abuse is a pattern of behavior that can seriously interfere with the victim's positive emotional well-being and, over time, can lead to significant detriment to the victim's self-esteem, emotional well-being, and physical health.[28]

Outside of these forms of mistreatment, PEAM also notes that elder abuse can result from actions such as:

> Neglect and acts of omission: including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, or the withholding of the necessities of life, such as medication, adequate nutrition and heating; Discriminatory abuse: including racist, sexist, that based on a person's disability, and other forms of harassment, slurs or similar treatment. Institutional abuse: or the failure of an organisation to ensure necessary safeguards and good standards of care are in place to protect and support a vulnerable adult. This may include neglect and poor professional practice and may take the form of isolated incidents through to pervasive ill treatment or

[27] Another less commonly recognized form of financial abuse is predatory marriage: where a person takes advantage of another individual who has limited capacity and marries them for financial gain (see generally Dana Nelko & Amelia Peterson, "Predatory marriages" (12 May 2021), online (blog): *Fillmore Riley* <www.fillmoreriley.com/newsletter-articles/article/559/predatory-marriages>).
[28] PEAM, "Forms of Abuse", online: <www.peam.ca/Forms-of-Abuse>.

> gross misconduct at the other. Any or all of these types of abuse may be perpetrated as the result of deliberate intent, negligence or ignorance.[29]

Of the many sociological, psychological, cultural and societal factors which have been associated by scholars with an increased risk of elder abuse, some of the most commonly identified risk factors are stress related to caregiving, increasing dependency of older persons on their caregivers, social isolation, limited cognitive ability, mental illness, shared living accommodations, poverty, ageism, and the overuse or abuse of illicit drugs and/or alcohol by caretakers.[30] Other risk factors that have been associated with an increased potential for abuse include external stresses of caregivers, such as income and employment problems, and internal family dynamics, including unresolved filial crises.[31] However, given the complex dynamics surrounding elder abuse cases, there is no single set of factors which can account for all instances of mistreatment.[32]

In a Report from 1999 which focused on adult protection and elder abuse, the Commission touched upon the complexity of elder abuse cases, explaining that elder abuse "may be seen in terms of the interplay of multiple factors on four levels of interaction."[33] These include personal factors, interpersonal factors, situational factors, and sociocultural factors. The Commission explains,

> Personal factors include the older person's self-perception as helpless and dependent, whose problems magnify stress on the caregiving perpetrator. Interpersonal factors include unresolved past conflicts, power struggles, and a history of inadequate relationships with the perpetrator. Situational factors include the sandwich generation phenomenon in which a middle-aged caregiver provides for children and parents, as well as unemployment, substance abuse, marital problems, economic stress, the stress of constant care, and medical problems of both victim and perpetrator. Sociocultural factors include ageist evaluations of older persons as needful and as non-contributors to society. This reinforces personal factors including lack of self-esteem and self-evaluation. Ageism is also reflected in lack of attention to the problems of older adults. Related sociocultural factors include the reduced kinship obligations of the modern nuclear family and the wide geographical separation of family members.[34]

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[29] *Ibid.*
[30] Roger et al, "Under Reporting of Abuse of Older Adults in the Prairie Provinces: A Summary Report of Findings" (2020), online (pdf): <cnpea.ca/images/community_report_-_abuse_of_older_adults_living_in_the_community_in_the_prairies_june_10_2020.pdf>.
[31] E Villomare & J Bergman, "Elder Abuse and Neglect: A Guide for Practitioners and Policy Makers" (1981), (prepared for the Oregon Office of Elderly Affairs, National Paralegal Institute, San Francisco) cited in RS Wolf, "Elder Abuse: Ten Years Later" (1988) 36 J American Geriatrics Society 758-762 at 759.
[32] *Ibid* at 760.
[33] *Manitoba Law Reform Commission, supra* note 11 at 30.
[34] *Ibid.*

While this interplay of factors has resulted in rather inconclusive findings with respect to risk factors of abuse, studies have proven rather consistently that perpetrators of elder abuse are most often adult family members of the older person, including children, grandchildren, nieces, nephews, and siblings.[35] Other common perpetrators include spouses, acquaintances, neighbors and service providers.[36]

Having said that, data on the prevalence and determinants of the abuse of older adults in Canada is generally deemed to be inconsistent and minimal. In fact, some have noted that research on elder abuse in the Canadian Prairie provinces is particularly limited,[37] and others have gone so far as to say that "Canadian data are almost non-existent."[38] The following section will outline the few national and Manitoba-based studies focusing on the incidence of elder abuse. These studies, while limited, help to paint a picture of the elder abuse landscape in Canada, and the extent of the elder abuse problem.

B. Incidence of Elder Abuse and Neglect in Canada and Manitoba

With respect to national data on the prevalence of elder abuse and neglect, it appears that there are four main sources, out of which only two have a direct and specific focus on the treatment of older adults. The first two sources, both stemming from Statistics Canada, are the Uniform Crime Reporting Survey (the "UCR2"), and the General Social Survey (the "GSS").[39] Neither is specific to elder abuse, but they both touch on elder abuse among other types of victimization.[40]

The UCR2, which is a non-representative, incident-based survey that provides yearly updates on "criminal offenses that are reported, detected, and collected by police services across the country," provides "detailed information about the crime, including characteristics of victims and offenders and the nature of incidents."[41] This data is the basis for Statistics Canada articles and reports such as *Family violence in Canada; A statistical profile, 2018*, which appears to be the most recent report on elder abuse and victimization that utilizes this national data. It includes sections dedicated to police-reported intimate partner violence, family violence against children and youth, and family violence against seniors.[42] Among other things, this report reveals that in 2018, the most common perpetrator of family violence against seniors was the victim's child,

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[35] *Aging, Ageism and Abuse: Moving from Awareness to* Action, ed by Gloria Gutman & Charmaine Spencer (Elsevier Insights, 2010) cited in *Roger et al, supra* note 30 at 4.
[36] Lynn McDonald, "The mistreatment of older Canadians: findings from the 2015 national prevalence study" (2018) 30:3 Elder Abuse & Neglect 176-208 at 193.
[37] *Roger et al, supra* note 30 at 5.
[38] Christine A. Walsh & Yongjie Yon, "Developing an Empirical Profile for Elder Abuse Research in Canada" (2012) 24:2 Elder Abuse & Neglect, 104-119, 105.
[39] *Ibid* at 107-108.
[40] *Ibid.*
[41] *Ibid.*
[42] Statistics Canada, *Family violence in Canada: A statistical profile, 2018*, by Shana Conroy, Marta Burczycka & Laura Savage, Catalogue No 85-002-X (Ottawa: Statistics Canada, 12 December 2019).

followed by "other family members" such as grandchildren, nieces, nephews, and cousins, and in-laws.[43]

The GSS, which is "a more generalized national telephone victimization survey," provides periodic victimization cycles including data on "violence against seniors from spouse, ex-partners, adult children, and caregivers."[44] Overall, it measures three main types of self-reported violent victimization (sexual assault, robbery and physical assault), and four types of self-reported household victimization (break and enter, motor vehicle theft, household theft and vandalism).[45] Unlike the UCR2, the GSS "collects personal victimization experiences from a sample of the population regardless of whether they are reported to the police."[46]

This data is the basis for Statistics Canada's *Victimization of Older Canadians, 2009*, which appears to be the most recent report on elder abuse and victimization that utilizes this national data. Specifically, using the data from the 2009 GSS on victimization, this study "presents information on violent and household victimization as reported by Canadians aged 55 years and older living in the ten provinces during 2009."[47] This report reveals that in 2009, more than 154,000 Canadians aged 55 or older living in the 10 provinces reported being the victim of violence in the previous 12 months.[48]

While the UCR2 and GSS provide some useful data on the national prevalence of elder abuse and neglect, scholars have pointed out that these sources are limited in a number of ways. Specifically, with respect to the UCR2, they note that the data is dependent on the "willingness of victims to report to the police, the quality of the police report, as well as jurisdictional variation and changes in legislation, policies, or enforcement practices."[49] With respect to the GSS, they note that the data relies on the respondent's perceptions and ability to report events of violence, thus excluding some of our most vulnerable senior populations who are unable to report (i.e. those who do not have access to a phone, those who have physical or cognitive disabilities, or those who live in institutions).[50]

Aside from these two sources of data, there have been two major national surveys conducted on the prevalence of elder abuse in Canada. The first was conducted in 1989 by Elizabeth Podnieks, of the Ryerson Polytechnical Institute, and the second in 2015 by Lynn McDonald, through the National Initiative for the Care of the Elderly out of the University of Toronto.

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[43] *Ibid* at 48.
[44] *Walsh & Yon, supra* note 38 at 107-108.
[45] Statistics Canada, *Victimization of Older Canadians, 2009*, by Shannon Brennan, Catalogue 85-002-X (Ottawa: Statistics Canada, 8 March, 2012), at 6.
[46] *Walsh & Yon, supra* note 38 at 107-108.
[47] *Statistics Canada, supra* note 45 at 6.
[48] *Ibid* at 5.
[49] *Walsh & Yon, supra* note 38 at 107-108.
[50] *Ibid.*

Podniek's study, which was the first of its kind in Canada, arose out of the federal government's family violence initiative in 1988, under which the government promised to allocate 40 million dollars over four years to help address the problem of family violence in the country.[51] Carried out on just over 2,000 randomly selected 65-year old Canadians living in private dwellings, this was a national telephone survey which sought to measure the prevalence of material/financial abuse, chronic verbal aggression, physical violence, and neglect of older Canadians.[52] The study was unique in that "the data obtained [reflected] the actual feeling and attitudes of older Canadians, their lived experiences, rather than the perceptions of professionals and service providers who may come in contact with them."[53]

The 95-page report outlining the results of the study contains data illustrating the socio-demographic characteristics of survey respondents compared with the total population of older Canadian at that time, the health and activity levels of survey respondents, the social isolation indicators of survey respondents, comparisons of key variables of the victims of the four different types of abuse, and overall prevalence of elder abuse in Canada at that time. Ultimately, this study revealed that about 100,000 older persons in the country had recently suffered from one or more forms of abuse or neglect; that material or financial abuse accounted for more than one-half of the cases, and that "the problem of elder abuse in Canada is of significant magnitude to warrant increased attention by policy makers, social service and legal system representatives and researchers."[54]

McDonald's study, which took place 25 years after Podnieks', had four major goals:

1. To present the overall prevalence for aggregate elder abuse and neglect and for each of five subcategories of abuse (neglect, physical, sexual, psychological, and financial) in the Canadian population 55 years of age and older;
2. To present a sociodemographic, health, and social contact profile of participants;
3. To provide a bivariate analysis of those mistreated compared to those not mistreated; and
4. To estimate a model predicting elder mistreatment and the various subtypes of mistreatment.[55]

Like Podnieks' study, McDonald's was also a national telephone survey. However, McDonald's interviews were only completed in households that had one or more people 55 years of age or older.[56] In addition to providing updated data that better reflected the demographic structure of the Canadian population, McDonald's study is said to have advanced Podnieks' and other prevalence studies on elder abuse on several fronts. Specifically:

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[51] *National Survey on Abuse of the Elderly in Canada*, by Elizabeth Podnieks, (Ontario: Ryerson Polytechnical Institute, March 1990) at iii.
[52] *Ibid* at vii.
[53] *Ibid* at iii.
[54] *Ibid* at vii.
[55] *McDonald, supra* note 36 at 177.
[56] *Ibid* at 180.

1. It was preceded by a full, 2-year pilot study which focused on problems associated with conceptual definitions of mistreatment, theoretical difficulties, and issues of collecting valid and reliable data;
2. It was guided by a life course framework, which measured five types of elder abuse and their occurrence across the life course (childhood, young adulthood, and older adulthood);
3. Its methodology was developed to flexibly accommodate comparisons with the first Canadian study and with investigations in other countries;
4. Respondents in the study were not only asked to report mistreatment on the usual measures of mistreatment outlined in prevalence studies, but were also asked if they personally felt abused in order to test the several problems found in measuring mistreatment;
5. The covariates of mistreatment were somewhat different as a result of using a life course theoretical model and were suggestive of altered approaches to prevention; and
6. Several national workshops were held with major Canadian stakeholders representing policy, practice, research, older adults, caregivers, and government to help design the study and to determine its dissemination.[57]

Ultimately, this updated study revealed that in 2015, over 8 million older Canadians had suffered from abuse[58], and that emotional and financial abuse were the most common forms of abuse, and neglect, the least.[59] The report also revealed that the most common perpetrators of emotional and financial abuse were spouses, ex-spouses, children and grandchildren.[60] The results also address the gender of perpetrators and their average rates of mental health and drinking problems, the factors that might place older adults in danger of mistreatment (i.e. sociodemographic characteristics, functional capacity, living conditions, mistreatment over the life course, and family communication), and more.

McDonald recognized that there were certain limitations in her research, such as, for example, the possibility that the study "underestimated the true population prevalence in the community because those who were cognitively impaired, who did not have a landline or cellular telephone and who spoke any languages other than English or French were excluded."[61] However, despite these and other limitations, she concluded:

> [The] research in elder mistreatment has been advanced through providing the largest sample to date which will allow for more in-depth analysis along with the collected qualitative descriptions of mistreatment. The study will allow for more cross-national comparisons by contraction and expansion of the many measures that can be adjusted to match studies in other countries and previous studies in Canada. The study has introduced the importance of the life course perspective in elder mistreatment, as well as the

[57] *Ibid* at 189-191.
[58] *Ibid* at 189.
[59] *Ibid* at 189-191.
[60] *Ibid* at 192-193.
[61] *Ibid* at 202.

