CIVIL INVESTIGATION AND ABUSE OF VULNERABLE ADULTS IN CALGARY: AN EXPLORATORY STUDY

Submitted to:
Action Group on Elder Abuse

Submitted by:
Canadian Research Institute for Law and the Family

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September 2010
The views expressed in this report are those of the authors and do not necessarily represent the views of the Canadian Research Institute for Law and the Family or Calgary’s Action Group on Elder Abuse.
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EXECUTIVE SUMMARY

Since 2004, Calgary’s Action Group on Elder Abuse (AGEA), an initiative of the Alliance to End Violence, has engaged community stakeholders in identifying gaps and building community capacity in addressing the issue of abuse of older adults. In 2007, AGEA initiated the development of a coordinated community response model for older adult victims of abuse and neglect in Calgary. As part of this process, three “Pulling Back the Curtain” working sessions were held in 2008, where community stakeholders were engaged in discussions regarding what Calgary’s community response model requires in order to be effective. As a result of these working sessions, a response model was drafted and presented to the community in October 2008. The consultations on the response model led to discussions regarding a civil investigation procedure for responding to situations where abuse or the risk of abuse of an older adult is alleged in the community, as it was recognized that a gap in protection exists in Alberta for this population. This is especially true of cases where there is no discernable criminal element.

AGEA recognized the importance of determining whether a non-criminal investigation procedure would be appropriate, feasible, and desired in Calgary. AGEA approached the Canadian Research Institute for Law and the Family (CRILF) in 2009 with the idea of conducting a small feasibility study. Ultimately, AGEA would use the results of the study to increase Calgary stakeholders’ understanding of civil investigation, and consult with the community on whether it should be a part of Calgary’s community response model to address the abuse of older adults. With funding from the Alberta Law Foundation, and in partnership with AGEA, CRILF and legal consultant Sheryl Pearson began work on the feasibility study in March 2010.

The purpose of this report is to determine the feasibility of a non-criminal investigation procedure in Calgary for cases where abuse of older adults is suspected, including the resources and legal mechanisms required as well as potential issues that may exist.

The objectives of the report are as follows:

(1) To increase understanding of the legal mechanisms available in Alberta provincial adult protection legislation;

(2) To increase understanding of non-criminal investigation models in Canada and internationally for cases of older adult abuse, and the legal and social mechanisms required for their operation;

(3) To determine whether non-criminal investigation would be appropriate and supported in Calgary’s community response model; and

(4) To determine the feasibility of adopting a non-criminal investigation procedure in Alberta as a possible tool to better protect older adults in the community.
Methodology

The following research questions are addressed in this report:

1. What kinds of non-criminal investigation models currently exist in Canada and, if relevant, internationally?
2. What resources would be required to adopt such a model in Calgary?
3. Is there support among Calgary’s older adult-serving agencies for such a model?
4. What legal mechanisms currently exist in Alberta to protect older adults?
5. What type of legislative mechanisms would be required in order to adopt such a model in Calgary?
6. What kind of legislative change (provincial, municipal) would be required in order to support this type of model in Calgary?

The following methodologies were used in the study:

Legislative Review

Drawing on CRILF’s 2006 legislative review of protection for older adults in Alberta (Pearson & Pauls, 2006), this review targets and analyzes provincial legislation that establishes the authority to respond to concerns about the mistreatment of vulnerable adults (e.g., Adult Guardianship and Trusteeship Act, Personal Directives Act, Protection for Persons in Care Act, etc.). “Vulnerable adults” is defined as persons over the age of 18 who are impaired in their ability to make decisions about abuse and/or neglect and who are, by reason of their circumstances, more vulnerable to victimization and abuse than others. The review also compares Alberta’s legislative framework to British Columbia’s Adult Protection Act, a Canadian example of a model that provides for powers of non-criminal investigation, identifies gaps in Alberta’s framework, and suggests legislative options for addressing the gaps in coverage in Alberta.

Environmental Scan

The environmental scan consisted of a search for jurisdictions in Canada and internationally where non-criminal investigation is used in cases of maltreatment of older adults. This search was performed primarily using internet search engines and aided with information available in academic and grey literature. Where possible and necessary, contact was made with key stakeholders to provide additional information regarding the models. The criteria for the search consisted of models where non-justice agencies were provided legislated powers to conduct investigations of reports of abuse or neglect of vulnerable adults in the community. Information regarding each model
was collected from available literature, the legislation under which the model is empowered, and in some cases, key stakeholders.

Community Consultation

The purpose of the community consultation was to garner knowledge and opinions regarding non-criminal investigation, as well as to determine whether there is support among professionals working with vulnerable adults and community members for Alberta to adopt the legislation and procedure required to support such a model. Twenty-eight stakeholders and six community members, some of whom were vulnerable adults who had experienced abuse, participated in a 90-minute focus group or interview.

Discussion

In 2006, CRILF conducted a review of Alberta’s legislation protecting elderly victims of abuse and neglect (Pearson & Pauls, 2006). Drawing on this work, the legislative review conducted for this study examined Alberta’s adult protection legislation, specifically analyzing the authority to respond to mistreatment of vulnerable adults in the community. The review found that although the Adult Guardianship and Trusteeship Act (AGTA), the Personal Directives Act (PDA), and the Protection for Persons in Care Act (PPCA) have legislated power to investigate reports of abuse of vulnerable adults within their jurisdiction, and the Persons with Developmental Disabilities (PDD) Abuse Reporting and Response Protocol stipulates that reports of abuse or neglect must be reviewed, these tools only protect a particular population of adults in particular circumstances or conditions. As the review stated, this reflects Alberta’s philosophical approach to adult protection – to limit the authority to intervene in the spirit of preserving adults’ independence. However, the review reiterated that currently, there is no legislated authority to respond to cases of abused or neglected adults who are not subjects of a substitute decision-making arrangement, reside in the community and have the capacity to make decisions (but may be impaired in their ability to do so), or are victims of financial abuse by an attorney under an Enduring Power of Attorney or by a family member/friend/caregiver where no trusteeship exists. Though some focus group participants felt that this philosophical approach was appropriate in order to preserve the self-sufficiency of vulnerable adults, a number of others felt that these gaps have resulted in a feeling of helplessness and frustration among service providers and abused/neglected adults alike.

In examining jurisdictions across Canada and internationally where adult protection legislation fills these gaps, it was found that, in most cases, models are guided by philosophies of protecting adults using the least intrusive interventions, preserving independence and self-sufficiency, and involving the adult in decisions made. These philosophies were echoed in discussions with stakeholders and community members, who felt that any additional protective tools must not infantilize vulnerable adults, but rather, empower them to be safe and healthy. Though some models adopt a “best interests” or welfare-based approach, most demonstrate an awareness of and respect for these issues.
Defining the population of adults who may be in need of protection is often a reflection of the philosophical approach adopted. While it is clear that many adults with disabilities or older adults are clearly self-sufficient and not in need of protection, establishing the parameters for protection is a grey area. Many of the Canadian models define the population to be protected broadly as those over the age of majority who are unable to seek support and assistance and who are unable to protect themselves due to a disability or illness; this provides for a certain amount of subjectivity in determining who is in need of protection. On the other hand, the New Brunswick, Massachusetts, and California models provide more static criteria – persons with disabilities, persons over age 60, etc. – with little room for interpretation. In discussions with service providers, there was a general sentiment that there should be room for professional discretion in determining whether an adult is in need of protection – a continuum to determine both the need for protection and the response required, as suggested by the B.C. Adult Abuse/Neglect Prevention Collaborative (2009).

Reporting is also a reflection of the ideologies adopted in adult protection. As evidenced in the models studied, reporting ranges from mandatory for all to mandatory for professionals to voluntary for all. In most Canadian models (e.g., British Columbia, Yukon, Prince Edward Island, New Brunswick), reporting is voluntary for anyone. The importance of voluntary reporting was iterated by the stakeholders and community members as a possible means to preserve the rights of the adult. However, the U.S. and Scotland models stipulate that certain professionals who have care or control of a vulnerable adult must report. This aspect was debated by the focus group/interview participants, who felt mandatory reporting by professionals may serve to protect the adult by taking the onus away from them; however, front-line workers were concerned that this may also threaten their relationship with the client. The literature (e.g., Stieber Roger, & Ursel, 2009) suggested that a large proportion of older adults feel that their rights would be violated by mandatory reporting.

In most models, once a report of suspected abuse or neglect is made and there is reasonable cause to believe that it is occurring, the legislation obligates the designated agency to investigate, evaluate, or assess. Typically, investigative powers include interviews, home visits, and the power to review records (e.g., medical, financial, etc.); the ability to access records, however, must be justified by the needs of the investigation. In situations where investigatory attempts are refused, most models provide parameters for court orders to be obtained. Currently in Alberta, similar powers to investigate exist under the Adult Guardianship and Trusteeship Act, the Personal Directives Act, and the Protection for Persons in Care Act; however, these investigatory powers apply only to cases of abuse within the jurisdiction of that legislation.

When stakeholders and community members were asked about the duty to and power to investigate, the importance of preserving the independence of the adult – not forcing an investigation on an “able bodied, mindful person” – was stressed. Many felt that the capacity or capability of the adult should be assessed prior to any investigation proceeding – that the investigation be tied to the ability to consent, thereby not forcing able but unwilling adults to participate in an investigation. Community members, however, raised the important point that a mandatory investigation would take the onus
away from the often fearful adult. The B.C. Adult Guardianship Act is one model that balances preserving the safety of the vulnerable adult that is suspected to be experiencing abuse and neglect without the intrusiveness of an unnecessary full inquiry, having discretionary power to investigate. Investigation is one course of action that may be followed if the adult is identified as in need of support or assistance; referral to community services, support, and involvement of the Public Guardian or Trustee are other options. Thus, a report of suspected abuse or neglect where there is reason to believe an adult needs support or assistance does not necessarily trigger a mandatory investigation, but rather, a range of possible responses – a graduated system of response, as suggested by focus group/interview participants.

In terms of the outcome of investigation, examination of the models suggest that recommendations for protective responses are made mandatory (often through court ordered protection orders) when the vulnerable adult’s life and/or health is in jeopardy or they are not capable of consenting to service and it has been determined that they require it for their safety; otherwise, it is up to the adult to choose whether they want the recommended intervention. Thus, the powers to intervene in an adult’s life are often directly related to their level of vulnerability. Focus group/interview participants agreed with this notion, and also expressed that it must be demonstrated that there is reasonable cause to believe the abuse is occurring before any action can be taken. In cases where abuse/neglect has been substantiated and intervention is required, participants felt that long-term case management, safety planning, and support is important, and that well-resourced responses are vital. In addition, provision of service must be coordinated, and the provider held accountable. According to community stakeholders and members, also key to any response is family and caregiver support and cultural sensitivity.

The legislative review revealed that there are, indeed, gaps in protection in Alberta with regard to the population of vulnerable adults. The environmental scan, in combination with input from community members and stakeholders, determined that an Alberta model must balance safety and independence, using the least intrusive and most effective actions and interventions possible. However, a few questions remain: (1) Is there support for this type of model as part of Calgary’s community response to abuse/neglect of older adults? (2) Is this type of model feasible? and (3) What would be required in order for a civil/non-criminal investigation model to work?

Discussions with community members and stakeholders revealed that perceptions of adopting civil or non-criminal investigation as part of Calgary’s community response to the abuse/neglect of older adults were mixed. Those who were in support stressed that it would allow them to “do something” in cases where there is currently no authority to protect older adults – those in the community experiencing various forms of abuse or neglect (including financial abuse) that cannot be substantiated as criminal and are not protected under any existing legislation. Further, a number of participants observed that with Alberta’s aging population, the current gaps in protection will become more apparent than ever, and that the Alberta government must plan for this occurring. Those who did not support an immediate change in Alberta’s adult protection scheme iterated a number of concerns. First, a thorough
assessment of the current system and resources must be conducted before any change is made. A number of stakeholders pointed out that it is unknown how large the problem is as there are few reliable statistics available as to exactly how many adults are subject to this gap in protection. Additionally, communication, coordination, and collaboration among agencies in the existing framework must be addressed and improved before a decision can be made as to whether an additional tool is required.

If the model were to be adopted, a number of elements would be required. First, and most importantly, a change in legislation is necessary. As identified in the legislative review, the gaps in Alberta’s current legislation may be addressed in one of two ways: a new piece of legislation similar to B.C.’s Adult Guardianship Act may be adopted, either to fill the current gaps or to more comprehensively cover all vulnerable adults; or Alberta’s current legislation (e.g., AGTA, PPCA, PAFVA) could be reformed to ensure this population of vulnerable adults is protected. In any event, this legislative change would need to incorporate three major elements: the target population, either broadly defined as in the B.C. AGA, or more narrowly in terms of adults who have mental incapacity; the flexibility for adults to consent to the process if they have capacity and for adults without capacity to receive service pursuant to a court order; and finally, that the legislation broadly apply to all forms of abuse and neglect (including self neglect). In discussions with community members and stakeholders, gaps in real estate law and title transfers, the power to monitor bank transfers, and the need for improved financial assistance must be addressed in any legislative reform. In order for the legislation to be effective, participants identified that the power to perform an assessment or investigation in cases where the adult lacks physical or mental capacity and gather information (e.g., interviews, records) is vital.

In addition to having a solid foundation in legislation, community stakeholders stressed that a civil investigation model would need to be well resourced and well coordinated. Community stakeholders and members identified that a central, independent agency must receive the reports, investigate, and monitor outcomes, which is reminiscent of existing models in Canada, the United States, and the United Kingdom. In order to achieve this, it was suggested that existing resources and agencies be drawn upon, so as to maximize what is available and minimize replication and expense. A number of existing government bodies were suggested for this, including Alberta Seniors and Community Supports and the Office for the Protection for Persons in Care. Community stakeholders also suggested drawing upon local agencies and initiatives, including Senior Connect, which connects seniors to community resources, and Homefront, Calgary’s coordinated community-justice response to family violence. Clear parameters and powers for reporting, investigating, and responding must be established to ensure a seamless system of adult protection. Issues of information-sharing and confidentiality were raised, suggesting the need for agreements between agencies, as demonstrated in existing models in other jurisdictions. A close relationship and clear lines of communication with police would also be important, particularly in cases where a crime may have occurred. Perhaps most importantly, the adult who is the subject of the intervention must be consulted and involved as much as possible to ensure their self-determination. Finally, communication of the process to agencies and the community would be key.
Conclusions

AGEA’s effort to develop a coordinated community response to the abuse and neglect of older adults has made tremendous strides in recent years, and has been met by generous community support. In its consultations with community members and stakeholders, it continues to strive to develop the best and most suitable model to respond to abuse and neglect of older adults in Calgary. As part of these efforts, AGEA has initiated this research to determine whether civil or non-criminal investigation would be a valuable tool to further protect vulnerable adults, and specifically, older adults.

This project has revealed that there are a number of models operating in Canada and internationally that work to ensure the safety of vulnerable adults while preserving their independence and self-sufficiency. However, the legislative review revealed that Alberta currently approaches the area of adult protection with the philosophy of respecting individual autonomy and self-determination of adults by leaving the intervention of authorities to only the most vulnerable. Before any powers of civil investigation in the area of abuse/neglect of older adults are granted, that philosophy must be revisited on a policy level.

In addition, though anecdotally many community stakeholders recognize this gap in protection as an issue, it is unknown as to exactly how many vulnerable adults living in the community are “falling through the cracks.” Collection of occurrence data is necessary in order to determine the extent of the issue and how best to respond. This may be aided by the Calgary Police Service’s Elder Abuse Team, who could provide counts of the number of cases they respond to that are not criminal in nature. However, a provincial initiative to collect data on the abuse/neglect of all vulnerable adults in the community would be ideal in order to truly determine whether legislative reform is needed.

It was also suggested by some community stakeholders that a more pragmatic approach to the issue be adopted, examining whether available resources are being maximized, determining the effectiveness of the response model without non-criminal investigation, and working to establish a strong network of collaboration among senior-serving agencies in Calgary.

There is little doubt, both analytically and anecdotally, that a gap in protection exists in Alberta that has resulted in frustration for both front-line workers and adults experiencing abuse and neglect. Efforts to explore this issue more extensively and find adequate solutions must be made in order to ensure that vulnerable adults are safe.
ACKNOWLEDGEMENTS

The authors would like to thank a number of individuals and groups who made this study possible. First, the authors would like to recognize the generosity of the Alberta Law Foundation (ALF) for funding this project. Second, the authors would like to gratefully acknowledge Eva Chan of the Alliance to End Violence for her support and assistance with the project, from development to final product. Her passion and motivation for this work is inspiring.

In addition, the authors would like to acknowledge the Action Group on Elder Abuse (AGEA) for their helpful input and review of the final report, and Sherrisa Celis in particular for her assistance in reviewing and providing input on the focus group/interview materials.

The authors also acknowledge Brenda Lee Doyle, Edith Baraniecki, and Marjory Sutherland of the Government of Alberta for providing insight into the application of relevant legislation in Alberta. Their time and expertise significantly added to the accuracy and thoroughness of the legislative review.

The authors would also like to extend tremendous gratitude to the community members and stakeholders who generously gave their time to participate in a focus group or interview. Their knowledge and input was invaluable to the research and provided helpful insight in examining the issues.

The authors would also like to thank Dr. Joseph Hornick, Dr. Lorne Bertrand, and Joanne Paetsch of the Canadian Research Institute for Law and the Family (CRILF) for providing input throughout the course of the study and reviewing the final report. In addition, the authors would like to recognize Linda Haggatt-Fortune, receptionist/typist at CRILF, for formatting and editing the final report.
1.0 INTRODUCTION

1.1 Background

Since 2004, Calgary’s Action Group on Elder Abuse (AGEA), an initiative of the Alliance to End Violence, has engaged community stakeholders in identifying gaps and building community capacity in addressing the issue of abuse of older adults. Specifically, AGEA’s efforts have focused on coordination of services, awareness and education, research and best practices, and partnership with policy makers, all toward its mission: to enhance and coordinate the response to abuse of older adults in Calgary.

In 2007, AGEA initiated the development of a coordinated community response model for older adult victims of abuse and neglect in Calgary. As part of this process, three “Pulling Back the Curtain” working sessions were held in 2008, where 195 community stakeholders representing a number of sectors (e.g., health, law enforcement, criminal justice, disabilities, social services, government, education, housing, ethnocultural) were engaged in discussions regarding what Calgary’s community response model requires in order to be effective. As a result of these working sessions, a response model was drafted and presented to the community in October 2008. The key components of the model included: a multidisciplinary response team; a 24-hour dedicated crisis line; shelter/accommodation options for older adults; on-going case management/support; education/training; and prevention/public awareness. In addition, the consultations on the response model also led to suggestions for a civil investigation procedure for investigating situations where abuse or the risk of abuse is alleged in the community, providing protection plans where appropriate. Though Alberta’s Protection for Persons in Care Act provides protection, including the power to investigate, for adults in publicly funded facilities, it was recognized that a gap exists in protective mechanisms for vulnerable adults experiencing abuse in the community, particularly in cases where there is no discernable criminal element.

As the community response model was being developed, AGEA recognized the importance of determining whether a non-criminal investigation procedure would be appropriate, feasible, and desired in Calgary. AGEA approached the Canadian Research Institute for Law and the Family (CRILF) in 2009 with the idea of conducting a small feasibility study. The feasibility study would determine the legislation and resources required in order for non-criminal investigation to exist as part of Calgary’s community response model, as well as whether there is support in the community for such a model. This would be accomplished through an environmental scan of existing models, consultation with key community stakeholders working with older adults in Calgary and older adults themselves, and a review of the legislative mechanisms currently available in Alberta to determine the legal feasibility of non-criminal investigation. Ultimately, AGEA would use the results of the study to inform Calgary stakeholders on civil investigation, and consult with the community on whether it should be a part of Calgary’s community response model to address the abuse of older adults.
AGEA applied to the Alberta Law Foundation for funds for the study, and in early 2010, funding was secured.

1.2 Issues in Adult Protection

The topic of civil investigation in the abuse and neglect of older adults, and vulnerable adults in general, falls into a larger debate over adult protection, one that has existed in Canada for a number of years. Approaches to protecting vulnerable adults in Canada vary by jurisdiction, ranging from largely non-intrusive approaches to significantly protective ones. As outlined by the B.C. Adult Abuse/Neglect Prevention Collaborative (2009), Canadian provincial/territorial abuse and neglect legislation can be grouped into four general categories:

(1) Comprehensive Adult Protection Regimes: Yukon, British Columbia, Prince Edward Island, and New Brunswick have specific pieces of legislation (whether stand-alone or part of guardianship/substitute decision-making legislation) that address adult abuse and neglect. In addition to defining the groups of adults protected and what constitutes abuse and neglect, these legislative schemes provide powers for agency intervention and investigation.

(2) Deliberately Limited Regimes: Ontario, Alberta and Manitoba’s legislative schemes follow a non-invasive ideology, rejecting comprehensive abuse/neglect specific legislation following the view that it would be too intrusive. Though these provinces protect those in care centres by legislating mandatory reporting and investigation, there is little specific protection for those in the community, aside from the protections provided by the Criminal Code and some guardianship/trusteeship legislation.

(3) Protectionist Regimes: For vulnerable adults in the community, Nova Scotia’s Adult Protection Act is perhaps the most protectionist regime in Canada. Following a best interests of the adult model, Nova Scotia’s legislation requires mandatory reporting, making it an offence to fail to report. The province is granted broad powers in cases where it has been determined that an adult requires protection, including the power to enter the home, order assessments, and provide required assistance. There are no provisions that implicitly give the adult the right to be heard.

(4) Patchwork Regimes: Saskatchewan, Quebec, and the Northwest Territories (NWT) do not have adult abuse and neglect legislation. In the case of Saskatchewan and NWT, family violence legislation may be used in certain situations. The most relevant legislation in Quebec is the Quebec Charter of Rights and Freedoms, which offers protection to those who are aged or disabled who might be exploited. Each province also has guardianship and trusteeship legislation.

As observed by the B.C. Adult Abuse/Neglect Prevention Collaborative, Alberta has adopted a deliberately limited approach to adult protection. CRILF’s 2006 project,
The Response to Elder Abuse in Alberta: Legislation and Victim Focused Services (Pauls & MacRae, 2006), articulated the limitations of this type of approach. According to the project’s legislative review (Pearson & Pauls, 2006), Alberta’s legislative framework has led to large protection gaps in relation to adults who are abused in their homes, in the community, or financially, areas that are covered by more comprehensive models. In addition, the study’s consultations with stakeholders revealed that, in order to better protect vulnerable older adults, a central agency should be created to receive reports of abuse or neglect and have the authority to assess and intervene in these cases, providing services and supports if needed (Pauls & MacRae, 2006). Self-report victim surveys also demonstrated the need for enhanced supports and, in addition, revealed the importance of developing better financial protection for vulnerable seniors.

As iterated by Podnieks (2008), adult protection in Canada generally combines legal, health, and social services to produce coordinated, interdisciplinary approaches. Often, the founding legislation provides for emergency access to the adult and gradual intervention, the goal being to provide care and service to the abused person, not to punish the perpetrator. Adults are encouraged to accept service, but in cases where a person is incapable of making the decision, an order may be made imposing emergency services. However, these types of approaches have been met by questions and resistance in a number of circles. As observed by Nerenberg (2006) of elder abuse reporting laws in the United States, most are modeled on approaches used in child protection. However, it has been argued using this type of approach in the context of protecting vulnerable adults is both inappropriate and infantilizing. As observed by Collins (2010) in his discussion of the emerging debate over adult protection in England and Wales, the vulnerability of children, their ability to give consent, and the duty of care required are clear-cut; this is not so in the case of adults, nor is the determination of what constitutes significant harm to them. Further, Collins (2010) argues that in cases of abuse/neglect of vulnerable adults, particularly when a criminal law has not been broken, a number of factors must be considered in determining whether adult protection laws should be applied:

- Does the suspected abuse apply to a vulnerable adult?
- Does the vulnerable adult have the capacity to consent to what is happening and/or was duress involved?
- Has a duty of care or position of trust been violated (e.g., by a caregiver)?
- Is the harm experienced by the vulnerable adult significant?

Adopting a more protectionist approach to older adults experiencing abuse or neglect is part of an ongoing ideological debate between safeguarding the right to the adult’s agency and independence and intervening to ensure their safety. Following this are questions of “who” among adults require protection. As described by the B.C. Adult Abuse/Neglect Prevention Collaborative (2009), prior to the 1980s, age was largely used as an indicator of incapability. In the 1980s and early 1990s, the ageist nature of this approach was recognized, after which “vulnerable” was used to describe “adults of
any age who faced societal challenges” (B.C. Adult Abuse/Neglect Prevention Collaborative, 2009: 14). This definition also presented issues, being paternalistic, broad, and vague, defining a person based on the assumptions about perceived disability. Later definitions of vulnerability involved the ability to safeguard personal welfare, property or finances, combined with the need for care and attention or the presence of a disability, illness, or mental disorder. Arguments continue to be made that defining an adult as vulnerable according to these criteria may be used to justify paternalistic or mandatory interventions, thereby limiting choice. As a result, there has been a move away from the use of this concept entirely in some jurisdictions (e.g., British Columbia, Yukon), simply referring to “adults who have been abused or neglected.” Further to this discussion are issues of capacity and capability. As the B.C. Collaborative (2009) observes, where previously the capability to make decisions had been based on an all-or-nothing approach, most modern regimes adopt a continuum which recognizes that capability may be fluid, subject to situations and circumstances.

Important to this debate are the perspectives of older and/or vulnerable adults; however, little Canadian research on the subject is available. A 2009 study examining public opinion on mandatory reporting of abuse/neglect of older adults in Manitoba (Stieber Roger & Ursel, 2009) revealed that 64% of older adults were in favour of someone being notified if they were at risk. However, with regard to mandatory reporting, 50% of older adults felt that their rights would be somewhat restricted by mandatory reporting. As Spencer (2005) explains, up to one-third of abused or neglected older adults decline the help that is offered to them by agencies, often due to the guilt or shame associated, but also because the assistance offered does not reflect their self-identified needs. Spencer goes on to assert that the older adult’s concerns about privacy, independence, and relinquishing control of their life must be understood in any approach to older adults experiencing abuse or neglect. As discussed by Podnieks (2008) in her work on elder abuse in Canada, older people have asked for the emphasis to be shifted away from infantilizing protection laws toward the protection of rights. Adopting this type of approach would mean collaborating with the older person as solutions are being explored. In rights-based approaches, adults “are entitled to make decisions based on their own needs and values…upholding the importance of their rights” (Podnieks, 2008). These perspectives follow a harm reduction approach, one where immediate harms are addressed and any interventions work to achieve realistic goals, where service providers establish and build relationships with the older adult to help the person deal with his or her difficulties. As Spencer (2005) explains, harm reduction is distinct from traditional protective approaches in that the adult is involved in the decisions, which may involve working with the perpetrator to maintain a relationship (e.g., family) or assisting the older adult in achieving well-being in all aspects of life.

An example in Canada where these best practice strategies in adult protection are being sought is British Columbia. B.C.’s Vanguard Project, an initiative that has amassed law and policy research on the abuse and neglect of adults and mental capability, has developed an evidence-based approach to adult protection that balances safety and independence, the objective being to sacrifice “as little independence as possible” (B.C. Adult Abuse/Neglect Prevention Collaborative, 2009: 33). To achieve
these ends requires careful consideration of the issues and a tailored approach to suit each unique risk, as well as adherence to a number of requirements:

(1) Respect and understanding of the adult and their viewpoint;
(2) Responding to and operationalizing the values, wishes and beliefs of the adult;
(3) Using the least intrusive and most effective means to intervene, if necessary;
(4) Limiting the interventions appropriately with regard to scope and time; and
(5) If possible, persons with capability challenges should be assisted in making decisions, rather than using a substitute decision-making approach.

It is through this approach that the Vanguard Project has attempted to ameliorate the debate, reducing confusion among professionals over adult capability in B.C., bringing together professionals working with vulnerable adults and supporting cross-disciplinary collaboration (B.C. Adult Abuse/Neglect Prevention Collaborative, 2009).

As AGEA examines the possibility of increasing the protection provided by its community response model, it is important to consider these debates and issues in adult protection, as well as proven best practices in this area.

1.3 Purpose of the Report

With funding from the Alberta Law Foundation, and in partnership with AGEA, CRILF and legal consultant Sheryl Pearson began work on the feasibility study in March 2010. The purpose of this report is to determine the feasibility of a non-criminal investigation procedure in Calgary for cases where abuse of older adults is suspected, including the resources and legal mechanisms required as well as potential issues that may exist.

1.4 Objectives of the Report

The objectives of the report are as follows:

(1) To increase understanding of the legal mechanisms available in Alberta provincial adult protection legislation;
(2) To increase understanding of non-criminal investigation models in Canada and internationally for cases of older adult abuse, and the legal and social mechanisms required for their operation;
(3) To determine whether non-criminal investigation would be appropriate and supported in Calgary’s community response model; and
(4) To determine the feasibility of adopting a non-criminal investigation procedure in Alberta as a possible tool to better protect older adults in the community.

1.5 Organization of the Report

Chapter 2.0 of the report describes the methodology used for the environmental scan, community consultation, and legislative review. Chapter 3.0 presents the legislative review – Alberta’s current protection legislation, comparison to the British Columbia Adult Guardianship Act, an analysis of the current gaps in Alberta, and recommendations. Chapter 4.0 describes models of non-criminal investigation in Canada and the United States and their key components. Chapter 5.0 highlights the findings from the community consultations with stakeholders and older adults. Finally, Chapter 6.0 summarizes the findings from the project and presents recommendations for AGEA as the community response model is developed.
2.0 METHODOLOGY

2.1 Research Design

As indicated in Section 1.3, the purpose of this report is to examine the feasibility of a non-criminal investigation procedure in Calgary for cases where abuse of older adults is suspected.