> significance of depression and the discrepancy between objective and subjective measures of maltreatment that requires more investigation.[62]

In Manitoba, there have been a handful of studies focusing on the incidence of elder abuse and neglect. For example, in 1982, Donna J. Shell conducted a study based on 105 interviews with public health nurses, social workers, psychiatric nurses, Victorian Order of Nurses, RN's in home care programs and hospital settings, police officers, doctors, lawyers, and clergy members.[63] Respondents were located within the Winnipeg, Central, Norman, Interlake, Parklands, Westman, and Eastman regions of Manitoba.[64]

Looking at the different types of abuse, Shell's research indicated that financial abuse was the most frequently encountered type of abuse of older persons, followed by psychosocial and physical. Her interviews revealed that the most common form of financial abuse, representing 50.4% of instances, involved cashing of an older person's pension/social insurance cheques and withholding the means for daily living necessities.[65] This was proceeded by trickery, fraud and misappropriated/misused property, which represented 10.3% of all instances of financial abuse. In terms of psychosocial abuse, the most common forms included derogation, humiliation, intimidation, infantilization, or any treatment diminishing identity, dignity, or self-worth (38.6% of instances).[66] This was followed by inadequate attention in terms of time, concern, and understanding of needs (17.5%), isolation (13.9%), and confinement (11.2%).[67] For physical abuse, physical assault accounted for 35.1% of instances, followed by withholding of food, at 11.7%, and rough handling, pushing, or shoving resulting in injuries or discomfort, at 11%.[68]

Shell's study also examined the characteristics of the victim and the abuser. With respect to the victim, her data revealed that the most frequently abused older person was a female aged 80-84 years, residing with a family member for 10 or more years.[69] With respect to the characteristics of the abusers, Shell's data revealed that 24.4% of all abusers of older persons identified in the study were unrelated caregivers while 75.6% were family members (of which 60% were males).[70]

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[62] *Ibid.*
[63] Benjamin Schlesinger & Rachel Schlesinger, *Abuse of the Elderly: Issues and Annotated Bibliography* (Toronto: University of Toronto Press, Scholarly Publishing Division, 2018) at 75.
[64] *Ibid.*
[65] *Ibid* at 80.
[66] *Ibid.*
[67] *Ibid.*
[68] *Ibid* at 80-81.
[69] *Ibid* at 81.
[70] *Ibid.*

Additionally, Shell asked participants to identify factors which, in their opinion and experience, were indicators of situations with a high risk of potential abuse for older persons. She asked them to consider both the high risk factors concerning the older individual themselves, as well as the high risk factors concerning caregivers. With respect to characteristics of the older persons, participants listed physical impairment, suspicious physical injuries, mental status, depression and anger of older persons as the top risk factors of abuse,[71] while listing alcoholism, financial stress, poor attitude toward aging and poor coping ability and emotional resources as the top risk factors related to caregivers. [72]

Ultimately, Shell noted that her study was "only a first step toward exploring the extent and nature of elder abuse."[73] She stated:

> More detailed and elaborate research in the area of elder abuse would be helpful for developing criteria for case identification, direction for planning intervention and prevention strategies, and providing a foundation for change in social policy or legislation. Thus, a major objective of future research should be the identification of effective means for isolating elder abuse cases. Hence, primary contributing factors or conditions in situations of abuse must be described with sufficient confidence to give professionals some guidelines in identifying potential cases. So also, the end product should be the identification of effective means for treating elder abuse and alleviating those conditions which appear to promote it.[74]

More recently, in 2007, in a Report entitled *Legislative Frameworks and Service Provision Regarding Abuse and/or Neglect of Older Adults in Manitoba,* Kerstin Roger and Jane Ursel outlined further statistics on the incidence of elder abuse and neglect in the province of Manitoba. Roger and Ursel were part of the University of Manitoba's Research and Education for Solutions to Violence and Abuse program ("RESOLVE"). Among other things, this program conducted the Winnipeg Family Violence Court ("FVC") Monitoring Project, which collected data on abuse cases related to older adults processed in the FVC since the Court's opening in 1990. Additionally, RESOLVE collected data on applications for Protection Orders in Winnipeg. The statistics on incidence of abuse and/or neglect of older adults in this report are based on these two sources of data. This data revealed the following:

> In the ten year period 1992-2002 […] there were 526 older adult abuse cases heard before the court which constitutes approximately 2.5% of the overall FVC caseload. The data includes 314 spousal abuse cases, 100 intergenerational abuse… and a category defined as "Other" including 112 cases involving a variety of relationships and/or multiple victim

[71] *Ibid* at 83.
[72] *Ibid.*
[73] *Ibid* at 84.
[74] *Ibid* at 84-85.

> or multiple accused dynamics. In the remaining four cases, the accused died before the court case was completed.[75]

In terms of the data on applications for protection orders in Winnipeg, the authors urge that it must be read with a great deal of caution, given that the statistics represented less than 5% of all protection order cases analysed by RESOLVE in the relevant time period. The authors explain:

> This data is extremely limited because the information in the files coded by RESOLVE almost never has the age of the applicant included. Out of thousands of cases analysed over the past five years, only 29 applications indicated that an older adult had applied for a Protection Order. However, we only had information on age in a couple of hundred cases.[76]

Having said that, this data provided the following limited information:

> Out of 29 applications, 20 applications (69%) were taken out against the intimate partners and ex-partners of the applicants, whereas 6 applications (21%) were taken out against children, grandchildren, or siblings; and, 3 applications (10%) were against neighbours, caregivers, co-workers or landlords. Fourteen of the 29 cases (48%) were described as involving emotional or psychological types of abuse, including unwanted communication (e.g. stalking). Six of the 29 applications (21%) appear to be due to physical abuse [.][77]

Further, in 2010, the University of Manitoba's Centre on Aging published a Profile of Manitoba's Seniors, "highlighting a wide variety of statistical information about Manitoba's older population," including information on elder abuse and victimization.[78] The statistics in this profile pertaining to elder abuse and neglect come from the former Manitoba Seniors and Healthy Aging Secretariat ("MSHAS") as well as from Age & Opportunity ("A & O").[79] The data focuses specifically on physical and sexual abuse, psychological abuse, financial abuse and neglect.

The MSHAS provided data on 1,162 phone calls made to its Seniors Abuse Referral Line during the period of April 1, 2006 to October 31, 2009.[80] This Abuse Referral Line was a "confidential information and referral service, whose goal [was] to provide seniors, family members, professionals, and others with information and referral on community resources on elder abuse

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[75] RESOLVE, University of Manitoba, "Legislative Frameworks and Service Provision Regarding Abuse and/or Neglect of Older Adults in Manitoba*"* (May 2007) at 9, online (pdf): <www.umanitoba.ca/centres/resolve/media/Manitoba_Elder_Abuse_Summary_Report_2007.pdf>.
[76] *Ibid* at 10.
[77] *Ibid.*
[78] Centre on Aging, University of Manitoba, "Profile of Manitoba's Seniors" (2010) at II, online (pdf): <digitalcollection.gov.mb.ca/awweb/pdfopener?smd=1&did=21552&md=1>.
[79] *Ibid* at 154.
[80] *Ibid* at 152.

available throughout the province."[81] This data revealed that the majority of calls came from the Winnipeg area,[82] were made by women,[83] and were made by individuals aged 80 and over.[84] The data further revealed that the most prevalent types of reported abuse were emotional abuse (40.1% of calls) and financial abuse (28.8% of calls),[85] and that the most common perpetrator of abuse was the older person's adult child (32.2%), followed by other family members (16.3%) and friends, landlords and neighbors (13.6%).[86]

Similarly, A & O provided data regarding program clients who sought assistance in situations of abuse for the period April 1, 2006 to March 31, 2009, with a total of 1,754 program clients during this period.[87] This data revealed that females consistently reported elder abuse more frequently than males,[88] that emotional abuse and financial abuse were the most common forms of reported abuse,[89] and that adult children were the most commonly reported perpetrators of abuse.[90]

Finally, data collected in an active tri-provincial research study on the underreporting of elder abuse in Manitoba, Alberta and Saskatchewan has yielded additional findings on prevalence of abuse in Manitoba. So far, relying on data collected by A & O, this study has revealed:

> In 2014-2019, females again made up about 80% of older adults who reported abuse during that period […]
>
> The most prevalent type of abuse reported from 2005-2019 was financial and psychological (emotional) abuse. For instance, in 2005-2006, financial abuse was recorded as 59%, and psychological abuse was recorded as 55% of recorded abuses. In 2018-2019, financial abuse recorded 44%, and psychological abuse was recorded as 30% of the entire abuse reported that period.
>
> The most prevalent perpetrators of abuse of older adults, according to this data, were adult children (e.g., sons and daughters). However, adult sons tend to be the more frequent abusers of older adult abuse. In 2014-2015, 41% of victims lived with perpetrators, and 39% lived alone. However, in 2018-2019, 41% of victims lived with perpetrators, and 46% lived alone.[91]

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[81] *Ibid.*
[82] *Ibid* at 153.
[83] *Ibid.*
[84] *Ibid.*
[85] *Ibid.*
[86] *Ibid* at 154.
[87] *Ibid.*
[88] *Ibid.*
[89] *Ibid* at 156.
[90] *Ibid* at 157.
[91] *Roger et al, supra* note 30 at 15-16.

C. Elder Abuse and Neglect Resources in Manitoba

There are a number of organizations, agencies and resources within Manitoba which aid in the study, prevention, management, and rectification of community elder abuse. These resources include research hubs such as the University of Manitoba's Centre on Aging, which is dedicated to the general study of aging; agencies such as Klinic Community Health, which offers a Senior's Abuse Support telephone line and A & O, which offers a broad range of services targeted at older adults living in the community; home care programs offered by Manitoba's five Regional Health Authorities, designed to promote independent yet supported living; and organizations like the Manitoba Association of Seniors Centres ("MASC"), designed to facilitate communication, networking and planning among senior centres. Other resources include the various Support Services to Seniors programs, Senior Community Resource Councils and Seniors Resource Finders throughout Manitoba, which offer and provide referrals to a variety of programs within the community that support the well-being and independence of older adults. Further, Manitoba benefits from certain outreach services such as the Winnipeg Regional Health Authority's Geriatric Mental Health Teams ("GMHT") and Geriatric Program Assessment Teams ("GPAT").

The University of Manitoba's Centre on Aging "generates, supports, and promotes interdisciplinary research on aging at Manitoba universities to improve the lives of older adults, their family, caregivers, and communities."[92] In focusing on research topics such as age-friendliness, caregiving, health and wellbeing of older adults, and health support/service use, the Centre is contributing to the provincial and national discussion on aging and on the needs and issues affecting older adults, including issues surrounding elder abuse.

The Seniors Abuse Support Line offered by Klinic Community Health is a telephone line operated by counsellors who can offer support to older adults who may be experiencing abuse or neglect. Often, these counsellors refer callers to outside elder abuse resources such as A & O, which is one of Manitoba's most comprehensive senior serving agencies.

A & O is "a not-for-profit organization that provides specialized services for older Manitobans across the province."[93] Its goal is to empower and support older adults in the community, to enhance their social, emotional, physical, intellectual and spiritual lives, and to promote active participation in all aspects of community life through advocacy, education and service delivery.[94] A & O provides three categories of services falling under what it refers to as its three foundational pillars: (1) safety and security; (2) social engagement; and (3) counselling

[92] University of Manitoba, "Our Mission", online: <umanitoba.ca/centre-on-aging/>.
[93] A & O Support Services for Older Adults, "About A & O: Support Services for Older Adults", online: <www.aosupportservices.ca/about-us/>.
[94] *Ibid*.

services.[95] Of particular interest to the Commission in connection with this project is the first of these pillars, under which A & O offers elder abuse prevention services, older victim services, and its "safe suite" program. These services aid in the prevention, management, and rectification of elder abuse in Manitoba.

A & O's elder abuse prevention services are available to Manitobans 55 years of age and older experiencing physical, sexual, financial, and/or emotional/psychological abuse and neglect by family members, friends or others in a position of trust.[96] These services include counselling regarding the abuse itself and options available to the older adult, referrals to appropriate community resources, consultation and referral for family members, support groups, assistance accessing crisis accommodations and legal services, and other information and education programming.[97] In connection with these services, A & O also offers the Safe Suite program, which is a free service which "provides temporary housing for men, women and couples, 55 years or older who are in need of a safe place to stay due to abuse or neglect and whose needs cannot be effectively met by existing abuse/crisis services."[98] A & O also works in partnership with the Winnipeg Police Service ("WPS") to help individuals over the age of 60 who are victims of crime.[99] Specifically, A & O and the WPS provide:

- Emotional support - an opportunity to talk about the experience;
- Information on the progress of the police investigation;
- Assistance navigating the Criminal Justice System;
- Information about the recovery and return of stolen property;
- Assistance in applying for compensation for injuries;
- Practical tips for personal and home safety; and
- Referrals to other community resources, including A & O's Programs and Services.[100]

From time to time, A & O also offers specialized training for caregivers of older adults. For example, in April and May of 2021 it offered a 6-week, online, evidence-based course entitled "Powerful Tools for Caregivers", which is meant to "help caregivers improve self-care behaviours, emotional management and self confidence by giving them the skills to take care of themselves while caregiving for someone else."[101] By providing these coping tools to caregivers,

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[95] A & O Support Services for Older Adults, "Our Three Pillars", online: <www.aosupportservices.ca/our-three-pillars/>.
[96] *A & O, supra* note 24.
[97] *Ibid*.
[98] A & O Support Services for Older Adults, "Safe Suite", online: <www.aosupportservices.ca/our-three-pillars/safety-security/safe-suite/>.
[99] A & O Support Services for Older Adults, "Older Victim Services", online: <www.aosupportservices.ca/our-three-pillars/safety-security/older-victim-services/>.
[100] *Ibid*.
[101] A & O Support Services for Older Adults, "Powerful Tools for Caregivers", online: <www.aosupportservices.ca/2021/03/23/powerful-tools-for-caregivers/>.

such training might help to prevent the abuse of older adults by caregivers who are burnt out, frustrated, overwhelmed, and thus more likely to become abusive.[102]

Other resources in Manitoba which help to prevent the abuse and neglect of older adults living in the community are the home care programs offered by Manitoba's five regional health authorities: the Winnipeg Regional Health Authority ("WRHA"), the Interlake-Eastern Regional Health Authority ("IERHA"), Prairie Mountain Health ("PMH"), the Northern Regional Health Authority ("NRHA") and Southern Health-Santé Sud ("SHSS"). Each Region's respective community-based home care program provides essential in-home support to individuals living in Manitoba who require health services or assistance with activities of daily living.[103] They do so by offering a variety of home care services.

The WRHA's Home Care Program, for example, which was established in 1974, is mandated to "provide effective, reliable and responsive community health care services to support independent living, develop appropriate care options with clients and/or family and facilitate admission into long term care facilities when living in the community is no longer possible."[104] The specific services offered through this program include:

- Personal care;
- Nursing;
- Counseling/Problem Solving;
- Household assistance;
- Respite/Family Relief;
- Occupational Therapy Assessment;
- Physiotherapy Assessment;
- Referral to other agencies;
- Coordination of internal and external services in the community; and
- Assessment for long term care and specialty services such as the Adult Day program, Companion Care program and Supportive Housing program.

[102] *Roger et al, supra* note 30 at 4.
[103] Winnipeg Regional Health Authority, "Home Care", online: <wrha.mb.ca/home-care/> [WRHA], Interlake Eastern Regional Health Authority, "Home Care", online: <www.ierha.ca/default.aspx?cid=17988&lang=1> [IERHA], Prairie Mountain Health, "Home Care Program", online: <www.prairiemountainhealth.ca/home-care-program> [PMH], Northern Health Region, "Home Care", online: <northernhealthregion.com/programs-and-services/continuing-care/home-care/> [NRHA], and Southern Health, "Home Care", online: <www.southernhealth.ca/en/finding-care/find-a-service/home-care/> [SHSS].
[104] *Ibid*, WRHA.