2.1.1 Research Questions

The following research questions are addressed in this report:

1. What kinds of non-criminal investigation models currently exist in Canada and, if relevant, internationally?

2. What resources would be required to adopt such a model in Calgary?

3. Is there support among Calgary’s older adult-serving agencies for such a model?

4. What legal mechanisms currently exist in Alberta to protect older adults?

5. What type of legislative mechanisms would be required in order to adopt such a model in Calgary?

6. What kind of legislative change (provincial, municipal) would be required in order to support this type of model in Calgary?

2.2 Legislative Review

In 2006, CRILF conducted a review of Alberta’s legislation protecting elderly victims of abuse and neglect (Pearson & Pauls, 2006). The goals of the 2006 review were to understand the legislative framework in place to protect victims of elder abuse in Alberta, including substitute decision-making and protection legislation, and to identify any gaps in the legislation in order to establish a legislative framework for responding to elder abuse. Since the 2006 review, several key pieces of legislation have been amended, resulting in a need to examine the current state of legislation in Alberta.

Drawing on the work completed in 2006, this review targeted and analyzed provincial legislation that establishes the authority to respond to concerns about the mistreatment of vulnerable adults in the community. Current issues concerning institutional abuse and standards of care in residential facilities were touched on only briefly. For the purposes of the discussion, “vulnerable adults” is defined as persons over the age of 18 who are impaired in their ability to make decisions about abuse and/or neglect and who are, by reason of their circumstances, more vulnerable to victimization and abuse than others. The review also compares Alberta’s legislative
framework to British Columbia’s Adult Protection Act, a Canadian example of a model that provides for powers of non-criminal investigation.

The legislative review focused on three pieces of legislation, plus one abuse reporting protocol in Alberta:

- The Adult Guardianship and Trusteeship Act (AGTA);¹
- The Personal Directives Act (PDA);²
- The Protection for Persons in Care Act (PPCA);³ and

In addition, the review examined the following Alberta acts, albeit in a more cursory way:

- The Protection Against Family Violence Act (PAFVA);⁵
- The Supportive Living Accommodation Licensing Act (SLALA);⁶ and
- The Powers of Attorney Act (PAA).⁷

The legislative review consisted of four major components:

1. Mapping the current legislative mechanisms available in Alberta for addressing abuse and safety concerns of vulnerable adults;

2. Cross referencing the protection legislation used in British Columbia, namely, the Adult Guardianship Act, with the legislative mechanisms used in Alberta;

3. Identifying what, if any, gaps exist in the Alberta framework for responding to abuse of vulnerable adults; and

4. Examining the legislative options for addressing the gaps in the protection coverage in Alberta and making recommendations for legislative reform.

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¹ S.A. 2008 c. A-4.2 [AGTA].
² R.S.A. 2000, c. P-6 [PDA].
³ S.A., 2009 c. P-29.1 [PPCA].
⁵ R.S.A. 2000, c. P-27 [PAFVA].
⁶ S.A. 2009 c. S-23.5 [SLALA].
⁷ R.S.A. 2000, c. P-20 [PAA].
2.3 Environmental Scan

The environmental scan consisted of a search for jurisdictions in Canada and internationally where non-criminal investigation is used in cases of maltreatment of older adults. This search was performed primarily using internet search engines and aided with information available in academic and grey literature. Where possible and necessary, contact was made with key stakeholders to provide additional information regarding the models.

The criteria for the search consisted of models where non-justice agencies were provided legislated powers to conduct investigations of reports of abuse or neglect of vulnerable adults in the community. Abuse or neglect subject to investigation was broadly defined as situations where harm is caused to a vulnerable adult by another person, whether intentionally or unintentionally, as a result of their vulnerability. A vulnerable adult was defined as an adult who, because of a physical, mental, or emotional disability, is vulnerable to victimization.

Information regarding each model was collected from available literature, the legislation under which the model is empowered, and in some cases, key stakeholders. Non-criminal investigation models were analyzed according to the following criteria:

1. Jurisdiction: the jurisdiction in which the model operates.
2. Legislation: the legislation that empowers the model.
3. Designated authority: the authority designated by the legislation to carry out the investigation process.
4. Applicable population: the population protected by the legislation and the investigation model. This may include age, vulnerability, living situation, etc.
5. Definition of abuse/neglect: the definition and types of abuse/neglect protected by the legislation and the investigation model.
6. Guiding principles: the principles upon which the legislation and the investigation model are based.
7. Reporting: the process by which suspected abuse/neglect is reported, and the degree of obligation to report (e.g., mandatory, voluntary, etc.).
8. Investigation: the obligation, actions, and powers of investigation.
9. Result of investigation: the outcome of the investigation, including the extent to which outcomes must be followed.
Findings from the analysis are summarized in table form in Chapter 4.0. In addition, the scan examined whether each model had been evaluated. Few evaluations were found, but evaluation results were summarized following each model.

2.4 Community Consultation

The purpose of the community consultation was to garner knowledge and opinions regarding non-criminal investigation, as well as to determine whether there is support among professionals working with vulnerable adults and community members for Alberta to adopt the legislation and procedure required to support such a model.

With AGEA's assistance, key community stakeholders working with vulnerable adults in Calgary were identified. These stakeholders represented a number of sectors that serve vulnerable adults, including justice, health, and social serving agencies. Approximately 50 stakeholders were sent an email invitation (see Appendix A) by AGEA to participate in one of four focus groups, as well as a background sheet (see Appendix B). A total of 27 stakeholders signed up to participate in a focus group, representing multiple agencies that serve vulnerable adults in the community. In addition, one key stakeholder agreed to participate in a telephone interview, given that she was located in Edmonton. Those stakeholders who signed up for a focus group or interview were subsequently emailed an information sheet on civil investigation, in order to establish a common understanding of the subject matter (see Appendix C). All focus groups were conducted at the Alliance to End Violence in Calgary, AB. At the focus group, participants were asked to read a project information sheet explaining confidentiality and privacy, and complete a consent form; the stakeholder who participated in the telephone interview was emailed these materials prior to the interview, and faxed the completed consent form to CRILF.

In addition to the stakeholder focus groups, a focus group was conducted with community members. Arranged by AGEA and the Kerby Centre, a shelter for older adults in Calgary, the focus group consisted of six participants, some of whom were older adults who had experienced abuse, one of whom was a volunteer with an agency that supports elderly Chinese citizens, and one individual who had personal relationships with vulnerable adults who had experienced abuse. The focus group was conducted at the Kerby Centre. Participants were provided the background and civil investigation information sheets in advance, and were asked to read an information sheet and complete the consent form at the focus group (see Appendix E).

Participants in the focus groups and interview were asked a number of questions from a prepared focus group protocol (see Appendix F). The questions related to three distinct themes: general perceptions of protection of vulnerable adults in Calgary; general perceptions of civil investigation; and perceptions of civil investigation as a part of Calgary's community response model to abuse/neglect of older adults. The focus groups and interview were conducted by one CRILF researcher. The focus groups lasted 90 minutes. Notes were taken by the focus group facilitator on a laptop computer. Data were coded and analyzed qualitatively, establishing distinct themes that emerged from the discussions.
3.0 LEGISLATIVE REVIEW

3.1 Introduction

What legislative mechanisms are available in Alberta for responding to abuse of vulnerable adults? What authority does the state have for responding to allegations of abuse involving adults who may lack the ability to protect themselves? Should Alberta have a parallel system to the child welfare system for reporting, investigating, and responding to abuse of vulnerable adults?

In 2006, the Canadian Research Institute for Law and the Family (CRILF) conducted a review of the provincial legislation protecting elderly victims of abuse and neglect (Pearson & Pauls, 2006). The goals of the 2006 CRILF review were to understand the legislative framework in place to protect victims of elder abuse in Alberta, including substitute decision-making and protection legislation, and to identify any gaps in the legislation. The 2006 CRILF review mapped out the legislative framework in Alberta for responding to elder abuse, compared the framework to other jurisdictions, identified gaps, and proposed legislative and policy reform.

Since 2006, there have been changes in key pieces of legislation, including the Personal Directives Act (PDA)\(^8\) the new Adult Guardianship and Trusteeship Act (AGTA)\(^9\) (which replaced the Dependents Adult Act (DAA))\(^10\), and the Protection Against Family Violence Act (PAFVA).\(^11\) Further, an amended Protection for Persons in Care Act (PPCA) was proclaimed on July 1, 2010.\(^12\) Given the significant changes in the legal landscape over the past five years, there is a need to examine the current state of the legislation in Alberta in order to: (1) help professionals and individuals understand what legal mechanisms are available to improve the community’s protection of this vulnerable group; and (2) determine whether additional legislative reform is required.

3.2 Scope of the Review

As protection of older adults often falls under the scheme of adult protection, legislation intended for the protection of vulnerable adults in general was examined. For the purposes of this discussion, “vulnerable adults” refers to persons over the age of 18 who face challenges in their ability to make decisions about abuse or neglect. This is a loose definition that takes into consideration numerous factors that may affect a person’s ability to make decisions about or protect themselves against abuse or neglect, including developmental or physical disabilities, illnesses such as dementia, Alzheimer’s, and mental illness, as well as psychological syndromes that can impair

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\(^8\) PDA, see note 15, below.
\(^9\) AGTA, see note 14, below.
\(^10\) DAA, R.S.A. 2000, C.D-11 Repealed.
\(^11\) PAFVA, see note 18, below.
\(^12\) PPCA, see note 16, below.
decision-making ability such as battered women’s syndrome. This broad definition is not intended to characterize these individuals as incapable or incompetent, but rather recognizes that some persons, by reason of their circumstances or health, are more vulnerable to victimization and abuse than others.

This review will not consider in detail what is meant by “abuse” in the context of various pieces of legislation although it will, at a broad level, identify gaps in responding to certain kinds of abuse, for instance, financial abuse.

This review targets and analyzes provincial legislation that establishes the authority to respond to concerns about the treatment of vulnerable adults. Additionally, a provincial abuse response protocol will also be analyzed. For the sake of manageability, the emphasis of this review is on mechanisms for responding to abuse of vulnerable adults that occurs in the community. As a result, issues concerning institutional abuse and standards of care are touched on only briefly.

3.3 Overview

The legislative review will have four major components:

(1) Mapping the Legislated Protection Coverage in Alberta – What’s So?

The first component will map out the current legislative mechanisms available in Alberta for addressing abuse and safety concerns of vulnerable adults.

(2) British Columbia’s Adult Guardianship Act – Alberta Compared

The second component will cross-reference the protection legislation used in British Columbia, namely, the Adult Guardianship Act, with the legislative mechanisms used in Alberta.

(3) Gap Analysis – What’s Missing?

The third component will identify what, if any, gaps exist in the Alberta framework for responding to abuse of vulnerable adults.

(4) Recommendations for Legislative Reform – What’s Possible?

The fourth component will explore the legislative options for addressing the gaps in the protection coverage in Alberta and make recommendations for legislative reform.

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13 This definition of vulnerable adult is based on the definition used in the British Columbia Adult Guardianship Act (AGA), see note 81 below, and takes an inclusive approach to adult protection. A thorough comparison between Alberta legislation and the B.C. AGA is conducted below.
3.4 Discussion and Analysis

3.4.1 Mapping the Legislated Protection Coverage

Currently Alberta has a piecemeal approach to adult protection, meaning that the protection authority comes from several sources. It might also be characterized as a conditional approach to protection, meaning that the protective authority under each piece of the legislation or protocol is triggered only when particular conditions are present. To be clear, neither of these traits means the Alberta approach is inadequate or deficient. Indeed, a conditional approach to protection also happens to be the case in other jurisdictions, even where comprehensive protection legislation has been enacted (as will be seen in the B.C. model) because it too requires that certain indicators or conditions be present in order to trigger the protective authority of the legislation.

That being said, because of the combined piecemeal and conditional approach in Alberta, the potential for gaps in the overall capacity of the protection scheme is more pronounced. In this section of the review, coverage of the Alberta framework will be mapped out in terms of the populations covered, areas of abuse addressed, reporting procedure, investigation authority, support and intervention services provided, and source of authority. In a nutshell, this section will answer the question of “what’s so?” in the world of adult protection in Alberta.

The Legislation

This legislative review will focus on three pieces of legislation, plus one abuse reporting protocol in Alberta, namely:

(1) The Adult Guardianship and Trusteeship Act (AGTA);\(^{14}\)

(2) The Personal Directive Act (PDA);\(^ {15}\)

(3) The Protection for Persons in Care Act (PPCA);\(^ {16}\) and

(4) Persons with Developmental Disabilities Abuse Prevention and Response Protocol (PDD Protocol).\(^ {17}\)

This review will also examine the following Alberta acts, albeit in a more cursory way:

\(^{14}\) S.A. 2008 c. A-4.2 [AGTA].

\(^{15}\) R.S.A. 2000, c. P-6 [PDA].

\(^{16}\) S.A., 2009 c. P-29.1 [PPCA].

(1) The *Protection Against Family Violence Act (PAFVA)*;\(^{18}\)

(2) The *Supportive Living Accommodation Licensing Act (SLALA)*;\(^{19}\) and

(3) The *Powers of Attorney Act (PAA)*.\(^{20}\)

Overview of Questions Addressed

In examining the first three pieces of legislation and the *PDD Protocol*, three main questions will be addressed:

(1) What are the criteria and processes for making complaints or reporting suspected abuse of vulnerable adults?

The first question will examine the processes for registering complaints about mistreatment and reporting abuse of vulnerable adults. It will address the question of target population, namely, what group of people does the legislation or protocol have jurisdiction to protect. It will also consider the types of abuse or harm the legislation is intended to protect against. Lastly, it will discuss the complaint process, including what body is charged with the responsibility for receiving complaints.

(2) What investigative authority is provided for in the legislation to look into the allegations?

The second question will look at what, if any, investigative authority is prescribed under the legislation. For instance, who is designated with the authority to conduct investigations and what legal mechanisms are available to that investigator for the purpose of conducting the investigation?

(3) What is the authority to respond to or intervene in confirmed complaints and reports of abuse?

The third question will look at what support and services are legislated to respond and intervene in confirmed complaints about treatment of vulnerable adults and allegations of abuse. Is consent of the vulnerable adult required to intervene? What body, if any, is charged with the authority to make court applications on behalf of the vulnerable adult?

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\(^{18}\) R.S.A. 2000, c. P-27 [PAFVA].

\(^{19}\) S.A. 2009 c. S-23.5 [SLALA].

\(^{20}\) R.S.A. 2000, c. P-20 [PAA].
Protection Coverage

(1) Adult Guardianship and Trusteeship Act

The Adult Guardianship and Trusteeship Act (AGTA)\(^{21}\) came into force on October 30, 2009 and repealed and replaced the Dependent Adults Act (DAA).\(^{22}\) In contrast to the DAA, which provided for nothing short of the blunt instruments of guardianship and trusteeship orders, the AGTA has created a range of decision-making options for adults who need assistance making personal and/or financial decisions. The options range from support options for adults who have capacity to make their own decisions but would like some help, to guardianship orders for adults who lack the capacity to make personal decisions. The legislation enables adults to access the precise amount of support they need, and no more, so as to maintain the highest level of autonomy and independence possible.

The range of options for personal care support and financial decision making support under the AGTA include: (1) supported decision-making,\(^{23}\) (2) co-decision-making,\(^{24}\) (3) guardianship,\(^{25}\) (4) specific decisions and emergency health care,\(^{26}\) and (5) trusteeship.\(^{27}\) Of the support options available, only co-decision-making, guardianship, and trusteeship require a court order. Supported decision-making is an agreement between a capable supported adult and a supporter, and specific decisions and emergency health care are options available on an emergency basis only without the need for a court order.

Represented adults, those who are the subject of guardianship orders, trusteeship orders, or co-decision making orders, now have access to a complaint process when a two-part test is met: first, the guardian, trustee, or co-decision maker is failing to comply with an order or their duties under the AGTA,\(^{28}\) and second, this failure is likely to cause harm to the assisted or represented adult – physically, mentally, or financially (including loss to the property of the represented adult).\(^{29}\)

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\(^{21}\) AGTA, see note 14, above.

\(^{22}\) DAA, see note 10, above.

\(^{23}\) AGTA at s. 4(1).

\(^{24}\) AGTA at s. 13(4).

\(^{25}\) AGTA at s. 33.

\(^{26}\) AGTA at ss. 87-101.

\(^{27}\) AGTA at ss. 43-72.

\(^{28}\) For co-decision makers, authority must be exercised: (1) in the assisted adult’s best interests; (2) diligently; and (3) in good faith: AGTA, s. 18(1). For a full list of statutory duties of a co-decision maker, see section 18 of the AGTA. For guardians, a guardian shall exercise his authority: (1) in the represented adult’s best interests; (2) diligently, (3) in good faith, (4) in a way that encourages the represented adult to become, to the extent possible, capable of caring for himself and of making decisions in respect of matters relating to his person; and (5) in the least intrusive and least restrictive manner that, in the opinion of the guardian, is likely to be effective: AGTA, s. 35(1). For a full list of statutory duties of an agent, see section 35 of the AGTA. A trustee shall: (1) exercise the trustee’s authority in the best interests of the represented adult; and (2) act in accordance with the trusteeship order and the trusteeship plan approved by the Court: AGTA, s. 56(1). For a full list of statutory duties of a trustee see section 56 in its entirety.

\(^{29}\) AGTA at s. 75(1).
A complaint must be squarely within the jurisdiction of the AGTA before it will be reviewed or investigated. This means that a co-decision-making order, guardianship order, or trusteeship order must have been obtained before the authority to investigate is triggered. This fills a significant gap in the protection framework in that adults who have diminished capacity (to the extent of requiring a guardianship, trusteeship, or co-decision making order) are covered by the protection mechanisms under the AGTA. Vulnerable adults who are not the subject of one of those orders fall outside of the scope of that protection mechanism because the reporting criteria of failing to comply with duties or an order cannot otherwise be present. That being said, unrepresented adults who are in danger of death or serious harm may be the subject of an application for an urgent guardianship order, as discussed below.

It is noteworthy that the AGTA does not create an abuse reporting mechanism, but rather a complaint reporting mechanism. Practically speaking, however, any concern about a guardian, co-decision maker, trustee, or anyone else for that matter abusing a represented adult would likely satisfy the complaint criteria of failing to comply with an order or duties. For example, if a guardian is physically abusing a represented adult, or failing to protect a represented adult from physical abuse by another party, that guardian is not acting in the best interest of the adult as required by the legislation. Similarly, if a trustee is misappropriating funds from a represented adult or is failing to prevent another individual from doing so, that trustee is arguably not carrying out his duties under the AGTA or the order.

Complaints can be made by an “interested person,”30 in writing, to a designated complaints officer who is appointed by the Minister.31 Currently, there is a centralized complaint process and the same complaints officer is responsible for receiving all complaints under the AGTA, the Protection for Persons in Care Act, and the Supportive Living Accommodation Licensing Act (SLALA).32 The officer reviews the complaint and decides whether to refer the complaint for investigation.33 Complaints involving private trustees and financial matters are referred by the Complaints Officer to the Public Trustee for investigation, whereas complaints involving personal care decisions will be referred to the Office of the Public Guardian for investigation.

Under both the AGTA and the PDA (see below), if the complaints officer or the Public Guardian has reason to believe that the complaint could constitute an offence under the Criminal Code, abuse under the Protection for Persons in Care Act, or an offence under a statute or regulation in Alberta, the Public Guardian must notify the appropriate authorities.34

30 AGTA, s. 1(u): Interested person is defined as including: the Public Guardian, the Public Trustee, and any person who is 18 years of age or older and who is concerned for the welfare of a person in respect of whom a co-decision-making order, guardianship order or trusteeship order is sought or has been obtained.
31 AGTA at s. 82, 83.
32 As per meeting with representatives of Alberta Seniors and Community Supports: Brenda Lee Doyle, Edith Baraniecki, and Marjorie Sutherland on June 4, 2010.
33 AGTA at s. 76(1).
34 PDA at s. 24.6(1), AGTA at s. 79(1).
Investigators have broad powers under the AGTA to interview persons, access records, and enter premises, or make an application to the Court for an order authorizing the same. The investigator may then attempt to resolve the matter, refer the parties to alternate dispute resolution, or recommend that the Public Guardian or Public Trustee take action by making application for a guardianship order, temporary protection order, or trusteeship order.

The Public Guardian has the authority and the obligation to apply for a guardianship order where, in the opinion of the Public Guardian, an adult is in need of a guardian and no person is willing, able, and suitable to make an application for the appointment of a guardian for the adult. Notably, the threshold for a guardianship application by the Public Guardian under Section 26 is that the adult is in need of a guardian, and no other person is willing and able to make an application. Thus, Section 26 effectively functions as a referral process to the Office of the Public Guardian for guardianship.

A Temporary Protection Order (TPO) may be sought by the Public Guardian when there are reasonable grounds to believe that a represented adult is at risk of serious harm. If the court makes a TPO, the court may: (1) authorize a police officer to assist the Public Guardian or another person to remove the represented adult to a temporary place of safety; (2) appoint the Public Guardian as the temporary guardian of the represented adult; (3) include any terms or conditions the Court considers appropriate; and (4) direct the Public Guardian to prepare and file with the Court a report respecting any matter as the Court considers appropriate. Thus, a TPO gives the Public Guardian the authority to remove an adult from the care of a guardian and/or assume guardianship of an adult for up to 30 days. This is a new remedy under the AGTA that did not previously exist under the DAA.

The Public Trustee may also seek a Trusteeship Order under Section 46. Section 47 imposes a duty on the Public Trustee to inquire into the alleged need for a trustee. Where the Public Trustee receives a written allegation that an adult is in need of a trustee, for instance via an investigation report, the Public Trustee is required to make any inquiries and take any action that the Public Trustee considers necessary for the purpose of determining whether: (1) the criteria for the appointment of a trustee in Section 46 are satisfied; (2) the adult is likely to suffer serious financial loss if a trustee is not appointed within a reasonable time; and (3) no other person is likely to apply within a reasonable time for the appointment of a trustee for the adult. This provision does not give the Public Trustee any investigative authority to inquire into circumstances involving alleged abuse of an enduring power of attorney or financial abuse in general. Instead, this provision functions as a referral mechanism such that

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35 AGTA at s. 77(1).
36 AGTA at s. 26.
37 AGTA at s. 74.
38 AGTA at s. 46.
39 AGTA at s. 26(2).
40 AGTA at s. 74(1).
41 AGTA at s. 74(3).
once an investigation about a trustee has been completed, the Public Trustee may make an application for trusteeship on the recommendation of the investigator. Alternatively, following a referral from the community, the Public Trustee may make the necessary inquiries to determine whether an application for trusteeship is necessary.

There is another provision in the AGTA that provides for an application for guardianship orders in urgent cases. In contrast to the TPO provision, this provision can apply to adults for whom no guardianship order is currently in place; thus, it applies to unrepresented adults. When an interested person has reason to believe that an adult lacks capacity to make a decision about a personal matter, and where there is immediate danger of death or serious physical or mental harm to an adult, an application may be made to the court for a guardianship order.42 “Interested persons” under this section include members of the public and the Public Guardian. Although this is not an abuse reporting provision per se, when the Public Guardian receives calls from concerned persons about an urgent situation involving serious harm to an adult (including self neglect), the Public Guardian will assess the situation and make application for guardianship if needed. This provision effectively dispenses with the requirement for a formal capacity assessment and establishes an expedited referral process that enables the Public Guardian to quickly obtain a guardianship order for up to 90 days to protect an adult from serious harm. While there is no legislated investigative authority under this provision, the assessment process involves the Public Guardian making a determination regarding capacity, community referrals, services needed, and the need for guardianship. At the end of 90 days, the order will be terminated, renewed (for up to 60 days), or proceed with an application for guardianship under Section 26.

The Office of the Public Guardian receives approximately 100 referrals each month involving vulnerable people. While some of these referrals result in applications for guardianship, either under Section 26 or Section 27 (urgent cases), many result in referrals to other appropriate community services. While the Public Guardian takes seriously its duty to ensure the safety of vulnerable adults, it also takes seriously the need to preserve independence and autonomy of adults where possible.43

(2) Personal Directives Act

The Personal Directives Act (PDA)44 enables an individual to appoint an agent (by means of a personal directive) who can consent to healthcare treatment and make personal care decisions on behalf of the individual. Personal matters may include decisions related to healthcare, accommodation, participation in social, educational, and employment activities, and legal matters. The PDA is a proactive legislative tool designed to promote the autonomy of individuals so that, in the event that a person loses capacity, at least some of the decisions related to the individual’s personal care will have been made in advance by the individual.

42 AGTA at s. 27.
43 Unofficial statistics provided by Brenda Lee Doyle, Provincial Director of the Office of the Public Guardian, during a telephone conversation on June 29, 2010.
44 PDA, see note 15.
The PDA establishes a complaints process that provides protection to adults who have a personal directive in effect.\textsuperscript{45} A personal directive only has effect when the maker lacks capacity with respect to a particular matter and a written declaration is made to that effect.\textsuperscript{46} Any interested person may make a complaint to the Public Guardian when a personal directive is in effect and there is reason to believe: (1) an agent of the maker is failing to comply with the personal directive or the duties of an agent; and (2) the failure is likely to cause harm to the physical or mental health of the maker.\textsuperscript{47}

Thus, adults whose capacity has subsequently become diminished to the extent of bringing into effect a personal directive will have access to the protection mechanisms of the legislation if there is reason to believe that an agent is failing to comply with the personal directive or the duties of an agent, and the failure is likely to cause harm to the physical or mental health of the maker.

When a complaint is received, the Public Guardian has the authority to investigate the complaint by interviewing persons and accessing records relevant to the investigation.\textsuperscript{48} Designated persons in each regional office for the Public Guardian are responsible for investigating complaints under the PDA. If the complaint is substantiated, the Public Guardian may make an application to the Court for an order related to the personal directive. The Court may, among other things: (1) order a determination of the capacity of a maker or agent; (2) determine the validity of a personal directive; (3) vary or rescind a personal decision, in whole or part, made by an agent; (4) determine the authority of an agent; and (5) revoke the authority of an agent if the agent is failing to comply with the personal directive or the duties of an agent and the Court considers that the failure is likely to cause serious harm to the physical or mental health of the maker.\textsuperscript{49}

(3) Protection for Persons in Care Act

After more than 10 years since it was originally enacted, an amended Protection for Persons in Care Act (PPCA)\textsuperscript{50} was proclaimed on July 1, 2010. The PPCA exists for that very purpose – to protect persons in care. It does this, in part, by requiring reporting of abuse of adults who receive care and support services from a service provider.\textsuperscript{51}

Stated another way, the PPCA establishes a reporting and investigation process for suspected abuse of adults (regardless of the adult’s capacity or lack of capacity) who receive services related to their health or physical or psychological well-being\textsuperscript{52} from a

\textsuperscript{45} PDA at s. 24.2(1).
\textsuperscript{46} PDA at s. 9(1).
\textsuperscript{47} PDA at s. 24.2(1).
\textsuperscript{48} PDA at s. 24.2(1).
\textsuperscript{49} PDA at s. 24.3(3).
\textsuperscript{50} PDA at s. 27.
\textsuperscript{51} PPCA, see note 16.
\textsuperscript{52} PPCA at s. 1(1)(a).
government-funded service provider. For the purpose of the *PPCA*, government-funded service providers include nursing homes, hospitals, group homes, seniors' lodges, shelters, mental health facilities, addictions treatment centres, and other supportive living settings.\(^{53}\)

The conditions that must be present in order to trigger the application of the *PPCA* are that: (1) a person must be receiving care and support services from a residential government-funded service provider (as defined above); (2) there must be reasonable and probable grounds to believe that there has been abuse against a client;\(^{54}\) and (3) there must be a direct connection between the abuse and the service provider.\(^{55}\) “Direct connection” means that the alleged abuse must be related, in some way, to the provision of services provided by the service provider. This is a functional necessity which will be discussed below, under the Director’s authority to intervene.

The types of abuse covered by the *PPCA* include physical abuse, emotional abuse, medical abuse, sexual abuse, financial abuse, and neglect.\(^{56}\) Because the emphasis of the *PPCA* is on the protection of persons from abuse by service providers, the definition of abuse does not include self neglect.

The conditions that a person must be receiving services from a service provider, and that there must be a direct connection between the abuse and the service provider, do not necessary limit the protection mechanisms of the *PPCA* to suspected abuse by service providers. For instance, if a person who resides in a government-funded lodging facility is allegedly being physically abused by a guardian, agent, or any other person for that matter, and the abuse comes to the attention of the service provider, a report may be required. This is because service providers have a general duty to take reasonable steps to protect a client from abuse while providing care and support services, and maintain a reasonable level of safety for the client.\(^{57}\) As such, the protection authority of the *PPCA* may extend to some situations involving familial abuse of clients.

Under the *PPCA*, suspected abuse must be reported to a complaints officer, a police service, or another body authorized to investigate abuse (including a professional association).\(^{58}\)

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\(^{53}\) *PPCA* at s. 1(1)(m). Edith Baraniecki, Director of the Protection for Persons in Care Office advises that Alberta Seniors and Community Supports intends to further amend the *PPCA* in July, 2011 so that “service provider” will include government-funded home care services as well. This will broaden the scope of the legislation in that protection will be provided to clients who are receiving services in their homes. This recommendation was originally made in a report published in 2003 by a Legislative Review Committee entitled: Report on the Review of the Protection for Persons in Care Act (March 2003) online at: [http://www.seniors.gov.ab.ca/CSS/persons_in_care/Leg_Review/](http://www.seniors.gov.ab.ca/CSS/persons_in_care/Leg_Review/).