Similar services are offered by the four other Regional Health Authority home care programs, including the provision of medical equipment and supplies to support the provision of care at home, provision of meal programs, provision of palliative care services, and more.[105]

These home care programs contribute to the prevention and management of elder abuse and neglect by enabling older adults to live independently in their homes, with the assurance that their needs will consistently be met and their safety maintained. In providing regularly scheduled services to older adults in accordance with their individualized care plans, these programs act as a safeguard against abuse and neglect. They do so by ensuring that someone other than a family member, friend, or acquaintance in a caregiving position (those who are most likely to abuse or neglect an older adult[106]) maintains regular contact with the older adult, such that they may detect if the older adult is in distress or in need of assistance.

MASC is another resource in Manitoba which contributes to the prevention and management of the abuse and neglect of older adults. It does so by supporting senior centres, which MASC describes as "health promoting, capacity building, and community focal points on aging where older persons come together for services and activities that enhance their dignity, support their independence and encourage their involvement in and with the community."[107] More specifically, MASC works to support Manitoba senior centres so that they may achieve the following outcomes:

- Empowerment with a sense of health, defined as "the capacity of people to adapt to, respond to, or control life's challenges and changes" (Institute of Health Promotion Research, UBC);
- Decrease or preclude entry into formal health services;
- Reduce social isolation and depression;
- Prevent falls;
- Delay dementia;
- Access at a one-stop site many different needs;
- Encourage independence;
- Affirm one's own dignity and self-worth;
- Develop strengths; and
- Reaffirm that aging is a normal developmental process.[108]

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[105] IERHA, PMH, NRHA, and SHSS, *supra* note 103.
[106] *Aging, Ageism and Abuse: Moving from Awareness to* Action, ed by Gloria Gutman & Charmaine Spencer (London: Elsevier Insights, 2010) cited in *Roger, supra* note 27 at 4.
[107] Manitoba Association of Seniors Centres, "Welcome to MASC", online: <www.manitobaseniorcentres.com>.
[108] Manitoba Association of Seniors Centres, "Benefits/Outcomes", online: <www.manitobaseniorcentres.com/about-us/benefitsoutcomes/>.

One component of MASC which is particularly relevant to the prevention of abuse and neglect of older adults is its focus on educational programming regarding seniors' issues and needs. In supporting senior centres so that they may offer educational programming of this nature, covering topics such as powers of attorney, financial abuse, and more, MASC helps to provide older adults with the knowledge and tools to recognize and even avoid abusive situations.

For instance, in partnership with the RCMP and WPS, MASC helped to create the Police Academy – Older Adult Division program, which is designed to "inform 'students' on safety and security issues that benefit their overall well-being [...]"[109] Program topics include "Elder Abuse, Planning for your Future, Personal Safety, Frauds & Scams, Fall Prevention & Medication Safety."[110] Other topics addressed in this program may include "Emergency Preparedness, Fire Safety, Safe Banking Practice, Substance & Gambling Abuse, Safe Driving, & Scooter Safety."[111] The program is guided by a step-by-step program package created by MASC and other participating senior-serving agencies, which is intended to instruct potential program hosts on how to organize the program. The hope is that local law enforcement participate in the program as hosts in some capacity.[112]

Aside from this educational component, MASC also helps to prevent and manage elder abuse and neglect by simply providing older adults with a place where they may go to socialize with others, thus avoiding isolation and reducing the likelihood of abuse.[113]

Similarly, Support Services to Seniors is another valuable program which aids in the prevention, management, and rectification of community elder abuse through its promotion of education, socialization, and independent living. Offered throughout the province by Manitoba's various Regional Health Authorities, Support Services to Seniors "promotes healthy living and assists older adults by supporting community-based services and programs" offered by different community agencies.[114] These community agencies include Support to Seniors in Group Living ("SSGL")[115], regional Seniors Community Resource Councils[116], and Seniors Resource finders,

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[109] Manitoba Association of Seniors Centres, "Police Academy Older Adult Division", online (pdf): <www.manitobaseniorcentres.com/wp-content/uploads/2017/11/PA-Info-For-Web2.pdf>/
[110] *Ibid.*
[111] *Ibid.*
[112] *Ibid.*
[113] *Roger et al, supra* note 30 at 4.
[114] Winnipeg Regional Health Authority, "Support Services to Seniors", online: <www. wrha.mb.ca/support-services-to-seniors/>.
[115] SSGL offers "enhanced supports…within some designated existing seniors housing at no charge to tenants, with a goal of keeping people as independent as possible, for as long as possible" (see Health, Seniors and Active Living Manitoba, "Aging in Place", online: <www.gov.mb.ca/health/aginginplace/>).
[116] Seniors Community Resource Councils, which are located throughout Manitoba in accordance with the five Regional Health Authorities, are non-profit community based organizations which offer a variety of community programming intended to support the independence of older adults (see Seniors and Healthy Aging Manitoba, "Community Support/Resources for Seniors", online: <www.gov.mb.ca/seniors/community/index.html>.)

among others[117]. Services and programs offered through Support Services for Seniors include congregate meal programs, companion and/or transportation services, referral to volunteer opportunities and support groups, home maintenance services such as laundry, housekeeping and snow removal, assistance with errands and grocery shopping, assistance with legal affairs, health and wellness programming, and access to Emergency Response Information Kits ("ERIK").[118]

In addition to these services and programs, the various Regional Health Authorities throughout the province also offer a range of mental health services to Manitobans. However, some offer more comprehensive mental health services tailored specifically towards older persons. Of particular note is the Winnipeg Regional Health Authority's Geriatric Mental Health Teams ("GMHT") and Geriatric Program Assessment Teams ("GPAT").

The GMHT is a team composed of geriatric psychiatrists, clinical nurse specialists, psychiatric nurses, occupational therapists and social workers, who provide in-home assessments to people age 65 and older with first onset of mental illness or lifelong mental illness requiring specialized geriatric services.[119] These assessments evaluate "memory, mood, mental health issues and emotional and behavioral complications of brain disease on a non-emergent basis."[120] The GMHT also provides "recommendations, short term intervention, consultation to care providers, education and support, and connection with resources."[121]

Similarly, the GPAT is a team composed of geriatricians, nurses, occupational therapists, physical therapists, and social workers who provide in-home and in-hospital assessments and consultations to people age 65 and older. However, the GPAT assesses other areas of geriatric health and daily functioning such as "mobility/falls, activities of daily living (dressing, grooming, etc.), toileting, memory, mood, medication management, and social supports."[122] Like the GMHT, the GPAT provides recommendations, short term intervention, consultation to care providers, education and support, and connection with resources."[123]

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[117] Seniors Resource Finders offer "information on meal programs, health services, transportation options, home maintenance, recreational opportunities, housing options, and referrals to other resources in the community" such as home care, rental assistance, health services, home maintenance, legal affairs, etc. (see A & O, "Seniors Resource Finders", online: <www.aosupportservices.ca/resources/seniors-resource-finders/>).
[118] Northern Health Region, "Services to Seniors", online: <northernhealthregion.com/programs-and-services/continuing-care/home-care/services-to-seniors/>, Southern Health, "Community Senior Services", online: <www.southernhealth.ca/en/finding-care/care-by-topic/care-in-your-home/community-senior-services/>, Prairie Mountain Health, "Services to Seniors", online: <prairiemountainhealth.ca/services-to-seniors>, and Interlake-Eastern Regional Health Authority, "Services to Seniors", online: <www.ierha.ca/default.aspx?cid=6124&lang=1>.
[119] Winnipeg Regional Health Authority, "Outreach Services", online: <wrha.mb.ca/rehabilitation/outreach-services/>.
[120] *Ibid.*
[121] *Ibid.*
[122] *Ibid.*
[123] *Ibid.*

Like the home care programs offered throughout Manitoba, home visits by the GMHT and GPAT can help to prevent and remedy abuse and neglect. They do this both by enabling objective third parties other than an older person's primary caregivers to assess their well-being, and by ensuring that older persons are receiving the necessary care and supports to meet their special needs. Moreover, the collective expertise of the members of these teams in the area of geriatric health and wellness place these interdisciplinary teams in a strong position to assess whether an older person might be a victim of abuse or neglect.

Prior to 2017, older adults in Manitoba also benefited from a Seniors and Healthy Aging Secretariat, which was a "central point of contact within government for seniors, their families and seniors organizations" such as the organizations mentioned above.[124] This department, which, in December 2004, replaced the former Manitoba Seniors Directorate, was part of the department of Manitoba Health under the umbrella of healthy/active living, healthy aging, and seniors. Focusing on "program and policy delivery across departments to improve access to public services," the Secretariat "[worked] with the seniors community to identify and address issues and concerns." [125]

Part of the Secretariat's mandate was the facilitation of the multidisciplinary Elder Abuse Strategy developed by Manitoba in 2002, which was made up of a number of key components, including a Senior's Abuse Support Line, education and awareness campaigns, the development of community-based response and monitoring teams, and of particular note, a full-time consultant focused exclusively on the abuse of older adults in Manitoba.[126] This provincial elder abuse consultant "[worked] throughout Manitoba providing education and training to various groups […reviewed] and [developed] policy, [supported] community development efforts and [worked] closely with partners to ensure elder abuse support services [were] available and accessible."[127] With the transition of the Seniors and Healthy Aging Branch into the department of Health, Seniors and Active Living in 2016, this consultant position and the Secretariat under which it operated were essentially dissolved, resulting in a more generalized Seniors-centred branch of Manitoba Health which lacks the same capacity to holistically address issues surrounding elder abuse.

While the aforementioned resources are available to older adults who may be experiencing abuse or neglect in Manitoba, there are concerns that many older adults in need of these services are not utilizing them. This may be because they are not aware that these resources even exist, because they are unaware that they are in an abusive situation, or because they are either

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[124] Legislative Assembly of Manitoba, *Debates and Proceedings*, 38-3, vol LVI, No 40 (3 May 2005) at 2271 (Hon. Theresa Oswald).
[125] *Ibid.*
[126] Manitoba, *House of Commons Debates*, 37-3, No 49 (17 June 2002) at 17:40 (Mr. Doug Martindale).
[127] Age Friendly Manitoba, "Manitoba Elder Abuse Strategy", online (pdf): <digitalcollection.gov.mb.ca/awweb/pdfopener?smd=1&did=20888&md=1>.

unwilling to accept that they are in an abusive situation or are uncomfortable disclosing that they are in an abusive situation. It may also be because they are living in rural or remote settings which have fewer resources available to community members and which make it more challenging for community members to seek out the services which are available in other areas of the province. This may indicate a need in Manitoba to increase and improve upon educational programming and public awareness regarding abuse and neglect of older adults; to increase efforts to promote reporting and disclosure of abuse by older adults, and to increase elder abuse programming and resources in rural and remote areas of the province. However, in light of the relatively few resources available in Manitoba to address the abuse and neglect of older adults, and the gap which now exists in our provincial government in light of the dissolution of the Seniors Secretariat and elder abuse consultant, there are also concerns that Manitoba might not be adequately prepared to address the potential influx of elder abuse and neglect cases which could come with additional education and public awareness.

D. The Legal Landscape of Elder Abuse and Neglect in Manitoba

Despite the valuable resources that do exist in Manitoba, it is clear that the problem of elder abuse and neglect is serious and one which requires more attention, and perhaps, more legal intervention. While there are a number of pieces of legislation in Manitoba that may help to guard against the abuse and neglect of older adults living in the community incidentally, these Acts tend to aim more generally at protecting groups of vulnerable adults, which *may*, and often do, include older individuals. They do not specifically address the issue of elder abuse.

In both 2015 and 2016, Mr. Cliff Graydon, the then-Emerson MLA, tabled Private Member's Bills, which, had they made it passed their second readings, would have created specific elder abuse legislation in Manitoba. In addition to explicitly defining "elder abuse", Bill 213, *The Seniors' Rights and Elder Abuse Protection Act*, and Bill 205, *The Seniors' Rights and Elder Abuse Protection Act*, would have done the following:

1. Establish a bill of rights for Manitoba's seniors;
2. Establish an elder abuse protection team;
3. Impose a duty to report elder abuse;
4. Prohibit reprisals for reporting elder abuse;
5. Permit information sharing about elder abuse with the Adult Abuse Registry Committee, the minister responsible for *The Protection for Persons in Care Act*, and the executive director appointed under *The Vulnerable Persons Living with a Mental Disability Act*;
6. Make it an offence to make a false report; and
7. Require the minister to table annual reports in the Assembly.[128]

[128] Bill 213, *The Seniors' Rights and Elder Abuse Protection Act*, 4th Sess, 40th Leg, Manitoba, 2015, Explanatory Note (first ereading 9 June 2015).

However, these Bills did not proceed for a number of reasons, including, among others, the anticipated need to involve numerous government departments in their implementation, and thus the significant resources and investments which would be required; and the lack of clarity regarding how they would improve the elder abuse protocols already in place in the province of Manitoba.[129]

While there are no pieces of Manitoba legislation which explicitly set out to protect Manitoba's older population, it is clear that the safeguards established by the more general Acts which do exist extend to older Manitobans who, in their older age, become more prone to the ailments and conditions that make adults "vulnerable," as that term is understood throughout the relevant legislation (e.g. physical disability requiring health care and medical treatment, mental disability, disordered thinking, perception or memory, impaired ability to meet the ordinary demands of life, etc.). These legislative schemes include:

- *The Adult Abuse Registry Act*, C.C.S.M. c A4;
- *The Vulnerable Persons Living with a Mental Disability Act,* C.C.S.M. c V90;
- *The Mental Health Act*, C.C.S.M. c M110;
- *The Powers of Attorney Act*, C.C.S.M. c P97;
- *The Health Care Directives Act,* C.C.S.M. c H27;
- *The Domestic Violence and Stalking Act*, C.C.S.M. c D93; and
- *The Human Rights Code,* C.C.S.M. c H175.

The Adult Abuse Registry Act

The Adult Abuse Registry Act ["*AARA*"] establishes a registry in which the names of individuals responsible for the abuse or neglect of specified adults is displayed. The Adult Abuse Registry Committee, which is also created under this Act, is responsible for reviewing reports of abuse or neglect of specified adults, determining whether abuse or neglect has occurred, and determining whether the person responsible for the abuse or neglect should be entered in the Adult Abuse Registry.[130] The Act is intended "to help protect vulnerable adults by allowing employers to screen potential employees and volunteers who want to work with vulnerable people."[131]

Under the *AARA,* abuse and neglect is defined in relation to adults who are considered vulnerable persons under *The Vulnerable Persons Living with a Mental Disability Act* ["*VPA*"], and in relation to specified adults under any other Act that is considered a designated Act in the regulations to this legislation.[132] The only other designated Act in the regulations to this legislation is *The Protection for Persons in Care Act* ["*PPCA*"], under which "patients" are the

[129] Bill 205, *The Seniors' Rights and Elder Abuse Protection Act*", second reading, *Legislative Assembly of Manitoba Debates and Proceedings*, LXVIII, 23A (3 March 2016), 786.
[130] *The Adult Abuse Registry Act*, SM 2011, c. 26, s 21(1) [*AARA*].
[131] Province of Manitoba, "Adult Abuse Registry", online: <www.gov.mb.ca/fs/adult_abuse_registry.html>.
[132] *AARA*, *supra* note 130 at s 1.