\(^{54}\) *PPCA* at s. 7(1).

\(^{55}\) Although not explicitly stated in the legislation, the requirement that a direct connection exist between the alleged abuse and the agency is implicit in the definition of abuse in s.1(2) (as per telephone conversation with Edith Baraniecki, Director of Protection for Persons in Care on June 22, 2010).

\(^{56}\) *PPCA* at s. 1(2).

\(^{57}\) *PPCA* at s. 10(1).

\(^{58}\) *PPCA* at s. 7(1).
Notably, the complaints officer designated under the PPCA is the same as the designated officer under the AGTA and the Supportive Living Accommodation Licensing Act (SLALA).\(^{59}\) Thus, while the authority to investigate and respond to complaints regarding guardians, trustees, service providers, and supported living accommodation officers comes from different sources, the procedure for receiving the complaints and reports is centralized.\(^{60}\)

When a report is made under the PPCA, review of the complaint is mandatory, but a referral to a PPC investigator is discretionary. In other words, the complaints officer must review the complaint but has discretion over whether or not to refer the complaint to a PPC investigator.\(^{61}\) As with the AGTA and PDA, the investigators have broad investigation authority and, if necessary, may seek orders from the Court granting access to interview persons and enter premises. When an investigation is complete, the investigator submits a final report to the PPC Director stating whether the abuse was founded or not, and making any recommendations they consider appropriate.\(^{62}\) The Director may accept or reject the recommendations contained in the report and then makes a decision that outlines steps or measures the service provider or the individual involved must take to prevent the abuse of clients.\(^{63}\)

Steps or measures are usually related to education, policies, prevention, and discipline, although occasionally they may specify a stop visiting order, make a referral to the Public Guardian, or direct that the agency make the necessary referrals to assist the adult in obtaining support and assistance. The legislation does not provide for court ordered protective remedies and the Director does not have authority to seek protective orders from the Court. Thus, the authority of the PPC Office is largely weighted to actions the agency must take or else risk the loss of some or all government funding.

(4) **Persons with Developmental Disabilities Abuse Prevention and Response Protocol**

In Alberta, adults with developmental disabilities who meet the eligibility criteria receive funding support and services from Persons with Developmental Disabilities (PDD) Community Boards. The PDD program has a protocol in place to address allegations of abuse by service providers – the *PDD Abuse Prevention and Response Protocol* [PDD Protocol].\(^{64}\) The *PDD Protocol* focuses on abuse prevention, and also creates a response process.

The *PDD Protocol* is an operational policy framework of the PDD Program.\(^{65}\) It exists to protect persons with developmental disabilities who receive support services

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59 See discussion below under Section 5).
60 Complaints under the *PDA* go directly to the Office of the Public Guardian—not the designated complaints officer.
61 PPCA at s. 11(5).
62 PPCA at s. 14(1)(2).
63 PPCA at s. 15(1).
64 PDD Protocol, see note 17.
65 PDD Protocol at page 5.
from PDD funded service providers, including government operated, community run, and privately hired family managed services. It applies when there are concerns that a service provider is abusing an individual who receives PDD services. Abuse occurs when a staff person misuses their authority by acting in a way that causes harm or could potentially cause harm to an individual receiving PDD funded supports. The types of abuse covered by the *PDD Protocol* are physical abuse, sexual abuse, negligence, emotional abuse, exploitation, and inappropriate use of restrictive procedures.\(^{66}\) Examples of abuse might be if a staff member of a PDD direct operation agency allegedly is negligent in providing an individual with adequate support, or if a staff member of a family who hires privately allegedly exploits an individual for whom the staff is paid to provide support.\(^{67}\)

The *PDD Protocol* is not a statutory instrument and there is no legislated authority for PDD to investigate alleged abuse or intervene. Nonetheless, in the case of community-based service provider organizations and families who hire their own services, the authority will come from a signed contractual agreement with PDD. In the case of government-operated facilities, the authority comes from PDD’s basic fiduciary duty to protect vulnerable people for whom it is responsible.\(^{68}\) Because the authority to act is contractual and fiduciary in nature, the conditions that trigger the application of the protocol are necessarily linked to the provision of service.

Under the *PDD Protocol*, staff hired with PDD funding must report any allegation or suspicion of abuse immediately to the Executive Director or designate of the organization, or family who hires privately. If this is not possible, or the person is uncomfortable doing so, the person must report the alleged abuse directly to PDD or, when appropriate, to external investigative bodies such as the Protection for Persons in Care Office and/or the police.\(^{69}\) Thus, there are two types of reviews that may occur: internal and external. Internal reviews may be conducted in one of three ways: (1) by the service provider organization or family managed supports; (2) in conjunction with PDD; or (3) in agreement with a third party. Service provider organizations and families who hire privately must always conduct an internal review to ensure the immediate safety of the individual and to address any employee relations’ issues.\(^{70}\) An external review may also be necessary and may involve PDD Community Offices, PPC Office, professional associations or the police.

A review under the *PDD Protocol* is the equivalent of conducting an investigation, although, unlike investigations, there is no statutory authority to act or carry out investigative actions. Instead, each service provider is responsible for conducting an internal review, possibly in conjunction with the PDD representative if necessary. A review will involve developing a plan that outlines the steps to be followed, interviewing individuals (with guardian’s consent where applicable), obtaining physical information

\(^{66}\) *PDD Protocol* at page 18-19.  
\(^{67}\) *PDD Protocol* at page 17.  
\(^{68}\) *PDD Protocol* at page 17.  
\(^{69}\) *PDD Protocol* at page 17.  
\(^{70}\) *PDD Protocol* at page 20.  
\(^{71}\) *PDD Protocol* at 23.
pertinent to the allegation, such as documentation, records, articles of clothing, and considering secondary documentation such as policies and training procedures.\textsuperscript{71}

Once an internal review is completed, the service provider organization or family hiring privately will provide a report to the PDD Community Board designate outlining a summary of the review process, the findings of the review, and recommendations made by the service provider organization or the family who hires privately. The recommendations may include contacting the professional association of the alleged abuser, retraining staff, and follow-up measures to support the individual and others impacted by the allegation. The PDD Community Board designate will monitor the implementation of this action plan.\textsuperscript{72}

The PDD Community Board’s authority to oversee the recommendations is similar to the Office of the Protection for Persons in Care, in that it is linked to funding. In other words, an agency’s funding may be in jeopardy if it fails to follow through with the recommendations. Also, like the Office of the Protection for Persons in Care, PDD has no statutory authority to intervene or seek court ordered remedies. Ultimately then, one might describe the purpose of the \textit{PDD Protocol} as ensuring a standardized and regulated internal approach for responding to allegations of abuse.

(5) \textit{Supportive Living Accommodation Licensing Act}

Supportive living accommodations are residential settings with services. Residents are provided with the support services they need to live as independently as possible. Any supportive living setting that accommodates four or more adults must be licensed under the \textit{Supportive Living Accommodation Licensing Act (SLALA)}\textsuperscript{73} and must meet the Supportive Living Accommodation Standards.

The \textit{SLALA} promotes compliance with facility standards by establishing a complaint procedure and investigation procedure that dovetails with the complaint and investigation procedures under the \textit{AGTA} and \textit{PPCA}.

The \textit{SLALA} establishes a mechanism for intervening where a facility fails to meet a standard. Possible remedies for failure to comply include ordering the operator of the accommodation to take specific measures, issuing a stop order (requiring the operator to cease a contravention or stop an activity) or ordering the operator to stop operating altogether.\textsuperscript{74} While the \textit{SLALA} does not relate to the abuse or mistreatment of a vulnerable adult on an individual level, it nonetheless bolsters the framework of mechanisms available to ameliorate the mistreatment of vulnerable adults.

\textsuperscript{71} \textit{PDD Protocol} at 25.
\textsuperscript{72} \textit{PDD Protocol} at 25-26.
\textsuperscript{73} \textit{SLALA}, see note 19.
\textsuperscript{74} \textit{SLASA} at s. 16(2).
(6) **Protection Against Family Violence Act**

The purpose of the Protection Against Family Violence Act (PAFVA)\(^75\) is to enable victims of family violence to obtain court ordered protection against the perpetrators of the violence. Unlike the AGTA, PDA, SLALA, and PPCA, the PAFVA does not establish a civil investigation procedure. This means there is no public authority designated with the responsibility to receive complaints or reports of abuse, to investigate alleged abuse, or intervene in cases of suspected family violence involving adults. Instead, PAFVA establishes a court-based application procedure that is largely complainant initiated.

The PAFVA adopts a broad definition of family violence which includes physical injury, property damage, intimidation of physical injury or property damage, forced confinement, sexual abuse and stalking.\(^76\) It establishes an application process and court ordered remedies for individuals, including Emergency Protection Orders\(^77\) and Queen's Bench Protection Orders.\(^78\) The PAFVA also enables the police to obtain a warrant to enter residences and other places in order to search for and assist individuals who may have been the victims of family violence.

PAFVA is limited to “family members” which includes persons who are, or have been, married, living together in an intimate relationship, or in an adult interdependent partnership. It also includes parents of adult children, whether or not they live together, and persons who reside together where one of them has care and custody over the other pursuant to a court order.\(^79\) This means that vulnerable adults, be it parents or adult children, who are the subject of family violence by a family member, whether or not they reside together, will have access to the remedies under the PAFVA. Additionally, vulnerable adults who are the subject of a co-decision making order or guardianship order where the caregiver resides with the adult, also have access to PAFVA remedies.

(7) **Power of Attorney Act**

The Power of Attorney Act (PAA)\(^80\) is the equivalent of the Personal Directives Act (PDA) in relation to financial matters (as opposed to personal matters). As with a personal directive, an enduring power of attorney (EPA) must be prepared in advance of incapacity and it enables adults to maintain the greatest degree of autonomy possible. The difference between the PDA and the PAA is that the PAA has no protective mechanisms. When there is concern about abuse of authority by an attorney under an EPA, there is no designated public authority with the statutory duty to investigate allegations of abuse or failure to comply with duties. Further, there is no public body with the designated authority or responsibility to intervene or assist the donor. Thus,

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\(^{75}\) [PAFVA](#) see note 18.
\(^{76}\) [PAFVA](#) at s. 1(1)(e).
\(^{77}\) [PAFVA](#) at s. 2.
\(^{78}\) [PAFVA](#) at s. 4.
\(^{79}\) [PAFVA](#) at s. 1(1)(d).
\(^{80}\) [PAA](#) see note 20.
when concerns about the duties or authority of an attorney under an EPA arise, the only available courses of action are to refer the matter to the police for investigation of abuse under an EPA, or make a referral to the Public Trustee as a person who is in need of a public trustee, which the Public Trustee will inquire into as with any other referral.

3.4.2 British Columbia’s Adult Guardianship Act – Alberta Compared

This section of the review will discuss and compare and contrast the B.C. *Adult Guardianship Act* (B.C. *AGA*)\(^{81}\) with the protection coverage currently available in Alberta.\(^{82}\)

The B.C. *AGA* provides for support and assistance of abused and neglected adults. It does this by means of a comprehensive statutory framework that establishes the authority: (1) to receive reports and investigate allegations of abuse and/or neglect; and (2) to provide services to abused and neglected adults. The existence of these mechanisms – reporting, investigating, and responding – is not unique inside of legislation that focuses on the protection of vulnerable adults. What is unique about the B.C. *AGA* is the scope of its application – it applies to a broad range of adult populations, it applies to any kind of abuse and/or neglect, it applies to most community and institutional settings, and it establishes a full range of services to support and protect adults, both voluntary and court ordered.

Specifically, the B.C. *AGA* provides for support and assistance of adults who are abused or neglected and who are unable to seek support and assistance.\(^{83}\) The target population of the legislation is defined by two criteria: (1) adults who are abused and neglected; and (2) adults who are unable to seek support and assistance. Two questions arise from these criteria: what constitutes abuse and neglect; and what does it mean to be “unable to seek support and assistance?”

Under the B.C. *AGA*, abuse includes: deliberate mistreatment of an adult that causes: (1) physical, mental or emotional harm; or (2) damage to or loss of assets, and includes intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy, or denial of access to visitors.\(^{84}\) For the purpose of this Act, neglect includes: 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, serious physical, mental, or emotional harm; or substantial damage to or loss of assets and includes self neglect. Self neglect includes living in grossly unsanitary conditions, suffering from an untreated illness, disease or injury, suffering from malnutrition, creating a hazardous situation that will cause serious physical harm to the adult or cause substantial damage to or loss of assets, and suffering from an illness, disease, or injury that results in the adult dealing with assets in a manner that is likely to cause substantial damage to or loss of assets.\(^{85}\)

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\(^{82}\) Large portions of this analysis were adopted from Pearson & Pauls (2006).
\(^{83}\) B.C. *AGA* at s. 44.
\(^{84}\) B.C. *AGA* at s. 1.
\(^{85}\) B.C. *AGA* at s. 1.
Notably, the definition of abuse under the B.C. AGA is broad and covers most situations involving the mistreatment of vulnerable adults.

An adult will satisfy the second criterion if she/he is unable to seek support and assistance for any of the following reasons: physical restraint, a physical handicap, or an illness, disease, injury or other condition that affects his/her ability to make decisions about abuse or neglect.\(^{86}\) Thus, the Act is intended to provide protection for adults experiencing any type of abuse or neglect, including self neglect, and who are impaired, for a multitude of reasons, from seeking support and assistance on their own. This exemplifies the true breadth of the legislation because it applies to adults with a physical disability or developmental disability, as well as those suffering from mental illness, addictions, and syndromes that impair decision making, such as battered woman syndrome. Perhaps the most notable feature of the legislation is that its protective function is not limited to adults who lack capacity to make decisions.

While the B.C. AGA clearly requires that certain conditions be present to trigger jurisdiction of the legislation (for instance, that an adult be unable to seek support and assistance) it is difficult to conceive of a scenario involving alleged abuse of a vulnerable adult that would not fall within the purview of the legislation. The B.C. AGA also applies regardless of where the alleged abuse takes place, including public places, in the adult’s home, in a relative’s home, in a care facility or any other place (except a correctional centre).\(^{87}\) Thus, the conditions of the B.C. AGA are more inclusive than restrictive, to the point of not being conditional at all.

This approach stands in contrast to the Alberta approach, which carves out specific groups and circumstances in its protection legislation. For instance, the AGTA is intended to protect adults who are the subject of guardianship, trusteeship, or co-decision making orders, or adults who are believed to lack capacity and who are in immediate danger of death or serious physical or mental harm. Thus, a central precondition to the application of the AGTA is incapacity. The PPCA and PDD Protocol are intended to prevent abuse of adults who receive services from select government funded service providers and persons who receive PDD funding and supports.

Given the broad scope of the B.C. AGA, guiding principles were established to focus its application. The principles provide that: (1) capable adults should not be subject to intervention without their consent; (2) a policy of least intrusiveness should govern the application of the act; and (3) court orders for guardianship and decision-makers should only be used as a last resort. These principles help to rein in the legislation and maintain its intention to promote independence and autonomy of adults.

Reporting of abuse under the B.C. AGA is voluntary and reports are made to a designated agency.\(^{88}\) Designated agencies are public bodies, organizations, or persons designated with the responsibility to carry out the protection function under the Act. Although they are delegated authority by the state, they are nonetheless arms distance...
from the province and representative of the community. Initial reports of abuse are screened by the designated agency to determine whether the report falls within the mandate of the *Act* (i.e., whether an adult needs support and assistance). If there is no need, either because the adult is not being abused or neglected within the meaning of the *Act*, or because the decision-making ability of the adult is not impaired, the agency is prohibited from taking any further action. 89 This provision functions to prevent the needless, unwarranted intrusion of public authorities into the lives of adults.

However, if there is reason to believe the adult needs support and assistance, the designated agency may take one of several actions: (1) refer the adult to community services, including health care, social, legal, accommodation or other services; (2) assist the adult in obtaining those services; (3) inform the Public Guardian and Trustee (which would trigger a review and capacity assessment under the *AGA*); or (4) investigate to determine if the adult is abused or neglected and unable to seek support and assistance. 90

The power to investigate under the B.C. *AGA* is discretionary. If an adult is identified as being in need of support and assistance, an investigation of abuse and neglect is one course of action that may follow. 91 As part of the investigation, the designated agency must make all reasonable efforts to interview the adult. 92 If the designated agency is denied entry to a premises for the purpose of interviewing the adult, the agency may apply to the court for an order authorizing entry and/or authorizing a health care provider to enter and examine the adult. 93

The investigative authority under each of the *AGTA*, *PDA*, and *PPCA* is comparable to the B.C. *AGA*. Each act provides the legislative authority to interview adults, review documents, enter premises, and seek court orders related to the same. Where the acts differ, however, is in the practical purpose of the investigation process. For instance, the *PPCA* investigation process focuses on making a determination of whether the abuse occurred or not; the emphasis of the B.C. *AGA* is on the assessment of need and provision of service, support, and assistance. Although the recommendations arising from an investigation under the *PPCA* may specify a support plan that the agency would be required to carry out, in most cases the recommendations will pertain to the modification or creation of a policy or procedure of the agency, rather than the support needs of the adult. Similarly, the investigation processes under the *AGTA* and *PDA* emphasize the determination of whether a guardian, trustee, co-decision maker or agent is failing to comply with a duty or a court order, rather than on the person’s needs and a corresponding service plan.

The difference between the intervention authority of the B.C. *AGA* and the Alberta legislation is evident in the range of possible interventions that follow an investigation. Under the B.C. *AGA* a designated agency may: (1) take no action; (2)

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89 B.C. *AGA* at s. 47(2).
90 B.C. *AGA* at s. 47(3).
91 B.C. *AGA* at s. 47(3).
92 B.C. *AGA* at s. 48(1).
93 B.C. *AGA* at s. 49.
refer the adult to available services (healthcare, social, legal, accommodation); (3) report the case to the Public Guardian and Trustee or another agency; (4) assist the adult in obtaining a representative; (5) apply to the court for an interim order (requiring a person to do any of the following: stop residing at and stay away from the premises where the adult lives, not visit or communicate with the adult, not have any contact or association with the adult or the adult’s assets, business, or financial affairs) for up to 30 days; and/or (6) prepare a support and assistance plan that specifies any services needed by the adult. The court may only make an interim order if the designated agency establishes that there is reason to believe that the person has abused the adult, and the adult is unable (for any of the reasons previously listed) to seek support and assistance.

The remedies of “support and assistance” under the B.C. AGA are more varied than simply applying for a decision-maker or guardian to be appointed. Support and assistance is often the first level of support offered to an adult. It may involve a referral to community health and social services or the preparation of a support and assistance plan by the designated agency in consultation with the adult. An adult has the choice to accept the services proposed in a support and service plan. If the adult decides not to accept the services, they must not be provided. Lastly, where it is determined that the adult is unable to consent to the provision of services (following an assessment by the Public Guardian and Trustee that the adult is incapable), an application may be made to the court for a support and assistance order authorizing services to the adult.

The B.C. AGA does not prescribe a “best interests” test as the threshold for interventions or court orders. Unlike child protection legislation, which is governed by the best interests of the child, court orders under the B.C. AGA are governed by a three part test. The court may only make an order for support and assistance if satisfied that the adult is: (1) abused or neglected; (2) unable to seek support and assistance because of illness, disease, injury or other condition that affects his or her ability to make decisions about the abuse or neglect; and (3) needs and would benefit from the services proposed in the support and assistance plan. If the three part test is met, the court may then make an order for the provision of support and assistance for the adult without his or her consent, or make an order in relation to the person who has abused the adult, including ordering a person to pay for, or contribute towards the adult’s maintenance or services.

In comparison, none of the AGTA, PDA, or the PPCA makes specific provision for “support services.” Under the PPCA, if the adult has capacity and consents to support, then support services may be arranged by the agency providing service

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94 B.C. AGA at s. 51(1).
95 B.C. AGA at s. 51(2).
96 B.C. AGA at s. 53(1).
97 B.C. AGA at s. 53(4).
98 B.C. AGA at s. 53(5).
99 B.C. AGA at s. 54(1).
100 B.C. AGA at s. 56(1).
101 B.C. AGA at s. 56(3).
pursuant to their duties under the Act (to take reasonable steps to protect a client from abuse while providing care or support services and maintain a reasonable level of safety for the client). 102 However, this duty is distinct from the authority of a designated agency under the B.C. AGA to provide support and assistance to an adult – either with consent of the adult or pursuant to a court order. Under the PPCA if the adult is incapable of consenting to support or assistance, neither the Office of the Protection for Persons in Care nor the service provider has authority to intervene. Further, most cases of reported abuse under the PPCA will be related to abuse by a service provider, as opposed to a caregiver or family member. Thus, support services or assistance would be secondary in any event to the service provider taking necessary steps to prevent further abuse of the client. Under the AGTA and PDA the primary remedies available are court ordered, namely orders for guardianship, trusteeship, or temporary protection orders.

Lastly, under the B.C. AGA, a designated agency may provide emergency assistance to an abused adult who is incapable of giving or refusing consent if emergency intervention is necessary in order to: (1) preserve the adult’s life; (2) prevent serious physical or mental harm to the adult; or (3) protect the adult’s assets from significant damage or loss.

By way of comparison, the AGTA also makes provision for emergency interventions in the form of Temporary Protection Orders or guardianship in urgent cases. The TPOs are only available to adults who are already the subject of guardianship orders, whereas guardianship in urgent cases applies to adults who appear to lack capacity and where there is immediate danger of death or serious physical or mental harm. Conversely, the PPCA does not provide authority for emergency interventions at all, either by agreement or by court order.

The approach of the B.C. AGA is intended to preserve the dignity and autonomy of adults – even when they are vulnerable and unable to make decisions about abuse and neglect. The absence of a “best interests” test under the B.C. AGA is intentional so as not to infantilize adults who may or may not need support and assistance. Further, nowhere is there reference to an adult being “in need of protection.” Instead, the B.C. AGA provides support and assistance to adults who are “unable to seek support and assistance” for a number of reasons. 103 Lastly, the language of capacity and incapacity is avoided. Thus, the AGA takes care to ensure that adults are treated as adults who may need support and assistance, rather than deferring to a child protection model and treating them as children in need of protection. Like the B.C. AGA, none of the Alberta acts use the best interests test or make reference to an adult being in need of protection, and therefore promote dignity and autonomy as well.

102 PPCA at s. 10(1).
103 B.C. AGA at s. 44.
3.4.3 Gap Analysis – What’s Missing?

Thus far in this review, the question of “what’s so?” in the world of adult protection legislation has been addressed. Through a careful review of the AGTA, PDA, PPCA, and PDD Protocol, and a cursory review of the PAFVA, SLALA, and PAA, the legislated protection coverage in Alberta has been mapped out. The British Columbia model under the B.C. AGA was also considered and loosely compared with the Alberta framework. The next phase of the analysis will be to consider what’s missing in the Alberta framework. The intention of this analysis is not to be critical of the Alberta model, but rather to create a forum for contemplating what’s possible.

Summary of Alberta Coverage

Before starting the discussion of what’s missing, it will be useful to recap “what’s so” in the world of Alberta legislation. Below is a summary of the protection coverage available under each of the Alberta acts and protocol discussed.

(1) Summary of Protection Coverage under the Adult Guardianship and Trusteeship Act

- It applies to adults for whom a co-decision making order, guardianship order, or trusteeship order has been obtained.
- It applies when a co-decision maker, guardian, or trustee fails to carry out court ordered duties or duties under the Act and the failure is likely to cause harm to the adult physically, mentally, or financially (including loss of property of the adult).
- Reporting of complaints is discretionary and is made to a centralized designated complaints officer.
- Complaints officer may refer the report to the Public Guardian or Public Trustee for investigation if conditions are met.
- Investigators have broad authority to interview persons, access records, enter premises, or seek court orders authorizing the same.
- If the complaint is founded, the investigator may attempt to resolve the matter or make recommendations that the Public Guardian apply for a guardianship order under s. 26, or a temporary protection order under s. 74, or that the Public Trustee make an application for trusteeship under s. 46.
- The Public Guardian may also apply for guardianship of an unrepresented adult in urgent cases under s. 27 when an adult appears to lack capacity and is in danger of death or serious physical or mental harm.
(2) Summary of Protection Coverage under the Personal Directives Act

- Applies to adults for whom a personal directive is in effect.
- Applies when there is reason to believe an agent is failing to comply with the personal directive or duties of an agent and the failure is likely to cause harm to the physical or mental health of the maker.
- An interested person may make a complaint to the Public Guardian; complaints are received by the various public guardian offices throughout the province.
- The Public Guardian has broad authority to investigate and interview persons and access records, or seek a court order requiring the same.
- Following the investigation the Public Guardian may make an application to the court for an order related to the personal directive, or may make an application for guardianship under s. 26 or s. 27 (if urgent).
- Complaints that could constitute criminal offences, abuse under the PPC, or an offence under another statute, must be referred to the appropriate authorities.

(3) Summary of Protection Coverage under the Protection for Persons in Care Act

- Applies to all persons (independent of capacity) who are receiving services related to their health or physical or psychological well-being from a government funded residential service provider (including nursing homes, hospitals, group homes, senior’s lodges, shelters, mental health facilities, addictions treatment centers).
- Applies to allegations of physical abuse, emotional abuse, medical abuse, sexual abuse, financial abuse and neglect.
- Applies regardless of who the alleged abuser is, but only when there is a direct connection between the agency and the abuse.
- A designated complaints officer receives reports of abuse; reporting is mandatory.
- The complaints officer has discretion to refer the complaint to a PPC investigator.
- PPC investigators have broad authority to interview persons, access records, and enter premises, and may seek court orders for the same.
• Investigators submit a final report to the Director of PPC stating whether abuse was founded and making recommendations.

• The Director makes a decision regarding the alleged abuse, including the steps or measures the service provider must take to prevent abuse of clients.

(4) Summary of Protection Coverage under the *PDD Abuse Reporting and Response Protocol*

• Applies to persons receiving PDD funding and supports.

• Applies when there are concerns that a service provider is abusing an individual who receives PDD services.

• Types of abuse covered include physical abuse, sexual abuse, negligence, emotional abuse, exploitation, and inappropriate use of restrictive procedures.

• Reporting suspected abuse is mandatory; reports must be made to the Executive Director of the organization providing services or to the family who privately hires the service provider.

• There is no statutory authority to investigate or intervene; the authority to review the allegation comes from the service provider’s contractual agreement with PDD and PDD’s fiduciary duty to protect vulnerable people for whom it is responsible.

• The Protocol establishes a process for reviewing allegations of abuse; reviews may be internal or external.

• A report is prepared that outlines recommendations which may include retraining staff and follow-up measures to support the individual and others impacted by the allegation.

(5) Summary of Protection Coverage under the *Protection Against Family Violence Act*

• Applies to family members (including persons who are, or have been, married, living together in an intimate relationship, or in an adult interdependent partnership, parents of adult children, whether or not they live together, and persons who reside together where one of them has care and custody over the other pursuant to a court order).

• Applies to family violence which includes physical injury, property damage, intimidation of physical injury or property damage, forced confinement, sexual abuse and stalking.
• Requires a complainant initiated court application for an Emergency Protection Order or Queen’s Bench Protection Order.

• Applications may be made on behalf of the person who is the subject of family violence, with the person’s consent (by a police officer or Director under the Child, Family and Youth Enhancement Act), or on behalf of the person with leave of a judge.

(6) Summary of Protection Coverage under the Supportive Living Accommodation Licensing Act

• Establishes a complaint, investigation, and reporting procedure for alleged non-compliance with facility standards.

• Applies to supportive living settings that accommodate four or more adults.

• Not intended to respond to individual allegations of mistreatment or abuse.

(7) Summary of Protection Coverage under the Power of Attorney Act

• There is no mechanism to report, investigate, or intervene in cases of misuse or abuse under an EPA. Complaints can be made to the police if the abuse is criminal in nature, or a referral can be made to the Public Trustee if the person is in need of a trustee.

What’s Missing in Alberta?

Having reviewed and analyzed the protection coverage of vulnerable adults in Alberta, and having compared that coverage with the coverage in British Columbia, the gaps in the Alberta framework readily emerge. What follows is a comprehensive, although not exhaustive, discussion of the gaps in the Alberta model (see Appendix G for a simplified visual representation of Alberta’s Protection Coverage).

(1) Target populations

• Under the AGTA there is limited protection available for vulnerable adults who are not the subject of a guardianship, trusteeship, or co-decision making order.

• The Public Guardian may make an application for guardianship under the AGTA where an unrepresented adult is in need of a guardian, and no other person is willing and able to make an application.

• The Public Guardian may make an expedited application for guardianship under the AGTA in urgent cases where an adult is in danger of death or serious harm. This provision does not apply short of the death or serious
harm threshold. There is no mechanism to quickly intervene in non-life threatening situations involving unrepresented adults who lack capacity.

- Where capacity is assumed, there is no mechanism to intervene in situations of abuse involving adults who nonetheless have an impaired ability to make decisions – regardless of whether the abuse is life threatening or not.

- There is no statutory protection available under the AGTA for persons who have a supported decision making authorization in place and who are experiencing non-life threatening abuse. A supported decision-making authorization is the mechanism often used by capable individuals who face complex personal decisions, people whose first language is not English, or people with mild disabilities. Thus, this vulnerable subgroup of individuals is outside of the protective purview of the AGTA.

- The protection authority under the AGTA applies to “represented adults,” but not “represented persons.” “Represented adults” are adults who are the subject of a guardianship or trusteeship order, while represented persons are persons who are the subject of guardianship and/or trusteeship orders that have not yet taken effect. Thus, vulnerable adults who are de facto subjects to the authority of a caregiver, and who are in the midst of a court application, but for whom the court order has not yet been granted or taken effect, are not covered by the complaint procedure under the AGTA.

- Other vulnerable adults who do not have a personal directive in effect fall outside of the protective ambit of the PDA.

(2) Circumstances around abuse

- The PPCA applies only to “clients” who receive care or support services from a service provider. The definition of service provider includes government-funded residential facilities that provide care and support services. It does not include service providers that offer community support services or operate out of a client’s home. While the PPCA is an effective mechanism for responding to suspected abuse of vulnerable adults in a publicly funded residential facility, it does not provide protection for vulnerable adults who live with caregivers or family in a community setting or in a private residential facility. Similarly, the PPD Protocol applies only to adults who receive PDD funding or services where the adult is allegedly abused by a service provider.

- The protection coverage under the PPCA is restricted to circumstances when there is a direct connection between the abuse and the service provider. Thus, incidents of abuse that are unrelated to the service are outside the scope of the Act. For example, this means that financial abuse
under an EPA that comes to the attention of a service provider will not trigger a *PPCA* investigation unless the financial abuse is affecting the ability of the service provider to access necessary funds for service or medication etc.

- The protection coverage under the *PDD Protocol* applies only to adults who are eligible for funding and support from PDD and who are allegedly being abused by a PDD service provider. It does not apply to individuals who are ineligible for PDD funding.

- The protection coverage available under the *SLALA* is limited to the investigation and response of complaints about non-compliance with standards by facilities that accommodate vulnerable adults. It does not apply to allegations of individual abuse within those facilities – the *PPCA* would apply in those situations instead.

- There is no reporting, investigation, or intervention mechanism under the *PAFVA*. Further, although the *PAFVA* has a broad definition of “family member,” and a broad definition of abuse, remedies under this legislation are largely complainant driven. Practically speaking, there are few vulnerable adults who will be capable of making an application on their own behalf, or capable of giving consent for another person to make application on their behalf. While there is a provision that enables an application to be made by any person on behalf of a person with leave of the judge, the rate limiting factor is that someone must be able and willing to make that application on behalf of the vulnerable adult.

(3) Authority to intervene or provide services

- There is no authority under the *AGTA* or *PDA* for the Public Guardian to provide support services or assistance to an adult. The interventions are limited to applications by the Public Guardian or Public Trustee for court orders including guardianship orders, trusteeship orders, Emergency Protection Orders, and revocations of personal directives. Not all adults experiencing abuse or neglect require guardianship or trusteeship orders. Indeed, support short of guardianship and trusteeship may be appropriate in many cases.

- Under the *PPCA*, the intervention authority comes in the form of a Director’s decision, which outlines steps or measures the service provider must take to prevent abuse of clients. These steps or measures will generally be related to education, policies, prevention, and discipline, although will sometimes include stop visiting orders or other prescriptive actions. Otherwise, there is limited ability for the Office of the PPC, or the service provider, to put in place a service plan for an adult who is experiencing abuse by a family member or caregiver. The reason for this is that the authority of the *PPCA* is the threat of a loss of funding or
accreditation of the service provider if the Director makes a recommendation to that effect. As such, the remedies under the PPCA must be linked to activities within the control of the service provider.

- Under the PDD Protocol the service provider or PDD representative will make recommendations to prevent further abuse, including contacting the professional association of the alleged abuser, retraining staff, and follow-up measures to support the individual and others impacted by the allegation. PDD has no statutory authority to intervene or seek court ordered remedies.

(4) Types of abuse

- When there is concern about abuse of authority or financial abuse under an enduring power of attorney by an attorney, there is no designated authority with the statutory responsibility to investigate allegations of abuse or failure to comply with duties, nor is there a public body that has the authority or responsibility to intervene or assist the donor. Thus, when concerns about the duties or authority of an attorney arise, the only available courses of action are to refer the matter to the police for investigation, or make a referral to the Public Trustee as a person who is in need of a public trustee, which the Public Trustee will inquire into as with any other referral.

- There are no protection mechanisms to respond to concerns or intervene in cases of self neglect, outside of a referral to the Office of the Public Guardian for guardianship.

3.4.4 Recommendations for Legislative Reform – What’s Possible?

This final section will identify the legislative options for addressing the gaps in the protection coverage in Alberta and make recommendations for legislative reform.

In Alberta we have a “niche” approach to adult protection; each piece of legislation is designed to address a particular population of adults (or legal status), a particular circumstance, or a particular condition where the mistreatment of vulnerable adults might occur. Currently, only some adults, in some circumstances, will have access to some protection in Alberta. “What’s missing” is an overarching, comprehensive approach to adult protection where certain conditions are the exception to protection coverage, rather than the rule.

Legislative Options

Considered collectively, the protection gaps reveal a statutory scheme that is blunt, at best, and incomplete at worst, in its ability to prevent and respond to abuse of vulnerable adults. While dramatic changes have occurred in the Alberta legal landscape over the past five years, this legislative review reveals yet to be addressed
gaps in the current protection regime and highlights the need for still more legislative reform to fill the gaps.

There are a number of options to address the gaps in protection coverage:

(1) First, consider adopting an additional piece of legislation that could focus on vulnerable adults who live in the community and who are not the subject of any formal substituted decision making instrument. The new legislation could be specifically designed to fill in the protection gaps so as to avoid overlap with existing legislation or, alternatively, it could apply globally to all vulnerable adults (similar to the B.C. AGA), regardless of whether their circumstances already fall within the scope of another piece of legislation.

(2) Second, one or more existing pieces of legislation could be amended so as to increase the scope and capacity of the legislation to respond to the gaps. For instance:

   (i) The Adult Guardianship and Trusteeship Act could be amended to incorporate a parallel reporting, investigation and support process for alleged abuse (of all types) occurring outside of guardianship, trusteeship, and co-decision making orders. A parallel process would enable the Public Guardian and Public Trustee to investigate and respond to alleged abuse of a vulnerable adult; or

   (ii) The Protection against Family Violence Act could be amended so as to add a reporting and investigation procedure. The complainant initiated application process for Emergency Protection Orders and Queen’s Bench Protection Orders could remain intact; however, an agency could be designated with the authority to take reports, investigate allegations of abuse, and make applications on behalf of a vulnerable adult. The agency could also have the mandate to provide support and assistance to adults short of EPOs and Queen’s Bench Orders.

(3) Regardless of the form of legislative reform (whether it be new legislation or amendments to existing legislation), incorporating the following characteristics could be considered:

   (i) The target population of the legislation could be as broad as the B.C. AGA target population (any adult unable to seek support and assistance because of physical restraint, a physical handicap, an illness, disease, injury or other condition that affects their ability to make decisions about abuse or neglect), or more narrow so as to target only adults who experience some mental incapacity.

   (ii) Adults who are capable of doing so could choose to accept support and assistance or not, while adults who are incapable of consenting could receive supports pursuant to a court order.
(iii) The legislation could address all types of abuse and neglect (including self neglect).

(4) Lastly, the *Powers of Attorney Act* could be amended to designate the Public Trustee (or another designated authority) with the authority to investigate and intervene in cases of financial abuse under an enduring power of attorney.

### 3.5 Summary of the Legislative Review

The legal landscape in Alberta for responding to abuse of vulnerable adults has dramatically shifted over the past five years. The authority to report, investigate and respond to concerns about the failure of guardians, trustees, or agents (under a personal directive) to carry out their duties came into existence under the new *Adult Guardianship and Trusteeship Act* and the amended *Personal Directives Act*. The *Protection Against Family Violence Act* was amended so that it now applies to parents of adult children – whether they reside together or not – and to persons who reside together where one of them has care and custody of the other pursuant to a court order. The scope of the *Protection for Persons in Care Act* has been strengthened to make reporting of suspected abuse mandatory. The *Persons with Developmental Disabilities Abuse Reporting and Response Protocol* has also been strengthened to ensure a consistent approach for responding to alleged abuse of persons who receive services from PDD funded services. Lastly, the *Supportive Living Accommodation Licensing Act* was recently proclaimed to ensure that living accommodations for vulnerable adults comply with legislated standards.

In spite of the dramatic changes to legislation in Alberta, there are still gaps in the protection framework. Those gaps include:

- the legislated authority to respond to, investigate and intervene in alleged abuse of adults for whom no substitute decision making instrument applies;
- the legislated authority to respond to, investigate, and intervene in alleged abuse of adults who reside in the community and who are impaired in their ability to make decisions about abuse and neglect, although not necessarily lacking capacity; and
- the legislated authority to respond to, investigate, and intervene in alleged financial abuse of vulnerable adults by an attorney under an EPA or by a friend/family member/caregiver, etc., where no trusteeship order exists.

Alberta’s approach to adult protection is not haphazard. It reflects a philosophical approach that respects individual autonomy and self determination of adults by limiting intervention of authorities to situations involving only the most vulnerable adults. Unlike the B.C. model, which is more interventionist and offers support and assistance to all adults who are abused and/or neglected regardless of capacity and location, Alberta
limits statutory protection to the most vulnerable adults – namely those who lack capacity and those receiving specified services which increase the adult’s vulnerability.

In its current form, the Alberta approach will likely foster independence and encourage self sufficiency of individuals and families. Still, there will be adults in the community, with varying degrees of vulnerability and impaired decision-making, experiencing mistreatment by caregivers, partners, parents, adult children, and attorneys, who will not have access to predictable support and assistance. While some community-based services and programs exist for the purpose of supporting these individuals, the reliability of these programs is often subject to funding and they may lack the legal authority to intervene in complicated situations. Adopting a statutory instrument similar to the B.C. Adult Guardianship Act in Alberta would establish a government mandate for adult protection unlike the model that currently exists. If a public body was charged with the statutory responsibility to receive and investigate all cases of suspected abuse, this would create a reliable and predictable mechanism for supporting all vulnerable adults – not just those that meet specific criteria or pre-conditions. All vulnerable adults would then have reliable access to support and assistance with the state authority to back it up. Adults with capacity could choose whether or not to accept the service, while adults who lack the capacity to consent could receive support pursuant to a court order. A protection model of this nature would go a significant distance toward protecting vulnerable adults, while maintaining autonomy and the right to self determination.
4.0 ENVIRONMENTAL SCAN

The purpose of the environmental scan is to examine other jurisdictions where civil or non-criminal investigation procedures are used to protect older adults in the community – specifically, cases where older adults living in the community and experiencing abuse or neglect can be reported and investigated civilly by power of law. As protection of older adults often falls under the general scheme of adult protection, models designed for the protection of vulnerable adults in general were examined. Each model was analyzed according to specific criteria: jurisdiction where the model exists; legislative authority; the authority designated the power to investigate; the definition of abuse or neglect; guiding principles; reporting; investigation (obligations, actions, and powers); and the result of the investigation (e.g., actions, obligation to act). Models found in Canada, the United States, and the United Kingdom are presented.

4.1 Canadian Models

The environmental scan first looked at existing powers of civil investigation in Canada. While federal legislation provides for criminal investigation under the *Criminal Code*, it is the jurisdiction of individual provinces and territories to provide additional adult protection legislation (Department of Justice Canada, 2009). As discussed in Chapter 1.0, within Comprehensive Adult Protection Regimes and Protectionist Regimes, powers for reporting, investigation, and action are provided. British Columbia (see Table 4.1), Yukon (see Table 4.2), New Brunswick (see Table 4.3) and Prince Edward Island (see Table 4.4) fit into the Comprehensive Adult Protection Regimes, striving to balance the independence and self determination of the adult with protection from abuse and neglect. These models apply to adults over the age of majority who are unable to protect themselves due to some physical, mental, or emotional difficulty and who are experiencing abuse, neglect or self neglect that threatens their well-being or property. They involve voluntary reporting to a designated agency, which have the obligation to investigate if an adult is suspected of being abused or neglected or is at risk of abuse or neglect. The legislation provides some powers to investigate (e.g., interviews, access to information, entry), however, more intrusive investigatory activities must be granted by court order. The outcomes of investigations often involve case planning, referral to service, and/or protective orders if necessary. In most cases, provision of services must be by consent of the adult; however, greater powers to provide services are granted in cases where the adult lacks capacity or capability to consent, typically by court order. Nova Scotia’s model (see Table 4.5), the most protectionist model in Canada, applies to adults 16 and older who have a physical disability or mental infirmity, are experiencing abuse and are not being protected, or are not receiving adequate care and attention and are unable to care for themselves. Reporting cases where an adult is suspected of needing care or attention is mandatory in Nova Scotia, and court orders may be granted for entry and protective measures. The legislation in all of the Canadian models stipulate that designated community agencies or existing government departments be responsible for adult protection activities.
### TABLE 4.1
Summary of British Columbia’s Model

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>British Columbia, Canada</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designated Authority</td>
<td>Agencies designated by the Act:</td>
</tr>
<tr>
<td></td>
<td>• BC’s five Regional Health Authorities</td>
</tr>
<tr>
<td></td>
<td>• Community Living B.C. (for those who have developmental disabilities)</td>
</tr>
<tr>
<td>Applicable Population</td>
<td>Adults (age 18 and older) who are abused or neglected in a public place, in their home, a relative’s home, care facility, or any other place except a correctional centre, and unable to seek support and assistance because of:</td>
</tr>
<tr>
<td></td>
<td>• Physical restraint;</td>
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<tr>
<td></td>
<td>• Physical handicap that limits the person’s ability to seek help; or</td>
</tr>
<tr>
<td></td>
<td>• An illness, disease, injury, or other condition that affects their ability to make decisions about the abuse/neglect.</td>
</tr>
<tr>
<td>Definition of Abuse/Neglect</td>
<td>Abuse:</td>
</tr>
<tr>
<td></td>
<td>The deliberate mistreatment that causes physical, mental, or emotional harm, or damage to or loss of assets (e.g., intimidation, humiliation, physical/sexual assault, overmedication/withholding medication, censoring mail, invasion or denial of privacy, denial of access to visitors.</td>
</tr>
<tr>
<td></td>
<td>Neglect:</td>
</tr>
<tr>
<td></td>
<td>Any failure to provide necessary care, assistance, guidance or attention if that failure causes/likely to cause, within a short period of time, serious physical, mental or emotional harm, or substantial damage to or loss of assets.</td>
</tr>
<tr>
<td></td>
<td>Self neglect:</td>
</tr>
<tr>
<td></td>
<td>Any failure of an adult to take care of him/herself that causes/is likely to cause, within a short period of time, serious physical or mental harm or substantial damage to or loss of assets (e.g., unsanitary conditions, untreated illness/disease/injury, malnutrition, hazardous conditions, etc.).</td>
</tr>
<tr>
<td>Guiding Principles</td>
<td>Adults are entitled to live in the manner they wish and to accept or refuse support as long as they do not cause harm to others and are capable of making decisions.</td>
</tr>
<tr>
<td></td>
<td>Adults should receive the most effective, but least intrusive and restrictive form of support, assistance and protection when they are unable to care for themselves and their assets.</td>
</tr>
</tbody>
</table>
### TABLE 4.1 (cont’d)

| Guiding Principles (cont’d) | The Court should not be asked to appoint guardians/decision-makers unless alternatives (e.g., provision of support) have been tried or carefully considered.  
Every adult is presumed capable of making personal decisions (e.g., health care, legal matters, financial affairs, etc.) unless the contrary is demonstrated.  
An adult’s way of communicating is not grounds for deciding capability. |
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Reporting</td>
<td>Anyone may make a report to a designated agency if they suspect an adult is being abused and neglected and is unable to seek support and assistance. Reporting abuse/neglect of adults is not a legal requirement. Reports may be anonymous, and the reporter cannot be punished except in cases where the report is false or malicious.</td>
</tr>
</tbody>
</table>
| Investigation (nature, action required, powers) | **Obligation:**  
Designated agencies are mandated to determine if an adult needs support and assistance if they have received a report, have reason to believe that the adult is being abused or neglected, or receive a report that the adult’s representative, decision-maker, guardian or monitor has been prevented from visiting or speaking with the adult. Investigations are one tool that can be used to determine if the adult is abused or neglected and is unable to seek support and assistance.  
**Powers:**  
(1) Interviews: The designated agency must make every reasonable effort to interview the adult, and may interview the adult’s spouse, near relatives, friends, or any others who may provide assistance in the investigation.  
(2) Information: Reports from health care providers who have examined the adult, any agency that has provided health or social services to the adult, or any person that manages the adult’s financial affairs/assets maybe be acquired if the circumstances require. Designated agencies have the right to acquire this information to perform their duties under the Act.  
(3) Entry: If the investigating designated agency believes it is necessary to enter the premises to interview the adult and has been denied entry, the agency may apply for a court order or a warrant for an agency worker or health care provider to enter the premises; the order/warrant is granted if there is reason to believe that the adult is abused/neglected and is unable to seek support or assistance.  
**Result of Investigation** | If, as a result of the investigation, the designated agency has reason to believe a criminal offence has been committed, it must report the facts to the police.  
If it is believed that the adult is being abused and neglected, that acting without delay would preserve the adult’s life, prevent serious physical or mental harm, or protect the adult’s assets from significant damage or loss, and the adult is incapable of giving or refusing consent, the designated agency may provide emergency assistance without the adult’s agreement. This may include:  
(1) Entering any premises where the adult may be located and use reasonable force that may be necessary, without a court order or warrant;  
(2) Remove the adult from the premises and move him/her to a safe place; |
TABLE 4.1 (cont’d)

<table>
<thead>
<tr>
<th>Result of Investigation (cont’d)</th>
<th>(3) Provide the adult with emergency health care;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(4) Inform the Public Guardian and Trustee that the adult’s financial affairs require immediate protection; and</td>
</tr>
<tr>
<td></td>
<td>(5) Take any other emergency measures necessary to prevent harm to the adult.</td>
</tr>
</tbody>
</table>

The designated agency may also do one or more of the following:

| (1) | Take no further action; |
| (2) | Refer the adult to available health care, social, legal, accommodation, or other services; |
| (3) | Report the case to the Public Guardian or Trustee, or another agency; |
| (4) | Assist the adult in obtaining a representative; |
| (5) | Apply to the Court for an interim order requiring a person to: stop residing with and stay away from the premises where the adult lives (unless they are the owner or lessee); not to visit, communicate with, harass, or interfere with the adult; not to have any contact or association with the adult or his/her assets, financial affairs, business; or to comply with any other restrictions, for up to 30 days. The order may be granted if there is reason to believe that the person in question has abused the adult and the adult is unable to seek support and assistance; |
| (6) | Apply to the Court under the *Family Relations Act* for the adult’s maintenance; and |
| (7) | Prepare a support and assistance plan that specifies any services needed by the adult (e.g., health care, legal, financial, or social services, accommodation). If the adult decides not to accept the services proposed in the plan, they must not be provided unless the adult appears incapable of making the decision, in which case the designated agency may ask the Public Guardian and Trustee to arrange an assessment to determine whether the adult is capable. If the adult is found to be incapable, the designated agency may apply to the Court for an order authorizing the provision of services. The order may be granted if it is found the adult is abused/neglected, unable to seek support and assistance, and needs and would benefit from the services proposed. |

The designated agency must involve the adult, to the greatest extent possible, in decisions about how to seek support and assistance and provide the necessary support and assistance to prevent future abuse/neglect.

| References | Public Guardian and Trustee of British Columbia (2005) |
## TABLE 4.2
Summary of Yukon’s Model

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Yukon, Canada</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designated Authority</td>
<td>Yukon Health and Social Services</td>
</tr>
<tr>
<td>Applicable Population</td>
<td>Adults (19 and older) who are experiencing abuse and neglect (including self neglect) and are unable to seek support and assistance due to: physical or chemical restraint; a physical or intellectual disability that limits their ability to seek help; an illness, disease, injury or other condition that affects their ability to seek help; or any similar reason. The adult can be experiencing abuse/neglect in a public place, their home, a relative’s home, a care facility, or any other place (with the exception of correctional centres). The Act applies whether or not an adult has a guardian, associate decision-maker, or representative.</td>
</tr>
</tbody>
</table>
| Definition of Abuse/Neglect | **Abuse:** The deliberate mistreatment of an adult that causes the adult physical, mental, or emotional harm, or causes financial damage or loss to the adult.  

**Neglect:** 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 financial damage or loss to the adult. |
| Guiding Principles | Responses to reports of adult abuse/neglect will use the least intrusive method.  

Responders will work with the adult to reduce risk.  

The adult will be involved to the greatest extent possible in decisions about how to stop the abuse and neglect and/or provide the support necessary to prevent it in the future. |
<p>| Reporting | Anyone may make a report to a designated agency where they have information that an adult is abused or neglected, or is unable to seek support and assistance due to a diminished ability to make their own decision. The report may be made with regard to the conduct of a guardian, associate decision-maker, or representative for the adult. No legal action or punishment may be brought against a person for making a report, except in the case of false or malicious reporting. |
| Investigation (nature, action required, powers) | <strong>Obligation:</strong> The designated agency must make inquiries to determine whether there are reasonable grounds for believing an adult is being abused/neglected or is unable to seek support or assistance if a report has been received, there is reason to suspect abuse/neglect, or there is a report that the adult’s guardian, associate decision-maker or representative has been prevented from being in contact with the adult. If it has been found that there are no reasonable grounds that the adult is being abused/neglected and unable to seek support, the designated agency must promptly discontinue its inquiry. |</p>
<table>
<thead>
<tr>
<th>Investigation (nature, action required, powers) (cont’d)</th>
<th>Powers:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Interviews: Every reasonable effort must be made to interview the adult. The designated agency may apply to a judge, without notice to any person, for an order authorizing entry to premises for the purpose of interviewing the adult if there is reason to believe that the adult is abused/neglected; the adult is unable to seek support or assistance; it is necessary to enter the premises to interview the adult; and the designated agency has been denied entry to the premises by anyone (including the adult) or there is reason to believe that entry will be denied. If there is reason to believe that the application to the judge will result in delay that could result in harm to the adult, an application may be made to a justice of the peace under the Family Violence Prevention Act for an order authorizing entry. An application may also be made to the judge to authorize a health care provider to enter the premises to examine the adult to determine whether health care is needed. The designated agency may also interview the adult’s spouse, relatives, friends, or anyone else who may be able to assist in the inquiry.</td>
<td></td>
</tr>
<tr>
<td>(2) Information: The designated agency may obtain any information that is required to perform its function under the Act, including reports from health care providers who have examined the adult, any agency that has provided health or social services, or any person who manages the financial affairs of the adult, without the consent of the adult or the adult’s guardian (where applicable). This information must be disclosed to the designated agency upon request. The Act overrides any claim of confidentiality or privilege (other than solicitor-client privilege).</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Result of Investigation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>If the designated agency believes the adult is apparently being abused and neglected, is incapable of giving/refusing consent, and it is necessary to act without delay to preserve the adult’s life, prevent serious physical or mental harm, or protect the adult from substantial financial loss, the designated agency may provide emergency assistance in the form of one or more of the following:</td>
<td></td>
</tr>
<tr>
<td>(1) Enter the premises where the adult is located without a court order or warrant using reasonable force as necessary;</td>
<td></td>
</tr>
<tr>
<td>(2) Remove the adult from the premises and take them to a safe place;</td>
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</tr>
<tr>
<td>(3) Provide emergency health care to the adult;</td>
<td></td>
</tr>
<tr>
<td>(4) Inform the Public Guardian and Trustee that the adult’s finances need immediate protection; and</td>
<td></td>
</tr>
<tr>
<td>(5) Take any other emergency measures necessary to protect the adult.</td>
<td></td>
</tr>
</tbody>
</table>

If the designated agency determines that there are reasonable grounds to believe that the adult is being abused and neglected and is unable to seek support and assistance, the designated agency may do one or more of the following: |
| (1) Refer the adult to available health care, social, legal, accommodation, or other services; |
| (2) Organize the provision of service or assist the adult in obtaining service; |
| (3) Inform the Public Guardian or Trustee; |
| Result of Investigation (cont’d) | (4) Report the situation to the RCMP;  
(5) Refer the case to a community restorative justice process;  
(6) Apply to the Court for an Adult Protection Order. If the designated agency establishes that there are reasonable grounds to believe that a person has abused/neglected the adult and the adult is unable to seek support and assistance, the judge may order one or more of the following: the person to stop residing with the adult and stay away from the premises; the person to have no contact with the adult; the person to have no association with the adult’s financial affairs; give the adult possession of specified personal property (e.g., bank card, vehicle, identification, etc.); not take, convert, damage, or deal with property that the adult may have interest in; post any security that the Court considers appropriate to secure the person’s compliance with the order; and the person to comply with any other restrictions deemed appropriate by the judge. The order may be for as long as and subject to the conditions that the judge deems appropriate; and  
(7) Apply to the Territorial Court under the Family Property and Support Act for the adult’s maintenance. |
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>References</td>
<td>---</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>New Brunswick, Canada</td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Designated Authority</td>
<td>Department of Social Development</td>
</tr>
<tr>
<td>Applicable Population</td>
<td>Persons age 65 or older, or a disabled adult over the age of 19 who is incapable of properly caring for him/herself because of a mental or physical infirmity, who is being abused and neglected, and who refuses, delays, or is unable to make arrangements for proper care and attention. Disability is defined as a physical, communication, or intellectual impairment which greatly limits the ability to carry out normal daily activities. It does not matter where the adult lives, whether in the community or in a private publicly funded facility.</td>
</tr>
</tbody>
</table>
| Definition of Abuse/Neglect | Abuse: Where an adult is disabled or elderly and is a victim of or is in danger of being a victim of physical abuse, sexual abuse, mental cruelty, or any combination thereof. Financial exploitation is not recognized in the *Family Services Act* at this time unless it is accompanied by the aforementioned forms of abuse.  
Neglect: Where an adult is a disabled or elderly person and is incapable of caring properly for him/herself due to a physical or mental disability and is not receiving proper care and attention, or the adult refuses, delays or is unable to make provision for his/her proper care and attention. |
| Guiding Principles | Working to protect vulnerable adults while recognizing that competent adults have the right to make their own decisions and live their lives as they wish. |
| Reporting | Anyone may report concerns about abuse/neglect of a disabled or elderly person by calling the closest Regional Social Development office. Reports may be made anonymously 24 hours a day, 7 days a week. |
| Investigation (nature, action required, powers) | **Obligation:** If the Department of Social Development believes that a person is a neglected or abused adult, the legislation requires that an investigation occur and may authorize a medical practitioner. If the adult is in immediate danger, the Department will start the investigation immediately. If not, the investigation will start within 16 working days of receiving the report. In cases where the adult can express his/her wishes and is capable of understanding the nature of any choices or decisions made, consideration shall be given to their interests and concerns in any decision made that affects him/her. In cases where the wishes of the adult cannot be expressed and they are not capable of understanding the nature of the available choices, the authority shall make every effort to identify and consider the adult’s best interests.  
**Powers:** The legislation authorizes the following powers to investigate:  
(1) If it is considered advisable a medical practitioner may be authorized by the legislation to examine and report on the physical and mental condition of the person and the care and attention he/she is receiving. Authorization under the legislation is sufficient for the examination to take place without the consent of the adult being examined. |
### TABLE 4.3 (cont’d)

<table>
<thead>
<tr>
<th>Investigation (nature, action required, powers) (cont’d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) If anyone interferes with or obstructs investigations in cases where an investigation is deemed warranted, a warrant authorizing the investigation may be issued by the Court for any designated person to enter, by force if necessary, any building or place in order to carry out the investigation.</td>
</tr>
<tr>
<td>(3) “Professional persons” (any person who has a duty of care toward the elderly person or disabled adult by virtue of their employment, e.g., physician, counsellor, nurse, residential facility worker, social worker, etc.) may disclose information to the person carrying out the investigation if the professional person has reason to believe that the adult is being neglected or abused, including information that was collected in the context of the professional person’s duties with the client. Action may be commenced against the professional person if the information provided was not done so in good faith. The professional person’s identity shall not be revealed unless consent is given by the person.</td>
</tr>
<tr>
<td>(4) The investigator may interview the adult to see if he/she is at risk of neglect or abuse, and may also interview family members.</td>
</tr>
<tr>
<td>(5) If it is found that a person is neglected or abused because of the presence of a person, an application to the Court may be made for a warrant to authorize the removal of the offending person from the premises in which the adult resides.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Result of Investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>If a person is deemed mentally incompetent, experiencing/in danger of experiencing abuse or neglect, and refusing service;</td>
</tr>
<tr>
<td>(1) The adult may be put under protective care for up to five days if it is found they are in imminent danger; protective care may mean leaving the person in their home with their caregiver (presuming that they are not the source of the abuse/neglect), removing the adult and placing them in another suitable location, returning the adult to their previous home or to the care of the person who had previously been responsible for the care of the person, or arranging for a medical examination and treatment of the person;</td>
</tr>
<tr>
<td>(2) A warrant may be issued for the removal of the person who is a source of danger for the adult from the premises in which the adult lives;</td>
</tr>
<tr>
<td>(3) A protective intervention order may be granted directed at any person who is a source of danger to an adult that is deemed mentally incompetent that orders them to cease residence in the same premises, refrain from any contact or association with the adult, and/or pay support as the Court establishes; and</td>
</tr>
<tr>
<td>(4) An order may be issued authorizing the Minister to give consent on behalf of the adult for any necessary medical, surgical, or dental treatment.</td>
</tr>
</tbody>
</table>

If a person is deemed competent, the recommendations made as a result of the investigation will only be followed by consent of the adult. These may include:

<p>| (1) Provision of social services; and |
| (2) Referral to a community social services agency, another government department/agency, law enforcement, a regional health authority or other institution, or any other appropriate service. |</p>
<table>
<thead>
<tr>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government of New Brunswick (2005)</td>
</tr>
<tr>
<td>Public Legal Education and Information Service of New Brunswick (2009)</td>
</tr>
</tbody>
</table>
**TABLE 4.4**
Summary of Prince Edward Island’s Model

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Prince Edward Island, Canada</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designated Authority</td>
<td>Department of Health and Wellness Home Care Programs</td>
</tr>
<tr>
<td>Applicable Population</td>
<td>Applies to adults who are the age of majority and who require legally authorized protective intervention to preserve their security and well-being due to having a physical or mental infirmity or disability or other incapacity.</td>
</tr>
</tbody>
</table>
| Definition of Abuse/Neglect | **Abuse:** 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/her estate.  