"specified adults."[133] Accordingly, the *AARA* specifically protects vulnerable adults and adult patients from abuse and neglect, as those terms are understood in the respective legislation. As adult patients under the *PPCA* are adults living in institutionalized settings, and the focus of this Paper is on older adults living in the community, as opposed to in institutionalized settings, the following brief description of the *AARA* is limited to the treatment of vulnerable adults under the *VPA*.

Under the *VPA*, abuse and neglect are defined as:

> Abuse: The mistreatment, whether physical, sexual, mental, emotional, financial or a combination thereof, that is reasonably likely to cause death, or that causes or is reasonably likely to cause serious physical or psychological harm to a vulnerable person, or significant loss to his or her property; and
>
> Neglect: An act or omission whether intentional or unintentional, that is reasonably likely to cause death or that causes or is reasonably likely to cause serious physical or psychological harm to a vulnerable person, or significant loss to his or her property.[134]

Accordingly, the *AARA* protects vulnerable adults from abuse and neglect by tracking individuals who are known to be abusive or neglectful toward them, and preventing them from working and/or interacting with these vulnerable populations in the future and committing further wrongdoings against them.

The Vulnerable Persons Living with a Mental Disability Act

The *VPA* "promotes and protects the rights of adults living with a mental disability who need assistance to meet their basic needs."[135] Through the development of individual plans for vulnerable persons and the provision of support services such as residential service, counselling, day services, vocational training, and life-skills programs, the *VPA* enables vulnerable persons to meet their own basic needs in an independent, yet supported manner.[136] It also provides for protection and emergency interventions for vulnerable persons where necessary,[137] and substitute decision making for the vulnerable person regarding their personal care or the management of their property, where they are unable to make those decisions for themselves.[138]

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[133] Man Reg 115/2017, s 1.
[134] *The Vulnerable Persons Living with a Mental Disability Act*, SM 1993, c. 29, s 1(1) [*VPA*].
[135] Province of Manitoba, "The Vulnerable Persons Living with a Mental Disability Act", online: <www.gov.mb.ca/fs/pwd/vpact.html#:~:text=On%20October%204%2C%201996%2C%20The%20Vulnerable%20Persons%20Living,who%20need%20assistance%20to%20meet%20their%20basic%20needs.> ["MB gov"].
[136] *Ibid.*
[137] *VPA*, *supra* note 134 at Part 3.
[138] *Ibid* at Part 4.

A "vulnerable person" is defined as "an adult living with a mental disability who is in need of assistance to meet his or her basic needs with regard to personal care or management of his or her property."[139] "Mental Disability" is defined as "significantly impaired intellectual functioning existing concurrently with impaired adaptive behaviour and manifested prior to the age of 18 years, but excludes a mental disability due exclusively to a mental disorder as defined in section 1 of *The Mental Health Act* ["*MHA*"]."[140]

For purposes of this Paper, Part 3 of the *VPA*, which focuses on protection and emergency intervention, is of particular interest. Part 3 not only establishes a duty in service providers, substitute decision makers and committees "to take all reasonable steps to protect the vulnerable person in respect of whom he or she is a service provider, substitute decision maker or committee from abuse or neglect,"[141] but it creates a general duty in every person to report any reasonable belief that a vulnerable person is, or is likely to be abused or neglected.[142] If such a report is made, the *VPA* empowers the Executive Director to investigate the claims of abuse or neglect and to take such action to protect the vulnerable person as the Executive Director considers appropriate, where a finding of abuse or neglect or a reasonable likelihood or abuse or neglect is made.[143] Such protective action may include:

> (a) providing or arranging for support services for the vulnerable person in accordance with Part 2 [of the Act];
> (b) requesting an investigation by a law enforcement agency with jurisdiction respecting the matter;
> (c) taking emergency intervention action under section 26 [of the Act];
> (d) applying for the appointment of a substitute decision maker under subsection 47(1) or 82(1) [of the Act];
> (e) applying for an emergency appointment of a substitute decision maker, or, for suspension or variation of an appointment on an emergency basis under Division 6 of Part 4 [of the Act];
> (f) applying for termination of the appointment of a substitute decision maker, replacement of a substitute decision maker or variation of an appointment under Division 7 of Part 4 [of the Act].[144]

Moreover, the Executive Director may report a matter to an individual's professional governing body if the Executive Director believes on reasonable grounds that that individual abused or neglected a vulnerable person, or failed to report the abuse or neglect of a vulnerable person in accordance with the abovementioned duty.[145] The Executive Director must report the name of the

[139] *Ibid* at s 1(1).
[140] *Ibid*.
[141] *Ibid* at s 20.2.
[142] *Ibid* at s 21(1).
[143] *Ibid* at ss 22, 25.
[144] *Ibid* at s 25.
[145] *Ibid* at s 25.1(1).

person to that person's employer, manager or supervisor if after an investigation, the Executive Director concludes that the individual abused or neglected a vulnerable person, and that person's employment duties involve the care or provision of support services or other assistance to a vulnerable person, or permits unsupervised access to vulnerable persons.[146] Finally, the Executive Director must provide a report on the matter to the Adult Abuse Registry Committee if after investigation, the Executive Director concludes that a person abused and/or neglected a vulnerable person, if that person meets the criteria set out in the regulations, and if there are no extenuating circumstances as set out in the regulations.[147]

Part 4 of the Act, which addresses substitute decision makers for the personal care and management of a vulnerable person's property, is also of particular interest to the Commission in this elder abuse research initiative, as it creates protections for vulnerable persons, including older vulnerable persons, against neglect and financial abuse. Specifically, it establishes a monitored system through which a vulnerable person may be assisted in making life decisions where the vulnerable person is:

1. Not able to understand information that is relevant to making a decision concerning his or her own health care, or his or her own physical, emotional, psychological, residential, educational, vocational or social needs, or similar needs, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of a decision;[148] or
2. Not able to understand information that is relevant to making a decision in the management of his or her property, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of a decision.[149]

In order to protect the rights of vulnerable people to make their own decisions in a manner that respects their independence, privacy and dignity, the *VPA* creates a Vulnerable Persons' Commissioner, to whom applications for substitute decision making must be made.[150] This Commissioner is not only responsible for determining whether the appointment of a decision maker is appropriate, but for monitoring the actions of those substitute decision makers where they are appointed, to ensure that the rights of the vulnerable person are being maintained.[151]

If the Commissioner is satisfied, based on a preliminary investigation, that a substitute decision maker ought to be appointed, the Commissioner must establish a hearing panel to consider the vulnerable person's needs and capabilities and to make recommendations to the Commissioner

[146] *Ibid* at s 25.2.
[147] *Ibid* at s 25.3(1). As per s 1.1 of the *Vulnerable Persons Living with a Mental Disability Regulation*, Man Reg 208/96, extenuating circumstances include where the abuse or neglect occurred because the person was not properly trained.
[148] *Ibid* at s 46.
[149] *Ibid* at s 81.
[150] MB gov., *supra* note 135.
[151] *Ibid.*

regarding the appointment.[152] This hearing panel must then conduct an investigation of its own to determine whether the appointment of a substitute decision maker is appropriate, and where it determines that it is, the hearing panel must select the appropriate decision maker, determine the powers the decision maker should be granted, and the duration, terms and conditions of the appointment of that decision maker.[153] It is important to note that the decision maker is only to be granted those powers that relate to the areas of incapacity of the particular vulnerable person, and only for as long as appropriate.[154]

With respect to substitute decision making regarding the vulnerable person's personal care, these powers may include the power:

(a) to decide where, with whom and under what conditions the vulnerable person is to live;
(b) to give, refuse or withdraw consent to health care on the vulnerable person's behalf;
(c) to decide whether the vulnerable person should work, and if so, the nature or type of work, for whom the vulnerable person is to work, and other related matters;
(d) to decide whether the vulnerable person should participate in any educational, vocational, training or life skills programs, and, if so, the nature and extent of the participation and other related matters;
(e) to decide whether the vulnerable person should participate in any social or recreational activities and, if so, the nature and extent of the participation and other related matters;
(f) to commence, continue, settle or defend any claim or proceeding that relates to the vulnerable person other than a claim or proceeding that relates to the vulnerable person's property;
(g) to make decisions about daily living on behalf of the vulnerable person, including decisions regarding support services under Part 2;
(h) any other power specified by the commissioner that is reasonably necessary for the vulnerable person's personal care;
(i) any other power that may be specified in the regulations.[155]

With respect to substitute decision making regarding the management of the vulnerable person's property, these powers may include the power:

(a) to purchase, sell, dispose of, encumber or transfer personal property;
(b) to purchase, sell, dispose of, mortgage, encumber or transfer real property;
(c) to transfer property held in trust by the vulnerable person, either solely or jointly with another, to the person beneficially entitled to it;
(d) to exchange or partition property or give or receive money for equality of exchange or partition;

[152] *Ibid.*
[153] *VPA, supra* note 134 at s 52.
[154] *Ibid* at s 57(1)(b).
[155] *Ibid* at s 57(2).

(e) to grant or accept leases of real or personal property, or give a consent to a transfer or assignment of a lease, to surrender a lease, with or without accepting a new lease, or accept a surrender of a lease;
(f) to receive, deposit and invest money;
(g) to draw, accept and endorse bills of exchange and promissory notes, endorse bonds, debentures, coupons and other negotiable instruments and securities, and assign choses in action;
(h) to give or receive a notice on behalf of a vulnerable person that relates to his or her property;
(i) to carry on the vulnerable person's trade or business;
(j) to exercise a power or give a consent required for the exercise of a power vested in the vulnerable person;
(k) to exercise a right or obligation to elect, belonging to or imposed on the vulnerable person;
(l) to execute any documents on behalf of the vulnerable person that are necessary to comply with *The Homesteads Act*;
(m) to commence, continue, settle or defend any claim or proceeding respecting the property of the vulnerable person;
(n) to compromise or settle a debt owing by or to the vulnerable person;
(o) to make expenditures from the vulnerable person's property for gifts, donations or loans;
(p) any other power specified by the commissioner that is reasonably necessary for the management of the vulnerable person's property;
(q) any other power that may be specified in the regulations.[156]

Accordingly, this Part of the Act establishes further protections for vulnerable individuals (including older persons) from being neglected and financially abused. It does so in the following ways:

Protections against Neglect:

1. By ensuring that decisions are being made and steps are being taken regarding an individual's physical, emotional, psychological, residential, educational, vocational or social needs, where that individual is otherwise incapable of making those decisions for themselves; and
2. By subjecting those decisions to the scrutiny of knowledgeable and impartial third parties to ensure that they are appropriate, reasoned, and being made in the individual's best interests.

[156] *Ibid* at s 92(2).

Protections against Financial Abuse:

1. By ensuring that decisions are being made regarding the management of an individual's property, where that individual is otherwise incapable of making those decisions for themselves; and
2. By subjecting those decisions to the scrutiny of knowledgeable and impartial third parties, to ensure that they are appropriate, reasoned, and being made in the individual's best interests.

The Mental Health Act

Similarly, the *MHA* aims to protect adults living with mental disorders of thinking, mood, perception, orientation or memory that grossly impairs their "judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life."[157] The *MHA* excludes from its definition of "mental disorder," any disorders due exclusively to a mental disability as defined in the *VPA*.[158]

Like the *VPA*, the *MHA* establishes protections for individuals (including older persons) against abuse and neglect. It does so by virtue of Parts 8 and 9 of the Act, which establish a system of emergency intervention for the abuse and neglect of adults falling under the purview of the Act, and which address the appointment of individuals to assist in decision making regarding the property and personal care of those adults.

Specifically, like the mechanism created under the *VPA* to appoint substitute decision makers, Parts 8 and 9 of the *MHA* establish a monitored system through which a person may be assisted in making significant life decisions. Under the *MHA*, a committee, like a substitute decision maker, may be appointed to assist where, because of a person's mental incapacity, the person:

1. is incapable of managing his or her property; or
2. is incapable of personal care; and
3. needs decisions to be made on his or her behalf concerning that property or personal care.[159]

In these situations, the *MHA* empowers the Court of Queen's Bench to issue an Order of Committeeship appointing any person as committee responsible for managing the adult's personal and financial affairs, or financial affairs only.[160] With respect to personal care, these powers include:

(a) determining where a person shall live, either temporarily or permanently;

[157] *The Mental Health Act*, SM 1998, c. 36, s 1 [*MHA*].
[158] *Ibid*.
[159] *Ibid* at ss 71(2)-(3).
[160] *Ibid* at Part 8 and Part 9.

(b) consenting or refusing to consent to medical or psychiatric treatment or health care on the incapable person's behalf, if the person is not mentally competent to make treatment decisions;
(c) making decisions about daily living on the incapable person's behalf; and
(d) commencing, continuing, settling or defending any claim or legal proceeding that relates to the person.[161]

With respect to property, these powers include:

(a) taking into his or her custody or control all of the incapable person's property that is subject to the committeeship order; and
(b) managing, handling, administering and otherwise dealing with the property in the same manner as the incapable person could if he or she were capable.[162]

Under Part 8 of the Act, the Public Guardian and Trustee ("PGT") may be appointed by the Director of Psychiatric Services for Manitoba as committee without court order, giving them the same powers as a private committee, plus additional powers to protect an incapable person from abuse and neglect in emergency situations.[163] Emergency intervention actions may include removing the incapable person to a place of safety, if the PGT believes, on reasonable grounds, that:

(a) the incapable person is or is likely to be abused or to suffer neglect; and
(b) there is immediate danger of death or serious harm or deterioration to the physical or mental health of the incapable person.[164]

In all circumstances, the PGT or the committee must take into consideration the incompetent person's wishes as specified in a health care directive.[165] As well, any person may apply to the court for termination, replacement and variation of an appointment.[166] However, it is worth noting that while the Court may require a committee of property (other than the PGT) to bring in and pass their accounts[167], and a creditor, relative of an incapable person, or other interested person may apply to the Court once a year for an order requiring the committee of property to bring in and pass their accounts[168], a committee of property is not otherwise required by the legislation to regularly pass their accounts.

[161] *Ibid* at s 90.
[162] *Ibid* at s 78.
[163] *Ibid* at s 64.
[164] *Ibid.*
[165] *Ibid* at s 63.
[166] *Ibid* at s 66.
[167] *Ibid* at ss 85(1), 85(2).
[168] *Ibid* at s 85(3).