**Neglect:** Lack of or failure to provide necessary care, aid, guidance, or attention, causing or reasonably likely to cause the victim severe psychological harm or significant material loss to his estate. |
| Guiding Principles   | (1) Society has an obligation to afford its members, regardless of individual abilities or conditions, the opportunity to have security and the necessities of life.  

(2) Persons afflicted with disability that impairs their capacity to care for themselves deserve that quality of necessary treatment, care, and attention that is most effective and least intrusive or restrictive in nature.  

(3) Although the capacity to express it may be diminished by disability, adults have a need for self-determination and to have their person, estate, and civil rights be protected.  

(4) An adult is entitled to live in the manner he/she wishes and to accept assistance or not, provided it is by his/her conscious choice and does not cause harm to others.  

(5) Any intervention to assist or protect a person should be designed for the specific needs of the individual, limited in scope, and subject to review and revision as the person’s conditions and needs change.  

(6) The paramount consideration of any intervention to assist or protect the person should be the best interests of that person. |
| Reporting            | Any person who has reasonable grounds to believe that an adult is, or is at risk of being, in need of assistance or protection may report it anonymously to any of five Home Care Offices on P.E.I. The person making the report is not liable to any civil action unless the report was made maliciously or without reasonable and probable cause. |
### TABLE 4.4 (cont’d)

<table>
<thead>
<tr>
<th>Investigation (nature, action required, powers)</th>
<th>Obligation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>If Home Care determines that there is reasonable and probable cause that the person is, or is at serious risk of being, in need of assistance or protection, a preliminary investigation will be conducted to determine whether a more extensive investigation is needed. If the preliminary investigation indicates a strong reason to believe that a person requires assistance or protection, an in-depth assessment may be ordered to determine the extent and nature of assistance or protection required.</td>
<td></td>
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</tbody>
</table>

| Powers: |
| Assessment: Examines the person’s condition, circumstances and needs (e.g., health, social, residential, economic, vocational, education, etc.) related to the person’s functional ability to cope with the circumstances, make reasonable judgements, or to provide or make arrangements for his/her personal security or the meeting of his/her needs. Any person having responsibility over the adult must cooperate with the assessment. If the person assessed or the person having responsibility for the adult does not cooperate adequately or does not give consent for the assessment, or if the person assessed is unable to make a reasonable judgement about being assessed, application may be made and the Court may grant that the assessment be carried out if there are reasonable and probable grounds that the adult is in need of protection. |

<table>
<thead>
<tr>
<th>Result of Investigation</th>
<th>If the assessment determines that the adult is in need of assistance or protection, the following may occur:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development of a general case plan of services and interventions that serve the needs and best interests of the adult. The adult and anyone exercising supervisory responsibility for the adult must be involved in the development of the case plan to the fullest practical extent.</td>
<td></td>
</tr>
<tr>
<td>Provision of assistance, where it has been determined that the adult is in need of assistance, it is in accordance with his/her case plan, the adult gives informed consent if he/she is able to make reasonable judgements in such matters, and anyone with supervisory responsibility over the adult does not object. This assistance may include: assessment/case planning; counselling/other social work; speech/hearing therapy; occupational therapy/physiotherapy; respite or day care; socio-recreational activity; vocational training; homemaker, nutrition, or friendly contact; legal counsel and financial management; application for guardianship or trusteeship; residential accommodation/personal or nursing care; or any other type of service that is deemed necessary for the adult’s welfare.</td>
<td></td>
</tr>
<tr>
<td>Protective intervention: If the assessment finds that the adult is in need of assistance, refuses or is unable to give informed consent, or a person exercising supervisory responsibility over the adult objects to the assistance, application may be made to the Court that the suggested assistance be given as a protective intervention. The order may be granted if the person is in need of the protection and the intervention is in his/her best interests, if the remedy is unlikely to be achieved any way other than the order, and that the least intrusive and restrictive option is being sought. It may order supervision, removal of the adult from his/her current situation and placed under other care arrangements, the restraint of a person who is the source of harm or danger (e.g., removal from premises, no contact, no association with affairs, maintenance or support of the adult if there is an existing legal obligation, etc.).</td>
<td></td>
</tr>
<tr>
<td>Result of Investigation (cont’d)</td>
<td>(4) Order for health care, if the court determines that it is essential to do so.</td>
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<tr>
<td></td>
<td>(5) Application for a guardian, in cases where the adult is unable to make reasonable judgements necessary for his/her welfare and incapacity, will likely remain for a period of time beyond when decisions regarding the adult’s best interests are made.</td>
</tr>
<tr>
<td>References</td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Nova Scotia, Canada</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Designated Authority</td>
<td>Department of Health</td>
</tr>
<tr>
<td>Applicable Population</td>
<td>Adults who are age 16 and over and in the premises where they reside:</td>
</tr>
<tr>
<td></td>
<td>(1) Are victims of physical abuse, sexual abuse, or mental cruelty (or a combination thereof), and are incapable of protecting themselves due to a physical disability or mental infirmity and refuse, delay, or are unable to make provision for their own protection; and</td>
</tr>
<tr>
<td></td>
<td>(2) Are not receiving adequate care and attention and are incapable of caring for themselves by reason of a physical disability or mental infirmity, and refuse, delay or are unable to make provision for their adequate care and attention.</td>
</tr>
<tr>
<td>Definition of Abuse/Neglect</td>
<td>Abuse:</td>
</tr>
<tr>
<td></td>
<td>Physical abuse, sexual abuse, or mental cruelty.</td>
</tr>
<tr>
<td></td>
<td>Neglect:</td>
</tr>
<tr>
<td></td>
<td>Not receiving adequate care and attention and incapable of caring for oneself.</td>
</tr>
<tr>
<td>Guiding Principles</td>
<td>The welfare of the adult in need of protection is the paramount consideration.</td>
</tr>
<tr>
<td>Reporting</td>
<td>Every person who has information (confidential or privileged) indicating that an adult is in need of protection must report it immediately via the Department of Health telephone reporting line. Failure to report is an offence.</td>
</tr>
<tr>
<td>Investigation (nature, action required, powers)</td>
<td>Obligation:</td>
</tr>
<tr>
<td></td>
<td>Once a report has been made, an adult protection worker will assess the situation; if it is determined that the adult is in need of protection, the department will begin a more detailed investigation.</td>
</tr>
<tr>
<td></td>
<td>Powers:</td>
</tr>
<tr>
<td></td>
<td>If there are reasonable and probable grounds to believe that an adult is in need of protection, the following powers of investigation may be exercised:</td>
</tr>
<tr>
<td></td>
<td>(1) Assessment: An assessment may be ordered of the adult, the attention he/she is receiving, and whether the adult has been abused.</td>
</tr>
<tr>
<td></td>
<td>(2) Order for entry: An application may be made to the Court for an order of entry for a peace officer, medical practitioner, or anyone involved in the assessment into any building or place in the case where the adult refuses to consent to the assessment or a family member or person having care and control of the adult interferes with or obstructs the assessment.</td>
</tr>
</tbody>
</table>
In cases where the assessment determines that there are reasonable and probable grounds that the adult is in need of protection, an application may be made to the Court for an order declaring such, and where applicable, a protective intervention order.

In cases where the assessment determines that there are reasonable and probable grounds that the adult is in need of protection and is not mentally competent to decide to accept assistance or refuses assistance due to duress, the Court may order:

1. That the adult be provided with service (e.g., placement in a facility) to enhance his/her ability to adequately care for him/herself and protect him/her from abuse or neglect, when it is in the adult’s best interest to do so.

2. Protective intervention order: If the Court deems that a person is a source of danger to the adult, a protective intervention order may be issued requiring the person to leave the premises where the adult resides (unless the person is the owner or lessee), preventing contact with the adult, or requiring the person to pay maintenance for the adult in need of protection.

3. Inform the Public Trustee that the adult has no one to act as a guardian on behalf of the adult or that there is a guardian or person acting as a power of attorney who is not acting in the best interests of the adult.

In cases where the assessment determines that there are reasonable and probable grounds to believe that the adult’s life is in danger, the adult is in need of protection, and the adult is not mentally competent to make decisions or is refusing assistance due to duress, the following may occur:

1. Removal for protection: The Minister may authorize the removal of the adult to a place that offers protections of the adult and preservation of life; an authorized person may take reasonable measures to remove the adult; an application to the Court for an order of protection may be made within five days.

2. Inform the Public Trustee: If an adult is removed from his/her home and there is immediate danger of loss or damage to his/her property as a result of the adult’s inability to deal with it, the Public Trustee will be informed. If the Public Trustee deems that intervention is necessary, it may assume immediate management of the adult’s estate/property until it is no longer necessary, another person is appointed as the guardian, the adult is no longer in need of protection, or the protection order expires, terminates, or is rescinded.

References
4.2 United States Models

In the United States, federal legislation provides states with funds for Adult Protective Services, specifically, “advocacy and services for adults who, ‘as a result of physical or mental limitations, are unable to act in their own behalf, are seriously limited in the management of their affairs, are neglected or exploited, or who are living in unsafe or hazardous conditions’” (Nerenberg, 2006: 11). States are responsible for the implementation of their own programs; however, as Nerenberg (2006) observes, there is no federal body to oversee the implementation of Adult Protective Services, and many struggle to design and implement the programs. As a result, these programs vary considerably across the country in terms of structure, resources, and services provided, with some providing the power to investigate. Two examples of structured programs involving investigation in Massachusetts, the Executive Office of Elder Affairs (see Table 4.6) and the Disabled Persons Protection Commission (DPPC) (see Table 4.7), and California’s Adult Protective Services (see Table 4.8), were examined. The DPPC is an independent state agency that is responsible for receiving reports and conducting investigations, while the other models designate this responsibility to community agencies. All models allow anyone to report suspected abuse or neglect, but do require that some professionals are required by law to report abuse or neglect; failure to do so could result in a fine. Strict timelines for action are stipulated, and agencies are required to investigate all reports. Powers of investigation range, however, the obligation and powers of the DPPC are greater, with its system of investigation being more structured. In all cases, the outcome of the investigation, when abuse and neglect has been found to have occurred, is the provision of protective services to ensure that the adult does not experience future harm. The power to provide service ranges, and is often dependent on urgency and capacity; in the case of the DPPC, given all adults who are eligible to receive protection have disabilities, protective services must be provided if abuse is substantiated.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Massachusetts, United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designated Authority</td>
<td>Executive Office of Elder Affairs</td>
</tr>
<tr>
<td>Applicable Population</td>
<td>Anyone age 60 and older living in the community (separate laws apply to residents of nursing homes).</td>
</tr>
<tr>
<td>Definition of Abuse/Neglect</td>
<td><strong>Abuse:</strong> An act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person. Abuse is also considered the failure, inability or resistance of an elderly person to provide for him/herself one or more of the necessities essential for physical and emotional well-being without which the elderly person would be unable to safely remain in the community. No one will be considered abused or neglected if they rely upon treatment in accordance with the teachings of a church or religious denomination by an accredited practitioner.</td>
</tr>
<tr>
<td>Guiding Principles</td>
<td>To remedy or alleviate the abusive situation and to prevent the reoccurrence of abuse. Services must be provided in the least restrictive and most appropriate manner possible.</td>
</tr>
<tr>
<td>Reporting</td>
<td>Professionals designated in the legislation are legally required to make a verbal report if they have reasonable cause to believe that an elderly person is suffering from or has died from abuse. Reports may be made to a designated Protective Services agency directly or via a state-wide Elder Abuse Hotline (24 hours a day, 7 days a week). The verbal report must be followed within 48 hours by a written report. Professionals who fail to report are punished by a fine. In addition to those who are required to report, anyone else may make a report if they have reasonable cause to believe an elder is suffering from or has died from abuse. Reporting may be anonymous. Those who make false or malicious reports may be punished.</td>
</tr>
<tr>
<td>Investigation (nature, action required, powers)</td>
<td><strong>Obligation:</strong> Once a report is filed, the department or designated agency must assess and evaluate the information provided. The elderly person must be provided written notice that the assessment is being conducted and have the right to review the file and report developed. If an emergency exists, all assessments and evaluations must be completed within 24-hours of receipt of the report. If the abuse is serious, the department or designated agency must report it to the district attorney within 48-hours, which will determine whether criminal proceedings are necessary. <strong>Powers:</strong> (1) Assessment: The assessment involves a visit to the residence of the elderly person. The assessment may also include consultations with individuals and agencies that have knowledge of the elderly person, including the person who filed the report. (2) If the assessment determines that the elderly person is suffering from abuse, the Protective Services agency will perform an evaluation of functional capacity, situation, and resources.</td>
</tr>
</tbody>
</table>
TABLE 4.6 (cont’d)

<table>
<thead>
<tr>
<th>Result of Investigation</th>
<th>From the assessment and evaluation, a service plan for the provision of protective services will be developed, appropriate to the needs of the elderly person and using the least restrictive measures.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If the elderly person has capacity and refuses service, service cannot be provided. If the elderly person has capacity and consents to service, protective services will be provided, and may include:</td>
</tr>
<tr>
<td></td>
<td>(1) Capacity to respond to an emergency;</td>
</tr>
<tr>
<td></td>
<td>(2) Protective services case work; or</td>
</tr>
<tr>
<td></td>
<td>(3) Capacity to provide or arrange for a homemaker, home health aide, transportation, legal services, counselling, nutrition services, guardianship, protective order through the Court, emergency shelter, foster care, and adult day care services.</td>
</tr>
<tr>
<td></td>
<td>In addition, the following services may be arranged if necessary to assist and protect the elderly person:</td>
</tr>
<tr>
<td></td>
<td>(1) Medical care;</td>
</tr>
<tr>
<td></td>
<td>(2) Mental health care; or</td>
</tr>
<tr>
<td></td>
<td>(3) Emergency financial assistance.</td>
</tr>
<tr>
<td></td>
<td>In cases where an elder has capacity, services may be offered but the elder has the right to refuse them. For abused elders who lack the capacity to make informed decisions and are at risk for serious harm, the Court may order the services sought. If the investigation confirms one or more types of abuse, the elder is offered a number of services to address the issues they face. In serious cases, the case may be reported to the District Attorney for possible prosecution.</td>
</tr>
<tr>
<td></td>
<td>If any person interferes with the provision of service to the consenting elderly person, the department, protective services agency, or public guardian may petition the Court to stop the interference.</td>
</tr>
<tr>
<td></td>
<td>If the department or designated agency has reasonable cause to believe the elderly person lacks capacity to consent to the provision of service, the Court may be petitioned. If the court finds that the elderly person is abused, requires protective services, and lacks capacity to give consent and there is no other person authorized to consent, the court may appoint a conservator, guardian, or other person authorized (the least restrictive fiduciary representation possible) to give consent to the provision of service. Alternatively or in addition to, the Court may make an order for the provision of service using the least restrictive alternatives. The order is in effect for six months.</td>
</tr>
</tbody>
</table>
If an emergency exists and the department, designated agency, or family has reasonable cause to believe that the elderly person is being abused and lacks capacity to consent to service, the Court may be petitioned for an emergency order for protective service; the elderly person must be served with notice 24-hours prior to the hearing. If the Court believes there is immediate, reasonable foreseeable physical harm to the elderly person and that the 24-hour delay will cause more harm, notice can be dispensed with. If the Court finds after the hearing that the elderly person lacks capacity, is being abused, and that an emergency exists, an order may be made for the provision of service on an emergency basis—in order to remove the conditions creating the emergency. The order is in effect for no more than 14 days, with the option to apply for an extension if it is necessary to alleviate the emergency.

The Court will only order an institutional placement or change of residence if it is found that no other less restrictive option will meet the needs of the person.

If a petition has been filed in Court for the appointment of a guardian or for an emergency or for protective services, a geriatric evaluation must be conducted. This includes the current residence of the person, a description of current services provided, an evaluation of the elderly person’s physical, mental and social condition, and recommendation regarding the least restrictive course of services, care, or treatment.

<table>
<thead>
<tr>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>MassResources (2010)</td>
</tr>
<tr>
<td>Executive Office of Elder Affairs (2010)</td>
</tr>
</tbody>
</table>

**TABLE 4.6 (cont’d)**

| Result of Investigation (cont’d) | If an emergency exists and the department, designated agency, or family has reasonable cause to believe that the elderly person is being abused and lacks capacity to consent to service, the Court may be petitioned for an emergency order for protective service; the elderly person must be served with notice 24-hours prior to the hearing. If the Court believes there is immediate, reasonable foreseeable physical harm to the elderly person and that the 24-hour delay will cause more harm, notice can be dispensed with. If the Court finds after the hearing that the elderly person lacks capacity, is being abused, and that an emergency exists, an order may be made for the provision of service on an emergency basis—in order to remove the conditions creating the emergency. The order is in effect for no more than 14 days, with the option to apply for an extension if it is necessary to alleviate the emergency.  

The Court will only order an institutional placement or change of residence if it is found that no other less restrictive option will meet the needs of the person.

If a petition has been filed in Court for the appointment of a guardian or for an emergency or for protective services, a geriatric evaluation must be conducted. This includes the current residence of the person, a description of current services provided, an evaluation of the elderly person’s physical, mental and social condition, and recommendation regarding the least restrictive course of services, care, or treatment.

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<th>References</th>
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<tr>
<td>MassResources (2010)</td>
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<td>Executive Office of Elder Affairs (2010)</td>
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### TABLE 4.7
Summary of Massachusetts Disabled Persons Protection Commission Model

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Massachusetts, United States</th>
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<tbody>
<tr>
<td>Designated Authority</td>
<td>Disabled Persons Protection Commission (DPPC) <em>The DPPC was established as an independent state agency reporting directly to the Governor or legislature.</em></td>
</tr>
<tr>
<td>Applicable Population</td>
<td>Adults age 18 to 59 with disabilities who are in state care or in a private setting and who are suffering serious physical and/or emotional injury through the act and/or omission of the caregiver they require for daily living as a result of their disability (parent, guardian or other person or agency responsible for a disabled person’s health or welfare, whether in the same home, a relative’s home, a foster home or any other day or residential setting).</td>
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</table>
| Definition of Abuse/Neglect | **Abuse:**  
An act or omission which results in serious physical or emotional injury to a disabled person. No person is to be abused if the person is being provided or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner. |
| Guiding Principles     | To protect adults with disabilities from the abusive acts or omissions of their caregivers through investigation oversight, public awareness, and prevention. |
| Reporting              | “Mandated reporters,” professionals who are more likely to be aware of persons with disabilities who are being abused or neglected, are required by law to make a report if they have “reasonable cause to believe” a person with a disability is being abused or neglected; failure to report can result in a fine. Any other person may choose to make a report if they suspect abuse or neglect of a person with a disability. Reports may be made by calling a 24-hour hotline operated by the DPPC. A written report is required within 48-hours of the oral report; if the report involves a death, the written report must be provided within 24-hours. The hot-line staff receiving the report records the information in the DPPC database, which is available for subsequent reports regarding the victim, abuser, or program. Relevant information is recorded on a DPPC intake form, which is forwarded to an appointed investigator if it meets the legislated criteria for the victim of the alleged abuse (see “applicable population”). |
| Investigation (nature, action required, powers) | **Obligation:**  
All reports are assigned to an Adult Protective Service Investigator (who could be from the DPPC, Department of Mental Retardation, Department of Mental Health, or Massachusetts Rehabilitation Commission) and a DPPC Oversight Officer who monitors risk. A risk assessment is performed to determine the level of risk; risk is continuously reassessed by the Oversight Officer as new information is learned. Based on the risk assessment, a plan is developed to ensure safety before the investigation continues. Reports are then reviewed by a DPPC investigator and a member of the State Police Detective Unit assigned to the DPPC to determine whether a crime has occurred. Those that are criminal are referred to the district attorney’s office. The Adult Protective Services investigator’s primary role is to conduct a civil investigation under the authority of the law where all facts are reviewed, the nature and cause of any injuries are discovered, conclusions are drawn and recommendations for protective services are made to reduce or eliminate the risk to the victim. |
### Investigation (nature, action required, powers) (cont’d)

**Powers:**

The assigned investigator must:

1. Arrange to interview all parties relevant to the complaint (e.g., alleged victim, alleged abuser, witnesses, etc.);
2. Visit the site;
3. Examine records or other important documentation; and
4. Engage in any other investigatory activities (e.g., photographs of the scene or any injuries).

### Result of Investigation

As a result of the investigation, a report must be completed that contains the facts of the investigations, a finding of whether abuse occurred, and recommendations for actions necessary to address the causes of the abuse and prevent it in the future. If there is reason to believe a crime has occurred, the case must be referred to the district attorney. If there is reasons to believe employee misconduct has occurred, it must be referred to the state agency employing the person.

If the DPPC has reasonable cause to believe that a disabled person suffering from abuse lacks the capacity to consent to provision of protective services, the court may be petitioned for a finding that the person is unable to consent. If the court finds that the disabled person has been abused, requires protective services, and is unable to consent and has no other person who is authorized or willing to consent, the court can appoint a conservator or guardian to provide consent to service; however, the least restrictive form of fiduciary representation required to satisfy the needs of the person must be used. The court may also order the provision of services, stipulating the least restrictive alternatives.

If an emergency exists and the DPPC or family/caretaker has reasonable cause to believe that a disabled person is suffering from abuse and lacks capacity to consent to provision of protective service, the DPPC or family/caretaker may apply to the court for an emergency order of protective services. If the court finds the disabled person lacks capacity to consent, is being abused, and an emergency exists, the order may be granted. The court must only order the provision of services required to remove the conditions causing the emergency, lasting up to 72 hours unless an extension is deemed necessary. The court cannot order institutional placement unless it is found that there is no other less restrictive alternative. Warrants may be issued if access to the person is denied and there is reason to believe he/she is being abused.

If the adult has capacity and consents to protective services or has a guardian or conservator to consent to protective services, services may be provided by the appropriate service-providing agency.

Protective services are short-term and intended to remove the risk posed to the disabled person. Follow up and monitoring by the DPPC Oversight Officer is conducted to ensure the services are appropriate and implemented, and risk of harm is reduced or eliminated. Protective services range greatly and may include emergency housing, warrants, respite, protective or restraining orders, transportation, counselling, guardianship, financial support, legal assistants, medical assistance, etc. All protective services are:

1. Services provided to respond to incidents of abuse or neglect and protect the individuals involved;
2. Short-term and transitional between the crisis and ongoing support and service; and
(3) Intended to protect future abuse of the individual.

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<th>References</th>
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<tr>
<td>Disabled Persons Protection Commission (2010a)</td>
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<td>Disabled Persons Protection Commission (2010b)</td>
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<tr>
<td>Disabled Persons Protection Commission (2010c)</td>
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<tr>
<td>Jurisdiction</td>
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<td>Designated Authority</td>
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<td>Applicable Population</td>
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<td>Definition of Abuse/Neglect</td>
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<td>Guiding Principles</td>
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<td>Reporting</td>
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<td>Investigation (nature, action required, powers)</td>
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<tr>
<td>Investigation (nature, action required, powers) (cont’d)</td>
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<p>| Result of Investigation | Once it has been determined that adult protective services are to be provided, the APS worker completes a case assessment within 21-days of initial in-person contact with the adult. The assessment identifies the client’s capacity/ability to protect him/herself, their willingness to be involved in the problem-solving process, the need for protective intervention, immediate/ongoing risk factors, and the resources available to the adult to alleviate the risk of abuse/neglect. If the assessment determines that the client is not in need of protective services, the file is closed. For those in need of protective services, a service plan is prepared within 30 days from initial in-person contact to provide safety for the adult in the least restrictive environment. The service plan is developed with the client’s input. The service plan includes: (1) Identification of priorities/desired outcomes; (2) Strategies and resources to be used; (3) Services to be provided by APS or other service providers; (4) Frequency/duration of services; (5) The frequency of contact between the adult and the APS worker; and (6) The length of time the case will remain open. The service plan is time-limited, intended to reduce the risk poised to the abused or neglected elderly or dependent adult. is delivered only with consent of the adult. Protective services are provided according to the client’s needs, aimed to promote self-sufficiency and reduce the need for Adult Protective Services in the future. Services are provided by consent of the adult, except in cases where the adult is unable to provide consent; in these cases, a petition may be made to the Court for temporary conservatorship. If the is able to give consent and refuses service, the APS worker may refer them to other agencies. For those who proceed with the service plan, the APS worker must monitor and track its progress. A reassessment must be performed within 90 days to ensure that the service plan is meeting its desired outcomes, whether there are no problems or risk, and whether service needs to continue. |</p>
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<th>References</th>
<th>California Department of Social Services (2007)</th>
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4.3 United Kingdom Models

Adult protection in the United Kingdom varies by jurisdiction. As discussed by Spencer-Lane (2010), England and Wales currently use a piecemeal approach to adult social care, which he refers to as “a confusing patchwork of conflicting statues and soft law.” Thus, there are currently no statutory provisions for adult protection in England and Wales, the legal framework being composed of “common law, local authority guidance, and general statute law” (Spencer-Lane, 2010). Adult protection in England and Wales has recently been under review, with the possibility of a new piece of legislation to support adult protection (Collins, 2010). The idea for this legislation follows that which is available in Scotland. Scotland’s model (see Table 4.9) applies to adults age 16 and older who are at risk of harm, unable to safeguard their property, well-being or rights, and are vulnerable for physical or mental reasons. The model is guided by similar principles as in Canada and the United States, stressing the importance of the adult’s freedoms and least restrictive measures, as well as the involvement of the adult in the process. Authority is designated to local government councils to receive reports and investigate suspected risk of harm, and a council investigator is given the power to conduct visits, interviews, medical examinations, and obtain any required records. The outcome of the investigation is not specifically stipulated in the legislation, but independent advocacy is suggested. For serious cases, a variety of protective orders may be obtained; however, these may be refused if the adult is capable of making decisions. Thus, while the powers to investigate are substantial, little guidance is provided by the legislation with regard to investigatory outcomes or service provision.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Scotland, United Kingdom</th>
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<tbody>
<tr>
<td>Designated Authority</td>
<td>Local Government Councils/Adult Protection Committees</td>
</tr>
<tr>
<td>Applicable Population</td>
<td>Adults age 16 and older who are unable to safeguard themselves, their property, rights or other interests, are at risk of harm, and are more vulnerable to being harmed than others because of a disability, mental disorder, illness, or physical or mental infirmity.</td>
</tr>
<tr>
<td>Definition of Abuse/Neglect</td>
<td>Harm: Conduct which causes physical or psychological harm, unlawful conduct that appropriates or adversely affects property, rights, or interests, or conduct which includes self-harm.</td>
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</table>
| Guiding Principles     | (1) To achieve an appropriate balance between respecting adults’ rights and intervening where necessary to support and protect adults at risk of harm.  
                          (2) Any intervention must provide benefit to the adult and be the least restrictive to the adult’s freedom of the range of options available to meet the objective of the intervention.  
                          (3) These principles are guided by the following:  
                              - Consideration of the wishes of the adult;  
                              - Consideration of the adult’s nearest relative, primary caregiver, guardian/attorney, or others who may have interests in the adult’s well-being or property;  
                              - The adult should participate as much as possible and be provided with the information and support necessary;  
                              - To ensure that adults are treated fairly and equally; and  
                              - Consideration of the adults’ abilities, characteristics and background. |
| Reporting              | The Act stipulates that anyone concerned that an adult is at risk of harm can report it to their local council. Those who are part of public bodies or are office holders must legally report suspected harm of an adult to a council. |
### TABLE 4.9 (cont’d)

| Investigation (nature, action required, powers) | The Act authorizes councils to conduct inquiries about the adults’ well-being, property, or financial affairs, where the council believes that an adult is at risk and requires protective intervention. A council officer is appointed by the council to conduct the inquiry.  

**Powers:**  
Council officers are authorized by the Act to:  

(1) Conduct visits to determine if the adult is at risk of harm and whether action is required. If entry is refused, a warrant for entry can be issued and the police are called to help execute the warrant;  

(2) Conduct interviews with any person found at the place visited. Interviewees may refuse to answer any questions;  

(3) To be accompanied by a health professional to carry out a medical examination (in private); and  

(4) Obtain health, financial, or other records of the person at risk, when required.  

| Result of Investigation | If the inquiry finds that an adult is at risk of harm and in need of support, councils may provide adults with services tailored to the individual’s needs. The Act stipulates that independent advocacy can be provided; however, receipt of service is the choice of the adult. If an adult has a mental disorder or disability, they are entitled to independent advocacy under Scotland’s Mental Health Act. Councils are encouraged to refer adults to practical and emotional support services.  

The following protection orders may also be sought if the adult is considered to be or likely be at risk of serious harm, and all other options have been explored and exhausted:  

(1) Assessment order: An order for the adult to be taken to another location to be interviewed by the council officer or medically examined.  

(2) Removal order: Allows the adult to be removed to another place for up to seven days. The council has a duty to protect the adult’s property once the adult has been removed.  

(3) Banning or temporary banning order: Bans someone from a place or proximity to the adult when the adult is at risk to be seriously harmed.  

If the adult has capacity, they may refuse the granting of the order; however, if it is reasonably believed that the adult at risk has been pressured to refuse consent, the order may be granted if there are no other steps that can be taken to protect the adult. Evidence of undue pressure must be provided. If the adult does not have capacity to consent, the order may proceed.  

| References | Scottish Government (2009) |
5.0 COMMUNITY CONSULTATION

5.1 Introduction

The community consultation aspect of the project involved five focus groups and one interview, conducted between April 27 and June 9, 2010. A total of 28 stakeholders participated in a focus group or interview, representing a broad cross section of agencies serving vulnerable adults (e.g., health, outreach, justice, social services, etc.). In addition, one focus group was conducted with community members, some of whom were older adults who had experienced abuse and others who had knowledge or experience with vulnerable adults who had experienced abuse. Participants were asked general questions about abuse and neglect of vulnerable adults and Calgary’s current response, then were asked to discuss their views on civil investigation and whether it would fit into Calgary’s community response model to abuse and neglect of older adults. The results of the focus groups are summarized below.

5.2 General Perceptions Regarding Protection of Vulnerable Adults in Calgary

5.2.1 Abuse/Neglect and Vulnerability

The first series of questions dealt with participants’ general perceptions of vulnerable adults and Calgary’s current response. First, participants were asked what might make an adult vulnerable. Many respondents defined vulnerable in terms of health and well being, the most common defining features involving mental health – a developmental disability, cognitive dysfunction, or mental health disorder – or a physical disability. Participants also offered that other health concerns or illness, addiction or substance abuse, or extreme old age could constitute vulnerability. Some also stated that generally, any adult who is unable to care for themselves “for cognitive, emotional, or physical reasons” could be considered vulnerable.

Participants often defined vulnerability in terms of family or caregiver issues. In many cases, the abuser is a caregiver or person in a position of authority. As one stakeholder observed, “one of the things we hear about constantly are the people who are living in a situation where others have authority over them and are dependent on others for their day to day needs.” This vulnerability often leads to feelings of hopelessness, particularly when the caregiver lives in the home. As one participant iterated, many feel like there are no options – “I’d rather take this than have to leave.” A number of participants pointed out that caregiver exhaustion is a contributing factor to situations of abuse or neglect, particularly in cases where the adult has Alzheimer’s or dementia. Many vulnerable adults are dependent on family members for care, and are hesitant or unwilling to report abuse or neglect for fear of what will happen to their loved one. As some participants observed, vulnerable adults often have residual guilt regarding their children and are unwilling to divulge their abusive behaviour as a result; some have been threatened in various ways, including with their lives. These complex family and caregiver issues contribute to the vulnerability of adults who already may struggle with disabilities or declining health.
Respondents also pointed to a number of factors related to isolation that might make an adult vulnerable. Physical isolation was observed by many as a vulnerability, which often extends to having a diminishing social network or few neighbourhood connections. In addition to physical isolation, one of the most common themes that emerged related to cultural isolation; due to cultural differences, adults might keep family matters private, have language barriers or challenges with literacy and are unable to seek support, or may be dependent on abusive or neglectful sponsors in the case of immigrants. Many participants also pointed out that resources are an isolating factor for many adults, in that they may lack the resources to leave their abusive or neglectful situation, particularly financial resources. One stakeholder observed that adults experiencing abuse or neglect may be simply unaware that financial resources are available: “People perceive themselves as financially vulnerable – they don’t have a choice, they are unable to get out.” This lack of knowledge also extends to being able to identify abuse or neglect. As one service provider observed of older adults, “adults who contact us do so because they have new knowledge about what abuse is; they grew up from childhood thinking that the behaviour was normal.” Another stakeholder noted, “there is a distinction between naming abuse and knowing they’re being treated badly – they aren’t aware what is happening is against the law.” Related to this is awareness of rights, as one policy stakeholder observed: “The best way I would describe [vulnerability] is someone who is unaware of their personal rights and the fact that they can’t be interfered with, and those who cannot pursue or protect their rights.”

Finally, participants observed that fear and shame lead to vulnerability for many adults. Many adults are afraid to report their abuse or neglect, as one participant identified: “When they are in the midst of the situation, there is a lot of fear of reporting the abuse, it is swept under the carpet and not talked about.” Related is the shame that accompanies their abuse and neglect. As one community member noted, because of shame, she “let it go on and did not do anything.”

Based on these definitions, respondents were then asked what constitutes abuse and neglect of vulnerable adults. A number of participants simply stated that abuse or neglect of vulnerable adults is the same as the types of abuse that can happen to anyone, as one stakeholder noted: “I don’t see it as any different from abuse of anyone else…anytime someone is exercising a sense of power over an unwilling person.” As another participant noted, “one of the difficulties with this population is that there is such an array of abuse.” Some participants stated generally that abuse or neglect has been committed where harm or injury has been done. Other participants specifically stated what the array of abuse might be.

Common forms of abuse were identified, including physical abuse, emotional abuse, verbal abuse, psychological abuse, mental cruelty, sexual abuse, and spiritual abuse. Medical abuse – situations where caregivers refuse to take adults to medical appointments, or refuse medications – was observed as a unique form of abuse to this population. Participants also pointed to manipulation and exploitation (particularly financial exploitation) as forms of abuse, which may be perpetrated by family members, faith communities, scams, or even friends and neighbours taking advantage of a vulnerable person under the auspices of wanting to help. Some participants defined
abuse or neglect in relation to the need for care, whether in terms of the imbalance of power, or in terms of caregiver stress or exhaustion, which often leads to verbal and physical abuse. Neglect was often defined in the context of caregiving, generally as not providing the necessities of life. One stakeholder discussed the complexities of neglect: “Neglect is hard because if someone has agreed to take on the responsibility of caregiving and doesn’t do it – that’s neglect. It gets blurry if the person (e.g., family member) hasn’t taken on the responsibility, but the person is being neglected.”

Abuse and neglect were also defined in the context of family relations. Adults who are abused by their children “blame themselves” and “try to rationalize the abusive or neglectful behaviour.” Long-term spousal abuse was also discussed – referred to as “old domestic violence.” As one stakeholder noted, “with long-term spousal abuse, you have a lot more vulnerability, your health, mental health, judgement, all declines. [The abused adult] never learns to problem-solve – their development was arrested when the abuse began. They are damaged physically and emotionally.”

Importantly, participants noted that in many cases, abuse and neglect are perpetuated by factors related to vulnerability – isolation and shaming, feelings of hopelessness, and lack of knowledge of abuse and their rights. With older adults in particular, generational elements – saving face, keeping family issues private – also perpetuate the abuse they experience.

Participants were then asked whether abuse and neglect of vulnerable adults is unique, requiring focused interventions. A majority of participants agreed, with one participant stating, “society is judged by how they take care of their most vulnerable...it’s the responsibility of the family and community to make sure they are protected.” Another participant observed that not all situations require a legal or criminal response. One issue that was identified with regard to formulating interventions was that there is a lack of certainty as to how big the problem actually is, given the lack of empirical evidence – “we have no statistics – we don’t even really know what we’re looking at.”

All of the focus groups pointed to the need for unique approaches that are long-term, tailored to the individual, involve careful assessments by experts, are clearly defined, and well coordinated. The first point of contact was deemed vital to the success of these responses, particularly since many vulnerable adults access services not related to their abuse or neglect (e.g., doctor, bank, community centre), as was the collaboration of sectors so that first points of contact are not ignored or lost due to lack of communication among agencies.

Many reasons were given as to why these responses need to be unique, a common one being family dynamics. As previously discussed, adults often want to protect their family members and do not want them to come to the attention of authorities; further, they want to maintain their familial relationships. As one participant observed, “because of the family dynamic...the intervention might be unique. It makes things a bit more complicated [when family members are interdependent.]”
Further, in situations of caregiver abuse, participants noted that any response requires education and support to caregivers. As one stakeholder noted, “it’s a societal failure that there is not adequate support from caregivers.” Often caregiving is inherited by family members, who lack the skills and knowledge to appropriately provide that care. As another stakeholder noted, “we need a coordinated approach involving educators, home visitors....”

Participants also discussed the need for unique interventions with regard to common health conditions. Some pointed to cognitive decline for older adults, and the tendency to make poor decisions around the need for support. Others observed that limited mobility, vision, or hearing “provides an enhanced opportunity for someone to abuse power and control,” as well as unique challenges for interventions. In addition, those with dementia who may have to be removed from their home environment present a unique challenge. As one service provider noted, “putting them in a strange environment with strange caregivers...can be very damaging”; however, another commented that these adults “can improve physically by doing that.”

On the other hand, stakeholders pointed to the unique challenges posed by those who are not as seriously vulnerable – for those who are considered competent. As one stakeholder noted, there are few tools available for this population of adults: “If they haven’t been declared incapacitated and can still make their own decisions, that makes it really tough.” Further, the adult may simply not want help, which is particularly challenging when the adult is capable of making his/her own decisions. As one stakeholder noted, “sometimes the best response is what the client doesn’t want.”

5.2.2 Calgary’s Protection of Abused/Neglected Vulnerable Adults

Participants were asked to discuss their views on the safeguards currently in place for abused and neglected vulnerable adults. Discussions were mixed, ranging from perceptions that the current system is inadequate to observations regarding all the positive steps that have been taken.

Discussions regarding the inadequacies of the current system largely focused on the fact that there aren’t enough powers to effectively respond to abuse and neglect of vulnerable adults. Many pointed to situations where the abuse or neglect is not criminal. As one stakeholder noted, “the police’s hands are tied because they don’t have investigative capacity around non-criminal incidents.” This is particularly true, as two stakeholders noted, of financial abuse:

Where it falls apart is in financial offences...there are things we investigate that are abusive, and some that do not meet the criminal threshold.

If the public purse is the one that’s being defrauded, we can proceed. But if it’s between family members, it’s difficult for us to ascertain what we can charge.
Further, for situations where there is a criminal element, the adult may not want to proceed with or cooperate with charges: “The tools are there judicially, if the victim wants to pursue charges...but then again, if they don’t want to follow through with them, we can’t do much. That is the biggest barrier, there have been crimes committed, but the vulnerable adult chooses not to charge.” Many stakeholders felt that there needs more protective options other than to proceed with criminal charges. Front-line workers expressed frustration over the fact that there are no powers to act in situations where abuse or neglect is not criminal, yet there is harm occurring: “We don’t have the legislation, we can’t investigate, we can’t do anything”; “We need to be able to get our foot in the door.” Another participant observed:

When you leave it to the agencies, all they can ask is “what do you want to do” – give them the option to be protected. We need to investigate to protect – to be able to have that power to determine if there is abuse happening and then let them make the choice.

Some participants observed that the Protection for Persons in Care Act offers some protection for vulnerable adults, but only those in publicly funded facilities. Further, stakeholders with experience with this legislation pointed out that even with the legislation, there are not enough resources to support the investigations that the legislation provides for.

Participants offered a number of other suggestions as to how the system could be improved, many of which were preventative in nature. Some of the community members felt that law enforcement needs more training regarding vulnerable adults, particularly elder issues: “Police recruits need to be trained to recognize abuse of adults; attitudes need to be changed.” Some stakeholders noted that there needs to be better discussion in the community, and better advocacy for vulnerable people: “We need to be aware of what’s happening, how to identify it, and what to do.” From a reporting perspective, community members felt there needs to be a guaranteed phone number to call for help, one that is not intimidating. One stakeholder observed that reporting by individuals such as friends and neighbours is an issue, in that people tend not to look out for their neighbours or want to interfere in their lives. In terms of response, participants felt that the development of care plans for abused/neglected adults is necessary and that when possible, vulnerable adults should not be removed from their homes: “Remove the abuser, not the victim.” Participants also observed that there needs to be more support for those experiencing caregiver stress. Specialized supports for vulnerable adults from different cultures were also deemed necessary, ranging from translators to financial supports – particularly for immigrants who are dependent on abusive sponsors. For all vulnerable adults, financial support was deemed an important gap in Calgary’s current response.

Some groups pointed to the positive steps that have been taken in Calgary. Many felt that the issues are being recognized, and that the conversations are taking place. Some felt that the necessary resources currently exist in Calgary, but that they are simply not being organized effectively: “We have the potential and the resources, but we haven’t organized ourselves around these issues.” A number of stakeholders
pointed to the development of the coordinated community response as a positive step, particularly the proposed police/nurse/social worker team. Stakeholders also pointed to the possible role of the specialized domestic violence court as an option for abuse/neglect of vulnerable adults that come to the attention of the authorities, as it offers treatment instead of punishment for the offender, victim participation, and a more efficient process.

In addition to Calgary’s current response, participants were also asked their view on Alberta’s legislative structure with regard to the protection of abused and neglected vulnerable adults. It was suggested that abuse of vulnerable adults, especially the elderly, requires a range of legal responses – particularly where there is no criminal element, or where the adult does not want to pursue criminal charges. Many suggested that a civil arm of legislation might fill the gaps identified with regard to non-criminal situations. One respondent likened this to the child welfare model: “Someone comes to investigate, then there is a lot of choice – a variety of ways to intervene. I think [it would be good] if there were more options available, perhaps in a mediation kind of way.” However, some stakeholders cautioned that this kind of approach may jeopardize the independence of the adult.

One group also expressed concern over the aging population, that government needs to prepare for baby boomers and the possibility that more adults may develop disorders that make them more vulnerable (e.g., Alzheimer’s). As one stakeholder observed: “More people will develop Alzheimer’s in the coming years because of the baby boomers…the government needs to have direction and prepare. There is currently no plan.”

Another group observed that there are definite gaps in real estate law and title transfers that, if addressed, may provide more protection with regard to financial exploitation and abuse. One stakeholder noted: “Some sort of review in the banking system has to take place for the case of vulnerable adults. People are manipulated into signing others onto title, and are thrown out on the street without recourse.” Another stakeholder suggested that this type of protection might be offered through a civil arm of legislation.

Community members pointed to the need for provisions for financial assistance for those who choose to leave their abusive situations, attesting to the vulnerability and frustration they felt when they wanted to leave their abusive situation but couldn’t due to financial issues. Another community member suggested the need for provisions to ensure that the perpetrator is mandated to receive treatment, particularly in the case where the adult wishes to maintain a relationship with that person: “There should be a law that puts the perpetrator into counselling/anger management, and threaten to charge them if they don’t follow through.”

Some felt that Alberta’s current legislative structure was sufficient, depending on what it is that needs to be accomplished: “What do you want to do? You could get a restraining order very easily without going the criminal route. It’s not that we don’t have the legislation.” One participant argued that although it has been recommended that the
**Protection for Persons in Care Act** be extended to protect people in the community, vulnerable adults accept a certain degree of risk by continuing to live in their own homes:

The implication of people who are living in their own homes is that they accept a degree of risk like the rest of us do. The home care model is that seniors or adults with disabilities are accepting that degree of risk. By staying in the community, they are opening themselves up to the possibility that something might happen; they have the option to move into supported housing.

One participant observed that proper use of personal directives would ensure that adults are protected in some situations. Others pointed to the need for education regarding what protection is currently available: “We know what to do with a child, but not with a senior.” Finally, a number of stakeholders felt that if the legislation were to change to include additional protection (e.g., civil investigation), none of it would be worthwhile if there are no resources in place to support it. As one stakeholder observed, “the province doesn’t have people lined up to provide support – who is going to provide what is based on finances. There is a shortage of help, and a shortage of money to provide help.” However, other stakeholders noted that these resources may currently exist, but merely need to be re-deployed: “There may be bodies, but it requires a shuffling of responsibilities.”

### 5.3 Perceptions of Civil Investigation

#### 5.3.1 General Perceptions

The next series of questions dealt with participants’ perceptions and opinions about civil investigation and what it might look like. The first question asked, generally, what participants thought of non-criminal investigation as a tool to enhance Calgary’s community response model. Some felt that civil investigation is necessary when abusive behaviour is not criminal, and that there needs to be a continuum of support given various forms of abuse and neglect are difficult to define for this population. Many felt that it would depend on what would be involved and how intrusive it would be, and that certain components would be necessary in order for it to be helpful, such as powers to collect information, clear parameters of investigation, expert knowledge, and ongoing support for the adult beyond the investigation. Some stakeholders felt that it would be acceptable if it was not too intrusive on the individual’s rights. Many felt that overall, improvement is needed due to the aging population, and the fact that there are currently not many options for vulnerable adults in these situations. One community member stressed the importance of knowing who and where to call. Further, a stakeholder noted that if an investigation reveals that simple supports would address the issues, the situation can be remediated without intrusive measures (e.g., removing the adult from their home): “If you go in early and support the caregiver, put supports in place, you give the older adults a chance to stay in their home.”
However, many possible issues regarding civil investigation were raised and discussed. One was whether the victim should be forced to participate. As one stakeholder reflected, “mandatory is uncomfortable for me; it identifies risk but takes away people’s independence…some people do have the capacity to decide for themselves.” Another participant stated, “if you have some draconian legislative piece, it raises issues. People have the right to make bad choices.” Others struggled with regard to the balance between independence and safety: “It does infringe on rights – but I would rather be intrusive and save someone’s life and identify what is occurring, then give them the options to manage it”; and “I think it’s around choice – however, if we have cases that there is capacity and they are being abused, there is nothing we can do right now.”

The issue was also raised with regard to reporting. Stakeholders and community members observed that reporting could escalate the abusive situation, particularly if the abuser has knowledge. As one community member observed, “if a person is isolated, if they don’t see people regularly, by having someone come it lets the perpetrator know there is something going on.” A stakeholder also noted, “you can get your foot in the door, but people live in fear – if the abuser finds out, there could be consequences.”

Finally, a discussion in one focus group identified that financial abuse must be treated uniquely from other forms of abuse in any civil response, given the special issues involved and the fact that financial abuse can often occur separately from other forms of abuse.

Participants were then asked whether they thought legislation in Alberta should be reformed to provide for powers of civil investigation. Some felt that existing powers are enough, that the police can do something if there is evidence, that a “door knock” only requires a call to “266” (403-266-1234, the Calgary Police Service non-emergency reporting line). Others felt that existing legislation, such as the Protection for Persons in Care Act, could be either better enforced or amended to include abuse or neglect in any location; some also suggested that the Public Guardian could be held to task in situations where vulnerable adults who are unable to make decisions are being abused or neglected.

Other discussions pointed to the need for legislation that would allow for mandatory investigation in cases where the adult lacks physical or mental capacity, or at the very least, to be able to have an assessment completed. Others felt that the power to gather information in these cases is key, from both private and public sources, and that there needs to be legislated parameters for any investigation (e.g., timeframe, powers, etc.). In addition, stakeholders in one group pointed to the importance of any legislative reform applying to bank transactions and title transfer – mandatory reporting by banks around large transactions in cases of vulnerable adults, as well as title transfers.
5.3.2 The Complexion of Civil Investigation

The focus group/interview discussion then shifted to the specifics of any civil investigation procedure, ranging from reporting to outcomes. Participants were first asked whether reporting should be mandatory. Many felt that anyone should be able to report, but that you cannot mandate it for the general public. There was a general sentiment that reporting should be mandatory, however, for certain professionals, such as physicians, nurses, social workers, psychologists, lawyers, financial managers, spiritual leaders, or anyone providing a service and in a position of trust: “People in a professional capacity, being a steward of their finances or personal care, should be the eyes and ears to protect these people.” A number of participants stressed the importance of mandatory reporting among financial institutions when suspicious activity is observed, stating that often they are the only ones who are aware of financial abuse. However, some front-line workers expressed concern over the fact that mandatory reporting could jeopardize their professional position, as the following participants discussed:

From an outreach perspective, if the client doesn’t want to go forward, but you have to mandatorily report, then the relationship is destroyed.

There has to be some caution – it might break trust between the adult and their spiritual leader.

A number of participants suggested anonymous reporting as a possible solution, however, as one participant cautioned, it may not be effective in the case of isolated adults: “Anonymous reporting might help that; however, sometimes an outreach worker is the only contact a vulnerable adult has.” Another participant suggested a graduated mandatory reporting model where professional judgement is involved in determining whether to report. In any event, there was a general sentiment that if reporting became mandatory for certain professionals, they would need to be well-trained in recognizing abuse and neglect.

Discussions also led to the parameters of reporting: “At what point are you obligated to report?” Some thought that a report should be made when there is “reasonable cause” to believe something is occurring,” unlike the criminal justice system where “beyond a reasonable doubt” is used. However, a number of participants raised questions regarding self determination and choice for adults, particularly those who are capable of making decisions. Another respondent pointed out that there has to be a clear distinction as to where reporting should be mandatory: “There has to be a clear distinction regarding the assumption of self-determination – adults without capacity versus people with capacity.” Another participant noted, “broadening the legislation raises questions of self-determination.” Some of the groups noted that by raising awareness about how the process would work, and by providing options to adults who are capable of deciding, some of these issues could be mitigated.

Some other concerns raised with regard to mandatory reporting are worthy of note. Two of the groups identified that the current legislation is inadequate to provide
for mandatory reporting, and one expressed concern over how mandatory reporting would be resourced (e.g., who would accept the call and proceed). One stakeholder also noted that there would have to be mechanisms in place to protect against false or malicious reporting. In addition, some participants asserted the importance of being culturally aware, that perhaps adopting this system would “impose on communities a set of values that are in conflict with their beliefs.”

Participants were also asked about what forms of abuse should be mandatory to report. Among those who felt that reporting should be mandatory, many felt that all suspected forms of abuse – physical, emotional, psychological, financial, spiritual – as well as neglect and self neglect, should be reported. One group discussed the importance of including property transfers in reporting of financial abuse. Discussion also led to the importance of educating vulnerable adults about how to identify abuse, and teaching them the language of abuse – as one participant pointed out, “those words for some folks have no meaning…using proper words and language is important.” This was identified as particularly true for those who may experience a language barrier.

The participants were then asked about their views on mandatory investigation. Discussions ranged from strong support for mandatory investigation to strong opposition. Many felt that “able bodied, mindful people” should not be forced to be investigated. As one front-line worker noted, there is a huge benefit to mandatory reporting, but it can be traumatizing if you’re not choosing to report and it goes to the police.” As a result, one of the common themes was that vulnerability is a determining factor. As one participant questioned, “what happens when they seem to have capacity but they are being abused?” Another participant stated:

There is the concern that [mandatory investigation] infringes on rights to choose – there are abused individuals who don’t want to be investigated. I’m thinking of domestic incidents where wives are being abused, but [in the case of mandatory investigation] they have to take action. But it might be different for vulnerable adults.

The sentiment among many was that determining level of vulnerability, including capacity tests, capability to make decisions, and whether caretaking is required, could be tied to the ability to investigate. This could be accomplished by a graduated system of investigation, as one participant explained:

You could look at a graduated assessment based on graduated perception of abuse and vulnerability. The beginning level would be assessment. People become aware as the investigation goes on, as more information is provided – then it could progress or not.

For vulnerable adults who have the ability to decide, community members and stakeholders alike suggested that consent could be used.

On the other hand, participants did discuss the merits of mandatory investigation in all cases. As one community member noted, “if the person is in protection mode,
they might not be cooperative – that’s why mandatory investigation might be effective.”  

Another community member iterated that mandatory investigation might reduce the fear associated with bringing a case of abuse to the attention of any authorities. A stakeholder echoed this sentiment from a service delivery perspective:

Mandatory reporting and investigation removes the responsibility of the client from the accusation. If the professional has to report, then the client doesn’t feel like they are implicating their own family member. If the investigation is mandatory, they are removed from that as well.

One community member stated that “if the investigation is done in the best interests of the elderly person,” having it mandatory may be acceptable.

Some of the community members and stakeholders discussed conditions that would be important to any investigation. One suggestion was that there should be clear guidelines in place to initiate an investigation. As one stakeholder noted, investigations should be mandatory “if the report falls under certain guidelines.” Another asserted, “as long as there are clear guidelines in terms of what falls under the legislation, if it meets the criteria it gets investigated. There needs to be some kind of gatekeeper, and some kind of definition of what needs to be mandatory.” An additional suggestion for investigations made by a community member was that the adult always be part of the process to ensure their needs are met. This sentiment was echoed by another community member, who insisted that the adult always be interviewed. Finally, awareness about the process was suggested as vital so that the community knows what is available, and how it works.

The qualifications of investigators were then discussed by the participants. Stakeholders suggested that investigators be trained in risk assessment, forensics, and capacity assessments, as well as mental health and cognitive and behavioural interviewing. In addition, investigators should have knowledge and skills in human services, and experience with vulnerable adults. As one participant noted, “a level of life learning and experience, and an ability to understand older people” is required, as is “special skills to talk to someone with Alzheimer’s/dementia.” Generally, participants stressed the importance of a multidisciplinary team with various skills being employed in any investigation.

In terms of investigatory powers, a number of participants stressed the importance of an assessment at intake. Once it has been determined that a vulnerable adult is being abused or neglected, some suggested that the investigator have the power to conduct a home visit: “They should be able to visit the house – the legal right to show up at the house and investigate.” However, some concerns were raised over home visits. As one stakeholder questioned: “They should be able to go to the home – but if the person won’t let them in, should it end there? There are rights that are in conflict.” Another stakeholder questioned whether permission would be required to enter a premises, suggesting that the police may have to accompany home visits. Partnership with police was echoed by some, particularly if there are safety concerns for the civil investigators and/or if there is potentially a criminal element.
Many participants felt that it is important that interviews be conducted with the victim, and some suggested that the perpetrator and any witnesses also be interviewed. One stakeholder cautioned, however, that though investigators should be able to initiate conversation, they should not be able to force people to talk – that they should not “have more rights or power than…the police would have.”

There was also substantial discussion with regard to access to records. Some felt that investigators should have access to all records (e.g., financial records, medical records, etc.) if they are relevant to the investigation, with the exception of therapeutic, private notes. One community member suggested that the criminal history of the perpetrator be reviewed. Many echoed the sentiment that investigators need to be able to justify the need for the information requested. Further, some questioned whether consent would be required, or if investigative powers should allow for access without consent, which could be facilitated by protocols among agencies. One stakeholder cautioned that access to records could be met by resistance, both ethically and practically.

Finally, participants were asked what they felt the outcome of any investigation should be, and whether the outcomes should be mandatory. One participant expressed that there needs to be some kind of documentation of the investigation available that details exactly how it was conducted and what was found, and that there are recommendations made from the investigation. Participants expressed that following recommendations should be dependent on whether there is “reasonable cause to believe abuse is occurring,” and on whether there is capacity: “If you have cases where capacity isn’t an issue, it’s up to the victim. If there are capacity issues, then there has to be some sort of power to protect the victim.”

Long-term follow up was stressed as an important outcome of any investigation. As one stakeholder noted:

I think there should be a required follow-up – there needs to be some sort of ongoing communication or continued contact. Unfortunately sometimes if you poke a sleeping bear, it might get worse – there may be some negative, unintended consequences of having done that investigation…so there needs to be follow-up.

Other stakeholders pointed to the importance of case planning and management in the long-term: “There needs to be more than just recommendations; there needs to be follow-through and follow-up [and]...long-term case planning and management.” A number of participants stressed the importance of developing a safety plan, ensuring that the abuse does not continue. This may involve working with the abuser, providing services for him/her or conducting assessments, a sentiment echoed by both community members and stakeholders. As one community member noted, “the cycle must be broken.” Community members also pointed to the importance of financial support and long-term housing for those who are forced to leave their homes.
Participants also pointed to the need for a well resourced plan for families, particularly in cases where the adult wishes to maintain a relationship with the family member who may be perpetrating the abuse. As one community member expressed, “the person doesn’t always want to leave – there needs to be good discussion with the abuser, education, using a diplomatic approach.” Family care management and mediation were suggested as possible approaches. This is also important with regard to families of different cultures, with one service provider expressing that it is important to “recognize the role of culture in family, and be supportive of family unity when appropriate.”

The resourcing and coordination of any response was identified as vital to its success. As one stakeholder noted, situations where adults are being abused are “fairly complex...there are many needs that need to be addressed.” A good network of referrals was identified as important.

Important to any recommendations or plan made as a result of an investigation is accountability, as identified by one participant: “Someone has to be held accountable for following through with the report; there must be a check and balance in place.” Another participant noted: “There needs to be some sort of legislative power to be involved in a follow-up process. There needs to be a lot of background follow-up – like police.” Relatedly, participants expressed that there needs to be power to provide care, particularly if the primary caregiver was the abuser and an agency needs to resume care. In addition, one community member suggested the need for any court orders, such as restraining orders, to be made more powerful in order to better protect the victim. Further, advocacy for the vulnerable person is important as any care plan is initiated.

5.4 Civil Investigation in Calgary’s Community Response to Abuse of Older Adults

The final series of questions in the focus groups/interview dealt with participants’ perceptions of civil investigation as part of Calgary’s community response model. First, participants were asked whether it would be an important part of the response model as it is developed. Focus group participants were generally divided. Those who said it would be iterated that it is a missing piece of the protection puzzle. As one participant noted, “yes – certainly – it is an important missing piece on the continuum between prevention and the criminal element.” One community member stressed that it would protect those people who “fall between the cracks and need to be recognized and helped.” A number of respondents spoke to the importance of a central, independent agency that would receive calls, be responsible for investigations, and monitor outcomes. Participants also suggested that the current model and protective mechanisms could be expanded, perhaps using the reporting line for the Protection for Persons in Care Act.