The Powers of Attorney Act

The Powers of Attorney Act ("*POA*") aims to ensure individuals that their financial affairs will be handled in accordance with their wishes if they become unable to manage their own affairs due to mental infirmity arising from age, disease, or otherwise.[169] The *POA* accomplishes this by establishing a regime by which an adult can execute an enduring power of attorney. An enduring power of attorney is a donor's grant of authority to the attorney to manage the donor's finances according to instructions even after the donor becomes mentally incompetent, thus avoiding judicial appointment of a committee.[170] The Act safeguards against potential exploitation by an attorney by requiring that an attorney produce an annual accounting in respect of the donor's estate to either a third party named as a recipient of an accounting by the donor in the enduring power of attorney, or where no such person is named, to the donor's nearest relative.[171] There is no requirement under the legislation for the attorney to produce an annual accounting in respect of the donor's estate to the Court or to some other impartial body.

In this sense, the *POA* protects adults (including older persons) against financial abuse by taking proactive steps to avoid a situation in which a mentally incompetent person can be taken advantage of. It does so first, by enabling the individual to create clear instructions with respect to how they want their finances to be dealt with, and second, by ensuring that the individual tasked with following those instructions, does so fairly, accurately, and in keeping with the adult's best interests.[172]

The Health Care Directives Act

The Health Care Directives Act ("*HDCA*") aims to provide individuals an opportunity to express their wishes regarding the amount and type of health care and treatment they receive should they become unable to communicate this for themselves.[173] The *HDCA* was summarized succinctly by the Commission in its 1999 Report on Adult Protection legislation. It states:

> Imposing unwanted medical treatment is a basic denial of rights. A personal health care directive or living will instructs family members and medical practitioners on the nature and extent of medical or other treatment if, at some future time, the adult is incompetent or unable to communicate his or her wishes. The adult can set limits on medical treatment and appoint a person to make such decisions on the adult's behalf. *The Health Care Directives Act* provides some legal assurance that living wills will be respected by families and the medical profession. The health care directive tends to have greatest impact in serious circumstances such as the applying of extreme measures of resuscitation or maintaining life for extended periods of time on life support apparatus.

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[169] *The Powers of Attorney Act*, SM 1996, c. 62, s 1(1) [*POA*].
[170] *Manitoba Law Reform Commission, supra* note 11 at 21.
[171] *POA, supra* note 169 at s 22(1).
[172] *Ibid.*
[173] Health, Seniors and Active Living Manitoba, "The Manitoba Health Care Directive", online: <www.gov.mb.ca/health/livingwill>.

> However, should the health directive include the adult's desire to be euthanized in the event of contracting a painful and fatal disease, the directive would not be followed as it would be against the law to do so.[174]

The Domestic Violence and Stalking Act

The Domestic Violence and Stalking Act ("*DVSA*") may protect older adults in Manitoba against abuse by enabling them to seek a prevention or protection order if they are experiencing domestic violence at the hands of another person who:

> (a) is cohabiting or has cohabited with him or her in a spousal, conjugal or intimate relationship;
>
> (b) has or had a family relationship with him or her, in which they have lived together;
>
> (c) has or had a family relationship with him or her, in which they have not lived together;
>
> (d) has or had a dating relationship with him or her, whether or not they have ever lived together; or
>
> (e) is the other biological or adoptive parent of his or her child, regardless of their marital status or whether they have ever lived together.[175]

According to the Act, domestic violence includes any of the following acts or omissions:

> (a) an intentional, reckless or threatened act or omission that causes bodily harm or property damage;
>
> (b) an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or property damage;
>
> (c) conduct that reasonably, in all the circumstances, constitutes psychological or emotional abuse;
>
> (d) forced confinement; or
>
> (e) sexual abuse.[176]

If an older adult is experiencing domestic violence, they may apply to the Courts for a prevention or protection order, which may protect them against further abuse by prohibiting the abusive individual from communicating with or contacting them, attending at or near any place they happen to be or attend regularly, including their home, or by directing a peace officer to remove the abusive person from their residence, among other things.[177]

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[174] *Manitoba Law Reform Commission*, *supra* note 11 at 21.
[175] *The Domestic Violence and Stalking Act*, SM 1998, c. 41, s 2(1) [*DVSA*].
[176] *Ibid* at s 2(1.1).
[177] *Ibid* at s 7(1).

The Human Rights Code

The Human Rights Code (the "Code") may also protect older adults from certain forms of abuse by prohibiting discrimination and harassment on the basis of age. Specifically, by virtue of Part II of the Code, which outlines prohibited conduct, no one may treat an individual differently on the basis of the individual's age unless reasonable cause exists to do so.[178] This refers to the differential treatment of a person in the provision of any service, accommodation, facility, good, right, licence, benefit, program or privilege available or accessible to the public,[179] and in respect of any aspect of an employment or occupation[180] or contract.[181] Moreover, Part II prohibits harassment on the basis of various characteristics including age. Harassment is defined as:

> (a) a course of abusive and unwelcome conduct or comment undertaken or made on the basis of any characteristic referred to in subsection 9(2); or
>
> (b) a series of objectionable and unwelcome sexual solicitations or advances; or
>
> (c) a sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
>
> (d) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance.[182]

Accordingly, the Code contains provisions which explicitly prohibit abusive conduct towards an individual based on their age, thus capturing the different forms of abusive conduct which are commonly associated with elder abuse. However, in order to benefit from these protections, an older adult subjected to age-based discrimination or harassment needs to take the initiative to commence human rights proceedings against the perpetrator in accordance with Part III of the Code. Specifically, they are required to file a human rights complaint against the perpetrator with the Human Rights Commission, explaining how the perpetrator has contravened the Code, and then be prepared to participate in the investigation and possible adjudication of the complaint.

E. Conclusion

Just as the Commission concluded in 1999, in its initial analysis of adult protection and elder abuse in Manitoba, it is clear that further empirical study still, over twenty years later, must be undertaken in order to properly understand the origins, extent and severity of the problem of abuse, neglect and exploitation of older adults.[183] While national and provincial studies have

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[178] *The Human Rights Code*, SM 1987-88, c. 45, Part II.
[179] *Ibid* at s 13(1).
[180] *Ibid* at s 14(1).
[181] *Ibid* at s 15(1).
[182] *Ibid* at s 19(2).
[183] *Manitoba Law Reform Commission, supra* note 11 at 13.

revealed useful statistical trends and have sparked important conversations surrounding the abuse and neglect of older adults, these studies do not disclose the full extent of the problem, and still leave much to be discovered before it will be possible to implement ameliorative services and laws capable of addressing the elder abuse health crisis.

It is important, not only from a social science or medical perspective but from a law reform perspective, to grasp the core concepts underlying elder abuse and to appreciate the full extent of the problem. Without this knowledge-base and without further exploring the issue of elder abuse at the ground level, it will be difficult to determine if our current legal system is doing enough to address the problem. It is the Commission's hope, in this first Consultation Paper, to build upon this knowledge-base in Manitoba in order to ultimately identify and fill any legal or policy gaps which may be hindering Manitoba's ability to properly address the issue of elder abuse and neglect.

CHAPTER 3: OTHER JURISDICTIONS

A. Other Canadian Jurisdictions

As in Manitoba, older adults in other Canadian provinces and territories may be protected from certain forms of elder abuse and neglect by virtue of legislative schemes pertaining to adult protection and guardianship, substitute decision making, family violence and human rights.[184] These legislative schemes include:

Province	Legislation
BC	*Adult Guardianship Act*, RSBC 1996, c 6; *Representation Agreement Act*, RSBC 1996, c 405; *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c 181; *Public Guardian and Trustee Act*, RSBC 1996, c 383; *Patients Property Act*, RSBC 1996, c 349; *Power of Attorney Act*, RSBC 1996, c 370; *Family Relations Act*, RSBC 1996, c 128; *Human Rights Code*, RSBC 1996, c 210.[185]
AB	*Protection Against Family Violence Act*, RSA 2000, c P-27; *Dependent Adults Act*, RSA 2000, c D-11; *Personal Directives Act*, RSA 2000, c P-6; *Powers of Attorney Act*, RSA 2000, c P-20; *Mental Health Act*, RSA 2000, c M-13; *Maintenance Order Act*, RSA 2000, c M-2;

[184] Department of Justice Canada, *Legal Definitions of Elder Abuse and Neglect*, March 2015.
[185] *Ibid* at Appendix A.

	Human Rights Act, RSA 2000, c A-25.5.[186]
SK	*Victims of Domestic Violence Act*, SS 1994, c V-6.02; *Adult Guardianship and Co-decision-making Act*, SS 2000, c A-5.3; *Powers of Attorney Act*, 2002, SS 2002, c P-20.3; *Health Care Directives and Substitute Health Care Decision Makers Act*, SS 1997, c H-0.001; *Public Guardian and Trustee Act*, SS 1983 c P-36; *Saskatchewan Human Rights Code*, SS 1979, c S-24.1.[187]
ON	*Charitable Institutions Act*, RSO 1990, c C.9; *Substitute Decisions Act*, 1992, SO 1992, c 30; *Health Care Consent Act*, 1996, SO 1996, c 2, Schedule A; *Human Rights Code*, RSO 1990, c H.19.[188]
QB	*Charte des droits et libertés de la personne*, RSQ c C-12 (s.48); *Civil Code of Québec* L. Q. 1991, c 64., Title IV: Capacity of Persons; Chapter III: Protective Supervision of Persons of Full Age. *Public Curator Act*, RSQ c C-81.[189]
NS	*Adult Protection Act* RSNS 1989, c 2; *Homes for Special Care Act*, RSNS 1989, c 203; *Domestic Violence Intervention Act*, SNS 2001, c 29; *Incompetent Persons Act*, RSNS 1989, c 218;

[186] *Ibid.*
[187] *Ibid.*
[188] *Ibid.*
[189] *Ibid.*

	Powers of Attorney Act, RSNS 1989, c 352; *Human Rights Act*, RSNS 1989, c 214.[190]
NB	*Family Services Act* SNB 1980, c F-22, Part III; *Mental Health Act*, RSNB 1973, c M-10; *Infirm Persons Act*, RSNB 1973, c I-8; *Human Rights Act*, RSNB 1973, c H-11.[191]
PEI	*Adult Protection Act* RSPEI 1988, c A-5; *Victims of Family Violence Act*, RSPEI 1988, c V-3.2; *Mental Health Act*, RSPEI 1988, c M-6.1; *Powers of Attorney Act*, RSPEI 1988, c P-16; *Human Rights Act*, RSNB 2011, c 171.[192]
NL	*Neglected Adults Welfare Act*, RSNL 1990, c N-3; *Mental Health Care and Treatment Act*, SNL 2006, c M-9.1; *Mentally Disabled Persons' Estates Act*, RSNL 1990, c M-10; *Advance Health Care Directives Act*, SNL 1995, c A-4.1; *Health and Community Services Act, SNL* 1995, c P-37.1; *Human Rights Act*, 2010, SNL 2010, c H-13.1; *Family Violence Protection Act*, SNL 2005, c F-3.1.[193]

[190] *Ibid.*
[191] *Ibid.*
[192] *Ibid.*
[193] *Ibid.*

YU	*The Adult Protection and Decision Making Act*, SY 2005, c 21, Sch A, Part Four: Adult Protection; *Family Violence Protection Act*, RSY 2002, c 84; *Care Consent Act,* SY 2003, c 21, Sch B; *Public Guardian Trustee Act*, SY 2003, c 21, Sch C; *Enduring Power of Attorney Act*, RSY 2002, c 73; *Human Rights Act*, RSY 2002, c 73.[194]
NWT	*Protection Against Family Violence Act*, SNWT 2003, c 24; *Guardianship and Trusteeship Act,* SNWT 1994, c 29; *Mental Health Act*, RSNWT 1988, c M-10; *Human Rights Act*, SNWT 2002, c 18.[195]
NU	*Guardianship and Trusteeship Act,* SNWT 1994, c 29; *Mental Health Act*, RSNWT 1988, c M-10; *Human Rights Act,* SNWT 2002, c 18.[196]

1. Comprehensive Adult Protection Schemes

While many of these Acts contain provisions which may incidentally protect adults from abuse and neglect, only some can be classified as true comprehensive adult protection regimes, which are defined by their "emphasis on protection against abuse and exploitation by means of agency intervention" as opposed to issues of competence and legal disability.[197] These Acts are particularly relevant in discussions of legal interventions for the abuse and neglect of older

[194] *Ibid.*
[195] *Ibid.*
[196] *Ibid.*
[197] *Manitoba Law Reform Commission, supra* note 11 at 23.

adults, as they are perhaps the closest instruments in Canadian law to standalone elder abuse legislation.

While the powers afforded to intervening agencies under such comprehensive protective frameworks varies from jurisdiction to jurisdiction, they typically include the following:

> Some statutes authorize investigation, and entry into the home, only on the basis of reports of actual victimization, while others permit it on the basis of a perceived risk. Among the striking features of the legislation are powers of forcible entry, and provisions for on-site medical examination and removal of the adult with or without consent. In Manitoba, no-one other than a police officer may enter a residence without permission, and police entry without permission requires either a warrant or reasonable grounds for suspecting that a criminal act is in process. Under certain comprehensive adult protection statutes, however, grounds for entry may be provided by a report of suspected abuse. An adult who is abused, neglected, or exploited may be isolated and unable, or unwilling, to report to police, and the perpetrator or the adult himself may prevent entry into the home by investigators. Comprehensive legislation thus gives protection agencies "a foot in the door" to assess the circumstances and take further action.[198]

Robert M. Gordon has explained that there are three major Canadian models of adult protection legislation: (1) the Atlantic Provinces Model; (2) the Ontario Model; and (3) the British Columbia Model. Of these three models, only the Atlantic Provinces technically have standalone, comprehensive adult protection legislation. He explains that the "Atlantic Provinces Model," which captures Newfoundland, Nova Scotia, Prince Edward Island, and New Brunswick, has involved the enactment of special standalone adult protection legislation supported by adult protection services or assigned adult protection personnel.[199] He notes that these legislative frameworks are similar to child protection legislation, that they mirror the approach taken in the majority of American jurisdictions, and that they share the following basic intervention procedures:

- Upon receiving information that an adult is being abused or neglected, adult protection service personnel will investigate the case;
- If the investigation is obstructed in some way, personnel can apply to court for an order or warrant assisting them in their tasks;
- Once an investigation is completed, adult protection or social service personnel may then decide to take no further action or to deal with the case by providing protection or assistance with the consent and cooperation of the abused or neglected adult; and

[198] *Ibid* at 24.
[199] *Gordon, supra* note 18 at 119-120.