Those who did not support civil investigation as a part of the community response model gave a number of reasons. One participant stated that it is too soon to say for sure whether civil investigation is necessary: “This feels like the cart before the
A number of participants felt that better resourcing and coordination of the system already in place is necessary before considering whether civil investigation is needed. As one stakeholder observed, “it’s less important than getting things resourced. When we have a more coordinated response, we’ll work around that.” Others stated that they felt that agencies need to communicate more effectively and work together, and that until that happens it’s difficult to say for sure whether an additional tool is warranted. Finally, one participant questioned whether civil investigation would really be meant to protect older adults: “Is it making the job easier for the worker or is it in the best interests of the client? It makes it so we can get in the door but…is it better?”

Participants were then asked, hypothetically, what the model might look like if it is adopted. Participants reiterated that there would need to be legislation in place to provide powers of investigation. In addition, stakeholders noted that a government department, such as Alberta Seniors and Community Supports, would probably be the best to coordinate the model. A body would need to be designated to receive reports and coordinate the response. Some participants stressed the importance of the reporting line being independent and unintimidating, like Senior Connect. An intake/assessment should be performed when the call is made to determine whether there is reasonable cause to believe that abuse or neglect is occurring. Participants stressed that the response would need to be coordinated, requiring communication and ingenuity among key agencies. Case management involving all key agencies (e.g., home care, financial institutions, etc.) would be important, according to one stakeholder. Other stakeholders suggested the need of Memorandum’s Of Understanding among the various systems to facilitate communication and information sharing. Well resourced and coordinated follow-up is necessary to avoid gaps in response, according to the participants.

Finally, participants were asked to speculate about any issues they could foresee if this model were to be adopted. The most commonly discussed issue was information-sharing, particularly in terms of the Freedom of Information and Protection of Privacy Act. As one participant commented, “FOIP is going to be huge – if you don’t have the sharing of information in place, you cannot make a well-informed decision.” Another participant noted, “you need to have that [information sharing ability] at the time of the investigation – but not at the planning/care plan stage. That distinction is really important and necessary.” Issues of protecting confidentiality were also identified.

Another issue identified was the importance of having the resources necessary ahead of time to ensure an effective and efficient response. As one stakeholder commented, “I think one of the issues would be lack of funding – have the resources in place to support this being done.” Another noted, “there is not the body of funds currently available – without there being mandated funding, it wouldn’t work.” In addition, stakeholders also stressed the importance of there being a designated agency to do the work.

A number of stakeholders also pointed to the importance of communicating the model and educating the public so that the community is aware of what is in place and
in what situations it could be accessed. As one stakeholder stated, “it would be important to educate the general public about the criteria...the call might be a form of education, it’s a form of having people sort out whether their call can be investigated.” It also must be stressed, according to some stakeholders, that anything criminal must be reported to the police.
6.0 DISCUSSION AND CONCLUSIONS

The first section of this chapter provides summaries of Chapter 3.0, the legislative review, Chapter 4.0, the environmental scan, and Chapter 5.0, the community consultation. The study findings will be discussed, as well as the implications as AGEA moves forward with its community response model.

6.1 Summaries

6.1.1 Legislative Review

Current Protection for Vulnerable Adults in Alberta

*Adult Guardianship and Trusteeship Act (AGTA)*

- Applies to adults for whom a co-decision making order, guardianship order, or trusteeship order has been obtained.

- Applies when a co-decision maker, guardian, or trustee fails to carry out court ordered duties or duties under the Act and the failure is likely to cause harm to the adult physically, mentally, or financially (including loss of property of the adult).

- Reporting of complaints is discretionary and is made to a centralized designated complaints officer.

- Complaints officer may refer the report to the Public Guardian or Public Trustee for investigation if conditions are met.

- Investigators have broad authority to interview persons, access records, enter premises, or seek court orders authorizing the same.

- If the complaint is founded, the investigator may attempt to resolve the matter or make recommendations that the Public Guardian apply for a guardianship order or a temporary protection order, or that the Public Trustee make an application for trusteeship.

- The Public Guardian may also apply for guardianship of an unrepresented adult in urgent cases when an adult appears to lack capacity and is in danger of death or serious physical or mental harm.
Personal Directives Act (PDA)

- Applies to adults for whom a personal directive is in effect.
- Applies when there is reason to believe an agent is failing to comply with the personal directive or duties of an agent and the failure is likely to cause harm to the physical or mental health of the maker.
- An interested person may make a complaint to the Public Guardian at any office throughout the province.
- The Public Guardian has broad authority to investigate, interview persons, and access records, or seek a court order requiring the same.
- Following the investigation the Public Guardian may make an application to the court for an order related to the personal directive, or may make an application for guardianship (if urgent).
- Complaints that could constitute criminal offences, abuse under the PPC, or an offence under another statute, must be referred to the appropriate authorities.

Protection for Persons in Care Act (PPCA)

- Applies to all persons (independent of capacity) who are receiving services related to their health or physical or psychological well-being from a government-funded residential service provider (including nursing homes, hospitals, group homes, senior’s lodges, shelters, mental health facilities, addictions treatment centers).
- Applies to allegations of physical abuse, emotional abuse, medical abuse, sexual abuse, financial abuse, and neglect.
- Applies regardless of who the alleged abuser is, but only when there is a direct connection between the agency and the abuse.
- A designated complaints officer receives reports of abuse; reporting is mandatory.
- The complaints officer has discretion to refer the complaint to a PPC investigator.
- PPC investigators have broad authority to interview persons, access records, and enter premises, and may seek court orders for the same.
- Investigators submit a final report to the Director of PPC stating whether abuse was founded and making recommendations.
The Director makes a decision regarding the alleged abuse, including the steps or measures the service provider must take to prevent abuse of clients.

**Persons with Developmental Disabilities (PDD) Abuse Reporting and Response Protocol**

- Applies to persons receiving PDD funding and supports.
- Applies when there are concerns that a service provider is abusing an individual who receives PDD services.
- Types of abuse covered include physical abuse, sexual abuse, negligence, emotional abuse, exploitation, and inappropriate use of restrictive procedures.
- Reporting suspected abuse is mandatory; reports must be made to the Executive Director of the organization providing services or to the family who privately hires the service provider.
- There is no statutory authority to investigate or intervene; the authority to review the allegation comes from the service provider’s contractual agreement with PDD and PDD’s fiduciary duty to protect vulnerable people for whom it is responsible.
- The Protocol establishes a process for reviewing allegations of abuse; reviews may be internal or external.
- A report is prepared that outlines recommendations which may include retraining staff and follow-up measures to support the individual and others impacted by the allegation.

**Protection Against Family Violence Act (PAFVA)**

- Applies to family members (including persons who are, or have been, married, living together in an intimate relationship, or in an adult interdependent partnership, parents of adult children, whether or not they live together, and persons who reside together where one of them has care and custody over the other pursuant to a court order).
- Applies to family violence which includes physical injury, property damage, intimidation of physical injury or property damage, forced confinement, sexual abuse and stalking.
- Requires a complainant initiated court application for an Emergency Protection Order or Queen’s Bench Protection Order.
- Applications may be made on behalf of the person who is the subject of family violence, with the person’s consent (by a police officer or Director under the Child, Family and Youth Enhancement Act), or on behalf of the person with leave of a judge.
**Supportive Living Accommodation Licensing Act (SLALA)**

- Establishes a complaint, investigation, and reporting procedure for alleged non-compliance with facility standards.

- Applies to supportive living settings that accommodate four or more adults.

- Not intended to respond to individual allegations of mistreatment or abuse.

**Power of Attorney Act (PAA)**

- There is no mechanism to report, investigate, or intervene in cases of misuse or abuse under an EPA. Complaints can be made to the police if the abuse is criminal in nature, or a referral can be made to the Public Trustee if the person is in need of a trustee.

**Adult Protection in British Columbia**

- The B.C. Adult Guardianship Act (AGA) provides for support and assistance of abused and neglected adults. It does this by means of a comprehensive statutory framework that establishes the authority: (1) to receive reports and investigate allegations of abuse and/or neglect; and (2) to provide services to abused and neglected adults.

- Specifically, the B.C. AGA provides for support and assistance of adults who are (1) abused or neglected and (2) who are unable to seek support and assistance.

- Being unable to seek support and assistance could be due to physical restraint, a physical handicap, or an illness, disease, injury or other condition that affects the adult’s ability to make decisions about abuse or neglect.

- The B.C. AGA applies regardless of where the alleged abuse takes place, including public places, in the adult’s home, in a relative’s home, in a care facility or any other place (except a correctional centre).

- The AGA’s guiding principles provide that: (1) capable adults should not be subject to intervention without their consent; (2) a policy of least intrusiveness should govern the application of the Act; and (3) court orders for guardianship and decision-makers should only be used as a last resort.

- Reporting of abuse under the B.C. AGA is voluntary and reports are made to a designated agency. Designated agencies are public bodies, organizations, or persons designated with the responsibility to carry out the protection function under the Act.
If there is reason to believe the adult needs support and assistance, the designated agency may take one of several actions: (1) refer the adult to community services, including health care, social, legal, accommodation or other services; (2) assist the adult in obtaining those services; (3) inform the Public Guardian and Trustee (which would trigger a review and capacity assessment under the AGA); or (4) investigate to determine if the adult is abused or neglected and unable to seek support and assistance.

The power to investigate under the B.C. AGA is discretionary. If an adult is identified as being in need of support and assistance, an investigation of abuse and neglect is one course of action that may follow. The designated agency must make all reasonable efforts to interview the adult. If the designated agency is denied entry to the premises for the purpose of interviewing the adult, the agency may apply to the court for an order authorizing entry and/or authorizing a health care provider to enter and examine the adult.

As a result of the investigation, a designated agency may: (1) take no action; (2) refer the adult to available services (healthcare, social, legal, accommodation); (3) report the case to the Public Guardian and Trustee or another agency; (4) assist the adult in obtaining a representative; (5) apply to the court for an interim order (requiring a person to do any of the following: stop residing at and stay away from the premises where the adult lives, not visit or communicate with the adult, not have any contact or association with the adult or the adult’s assets, business, or financial affairs) for up to 30 days; and/or (6) prepare a support and assistance plan that specifies any services needed by the adult.

The court may only make an interim order if the designated agency establishes that there is reason to believe that the person has abused the adult, and the adult is unable (for any of the reasons previously listed) to seek support and assistance.

An adult has the choice to accept the services proposed in a support and service plan. If the adult decides not to accept the services, they must not be provided.

Where it is determined that the adult is unable to consent to the provision of services (following an assessment by the Public Guardian and Trustee that the adult is incapable), an application may be made to the court for a support and assistance order authorizing services to the adult.

The B.C. AGA does not prescribe a “best interests” test as the threshold for interventions or court orders. The court may only make an order for support and assistance if satisfied that the adult is: (1) abused or neglected; (2) unable to seek support and assistance because of illness, disease, injury or other condition that affects his or her ability to make decisions about the abuse or neglect; and (3) needs and would benefit from the services proposed in the support and assistance plan.
A designated agency may provide emergency assistance to an abused adult who is incapable of giving or refusing consent if emergency intervention is necessary in order to: (1) preserve the adult’s life; (2) prevent serious physical or mental harm to the adult; or (3) protect the adult’s assets from significant damage or loss.

The approach of the B.C. AGA is intended to preserve the dignity and autonomy of adults – even when they are vulnerable and unable to make decisions about abuse and neglect. The absence of a “best interests” test under the B.C. AGA is intentional so as not to infantilize adults who may or may not need support and assistance.

Gaps in Protection in Alberta

Alberta has a “niche” approach to adult protection; each piece of legislation is designed to address a particular population of adults (or legal status), a particular circumstance, or a particular condition where the mistreatment of vulnerable adults might occur.

Alberta’s approach to adult protection is not haphazard. It reflects a philosophical approach that respects individual autonomy and self determination of adults by limiting intervention of authorities to situations involving only the most vulnerable adults.

Currently, only some adults, in some circumstances, will have access to some protection in Alberta.

Three major gaps in Alberta’s current protection framework were identified:

(1) The legislated authority to respond to, investigate and intervene in alleged abuse of adults for whom no substitute decision making instrument applies;

(2) The legislated authority to respond to, investigate, and intervene in alleged abuse of adults who reside in the community and who are impaired in their ability to make decisions about abuse and neglect, although not necessarily lacking capacity; and

(3) The legislated authority to respond to, investigate, and intervene in alleged financial abuse of vulnerable adults by an attorney under an EPA or by a friend/family member/caregiver, etc., where no trusteeship order exists.
Recommendations for Legislative Reform

• Consider adopting an additional piece of legislation that could focus on vulnerable adults who live in the community and who are not the subject of any formal substituted decision making instrument, so as to avoid overlap with existing legislation. Similar to the B.C. Adult Guardianship Act, it could be specifically designed to fill in the protection gaps. Alternatively, it could include all vulnerable adults, regardless of whether their circumstances fit within the mandate of another piece of legislation.

• One or more existing pieces of legislation could be amended so as to increase the scope and capacity of the legislation to respond to the gaps. For instance:
  
  (1) The Adult Guardianship and Trusteeship Act could be amended to incorporate a parallel reporting, investigation and support process for alleged abuse (of all types) occurring outside of guardianship, trusteeship, and co-decision making orders. A parallel process would enable the Public Guardian and Public Trustee to investigate and respond to alleged abuse of a vulnerable adult; or
  
  (2) The Protection Against Family Violence Act could be amended so as to add a reporting and investigation procedure. The complainant initiated application process for Emergency Protection Orders and Queen’s Bench Protection Orders could remain intact, however, an agency could be designated with the authority to take reports, investigate allegations of abuse, and make applications on behalf of a vulnerable adult. The agency could also have the mandate to provide support and assistance to adults short of EPOs and Queen’s Bench Orders.

• Regardless of the form of legislative reform, (whether it be new legislation or amendments to existing legislation), incorporating the following characteristics could be considered:
  
  (1) The target population of the legislation could be as broad as the B.C. AGA target population (any adult unable to seek support and assistance because of physical restraint, a physical handicap, an illness, disease, injury or other condition that affects their ability to make decisions about abuse or neglect), or more narrow so as to target only adults who experience some mental incapacity.
  
  (2) Adults who are capable of doing so could choose to accept support and assistance or not, while adults who are incapable of consenting could receive supports pursuant to a court order.
  
  (3) The legislation could address all types of abuse and neglect (including self neglect).
The *Powers of Attorney Act* could be amended to designate the Public Trustee (or another designated authority) with the authority to investigate and intervene in cases of financial abuse under an enduring power of attorney.

6.1.2 Environmental Scan

**Canadian Models**

- While the *Criminal Code of Canada* provides for criminal investigation, it is the responsibility of the provinces and territories to provide additional adult protection legislation and any non-criminal investigation procedures.

- Four Canadian provinces – British Columbia, New Brunswick, Prince Edward Island, and Nova Scotia – and one territory – the Yukon – have legislation that allows for non-criminal investigations of instances where vulnerable adults are living in the community and experiencing abuse or neglect.

- Most of the Canadian models apply to vulnerable adults who are the age of majority and living anywhere (e.g., community, publicly or privately funded facility); Nova Scotia’s model applies to adults age 16 and older. New Brunswick’s model distinguishes between persons age 65 and older and persons 19 and older who are disabled. All of the models apply to adults who are experiencing abuse and neglect and are unable to seek support and assistance and/or are unable to protect themselves or their property due to a physical, mental, or intellectual difficulty, disability, or illness.

- Abuse and neglect are defined broadly in all models; however, New Brunswick’s and Nova Scotia’s models do not include financial abuse unless it is accompanied by another form of abuse.

- Generally, the guiding principles of the B.C., Yukon, P.E.I., and New Brunswick models are to provide protection and assistance to vulnerable adults in the least intrusive ways possible, involving the adult in the process and allowing them to make decisions unless it is demonstrated that they are unable to do so. In Nova Scotia’s model, the guiding principle is that the welfare of the adult is of paramount consideration.

- Reporting is voluntary for all models except Nova Scotia’s, where reporting is mandatory for anyone who suspects an adult is being abused or neglected.

- In all models, a designated agency is obligated to determine whether there are reasonable and probable grounds to believe that abuse or neglect is occurring and the adult is in need of protection, whether immediately by a full investigation or by a series of preliminary steps prior to a full investigation.
• Powers to investigate include interviews, home visits, and access to records in most cases, with the legislation providing the ability to obtain a warrant or court order if access is refused.

• If it has been determined that there are reasonable grounds to believe that abuse and neglect is occurring, the legislation provides that certain actions can be taken.

• In all cases, if the investigation finds that a criminal offence has been committed, it must be reported to the police.

• All models provide emergency powers to protect without the adult’s consent when it is determined that the adult is in imminent danger, refusing service, and/or unable to give consent. This may include removal from their home, removal of the perpetrator from their home, emergency health care, protection of the finances, etc.

• All models provide for additional means to protect the adult, including development of a care plan, referral to service, etc. Often an application to the court can be made for the provision of service if the adult is unable to consent, otherwise services must be provided on a consent basis.

United States Models

• In the United States, federal legislation provides states with funds for Adult Protective Services. States are responsible for the implementation of their own programs for adults who are unable to act on their own behalf, are limited in their ability to manage their affairs, or are neglected/exploited and living in unsafe conditions.

• Programs vary across the U.S., but many states struggle to design and implement their own programs.

• Three programs were examined: the Massachusetts Executive Office of Elder Affairs model, the Massachusetts Disabled Persons Protection Commission (DPPC), and California’s Adult Protective Services (APS).

• The Massachusetts DPPC provides services specifically to adults age 18-59 with a disability who are being abused or neglected by their caregiver. The Massachusetts elder protection model applies to adults age 60 and older who are experiencing abuse, while the California model applies to elder adults (65 years and older) and dependent adults (18-64 who are disabled).

• Definitions of abuse and neglect primarily relate to acts or omissions that cause physical or emotional injury. Both the Massachusetts elder model and the California APS models specifically stipulate financial abuse and exploitation as an abusive act, as well as the withholding of care.
• Both the Massachusetts models stipulate that no adult would be considered abused if they rely upon treatment provided in accordance with the tenets of the teachings of a religious denomination or church.

• All of the U.S. models examined are guided by the principle to alleviate the abuse and protect the adult. While the Massachusetts elder model and the California model aim to provide services in the least restrictive way possible, the Massachusetts DPPC model is founded purely on protecting the adult.

• In all of the U.S. models, anyone may report suspected abuse, but all models have mandatory reporting for designated professionals.

• All models provide timelines for investigations to be conducted; more urgent cases are investigated more expediently, while the remainder must be investigated within a particular time frame.

• All cases reported to the DPPC are screened by an in-house police officer whereas with the Massachusetts elder and California models, cases are referred externally to police once they have been screened.

• In all cases, a preliminary assessment is performed to determine the next steps. Each model provides criteria for the timeline of investigation, depending on the level of urgency or risk. If it has been determined that there is reason to believe that abuse/neglect is occurring, a full investigation or assessment must be undertaken.

• In all models, investigators have the power to visit the residence and/or meet with the person to whom the report pertains. The DPPC has the power to examine records and perform any other necessary investigatory activities.

• Both the California APS and the Massachusetts elder model have a graduated approach, where an initial assessment or investigation is performed then, if it has been determined that the adult is being abused or requires service, further assessment or evaluation is performed to determine capacity, resources, ongoing risk factors, etc. The DPPC performs an initial risk assessment to determine urgency, then conducts a full investigation.

• In both the California APS and Massachusetts models, the importance of involving the adult in the development of any response plan is stressed.

• The result of investigations for all the U.S. models involve recommendation and provision of protective services. The DPPC, as a result of the investigation, makes recommendations for service to reduce the risk to the adult; protective services are meant to be short term. The California APS and Massachusetts elder models provide that a service plan be developed providing for the least restrictive measures to protect the adult.
• In the DPPC model, services are mandated. Follow up is conducted to ensure that services are being delivered.

• In the California APS model, the service plan is delivered only with the consent of the adult. For those who proceed with the service plan, follow up must be conducted within 90 days to ensure the service plan is appropriate.

• In the Massachusetts elder model, adults with capacity must give consent for the service plan to be carried out. If the adult lacks capacity and refuses services, the court may be petitioned for an order for service to be provided.

United Kingdom Models

• Adult protection in the U.K. varies by jurisdiction. England and Wales currently use a piecemeal approach to adult protection, while Scotland has a more comprehensive scheme.

• Scotland’s model applies to adults age 16 and older who are at risk of harm, unable to safeguard themselves, and are vulnerable for mental or physical reasons.

• Harm includes conduct that causes physical or psychological harm, that appropriates or adversely affects property, rights, or interests, or that causes self-harm.

• The model is guided by a number of principles, including balancing the adult’s rights and intervening to protect the adult, intervening in the least restrictive and most beneficial ways possible, and the involvement of the adult/adult’s family in the process, with consideration of his/her abilities, characteristics and background.

• Anyone may report if they are concerned about an adult, while certain professionals are mandated to report.

• If it is believed an adult is at risk, councils must conduct inquiries regarding the adult’s well-being, property, or financial affairs.

• Council officers conducting the inquiries have the power to conduct visits, obtain warrants to conduct visits if entry is refused, conduct interviews with any person found at the place visited, have a medical professional conduct a medical examination, and/or obtain records.

• If it is found that the adult is being harmed or is at risk of being harmed, services may be provided to fit their needs, as well as independent advocacy. The adult must provide consent to service; if they have a disability or mental disorder, they are entitled to independent advocacy under a different legislation. Protection orders may be sought if there are no other options or the adult is at risk of
serious harm; these include assessment orders, removal orders, or banning/temporary banning orders. These orders may proceed only with the consent of the adult or if it has been determined that the adult lacks capacity or is experiencing undue pressure to refuse the order.

6.1.3 Community Consultation

Abuse/Neglect and Vulnerability

- Participants were asked to discuss how vulnerability might be defined. Many participants defined vulnerable in terms of health and well being (e.g., Alzheimer’s, dementia, disabilities, illness, frailty). Others defined abuse in terms of family or caregiver issues. Complex family and caregiver issues contribute to the vulnerability of adults who already may struggle with disabilities or declining health. Participants also pointed to a number of isolating factors that might make an adult vulnerable – physical isolation, lack of resources, lack of knowledge of abuse/neglect, rights and protective options, etc. Participants observed that fear and shame may also lead to vulnerability for many adults.

- Participants were asked what constitutes abuse and neglect of vulnerable adults. Many participants simply stated that abuse or neglect of vulnerable adults is the same as the types of abuse that can happen to anyone (e.g., physical, emotional, mental), and also identified medical abuse and manipulation/exploitation as forms of abuse unique to the population. Some defined abuse or neglect in relation to the need for care, whether in terms of the imbalance of power, or in terms of caregiver stress or exhaustion, which often leads to verbal and physical abuse. Neglect was often defined in the context of caregiving, generally as not providing the necessities of life. Abuse and neglect were also defined in the context of family relations (e.g., abuse by children, long-term spousal abuse). Participants noted that in many cases, abuse and neglect are perpetuated by factors related to vulnerability – isolation and shaming, feelings of hopelessness, and lack of knowledge of abuse and their rights. With older adults in particular, generational elements – saving face, keep family issues private – also perpetuate the abuse they experience.

- Participants were then asked whether abuse and neglect of vulnerable adults is unique, requiring focused interventions. A majority of participants agreed, and also identified that not all situations require a legal or criminal response. All of the focus groups pointed to the need for unique approaches that are long-term, tailored to the individual, involve careful assessments by experts, are clearly defined, and well coordinated. The first point of contact was deemed vital to the success of these responses, as was the collaboration of sectors so that first points of contact are not ignored or lost due to lack of communication among agencies. Participants identified that caregiver and family issues, common health conditions among this population (e.g., dementia, cognitive decline), as well as the fact that some vulnerable adults have the capacity to make their own decisions, and require interventions to be tailored.
Calgary’s Current Response

- Participants were asked to discuss their views on the safeguards currently in place for abused and neglected vulnerable adults. Discussions were mixed, ranging from perceptions that the current system is inadequate to observations regarding all the positive steps that have been taken.

- Discussions regarding the inadequacies of the current system largely focused on the fact that there aren’t enough powers to effectively respond to abuse and neglect of vulnerable adults. Many pointed to situations where the abuse or neglect is not criminal, and also that the adult often does not want to proceed or cooperate with charges due to fear. Suggestions for improvement included more training for law enforcement regarding vulnerable adults, particularly elder issues, and better advocacy for vulnerable people. From a reporting perspective, community members felt that an unintimidating phone number to call for help is needed. In terms of response, participants felt that the development of care plans for abused/neglected adults is necessary and that when possible, vulnerable adults should not be removed from their homes. Participants also observed that there needs to be more support for those experiencing caregiver stress. Specialized supports for vulnerable adults from different cultures were also deemed necessary, ranging from translators to financial supports – particularly for immigrants who are dependent on abusive sponsors. For all vulnerable adults, financial support was deemed an important gap in Calgary’s current response.

- Some groups pointed to the positive steps that have been taken in Calgary. Some felt that the necessary resources currently exist in Calgary, but that they are simply not being organized effectively. A number of stakeholders pointed to the development of the coordinated community response as a positive step, particularly the proposed police/nurse/social worker team. Stakeholders also identified the possible role of the specialized domestic violence court as an option for cases of abused/neglected vulnerable adults.

- Participants were asked their view of the current legislative structure in Alberta. It was suggested that abuse of vulnerable adults, particularly the elderly, requires a range of legal responses – especially where there is no criminal element, or where the adult does not want to pursue criminal charges. Many suggested that a civil arm of legislation might fill the gaps identified with regard to non-criminal situations. However, some stakeholders cautioned that this kind of approach may jeopardize the independence of the adult.

- Groups identified gaps in real estate law and title transfers and provisions for financial assistance for those who choose to leave their abusive situations, as well as the need for provisions to ensure that the perpetrator is mandated to receive treatment.
Some felt that Alberta’s current legislative structure was sufficient. It was argued that although it has been recommended that the Protection for Persons in Care Act be extended to protect adults in the community, vulnerable adults accept a certain degree of risk by continuing to live in their own homes. It was also observed that proper use of personal directives would ensure that adults are protected in some situations. Finally, many felt that if the legislation were to change to include additional protection (e.g., civil investigation), it would not be worthwhile if there are not resources in place to support it.

General Perceptions of Civil Investigation

Participants were asked about their perceptions of non-criminal investigation as a tool to enhance Calgary’s community response model. Some felt that it is necessary when abusive behaviour is not criminal and that there needs to be a continuum of support, given various forms of abuse and neglect are difficult to define for this population. Many felt that it would depend on what would be involved, and how intrusive it would be, that certain components would be necessary in order for it to be helpful, such as powers to collect information, clear parameters of investigation, expert knowledge, and ongoing support for the adult beyond the investigation. Some stakeholders expressed that it would be acceptable if it was not too intrusive on the individual’s rights. Many felt that overall improvement is needed due to the aging population, and the fact that there are currently not many options for vulnerable adults in these situations. It was also noted that if an investigation reveals that simple supports would address the issues, the situation can be remediated without intrusive measures.

Many possible issues regarding civil investigation were raised and discussed. One was whether the victim should be forced to participate. Others struggled with regard to the balance between independence and safety. Stakeholders and community members also observed that reporting could escalate the abusive situation, particularly if the abuser has knowledge of the report.

Participants were asked whether they thought Alberta legislation should be reformed to provide for the powers of civil investigation. Some felt that existing powers are enough, that the police can do something if there is evidence. Others felt that existing legislation, such as the Protection for Persons in Care Act, could be either better enforced or amended to include abuse or neglect in any location; some also suggested that the public guardian could be held to task in situations where vulnerable adults who are unable to make decisions are being abused or neglected. Other discussions pointed to the need for legislation that would allow for mandatory investigation in cases where the adult lacks physical or mental capacity, or at the very least, to be able to have an assessment completed. It was also suggested that the power to gather information in these cases is key, from both private and public sources, and that there needs to be legislated parameters for any investigation (e.g., timeframe, powers, etc.). In addition, stakeholders in one group pointed to the importance of any legislative reform
applying to bank transactions and title transfer – mandatory reporting by banks around large transactions in cases of vulnerable adults, as well as title transfers.

The Complexion of Civil Investigation

- Participants were first asked whether reporting should be mandatory. Many felt that anyone should be able to report, but that you cannot mandate it for the general public. There was a general sentiment that reporting should be mandatory, however, for certain professionals, such as physicians, nurses, social workers, psychologists, lawyers, financial managers, spiritual leaders, or anyone providing a service and in a position of trust; financial institutions were identified as important to mandatory reporting given their position to identify financial abuse. Some front-line workers expressed concern over the fact that mandatory reporting could jeopardize their professional position; anonymous reporting was suggested as a possible solution; however, it was cautioned that it may not be effective in the case of isolated adults. There was a general sentiment that if reporting became mandatory for certain professionals, that they would need to be well trained in recognizing abuse and neglect.

- Discussions also led to the parameters of reporting. Some thought that a report should be made when there is “reasonable cause to believe something is occurring.” However, a number of participants raised questions regarding self determination and choice for adults, particularly those who are capable of making decisions. Some of the groups noted that by raising awareness about how the process would work, and by providing options to adults who are capable of deciding, some of these issues could be mitigated.