- Alternatively, and if the adult is mentally incapable of making decisions, adult protection personnel may apply to a court for an order declaring an adult to be neglected or abused, or in need or protection, and specifying an appropriate course of action.[200]

More specifically, the *Adult Protection Act*[201] of Newfoundland and Labrador ("*NL APA*") "protects adults who do not understand or appreciate the risk of abuse and neglect."[202] It protects every adult living in Newfoundland and Labrador who lacks capacity and is either incapable of caring for themselves or who is abused or neglected; or who refuses, delays, or is unable to make provision for adequate care and attention for themselves.[203] It provides this protection by:

> •Allowing the Regional Health Authorities to intervene more quickly in emergency situations to reduce the risk of leaving an individual in a dangerous circumstance;
>
> •Making provisions for mandatory, regular reviews of the situation and services provided to an adult declared to be in need of protective intervention; and
>
> •Requiring anyone who believes an adult may be in need of protective intervention to report that information to a social worker or police officer.[204]

Under the *NL APA*, "abuse" is defined as the deliberate mistreatment of an adult who lacks the capacity to protect himself or herself that causes or is reasonably likely, within a short period of time, to cause the adult serious physical, psychological or emotional harm, or substantial damage to or substantial loss of assets.[205] Abuse includes intimidation, humiliation and sexual assault.[206] "Neglect" is defined as the failure to provide care, assistance, guidance or attention to an adult who lacks capacity that causes, or is reasonably likely, within a short period of time, to cause to the adult serious physical, psychological or emotional harm or substantial damage to or substantial loss of assets.[207]

The *NL APA* requires any person who reasonably believes that an adult may be an adult in need of protective intervention to immediately give that information, together with the name and address of the adult, if known, to the provincial director, a director, a social worker or a peace officer.[208] In this sense, the *NL APA* establishes a mandatory reporting regime for abuse.

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[200] *Ibid.*
[201] *Adult Protection Act*, SNL 2011, cA-4.01 [*NL APA*].
[202] Health and Community Services Newfoundland and Labrador, "Legislation Focuses on Safety of Vulnerable Adults" (30 June 2014), online: *Government of Newfoundland and Labrador* <www.releases.gov.nl.ca/releases/2014/health/0630n07.aspx#:~:text=The%20Adult%20Protection%20Act%20provides%20legislative%20authority%20to,who%20does%20not%20understand%20or%20appreciate%20that%20risk%3B>.
[203] *Ibid.*
[204] *Ibid.*
[205] *NL APA*, *supra* note 201 at s 2(a).
[206] *Ibid.*
[207] *Ibid* at s 2(k).
[208] *Ibid* at s 12(2).

The *Adult Protection Act*[209] of Nova Scotia ("*NS APA*") protects adults who are 16 years of age or older and who lack the ability to care and fend adequately for themselves against abuse and neglect. The *NS APA* protects these adults 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.[210]

While the *NS APA* does not explicitly define the term "abuse," it defines "adult in need of protection" as an adult who, in the premises, where the adult resides,

> (i) is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting himself therefrom by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom, or
>
> (ii) is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his adequate care and attention.[211]

Like the *NL APA*, the *NS APA* establishes a mandatory duty to report information that indicates that an adult is in need of protection to the Minister of Community Services.[212] This duty pertains to information, whether it is confidential, privileged, or otherwise.[213]

In PEI, the *Adult Protection Act* ("*PEI APA*") [214] protects adults who, due to infirmity, disability or other incapacity, whether physical or mental, are either unable to or require assistance to provide or arrange for adequate care for themselves or their estate.[215] The *PEI APA* also protects adults who, due to infirmity, disability or other incapacity, whether physical or mental, are experiencing, and are unable to or require assistance to protect themselves against abuse or neglect.[216]

Under the *PEI APA*, "abuse" is defined as offensive mistreatment, whether physical, sexual, mental, emotional, material or any combination thereof, that causes or is reasonably likely to cause the victim severe physical or psychological harm or significant material loss to his estate.[217] "Neglect" is defined as a lack of or failure to provide necessary care, aid, guidance or

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[209] *The Adult Protection Act*, RSNS 1989, c 2 [*NS APA*].
[210] *Ibid* at ss 2 and 3(a).
[211] *Ibid* at s 3(b).
[212] *Ibid* at s 5(1).
[213] *Ibid.*
[214] *Adult Protection Act*, RSPEI 1988, c A-5 [*PEI APA*].
[215] *Ibid* at ss 1(h) and 1(i).
[216] *Ibid*.
[217] *Ibid* at s 1(a).

attention, which causes or is reasonably likely to cause the victim severe physical or psychological harm or significant material loss to his estate.[218]

The *PEI APA* protects adults by establishing a reporting regime and investigation process for allegations of abuse and neglect. Unlike the legislation in Newfoundland, Labrador and Nova Scotia, reporting is not mandatory under the *PEI APA* for ordinary individuals who have reasonable grounds to believe that an adult is in need of assistance or protection.[219] However, it *is* mandatory for those who, by virtue of their professional employment or occupation in health care, social services, education, law enforcement, counselling, residential services or any other field where the person has a duty of care to vulnerable adults, has reasonable grounds to believe that an adult is in need of assistance or protection.[220]

Where a report is made, an investigation into that report is conducted, and that investigation yields a belief that an adult is in need of assistance or protection, the Act enables the Minister to take steps to provide or arrange for assistance for the adult[221] or to provide protective intervention for them.[222] However, the Minister is not required by the *PEI APA* to do so.

Part III of the New Brunswick *Family Services Act* ("*NB FSA*")[223] outlines "protection services." This section of the *NB FSA* protects physically or mentally disabled adults or older adults who are 65 years of age or over. Where such adults are incapable of caring properly for themselves due to physical or mental infirmity and are not receiving proper care and attention, or where they refuse, delay or are unable to make provision for their proper care and attention, they are considered neglected adults under the *NB FSA*.[224] Where those adults are either in danger of becoming or are victims of physical abuse, sexual abuse, mental cruelty, or any combination thereof, they are similarly considered abused adults under the Act.[225]

Under the *NB FSA*, "professional persons" may disclose information to the Minister respecting a person whom the professional person has reason to believe is a neglected adult or an abused adult.[226] "Professional persons" include workers in adult day care centers, residential facilities or institutional facilities, educators, physicians, hospital administrators, etc., and includes any other person who by virtue of his employment or occupation has a responsibility to discharge a duty of care towards an older person or a disabled adult.[227] When the Minister has reason to believe that a person has been neglected or abused, the Minister must conduct an investigation into the

[218] *Ibid* at s 1(k).
[219] *Ibid* at s 4(1).
[220] *Ibid* at s 4(2).
[221] *Ibid* at s 9.
[222] *Ibid* at s 11.
[223] *Family Services Act*, SNB 1980, c F-22 [*NB FSA*].
[224] *Ibid* at s 34(1).
[225] *Ibid* at s 34(2).
[226] *Ibid* at s 35.1(1).
[227] *Ibid* at s 35.1(5).

matter.[228] If a finding of abuse or neglect is made, the Minister may apply to the court for a warrant to authorize the removal of the offending person from the premises in which the neglected or abused adult resides.[229]

The so-called "Ontario" Model of Canadian adult protection legislation, on the other hand, has involved the enactment of adult protection provisions within reconstructed adult guardianship legislation, with the responsibility for the investigation of adult protection cases being passed to the provincial public guardian and trustee service.[230] A variation of this model is said to exist in the Northwest Territories, Nunavut and in Manitoba, "where specific adult protection provisions are embedded in new substitute decision-making legislation", such as the *VPA* or *MHA* in Manitoba, discussed above.[231]

Finally, Gordon describes the "British Columbia Model" as "something of a hybrid."[232] This model, which revolves around Part 3 of *The Adult Guardianship Act* of British Columbia ("*BC AGA*"),[233] provides for interventions in cases of abuse or neglect (including self-neglect) as an alternative to court-ordered guardianship under existing guardianship legislation.[234] These interventions are carried out by existing health and social services agencies which are given a "renewed and formalized mandate to do what they are already doing- investigate and intervene when abuse or neglect are reported - but with new tools and newly developed networks of community-based support."[235]

The *BC AGA* provides support and assistance for abused and neglected adults by establishing a non-mandatory reporting regime and an investigation procedure for the abuse of adults. More specifically, the *BC AGA* protects adults who are abused or neglected, whether in public places, their homes, a relative's home, a care facility or any other place except a correctional centre, and who are unable to seek support or assistance for a number of reasons. These reasons 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.[236]

Under the *BC AGA*, "abuse" is defined as the deliberate mistreatment of an adult that causes the adult physical, mental or emotional harm, or damage or loss in respect of the adult's financial affairs. Examples of abuse include intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy or

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[228] *Ibid* at s 35(1).
[229] *Ibid* at s 36(1).
[230] *Gordon, supra* note 18 at 119.
[231] *Ibid*.
[232] *Ibid.*
[233] *The Adult Guardianship Act*, RSBC 1996, c 6 [*BC AGA*].
[234] *Gordon, supra* note 18 at 119.
[235] *Ibid* at 119-120.
[236] *BC AGA, supra* note 233 at s 44.

denial of access to visitors.[237] "Neglect' is defined in the *BC AGA* as any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage or loss in respect of the adult's financial affairs, and includes self-neglect.[238] "Self-neglect" is defined as any failure of an adult to take care of himself or herself that causes, or is reasonably likely to cause within a short period of time, serious physical or mental harm or substantial damage or loss in respect of the adult's financial affairs.[239]

2. Seniors Advocate

In addition to the protections created by the aforementioned legislation against elder abuse, older adults in British Columbia, New Brunswick, Newfoundland and Labrador may also benefit from the protections offered by their province's respective Seniors Advocates. Pursuant to Bill 196, the *Seniors' Advocate Act*, 2020, seniors in Ontario may soon have a similar advocate to turn to.[240] The following table summarizes the responsibilities and contemplated responsibilities of the Seniors Advocate in each of these jurisdictions.

British Columbia, *Seniors Advocate Act,* SBC 2013, c 15.	
Responsibilities of Seniors Advocate	• Monitoring the provision of seniors' services; • Analyzing issues that the Seniors Advocate believes to be important to the welfare of seniors generally; • Advocating in the interests of seniors; • Identifying and analyzing systemic challenges faced by seniors; • Collaborating with persons who deliver seniors' services for the purpose of improving the efficiency and effectiveness of service delivery; • Promoting awareness, by seniors, their caregivers and their families, of systemic challenges faced by seniors, and of the resources available to seniors; • Advising the minister, public officials and persons who deliver seniors' services on a number of matters, including on systemic challenges faced by seniors, policies and practices respecting those challenges, etc.; and

[237] *Ibid* at s 1.
[238] *Ibid.*
[239] *Ibid.*
[240] *The Seniors' Advocate Act*, 2020 was referred to the Standing Committee on the Legislative Assembly on October 19th, 2020.

	• Making recommendations to government and to persons who deliver seniors' services respecting changes to improve the welfare of seniors. The Advocate may fulfill these responsibilities by: • Hiring staff and retaining experts necessary for the fulfillment of the responsibilities; • Establishing an advisory council for the purpose of providing advice respecting the priorities and the fulfillment of the responsibilities; and • Requesting information other than personal information within the meaning of the *Freedom of Information and Protection of Privacy Act,* from a service provider.
New Brunswick, *Child, Youth and Senior Advocate Act,* SNB 2007, c C-2.7 *New Brunswick's advocate role differs slightly in that it focuses not only on seniors, but on children, youth, and "adults under protection" as well. Under the Act, an "adult under protection" is defined as a person who is at least 19 years of age but under the age of 65, and who has a physical or mental disability. A senior is defined as a person who is at least 65 years of age.	
Responsibilities of Seniors Advocate	• Ensuring that the rights and interests of children, youths, adults under protection and seniors are protected; • Ensuring that the views of children, youths, adults under protection and seniors are heard and considered in appropriate forums where those views might not otherwise be advanced; • Ensuring that children, youths, adults under protection and seniors have access to services and that their complaints about those services receive appropriate attention; • Providing information and advice to the government, government agencies and communities about the availability, effectiveness, responsiveness, and relevance of services to children, youths, adults under protection and seniors; and • Acting as an advocate for the rights and interests of children, youths, adults under protection and seniors generally. The Advocate may fulfill these responsibilities by: • Receiving and reviewing a matter relating to a child, youth, adult under protection or senior or a group of children, youths, adults under protection or seniors;

	• Advocating, mediating or using another dispute resolution process on behalf of a child, youth, adult under protection or senior or a group of children, youths, adults under protection or seniors; • If advocacy, mediation or other dispute resolution process has not resulted in an outcome the Advocate considers satisfactory, the Advocate may conduct an investigation on behalf of the child, youth, adult under protection or senior or the group of children, youths, adults under protection or seniors; • Initiating and participating in, or assisting a child, youth, adult under protection or senior to initiate and participate in, a case conference, administrative review, mediation or other process in which decisions are made about the provision of services; • Informing the public about the needs and rights of children, youths, adults under protection and seniors, including information about the Office of the Child, Youth and Senior Advocate; and • Making recommendations to the government or an authority about legislation, policies and practices respecting services to or the rights of children, youths, adults under protection and seniors.
Newfoundland and Labrador, *The Seniors Advocate Act*, SNL 2016 c S-13.002	
Responsibilities of Seniors Advocate	• Identifying, reviewing and analyzing systemic issues related to seniors; • Working collaboratively with seniors' organizations, service providers and others to identify and address systemic issues related to seniors; and • Making recommendations to government and government agencies respecting changes to improve seniors' services. The Advocate may fulfill these responsibilities by: • Receiving and reviewing matters related to seniors; • Initiating and participating in reviews related to seniors; • Conducting research related to seniors, including interviews and surveys; • Consulting with seniors, service providers and the public; • Requesting information, other than personal health information within the meaning of the *Personal Health Information Act*, and personal information within the meaning of the *Access to Information and Protection of Privacy Act*, 2015;

	• Making recommendations to government, government agencies, service providers and community groups respecting legislation, policies, programs and services impacting seniors; and • Informing the public about the Office of the Seniors' Advocate and promoting awareness of systemic issues related to seniors.
Ontario Bill 196, *An Act to establish the Seniors' Advocate,* 1st Sess, 42nd Leg, Ontario, 2020	
Contemplated Responsibilities of Seniors Advocate	• Monitoring the provision of seniors' services, including those provided by the Government of Ontario; • Analyzing the policies of the Government of Ontario with respect to their impact on seniors; • Analyzing issues that the Seniors' Advocate believes to be important to the welfare of seniors generally; • Advocating in the interests of seniors and their family members who act as caregivers; • Identifying and analyzing systemic challenges faced by seniors; • Collaborating with persons who fund or deliver seniors' services for the purposes of improving the efficiency and effectiveness of service delivery; • Promoting awareness, by seniors, their caregivers and their families, of systemic challenges faced by seniors, and of the resources available to seniors; and • Advising the minister, public officials and persons who fund or deliver seniors' services on a number of matters, including on systemic challenges faced by seniors, policies and practices respecting those challenges, etc.; and • Making recommendations to government and to persons who fund or deliver seniors' services respecting changes to improve the welfare of seniors.

3. Federal Government

The *Criminal Code*[241] also provides protections to Manitoba's older population from abuse and neglect. It does so through its criminalization of acts such as "physical or sexual assault; threats of death, serious bodily harm, or property damage; unlawful confinement; criminal harassment; failure to provide the necessities of life to a dependent; theft; fraud; or misappropriation of funds

[241] *Criminal Code*, RSC 1985, c C-46.

by a person in a position of trust."[242] Interestingly, it even sets out a standalone crime of theft by a person holding a power of attorney.[243] Punishment of these offences depends on several factors, including the gravity of the offence, circumstances of the offender, and other mitigating and aggravating factors.[244]

While elder abuse may be addressed in the criminal court system through these provisions of the *Code*, there has not been one single reported Canadian court decision within at least the last decade containing an explicit definition of elder abuse.[245] Similarly, in the civil law context, there are no reported cases expressly defining the term elder abuse, and none in which the Court has recognized a standalone tort of elder abuse.[246] However, according to a 2015 Report of the Canadian Department of Justice on the legal definition of elder abuse and neglect[247] [the "DOJ Report"],

> There does exist…a number of documented criminal and civil cases involving elderly victims in which the advanced age of the victim is highlighted. Often the victim's age emerged as a factor germane to sentencing (in the criminal context) or the assessment of damages (in the civil context), rather than being relevant to the issue of guilt or liability. Although a formal definition remains absent from these decisions, they do shed a small amount of light on the meaning of elder abuse and neglect in Canadian law.[248]

While this Report outlines a number of criminal cases touching upon issues relevant to elder abuse, including cases of home invasion, assault, fraud and undue influence, it notes that the five decisions pertaining to instances of criminal neglect, or failure to provide the necessaries of life, are "the most vocal cases on record with respect to adult abuse and neglect."[249] These cases include *R. v. Noseworthy*[250], *R. v. Peterson*[251], *R. v. Nanfo*[252], *R. v. Grant*[253], and *R. v. Chappell*,[254] each of which involve cases of accused persons failing to provide the necessaries of life to elderly individuals who were reliant upon their care.

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[242] *Manitoba Law Reform Commission, supra* note 11 at 14.
[243] *Criminal Code, supra* note 241 at s 331.
[244] *Ibid* at ss 718.1, 718.2.
[245] Department of Justice Canada, *Legal Definitions of Elder Abuse and Neglect*, March 2015.
[246] See, e.g. *Nash v. Nash*, [2019] M.J. No. 84 (CA), in which the Manitoba Court of Appeal upheld the lower court's decision to decline to grant summary judgment damages to the plaintiff "on the basis of a novel tort of 'elder abuse'".
[247] *Department of Justice Canada, supra* note 245.
[248] *Ibid* at 14.
[249] *Ibid* at 19.
[250] *R. v. Noseworthy*, 2007 CarswellOnt 9604 (Ont. S.C.J.)
[251] *R. v. Peterson*, [2005] O.J. No. 4450 (C.A.), 203 O.A.C. 364, 201 C.C.C. (3d) 220.
[252] *R. v. Nanfo*, 2008 ONCJ 313, 78 W.C.B. (2d) 580, [2008] O.J. No. 2742 (Ont. S.C.J.).
[253] *R. v. Grant*, 2009 NBPC 17.
[254] *R. v. Chappell*, Oral decision April 17, 2000 (S.C.(T.D.)).

Relying on the following "words of condemnation*,"* expressed in these cases, the DOJ Report concludes that the decision-makers in these cases considered the impugned behaviors to be examples of elder abuse or neglect:

> The sentence must bring home to other like-minded persons that abuse of elderly helpless parents in their care will not be tolerated. The imposition of a term of imprisonment has a denunciatory component in that it not only condemns the particular offender's conduct, but communicates and reinforces a shared set of values…[T]he need to ensure that this offence carries the required stigma would not be met by a conditional sentence in this case.
>
> On the whole of these circumstances, I am of the view that the sentence, which I have to impose on the accused, must be sufficient to denounce the fact that [the accused] committed a serious breach of her legal duty to care for her elderly sick [parent], as well as serve as general deterrence to any other like-minded individual who has been or might be in a similar position…This society is not prepared to tolerate such abuse or neglect of our most vulnerable.[255]

Ultimately, upon exploring the sentencing and damages analyses contained in these five criminal neglect cases, as well as in the seven home invasion and assault cases and nine fraud and undue influence cases mentioned in the Report, the Report provides a list of elements that might be included in a definition of elder abuse in Canadian jurisprudence, if it were stated directly.

It concludes that a definition of elder abuse would include extreme neglect; would be broader, conceptually, than physical abuse; would amount to an abuse of power; and would be marked by vulnerability of the older victim. Further, it concludes that a definition of elder abuse might involve a violation of a trusting relationship; that it may be made possible by the dependency of the victim; and that it may cause harms specific to older victims, like loss of independence, or worsening physical frailty. Moreover, it concludes that a definition might reflect the implications that elder abuse has not only on the victim of abuse, but on the victim's community.[256]

Since the publication of this 2015 Report, some Canadian courts have touched upon the meaning of elder abuse, albeit in an implicit manner, without explicitly defining the term. For instance, the British Columbia Provincial Court, in the 2016 sentencing decision of *R. v. Christie*[257], indicated that the case and sentencing at issue, which dealt with assaults committed against elderly dementia patients residing at a seniors' residence where the accused was employed as a licensed practical nurse, was "about elder abuse." Similarly, in the 2018 sentencing decision of *R. v. Llanto*[258], the British Columbia Provincial Court characterized the offence of assault at issue as elder abuse, given that the offender was "the paid caregiver for the elderly victim…who [suffered] from Alzheimer's Disease and [was] partially paralyzed due to a stroke." Likewise, in

[255] *Department of Justice Canada, supra* note 245 at 18-19.
[256] *Ibid* at 29.
[257] *R. v. Christie*, [2016] B.C.J. No. 2580 at 2.
[258] *R. v. Llanto*, [2018] B.C.J. No. 817 at 1.

the 2018 sentencing decision of *R. v. Fernandez*[259], dealing with a case involving an assault causing bodily harm on a 97-year-old long term care resident, the Ontario Court of Justice characterized the case as one of elder abuse, describing elder abuse as "abuse of an elderly person by his or her caregiver." None of these courts attempts to define the term broadly, outside of the particular context of the case at hand.

Prior to 2012, aggravating factors under the *Criminal Code* that tended to be relevant in these types of elder abuse cases included evidence that an offender, in committing the offence, abused their intimate partner,[260] or evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim.[261] Of course, the list of aggravating factors in the *Code* is not exhaustive, and courts are free to consider other aggravating factors during sentencing.[262] Accordingly, while elder abuse is not, in and of itself a crime under the *Code* or at common law, and while, prior to 2012, the old age of a victim was not an aggravating sentencing factor, many courts still considered it aggravating in sentencing.[263]

In 2012, however, the *Criminal Code* was amended by adding an additional aggravating sentencing factor to section 718.2(a), which reflects elder abuse more directly. The *Protecting Canada's Seniors Act,* which received assent in December of 2012, adds as an aggravating sentencing factor "evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation."[264] This amendment is meant to "help ensure that sentencing for crimes against elderly Canadians reflects the significant impact that crime has on their lives."[265]

However, while commentators have viewed this amendment as a "welcome improvement,"[266] it does not negate the findings that demonstrate that "[c]riminal law is used less frequently to address abuse and neglect of older persons than abuse of other persons."[267] According to the Canadian elder abuse literature, outlined in the Legislative Summary of the *Protecting Canada's Seniors Act*, this is the case for a number of reasons, including:

(1) That prosecutions are often difficult, as the victim may be reluctant to cooperate in a prosecution against the loved one;

(2) That the victim may have poor health and possible present or impending mental incapacity;

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[259] *R. v. Fernandez*, [2018] O.J. No. 2213 at 17.
[260] *Criminal Code*, *supra* note 241 at s 718.2(a)(ii).
[261] *Ibid* at s 718.2(a)(iii).
[262] Canada, Library of Parliament, *Legislative Summary of Bill C-36,* Publication No, 41-1-C36-E (26 April 2012) at 6-7.
[263] *Ibid* at 7.
[264] *Protecting Canada's Seniors Act*, SC 2012, c 29, s 2.
[265] *Library of Parliament, supra* note 262 at 1.
[266] *Ibid* at 8.
[267] *Ibid* at 4.

(3) That the prosecution may take so long that the victim dies before the case goes to court;

(4) That the perpetrator may be the only significant person in the victim's life and to report and testify against them would result in loneliness and pain from the perceived consequences of the intervention;

(5) That officers may not be familiar with all the complexities of elder abuse; and

(6) That not all conduct that may be perceived by the public as elder abuse will be treated as criminal conduct in the justice system.[268]

These reasons are echoed in a 2019 Canadian Bar Review article entitled "Seniors on the Stand: Accommodating Older Witnesses in Adversarial Trials."[269] Helene Love explains:

> In the criminal context, charges are infrequently laid for elder abuse due to elder victims' reluctance to press charges where the perpetrator of abuse is a child or caregiver, fear of institutionalization and loss of independence, and/or mental or physical disabilities. For civil cases, seniors who require accommodation may be deterred from initiating a civil dispute due to the time and emotional and financial costs of litigation. Lawyers may be more likely to advise elder clients to settle a civil case or plead out a criminal case if they anticipate their client's health may deteriorate before a trial can happen, or that the litigation process itself could exacerbate an existing medical condition.

Moreover, while this amendment "[sends] a clear message through the courts that abusing the elderly will be dealt with harshly," it will not ultimately prevent the abuse and neglect from happening in the first place.[270]

The Government of Canada has also made efforts outside of the legislative context to address the safety of Canada's seniors. For instance, in 2007, it established the National Seniors Council ("NSC") which advises the Minister of Seniors and the Minister of Health on matters related to the health, well-being and quality of life of seniors. It does so in a number of ways, including:

- [taking] into account the views of seniors, experts, organizations and groups that provide seniors' programs and services, and other relevant stakeholders and interested parties
- [undertaking] activities such as commissioning research, convening expert panels and roundtables and holding consultative meetings
- [consulting], using a comprehensive and collaborative approach, with federal departments, other levels of government and advisory bodies involved in seniors-related efforts[;and]

[268] *Ibid* at 4-5.
[269] Helene Love, "Seniors on the Stand: Accommodating Older Witnesses in Adversarial Trials" (2019) 97 Can Bar Rev 242-274 at para 59 (Lexis Advance QuickLaw).
[270] *Library of Parliament, supra* note 262 at 8.

- [examining] the policies, programs and services that have an impact on the lives of seniors.[271]

Included in the many topics addressed by the NSC since its inception are social isolation and elder abuse. These issues have been explored during the NSC's 3-year work plan for 2018-2021, which listed as a priority the identification of measures to reduce crimes and harms against seniors, with a particular focus on financial abuse, fraud and scams.[272] In pursuing this goal, the NSC undertook engagement activities "to hear from seniors, those who provide services to seniors, experts and federal officials on ways to improve the financial security of Canadian seniors by protecting consumers and addressing crimes that target seniors."[273] This culminated in a Report in 2019 entitled "What We Heard Report: Financial Crimes and Harms Against Seniors."[274]

More recently, in her speech from the Throne on September 23, 2020, Governor General of Canada Julie Payette acknowledged the gravity of elder abuse and neglect in this country, and outlined further steps that the Canadian government is committed to taking to prevent it. While recognizing that certain aspects of seniors-related issues such as long-term care falls under the jurisdiction of Canada's provinces and territories, she articulated the federal government's commitment to take "any action it can to support seniors while working alongside the provinces and territories."[275] Payette explained that this would include:

(1) Working with Parliament to produce further *Criminal Code* amendments to "explicitly penalize those who neglect seniors under their care, putting them in danger";

(2) Working with the provinces and territories to "set new, national standards for long-term care so that seniors get the best support possible";

(3) Taking "additional action to help people stay in their homes longer";

(4) "Increasing Old Age Security once a seniors turns 75";

(5) "Boosting the Canada Pension Plan survivor's benefit"; and

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[271] Government of Canada, "About the National Seniors Council", online: <www.canada.ca/en/national-seniors-council/corporate/about-us.html>.
[272] Government of Canada, "National Seniors Council work priorities", online: <www.canada.ca/en/national-seniors-council/corporate/priorities.html>.
[273] Government of Canada, "Publications and reports of the National Seniors Council", online: <www.canada.ca/en/national-seniors-council/programs/publications-reports.html#h2.06>.
[274] Government of Canada, Employment and Social Development, *What We Heard Report: Financial Crimes and Harms Against Seniors*, online: <www.canada.ca/en/national-seniors-council/programs/publications-reports/2019-what-we-heard-financial-crimes-harms.html#h2.1>.
[275] The Right Honourable Julie Payette, Governor General of Canada, "A Stronger and More Resilient Canada" (23 September 2020) at 17, online (pdf): <www.canada.ca/content/dam/pco-bcp/documents/pm/SFT_2020_EN_WEB.pdf> (speech from the Throne to open the second session of the 43rd Parliament of Canada).

(6) Looking at "further targeted measures for personal support workers".[276]

Similar commitments were articulated by the federal Government in December 2019 and again in January 2021 in the Mandate Letters of the Minister of Justice and Attorney General of Canada and the Minister of Seniors.[277] In those Mandate Letters, Prime Minister Justice Trudeau listed the following as top priorities for these Cabinet members:

- Creating a national definition of elder abuse;
- Investing in better data collection and law enforcement related to elder abuse; and
- Establishing new offences and penalties in the *Criminal Code* related to elder abuse.[278]

In February of 2021, in furtherance of these mandates, the Canadian Standing Committee on Justice and Human Rights commenced its study on elder abuse. Pursuant to Standing Order 108(2)[279], which empowers the Committee to study and report on all matters relating to the mandate, management and operation of the Department of Justice, the Committee has begun its process of holding public meetings, considering evidence from witnesses, and reviewing written submissions and other authoritative documents which will ultimately culminate in a report of its findings and recommendations with respect to elder abuse. Among other things, the Committee is interested in learning whether there are sufficient measures in place to protect against elder abuse in Canada, whether the current penalties in the *Criminal Code* are sufficient to address elder abuse, and how the government of Canada can improve elder protections.[280]

In its first public meeting held on May 6, 2021[281], the Committee heard from representatives of the Department of Justice, the Department of Employment and Social Development, the Ontario Advocacy Centre for the Elderly, and from the Research Chair on Mistreatment of Older Adults of the Université de Sherbrooke. Various matters were addressed in this meeting, including potential *Criminal Code* amendments related to elder abuse, the division of powers in respect of the treatment of elder abuse between the federal, provincial and territorial governments, the

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[276] *Ibid.*
[277] Minister of Justice and Attorney General of Canada Mandate Letter from Rt. Hon. Justin Trudeau to Hon. David Lametti (13 December, 2019), online: <pm.gc.ca/en/mandate-letters/2019/12/13/minister-justice-and-attorney-general-canada-mandate-letter>; Minister of Justice and Attorney General Supplementary Mandate Letter from Rt. Hon. Justin Trudeau to Hon. David Lametti (15 January 2021), online: <pm.gc.ca/en/mandate-letters/2021/01/15/minister-justice-and-attorney-general-canada-supplementary-mandate>; Minister of Seniors Mandate Letter from Rt. Hon. Justin Trudeau to Hon. Deb Schulte (13 December, 2019), online: <pm.gc.ca/en/mandate-letters/2019/12/13/minister-seniors-mandate-letter>; and Minister of Seniors Supplementary Mandate Letter from Rt. Hon. Justin Trudeau to Hon. Deb Schulte (15 January, 2021), online: <pm.gc.ca/en/mandate-letters/2021/01/15/minister-seniors-supplementary-mandate-letter>.
[278] *Ibid.*
[279] *Standing Orders of the House of Commons* (1 January 2021) Ch XIII, No 108.
[280] House of Commons, Standing Committee on Justice and Human Rights, 43rd Parl, 2nd Sess, Meeting 33, *Evidence* (11 May 2021) at 12:10:20 (Terry Lake, Chief Executive Officer of the BC Care Providers Association).
[281] House of Commons, Standing Committee on Justice and Human Rights, 43rd Parl, 2nd Sess, Meeting 32 (6 May 2021).

development of training and educational resources for individuals who might encounter elder abuse in the justice system, and more.

In its second meeting held on May 11, 2021[282], the Committee heard testimony from representatives of the Canadian Centre for Elder Law, a subsidiary of the British Columbia Law Institute, Vigil'Ange, a Quebec seniors resource network, the BC Care Providers Association, the Canadian Network for the Prevention of Elder Abuse, Elder Abuse Prevention Ontario, and Howie, Sacks and Henry LLP, an Ontario-based law firm which specializes in personal injury law. Among other topics, witnesses and Committee members addressed the need for increased comparative research regarding the treatment of elder abuse in Canada versus other jurisdictions, increased housing for vulnerable populations such as abused seniors, national standards for long term care facilities, increased training for police officers with respect to the investigation of elder abuse cases, the professionalization of health care aids, and more. The Committee heard testimony from representatives of the Canadian Association of Social Workers, Pak Pioneers Community Organization of Canada, the Canadian Nurses Association and the Canadian Indigenous Nurses Association on May 13, 2021, and from representatives of Statistics Canada on May 25th, 2021, before it began working on its Report.

In the interim, on June 15, 2021, Minister of Seniors, Deb Schulte announced the launch of consultations with experts, stakeholders and Canadians on a definition of senior abuse.[283] The creation of a federal policy definition of senior abuse through such consultations, it was explained, "will support more consistent and informed awareness and prevention activities, data collection, as well as program and service delivery."[284]

Through an online consultation portal, which will be open until the consultation period concludes on July 22, 2021, Employment and Social Development Canada is calling on various groups to provide feedback by participating in a 10-15 minute online survey which canvasses participants on a variety of matters. Specifically, the Government is calling on researchers and academics, groups and other experts that represent and provide support to older adults, and that work with persons with disabilities, LGBTQ2 communities, new immigrants, and official language minority communities, Indigenous communities, governments and organizations, and members of the general public, including older adults.[285] It is seeking feedback from these groups on matters such as their preferred term to describe the issue of senior abuse (e.g. senior abuse, abuse of older persons, mistreatment of older adults, etc.), the age group which ought to be included in a definition of senior abuse, the types of abuse that participants consider to be encompassed by the term senior abuse (e.g. physical abuse, financial abuse, sexual abuse, etc.) and whether these

[282] House of Commons, Standing Committee on Justice and Human Rights, 43rd Parl, 2nd Sess, Meeting 33 (11 May 2021).
[283] Employment and Social Development Canada, News Release, "Government of Canada launches consultation on federal policy definition of senior abuse" (15 June 2021).
[284] *Ibid.*
[285] Employment and Social Development Canada, "Share your thoughts: Creating a federal policy definition of 'senior abuse'" (15 June 2021).

types ought to be incorporated into a standardized definition, and more.[286] The survey also asks questions pertaining to the collection of information and data required in order to develop senior abuse policies, and questions pertaining to demographics of participants.[287]

Minister of Seniors Deb Schulte referred to the creation of a federal definition through these consultations as a foundational part of the Government's efforts to strengthen how Canada combats senior abuse in all its forms.[288] Similar sentiments were expressed by Minister of Justice and Attorney General of Canada David Lametti, who commented:

> The Government of Canada considers all forms of abuse and neglect of seniors to be very serious issues and we are committed to ensuring seniors are protected. Creating a federal definition of senior abuse will improve the tools we have at hand to better the lives of our seniors. We must take care of seniors across the country and ensure that their needs are met.[289]

Another unique area of federal jurisdiction which may have implications on elder abuse is Canada's medical assistance in dying ("MAID") law[290], which allows eligible Canadian adults to request medical assistance in dying under certain circumstances. Like provincial laws governing health care directives, the MAID law ensures that individuals are in control of the extent of medical treatment they receive, but more importantly, of their end of life medical decisions. In this sense, the MAID law protects individuals (including older individuals) from the imposition of unwanted medical treatment, which has been recognized as a denial of rights and thus a form of abuse.[291]

This law, which was originally passed in June 2016, was revised in March of 2021 to change existing safeguards for eligible people whose natural death is considered reasonably foreseeable, and to create new safeguards for eligible people who are requesting MAID and whose death is not considered reasonably foreseeable.[292] According to the Government of Canada, these safeguards aim to make sure that those who ask for MAID:

- request the service of their own free will[;]
- are able to make health care decisions for themselves[;]
- are eligible…[; and]

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[286] Employment and Social Development Canada, Online Survey, "Creating a Federal Policy Definition of Senior Abuse", online: <www.canada.ca/en/employment-social-development/corporate/consultation-senior-abuse-definition.html>.
[287] *Ibid.*
[288] *Employment and Social Development Canada, supra* note 283.
[289] *Ibid.*
[290] Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying)*, 2nd Sess, 43rd Leg, 2021 (assented to March 17, 2021).
[291] *Manitoba Law Reform Commission, supra* note 11 at 21.
[292] Government of Canada, "Medical assistance in dying", online: <www.canada.ca/en/health-canada/services/medical-assistance-dying.html#a1>.

- can and do give informed consent, which includes being informed of all care options available to them to help relieve suffering.[293]

These extra safeguards protect people requesting MAID from abuse or misuse of the law by ensuring that there are no outside forces influencing the individual's decision to end their life, like, for instance an abusive family member or caregiver.

B. United States

Legislation pertaining to aging has existed in the United States since the 1930s, with the enactment of the federal *Social Security Act*, which provides for Old Age Assistance and Old Age Survivors Insurance, among other things.[294] In the 1950s, in response to growing concerns regarding the safety of vulnerable older Americans, the *Social Security Act* was amended to provide federal funding targeted at the creation of formal protective services units, social services and guardianship services amongst the states.[295] Among other things, under this amendment, the U.S. Congress directed states to provide protective services units for adults over the age of 18 with mental and physical impairments who were neglected, exploited, or otherwise unable to manage on their own.[296]

Building upon this newfound recognition of the need to better serve and protect older Americans, the *Older Americans Act* ("OAA") was enacted in 1965, accompanied by the establishment of the Administration on Aging ("AoA") within the Department of Health, Education and Welfare. This agency is tasked with carrying out the provisions of the OAA to promote the well-being of older individuals.[297] Today, the OAA is viewed as one of the "major [vehicles] for the organization and delivery of social and nutrition services to [older individuals] and their caregivers."[298]

The OAA, which provides a suite of services to Americans who are 60 years of age and older,[299] established authority for grants to states for community planning and social services, research and development projects, and personnel training in the field of aging.[300] Funding is released by

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[293] *Ibid.*
[294] *Social Security Act*, 42 USC §§ 301-1305 (Suppl. 4 1934).
[295] Administration for Community Living, "Older Americans Act", online: <acl.gov/about-acl/authorizing-statutes/older-americans-act#:~:text=A%20new%20Title%20VII%20is%20created%20under%20the,Comprehensive%20Services%20Amendments%20established%20Area%20Agencies%20on%20Aging>.
[296] Pamela B. Teaster, Joy Swanson Ernst & Patricia Brownell, "United States Issues in Elder Abuse", in Mala Kapur Shankardass, ed, *International Handbook of Elder Abuse and Mistreatment* (Singapore: Springer Nature Singapore Pte Ltd., 2020) at 42.
[297] Administration for Community Living, "Administration on Aging", online: <acl.gov/about-acl/administration-aging>.
[298] *Older Americans Act*, Pub L 89-73, 79 Stat 218, July 14, 1965.
[299] AARP Public Policy Institute, "The Older Americans Act" (2014) at 1, online (pdf): <www.giaging.org/documents/The_Older_Americans_Act.pdf> [perma.cc/9AAX-Y4PF].
[300] *Administration for Community Living*, *supra* note 295.

the federal government under the OAA, and each state receives these funds based on its older adult population over the age of 60.[301] Some of this funding is used by the states to protect against elder abuse, specifically, and this is done in a variety of different ways, including through legislation addressing financial exploitation of vulnerable or dependent adults, through specific adult protection legislation, and through state Criminal Codes. In Florida, for example, the "aggravated abuse of an elderly person or disabled adult", which results in "great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult" is considered a first degree felony carrying with it a potential prison sentence of up to 30 years.[302]

More recently, in 2010, the *Elder Justice Act* ("EJA") was enacted as part of the *Affordable Care Act* ("ACA"). The EJA was the first federal law "to specifically state that it is the right of older adults to be free of abuse, neglect, and exploitation."[303] Like the OAA, the EJA included authorization of several grant programs from the federal government targeted at older Americans. However, the EJA specifically attempted to "address some of the weaknesses in federal and state efforts to prevent and respond to abuse, neglect, and exploitation of older people."[304] Accordingly, authorized grant programs included "a new state formula grant program for adult protective services (APS), established requirements for reporting of crimes in long-term care facilities, and […] advisory bodies on elder abuse within the Department of Health and Human Services (HHS)."[305] Unfortunately, as no funding has yet been appropriated to accomplish what it set out to do, the EJA has never quite realized its four-pronged mission of:

1. enhancing national coordination of elder justice activities and research;
2. establishing forensic centers to develop expertise and jurisprudence in elder abuse;
3. strengthening adult protective services; and
4. improving the capacity of long-term care settings to prevent and respond to abuse, neglect and exploitation.[306]

C. United Kingdom

Elder abuse entered the reform agenda in the United Kingdom later than in Canada and the United States. In fact, scholars indicate that it was not until around 1988, in which a national conference of the British Geriatrics Society raised concerns regarding elder abuse and neglect that the United Kingdom really began exploring the problem.[307] However, like Canada and the

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[301] *Ibid*.
[302] Fla. Stat. title XLVI § 825.1025, 775.082(6)(b)1.
[303] *Teaster, Ernst & Brownell, supra* note 296 at 43.
[304] Carol V. O'Shaughnessy, "The Elder Justice Act: Addressing Elder Abuse, Neglect, and Exploitation" (30 November 2010) at 2, online (pdf): *National Health Policy Forum* <www. nhpf.org/library/the-basics/Basics_ElderJustice_11-30-10.pdf>.
[305] *Ibid.*
[306] *Teaster, Ernst & Brownell, supra* note 296 at 43.
[307] Bridget Penhale, "Elder Abuse and Adult Safeguarding in UK", in Mala Kapur Shankardass, ed, *International Handbook of Elder Abuse and Mistreatment* (Singapore: Springer Nature Singapore Pte Ltd., 2020) at 312 [Elder Abuse and Adult Safeguarding in UK].

United States, much of the United Kingdom's legislative response to elder abuse has taken the form of legislation pertaining to adults who are "lacking capacity", "at risk" or "vulnerable."[308]

While there is no single piece of legislation in this regard that specifically concerns the protection of vulnerable adults in England, Wales or Northern Ireland, there are a number of different pieces of legislation within the United Kingdom which may be used by individuals who are in need of protection, including older adults.[309] These include legislation designed to protect people with mental illness from harm or harming others, such as *The Mental Health Act* (2007); legislation designed to protect older adults who lack the capacity to make decisions for themselves, like the *Mental Capacity Act* (2005); legislation focused on adult protection, like England's *Care Act*, Wales's *Social Services and Well-being (Wales) Act,* or Scotland's *Adult Support and Protection (Scotland) Act*; and domestic violence legislation such as the *Domestic Violence, Crime and Victims Act* (2004), which addresses elder abuse and which specifically criminalizes familial homicide resulting from elder abuse against a family member.[310]

Interestingly, with respect to adult protection legislation, scholars note that there are certain differences between the jurisdictions of the Untied Kingdom in terms of what level of mistreatment might lead to a response within safeguarding processes. Whereas in England and Wales, "the threshold appears to be quite narrowly drawn around abuse and/or neglect," in Northern Ireland and Scotland, "the equivalent trigger or threshold is based on the somewhat broader concept of harm."[311] Regardless of the threshold, however, each jurisdiction provides mechanisms intended to protect vulnerable individuals which are similar to those established by adult protection regimes in Canada (e.g. duties on local authorities to undertake enquiries, provision of a power of entry to a property in which an adult at risk of abuse is living, access to records, etc.)[312]

[308] *Ibid*.
[309] *Ibid* at 317.
[310] *Ibid* at 318.
[311] *Ibid* at 320.
[312] *Ibid*.

CHAPTER 4: ISSUES FOR DISCUSSION

In light of the current state of affairs in Manitoba with respect to elder abuse and neglect, as outlined in this Paper, the Commission, with the assistance of its Elder Abuse Project Advisory Committee ("the Advisory Committee"), has begun to turn its mind to a number of areas of concern and issues for consideration in respect of the study, prevention, and treatment of the abuse and neglect of older adults in this province.

For instance, in considering both how Manitoba and other jurisdictions in and outside of Canada currently address the abuse and neglect of older adults, the Commission has learned from its preliminary research and from the Advisory Committee that Manitoba may not have sufficient educational programming for older adults, caregivers, and the general population regarding the detection, prevention, and reporting of elder abuse and neglect. It has also learned that there may not be enough public awareness surrounding the issue of abuse and neglect in the province, that there may be insufficient emergency services available to older adults who are suffering from abuse and/or neglect, and most importantly, that likely these concerns cannot be adequately addressed by the resources and laws that currently exist in Manitoba.

Bearing in mind Manitoba's current elder abuse and neglect landscape, those of jurisdictions outside of Manitoba, and the issues and concerns raised throughout this Paper, the Commission seeks input from interested individuals, community groups, stakeholders, and the legal community in response to this Paper. The Commission seeks input regarding any additional issues for discussion that can help to inform the Commission's ongoing exploration into the topic of elder abuse and neglect in the province, and ultimately, its recommendations for reform. Specifically, the Commission asks:

What are your major concerns with respect to Manitoba's current efforts (legal and non-legal) to address the abuse and neglect of older adults?