- Participants were also asked about what forms of abuse should be mandatory to report. Among those who felt that reporting should be mandatory, many felt that all suspected forms of abuse – physical, emotional, psychological, financial, spiritual – as well as neglect and self neglect, should be reported. One group discussed the importance of including property transfers in reporting of financial abuse. Discussion also led to the importance of educating vulnerable adults about how to identify abuse, and teaching them the language of abuse.

- Participants were then asked about their views on mandatory investigation. Discussions ranged from strong support for mandatory investigation to strong opposition. Many felt that “able bodied, mindful people” should not be forced to be investigated. One of the common themes was that determining level of vulnerability, including capacity tests, capability to make decisions, and whether caretaking is required, could be tied to the ability to investigate. For vulnerable adults who have the ability to decide, community members and stakeholders alike suggested that consent could be used.

- Participants did discuss the merits of mandatory investigation, with the suggestion that mandatory investigation might reduce the fear associated with
bringing a case of abuse to the attention of any authorities, and take the onus out of the hands of the vulnerable adult.

- Some of the community members and stakeholders discussed the conditions that would be important to any investigation. Suggestions included the need for clear guidelines to initiate an investigation, the need for a gatekeeper, definitions of what needs to be mandatory, and that the adult always be part of the process to ensure their needs are met. Finally, awareness about the process was suggested as vital so that the community knows what is available, and how it works.

- The qualifications of investigators were then discussed by the participants. Stakeholders suggested that investigators be trained in risk assessment, forensics, and capacity assessments, as well as mental health and cognitive and behavioural interviewing. In addition, investigators should have knowledge and skills in human services, and experience with vulnerable adults. Generally, participants stressed the importance of a multidisciplinary team with various skills being employed in any investigation.

- Investigatory powers were also discussed. A number of participants stressed the importance of an assessment at intake. Once it has been determined that a vulnerable adult is being abused or neglected, some suggested that the investigator have the power to conduct a home visit. Some concerns were raised over the power to conduct home visits, and whether permission would be required to enter premises; there was a suggestion that the police may have to accompany home visits. Partnership with police, particularly if there are safety concerns for the civil investigators and/or if there is potentially a criminal element, was deemed important.

- Many participants felt it is important that interviews be conducted with the victim, and some suggested that the perpetrator and any witnesses also be interviewed, but that people not be forced to answer questions.

- There was substantial discussion with regard to access to records. Some felt that investigators should have access to all records (e.g., financial records, medical records, etc.) if they are relevant to the investigation, with the exception of therapeutic, private notes. It was suggested that the criminal history of the perpetrator be reviewed. Further, some questioned whether consent would be required, or if investigative powers should allow for access without consent, which could be facilitated by protocols among agencies. The ethical and practical issues related to access to records were raised.

- Finally, participants were asked what they felt the outcome of any investigation should be, and whether the outcomes should be mandatory. It was stressed that there needs to be some kind of documentation of the investigation available detailing activities and outcomes. Participants expressed that following recommendations should be dependent on whether there is “reasonable cause to
believe abuse is occurring,” and on whether there is capacity. Long-term follow up was stressed as an important outcome of any investigation. Other stakeholders pointed to the importance of case planning and management in the long term, and developing a safety plan to ensure that the abuse does not continue. Community members identified the importance of financial support and long-term housing for those who are forced to leave their homes. Participants also pointed to the need for a well-resourced plan for families, particularly in cases where the adult wishes to maintain a relationship with the family member who may be perpetrating the abuse, with special regard to cultural needs. Important to any recommendations or plan made as a result of an investigation is accountability, service coordination, the power to provide care, and resources.

Civil Investigation and Calgary’s Community Response to Abuse of Older Adults

• The final series of questions in the focus groups/interview dealt with participants’ perceptions of civil investigation as part of Calgary’s community response model. First, participants were asked whether it would be an important part of the response model as it is developed. Focus group participants were generally divided. Those who said it would be iterated that a missing piece of the protection puzzle, that a central independent agency to receive reports, investigate, and monitor outcomes is necessary, and that the current model and protective mechanisms could be expanded to include this (e.g., reporting line for the Protection for Persons in Care Act).

• Those who did not support civil investigation as a part of the community response model gave a number of reasons, including: it is too soon to say for sure whether civil investigation is necessary; better resourcing and coordination of the system already in place is necessary before considering whether civil investigation is needed; and agencies need to communicate more effectively and work together before it can be determined that an additional tool is warranted.

• Participants were asked to speculate on what the model might look like if it is adopted. Participants offered the following: there would need to be legislation in place to provide powers of investigation; a government department (e.g., Alberta Seniors and Community Supports) would best coordinate the model; a body would need to be designated to receive reports and coordinate the response; the reporting would need to be independent and unintimidating (e.g., Senior Connect); an intake/assessment should be performed when the call is made to determine whether there is reasonable cause to believe that abuse or neglect is occurring; the response would need to be coordinated, requiring communication and ingenuity among key agencies (e.g., MOUs); and case management and follow up involving all key agencies (e.g., home care, financial institutions, etc.) would be important to avoid gaps in service.

• Participants were asked to discuss any issues they could foresee if this model were to be adopted. The most commonly discussed issue was information-sharing, particularly in terms of the Freedom of Information and Protection of Information Acts. This issue is crucial as it affects the ability of agencies to share information securely and protect the privacy of individuals involved in the investigation.
Privacy Act; issues of protecting confidentiality were also identified. Another issue identified was the importance of having the resources necessary ahead of time to ensure an effective and efficient response. In addition, stakeholders also stressed the importance of there being a designated agency to do the work. Effective communication of the model to the community and stakeholders was stressed, as was the involvement of the police for criminal cases.

6.2 Discussion

The purpose of this project was to examine the feasibility of civil or non-criminal investigation in Calgary (and Alberta) as an additional tool in Calgary’s community response model to the abuse of older adults. In AGEA’s “Pulling Back the Curtain” community consultations, civil investigation was suggested as a possible option to fill the gap in protection for older adults living in the community and experiencing abuse or neglect, and who are not fully protected by existing Alberta protection legislation (e.g., Adult Guardianship and Trusteeship Act).

The objectives of this report were four-fold. The first was to increase understanding of the legal mechanisms available in Alberta’s provincial adult protection legislation, accomplished through a legislative review. The second was to increase understanding of civil or non-criminal investigation models used in Canada and internationally to address abused and neglected vulnerable adults (including older adults). This was accomplished through an environmental scan. The third objective was to determine whether civil or non-criminal investigation would be appropriate and supported in Calgary’s community response model, which was addressed through focus groups and interviews with key stakeholders representing a number of sectors serving vulnerable adults, as well as concerned community members. The final objective was to determine the feasibility of adopting civil or non-criminal investigation as a possible tool to protect older adults in Calgary. Specifically, the study addressed the following research questions:

1. What legal mechanisms currently exist in Alberta to protect older adults?
2. What kinds of non-criminal investigation models currently exist in Canada and, if relevant, internationally?
3. Is there support among Calgary’s older adult-serving agencies for such a model?
4. What resources would be required to adopt such a model in Calgary?
5. What type of legislative mechanisms would be required in order to adopt such a model in Calgary?
6. What kind of legislative change (provincial, municipal) would be required in order to support this type of model in Calgary?
In 2006, CRILF conducted a review of Alberta’s legislation protecting elderly victims of abuse and neglect (Pearson & Pauls, 2006). Drawing on this work, the legislative review conducted for this study examined Alberta’s adult protection legislation, specifically analyzing the authority to respond to mistreatment of vulnerable adults in the community. The review found that although the AGTA, the PDA, and the PPCA have legislated power to investigate reports of abuse of vulnerable adults within their jurisdiction, and the PDD Abuse Reporting and Response Protocol stipulates that reports of abuse or neglect must be reviewed, these tools only protect a particular population of adults in particular circumstances or conditions. As the review stated, this reflects Alberta’s philosophical approach to adult protection – to limit the authority to intervene in the spirit of preserving adults’ independence. However, the review reiterated that currently, there is no legislated authority to respond to cases of abused or neglected adults who are not subjects of a substitute decision-making arrangement, reside in the community and have the capacity to make decisions (but may be impaired in their ability to do so), or are victims of financial abuse by an attorney under an Enduring Power of Attorney or by a family member/friend/caregiver where no trusteeship exists. Though some focus group participants felt that this philosophical approach was appropriate in order to preserve the self-sufficiency of vulnerable adults, a number of others felt that these gaps have resulted in a feeling of helplessness and frustration among service providers and abused/neglected adults alike.

In examining jurisdictions across Canada and internationally where adult protection legislation fills these gaps, it was found that, in most cases, models are guided by philosophies of protecting adults using the least intrusive interventions, preserving independence and self-sufficiency, and involving the adult in decisions made. These philosophies were echoed in discussions with stakeholders and community members, who felt that any additional protective tools must not infantilize vulnerable adults, but rather, empower them to be safe and healthy. Though some models adopt a “best interests” or welfare-based approach, most demonstrate an awareness of and respect for these issues.

Defining the population of adults who may be in need of protection is often a reflection of the philosophical approach adopted. While it is clear that many adults with disabilities or older adults are clearly self-sufficient and not in need of protection, establishing the parameters for protection is a grey area. Many of the Canadian models define the population to be protected broadly as those over the age of majority who are unable to seek support and assistance and who are unable to protect themselves due to a disability or illness; this provides for a certain amount of subjectivity in determining who is in need of protection. On the other hand, the New Brunswick, Massachusetts, and California models provide more static criteria – persons with disabilities, persons over age 60, etc. – with little room for interpretation. In discussions with service providers, there was a general sentiment that there should be room for professional discretion in determining whether an adult is in need of protection – a continuum to determine both the need for protection and the response required, as suggested by the B.C. Adult Abuse/Neglect Prevention Collaborative (2009).
Reporting is also a reflection of the ideologies adopted in adult protection. As evidenced in the models studied, reporting ranges from mandatory for all to mandatory for professionals to voluntary for all. In most Canadian models (e.g., B.C., Yukon, P.E.I., New Brunswick), reporting is voluntary for anyone. The importance of voluntary reporting was iterated by the stakeholders and community members as a possible means to preserve the rights of the adult. However, the U.S. and Scotland models stipulate that certain professionals who have care or control of a vulnerable adult must report. This aspect was debated by the focus group/interview participants, who felt mandatory reporting by professionals may serve to protect the adult by taking the onus away from them; however, front-line workers were concerned that this may also threaten their relationship with the client. The literature (e.g., Stieber Roger & Ursel, 2009) suggested that a large proportion of older adults feel that their rights would be violated by mandatory reporting.

In most models, once a report of suspected abuse or neglect is made and there is reasonable cause to believe that it is occurring, the legislation obligates the designated agency to investigate, evaluate, or assess. Typically, investigative powers include interviews, home visits, and the power to review records (e.g., medical, financial, etc.); the ability to access records, however, must be justified by the needs of the investigation. In situations where investigatory attempts are refused, most models provide parameters for court orders to be obtained. Currently in Alberta, similar powers to investigate exist under the Adult Guardianship and Trusteeship Act, the Personal Directives Act, and the Protection for Persons in Care Act; however, these investigatory powers apply only to cases of abuse within the jurisdiction of that legislation.

When stakeholders and community members were asked about the duty to and power to investigate, the importance of preserving the independence of the adult – not forcing an investigation on an “able bodied, mindful person” – was stressed. Many felt that the capacity or capability of the adult should be assessed prior to any investigation proceeding – that the investigation be tied to the ability to consent, thereby not forcing able but unwilling adults to participate in an investigation. Community members, however, raised the important point that a mandatory investigation would take the onus away from the often fearful adult. The B.C. Adult Guardianship Act is one model that balances preserving the safety of the vulnerable adult that is suspected to be experiencing abuse and neglect without the intrusiveness of an unnecessary full inquiry, having discretionary power to investigate. Investigation is one course of action that may be followed if the adult is identified as in need of support or assistance; referral to community services, support, and involvement of the Public Guardian or Trustee are other options. Thus, a report of suspected abuse or neglect where there is reason to believe an adult needs support or assistance does not necessary trigger a mandatory investigation, but rather, a range of possible responses – a graduated system of response, as suggested by focus group/interview participants.

In terms of the outcome of investigation, examination of the models suggest that recommendations for protective responses are made mandatory (often through court ordered protection orders) when the vulnerable adult’s life and/or health is in jeopardy or they are not capable of consenting to service and it has been determined that they
require it for their safety; otherwise, it is up to the adult to choose whether they want the recommended intervention. Thus, the powers to intervene in an adult’s life are often directly related to their level of vulnerability. Focus group/interview participants agreed with this notion, and also expressed that it must be demonstrated that there is reasonable cause to believe the abuse is occurring before any action can be taken. In cases where abuse/neglect has been substantiated and intervention is required, participants felt that long-term case management, safety planning, and support is important, and that well-resourced responses are vital. In addition, provision of service must be coordinated, and the provider held accountable. According to community stakeholders and members, also key to any response is family and caregiver support and cultural sensitivity.

The legislative review revealed that there are, indeed, gaps in protection in Alberta with regard to the population of vulnerable adults. The environmental scan, in combination with input from community members and stakeholders, determined that an Alberta model must balance safety and independence, using the least intrusive and most effective actions and interventions possible. However, a few questions remain: (1) Is there support for this type of model as part of Calgary’s community response to abuse/neglect of older adults? (2) Is this type of model feasible? and (3) What would be required in order for a civil/non-criminal investigation model to work?

Discussions with community members and stakeholders revealed that perceptions of adopting civil or non-criminal investigation as part of Calgary’s community response to the abuse/neglect of older adults were mixed. Those who were in support stressed that it would allow them to “do something” in cases where there is currently no authority to protect older adults – those in the community experiencing various forms of abuse or neglect (including financial abuse) that cannot be substantiated as criminal and are not protected under any existing legislation. Further, a number of participants observed that with Alberta’s aging population, the current gaps in protection will become more apparent than ever, and that the Alberta government must plan for this occurring. Those who did not support an immediate change in Alberta’s adult protection scheme iterated a number of concerns. First, a thorough assessment of the current system and resources must be conducted before any change is made. A number of stakeholders pointed out that it is unknown how large the problem is as there are few reliable statistics available as to exactly how many adults are subject to this gap in protection. Additionally, communication, coordination, and collaboration among agencies in the existing framework must be addressed and improved before a decision can be made as to whether an additional tool is required.

If the model were to be adopted, a number of elements would be required. First, and most importantly, a change in legislation is necessary. As identified in the legislative review, the gaps in Alberta’s current legislation may be addressed in one of two ways: a new piece of legislation similar to B.C.’s Adult Guardianship Act may be adopted, either to fill the current gaps or to more comprehensively cover all vulnerable adults; or Alberta’s current legislation (e.g., AGTA, PPCA, PAFVA) could be reformed to ensure this population of vulnerable adults is protected. In any event, this legislative change would need to incorporate three major elements: the target population, either
broadly defined as in the B.C. AGA, or more narrowly in terms of adults who have mental incapacity; the flexibility for adults to consent to the process if they have capacity and for adults without capacity to receive service pursuant to a court order; and finally, that the legislation broadly apply to all forms of abuse and neglect (including self neglect). In discussions with community members and stakeholders, gaps in real estate law and title transfers, the power to monitor bank transfers, and the need for improved financial assistance must be addressed in any legislative reform. In order for the legislation to be effective, participants identified that the power to perform an assessment or investigation in cases where the adult lacks physical or mental capacity and gather information (e.g., interviews, records) is vital.

In addition to having a solid foundation in legislation, community stakeholders stressed that a civil investigation model would need to be well resourced and well coordinated. Community stakeholders and members identified that a central, independent agency must receive the reports, investigate, and monitor outcomes, which is reminiscent of existing models in Canada, the United States, and the United Kingdom. In order to achieve this, it was suggested that existing resources and agencies be drawn upon, so as to maximize what is available and minimize replication and expense. A number of existing government bodies were suggested for this, including Alberta Seniors and Community Supports and the Office for the Protection for Persons in Care. Community stakeholders also suggested drawing upon local agencies and initiatives, including Senior Connect, which connects seniors to community resources, and Homefront, Calgary’s coordinated community-justice response to family violence. Clear parameters and powers for reporting, investigating, and responding must be established to ensure a seamless system of adult protection. Issues of information-sharing and confidentiality were raised, suggesting the need for agreements between agencies, as demonstrated in existing models in other jurisdictions. A close relationship and clear lines of communication with police would also be important, particularly in cases where a crime may have occurred. Perhaps most importantly, the adult who is the subject of the intervention must be consulted and involved as much as possible to ensure their self-determination. Finally, communication of the process to agencies and the community would be key.

6.3 Conclusions

AGEA’s effort to develop a coordinated community response to the abuse and neglect of older adults has made tremendous strides in recent years, and has been met by generous community support. In its consultations with community members and stakeholders, it continues to strive to develop the best and most suitable model to respond to abuse and neglect of older adults in Calgary. As part of these efforts, AGEA has initiated this research to determine whether civil or non-criminal investigation would be a valuable tool to further protect vulnerable adults, and specifically, older adults.

This project has revealed that there are a number of models operating in Canada and internationally that work to ensure the safety of vulnerable adults while preserving their independence and self-sufficiency. However, the legislative review revealed that Alberta currently approaches the area of adult protection with the philosophy of
respecting individual autonomy and self-determination of adults by leaving the intervention of authorities to only the most vulnerable. Before any powers of civil investigation in the area of abuse/neglect of older adults are granted, that philosophy must be revisited on a policy level.

In addition, though anecdotally many community stakeholders recognize this gap in protection as an issue, it is unknown as to exactly how many vulnerable adults living in the community are “falling through the cracks.” Collection of occurrence data is necessary in order to determine the extent of the issue and how best to respond. This may be aided by the Calgary Police Service’s Elder Abuse Team, who could provide counts of the number of cases they respond to that are not criminal in nature. However, a provincial initiative to collect data on the abuse/neglect of all vulnerable adults in the community would be ideal in order to truly determine whether legislative reform is needed.

It was also suggested by some community stakeholders that a more pragmatic approach to the issue be adopted, examining whether available resources are being maximized, determining the effectiveness of the response model without non-criminal investigation, and working to establish a strong network of collaboration among senior-serving agencies in Calgary.

There is little doubt, both analytically and anecdotally, that a gap in protection exists in Alberta that has resulted in frustration for both front-line workers and adults experiencing abuse and neglect. Efforts to explore this issue more extensively and find adequate solutions must be made in order to ensure that vulnerable adults are safe.
REFERENCES


APPENDIX A

FOCUS GROUP INVITATION
The Action Group on Elder Abuse invites you and other community stakeholders working with vulnerable adults in Calgary to a community focus group.

The purpose of the focus groups is to provide an opportunity for key community stakeholders to discuss the value and potential effects of a civil investigation procedure to enhance the community response to violence and abuse of older adults and adults with disabilities.

The information gathered from the consultations, together with a legislative review and an environmental scan of existing models, will inform next steps in Calgary’s efforts to protect vulnerable adults living in the community.

Your input is vital!

Where:

Alliance to End Violence
(Suite 306, 301—14 Street NW Calgary)

When:
1. Tuesday, April 27, 2010, 9:30 to 11:00 a.m.
2. Wednesday, May 5, 2010, 2:00 to 3:30 p.m.
3. Wednesday, May 12, 2010, 9:30 to 11:00 a.m.
4. Wednesday, May 12, 2010, 2:00 to 3:30 p.m.

The focus groups are by invitation only. Space is limited for each session to facilitate in-depth discussion. Please let us know if you can attend one of these sessions by contacting Eva Chan at echan@endviolence.ca or 403-283-3013 ext. 223. Pre-session material will be provided once attendance is confirmed.

Thanks and we look forward to your participation!

Funding provided by

[Logo: Alberta LAW FOUNDATION]
APPENDIX B

PROJECT BACKGROUND SHEET
Background

Since 2007, the Action Group on Elder Abuse has guided the development of a coordinated response for victims of elder abuse. Three “Pulling Back the Curtain” working sessions were organized in 2008, attracting 195 participants. Community stakeholders were engaged in developing a coordinated community response to address abuse of older adults in Calgary. Participants represented a number of systems/sectors, including: law enforcement, criminal justice, legal, health, disabilities, social services, ethno-cultural, three levels of government, voluntary sector, education, and housing. As a result of these working sessions, the Calgary community response model was drafted and presented to the community in October 2008. To ensure older adults’ voices were included, focus groups discussing the draft response model were held with older adults in May 2009. The key components of the Calgary community response include a multidisciplinary response team; a 24-hour dedicated line; shelter/accommodation options for older adults; on-going case management/support; education/training; prevention/public awareness and legislation/advocacy for the capacity to conduct non-criminal investigations.

One suggestion for the response model that has come from the community consultations is a civil investigation procedure, a non-criminal tool for investigating situations where abuse or the risk of abuse is alleged, providing protection plans where appropriate. Though the Action Group is not aware of a similar investigative tool in Canada, the Massachusetts Disabled Persons Protection Commission’s investigation procedure for disabled persons experiencing abuse provides an example of a successful, non-criminal investigative tool for situations where the abuse of older adults and adults with disabilities is alleged. As the community response model is developed, it is important to determine whether a civil investigation procedure would be appropriate, feasible and desired in Calgary.

The purpose of the community focus groups is to provide an opportunity for key community stakeholders and older adults to discuss the value and potential effects of a civil investigation procedure to enhance the community response to vulnerable adults.

May 2010
APPENDIX C

CIVIL INVESTIGATION INFORMATION SHEET
Action Group on Elder Abuse
Civil Investigation and the Abuse of Vulnerable Adults in Calgary

Focus Group Information Sheet – For reference only

Thank you for agreeing to take part in a focus group discussing the value and potential effects of a civil investigation process for cases of abuse of vulnerable adults (elder adults and adults with disabilities) in Calgary. As the Action Group on Elder Abuse (AGEA) moves forward in developing Calgary’s coordinated community response to elder abuse, the idea of including a civil investigation process has been proposed and requires further exploration.

This information sheet will provide you with some basic background on civil investigation processes to facilitate focus group discussion.

What is meant by a civil investigation process?

Civil investigation is a non-criminal tool of investigation. In the case of abuse of vulnerable adults, this tool has been used (particularly in the United States) to investigate cases where abuse or neglect is suspected but there is not sufficient evidence that a crime has occurred. Civil investigation is an alternative method of ensuring that appropriate protective and social services are provided in cases where abuse may have occurred.

What powers does civil investigation have?

Most often, civil investigation is part of adult protection legislation, providing statutory criteria on what must be reported, who is protected, reporting requirements, and investigatory power. Alberta’s legislative framework currently provides some protective measures under the Adult Guardianship and Trusteeship Act (AGTA) (for those adults who have assigned a guardian, trustee, or co-decision maker) and the Protection for Persons in Care Act (PCC) (for those adults who live in publicly funded care facilities). However, in cases that do not fall under the AGTA or PCC and cannot proceed under the Criminal Code, there are no legislative mechanisms allowing investigation of cases of abuse or neglect of vulnerable adults in the community or private care settings, particularly those with the capacity to make their own decisions.

What might be involved in a civil investigation process?

Civil investigation is often conducted by an individual with a social work background. The investigation may involve home visits, interviews with the vulnerable adult and witnesses, reviewing relevant documents – collecting any information that might help to develop an appropriate course of action. If the investigation reveals that it is probable that abuse or neglect is occurring, recommendations are made to help curtail the risk to the vulnerable adult, and service referrals are made.
APPENDIX D

STAKEHOLDER INFORMATION SHEET AND CONSENT FORM
The Canadian Research Institute for Law and the Family (CRILF) has been engaged by the Action Group on Elder Abuse (AGEA) to conduct a study examining the feasibility of adopting a civil investigation process as a means to respond to cases of abuse and neglect of vulnerable adults. The need for this study emerged from suggestions by a number of key community stakeholders over the course of the development of Calgary’s coordinated community response to the abuse of older adults. As there are a number of complex elements involved in civil investigation models, AGEA recognized the need for further examination prior to considering it as part of Calgary’s community response to the abuse of older adults.

The project involves a review of current Alberta legislative mechanisms for the protection of vulnerable adults, an environmental scan of non-criminal investigative models for the abuse of vulnerable adults, and focus groups with key community stakeholders to determine the feasibility of civil investigation in Calgary. The purpose of the focus group is to consult with key community stakeholders working with vulnerable adults to determine the value and potential effects of civil investigation as a tool to enhance Calgary’s coordinated community response to the abuse of older adults. As one of these key stakeholders, CRILF is requesting your participation in a focus group. The focus group will ask questions about your knowledge and perspectives on Calgary’s current response to the abuse of vulnerable adults and civil investigation as a possible tool for their protection. The focus group should take no longer than 90 minutes.

Your participation in this focus group is completely voluntary. You may refuse to respond to any of the questions and may withdraw from the focus group/interview at any point in time. All of the information will be collected and dealt with in accordance with the Freedom of Information and Protection of Privacy Act (FOIP). While all personal information obtained by CRILF will remain confidential, we do request that you consent to the possible use of direct quotes without attributing them to specific individuals. Participants will not be named in any of CRILF’s or AGEA’s publications.

Should you have any questions or concerns about the project, please contact:

Leslie MacRae
Coordinator of Alberta-Based Research Projects
Canadian Research Institute for Law and the Family
(403) 216-0345
ldmacrae@ucalgary.ca

Joseph P. Hornick
Executive Director
Canadian Research Institute for Law and the Family
(403) 216-0340
crilf@ucalgary.ca

Thank you for your participation.
APPENDIX E

COMMUNITY MEMBERS INFORMATION SHEET
AND CONSENT FORM
The Canadian Research Institute for Law and the Family (CRILF) has been engaged by the Action Group on Elder Abuse (AGEA) to conduct a study examining the feasibility of adopting a civil investigation process as a means to respond to cases of abuse and neglect of vulnerable adults. The need for this study emerged from suggestions by a number of key community stakeholders over the course of the development of Calgary's coordinated community response to the abuse of older adults. As there are a number of complex elements involved in civil investigation models, AGEA recognized the need for further examination prior to considering it as part of Calgary's community response to the abuse of older adults.

The project involves a review of current Alberta legislative mechanisms for the protection of vulnerable adults, an environmental scan of non-criminal investigative models for the abuse of vulnerable adults, and focus groups with key stakeholders and concerned members of the community to determine the feasibility of civil investigation in Calgary. The purpose of the focus group is to examine the value and potential effects of civil investigation as a tool to enhance Calgary's coordinated community response to the abuse of older adults. As a concerned community member, CRILF is requesting your participation in a focus group. The focus group will ask questions about your knowledge and perspectives on Calgary's current response to the abuse of vulnerable adults and civil investigation as a possible tool for their protection. The focus group should take no longer than 90 minutes.

Your participation in this focus group is completely voluntary. You may refuse to respond to any of the questions and may withdraw from the focus group/interview at any point in time. All of the information will be collected and dealt with in accordance with the Freedom of Information and Protection of Privacy Act (FOIP). While all personal information obtained by CRILF will remain confidential, we do request that you consent to the possible use of direct quotes without attributing them to specific individuals. Participants will not be named in any of CRILF’s or AGEA’s publications.

Should you have any questions or concerns about the project, please contact:

Leslie MacRae Coordinator of Alberta-Based Research Projects (403) 216-0345 ldmacrae@ucalgary.ca

Joseph P. Hornick Executive Director (403) 216-0340 crilf@ucalgary.ca

Thank you for your participation.
APPENDIX F

FOCUS GROUP PROTOCOL
Civil Investigation and the Abuse of Vulnerable Adults in Calgary

1.0 Introduction and Welcome

2.0 Overview

The purpose of this focus group is to explore your knowledge, perspectives, and opinions on non-criminal investigation model as a protective mechanism in responding to cases of abuse and neglect of vulnerable adults, including vulnerable adults and adults with disabilities.

3.0 Introduction of Attendees

• Who they are;
• Position;
• Experience working with vulnerable adults; and
• Experience working in any other jurisdiction.

4.0 Questions

4.1 General Perceptions

4.1.1 In your opinion, what might make an adult “vulnerable?”

• Age
• Capacity
• Disability

4.1.2 What constitutes abuse and neglect of vulnerable adults?

• Types of abuse
• Perpetrator

4.1.3 Do you believe that abuse and neglect of vulnerable adults is unique, requiring focused interventions?

• What are some of the unique characteristics?
• Examples of unique interventions
4.1.4 What is your perception of the safeguards currently in place for abused and neglected vulnerable adults in Calgary?

- Are they adequate?
- Do they address the needs of all vulnerable adults experiencing abuse?
- What is working?
- What needs to be improved?
- Are there gaps in service?

4.1.5 What is your view of Alberta’s current legislative structure with regard to the protection of abused and neglected vulnerable adults and adults with disabilities?

- Does it offer sufficient protective mechanisms?
- Does it sufficiently protect all vulnerable adults?
- Does it sufficiently address all situations involving vulnerable adults?

4.1.6 Are you aware of any tools or models elsewhere that you believe would be useful in Alberta?

- Examples

4.2 Civil Investigation

In AGEA’s consultations with key stakeholders in Calgary, it was suggested that a non-criminal investigative procedure be considered as a possible tool in the development of Calgary’s coordinated community response to elder abuse. As was articulated in the information sheet, civil investigation is a means of offering protective services to abused/neglected vulnerable adults in cases where there is not a definable criminal element to the abuse/neglect. Currently the Adult Guardianship and Trusteeship Act and the Protection for Persons in Care Act provide some protective mechanisms, however, only in certain circumstances.

4.2.1 Generally, what is your perspective on the use of a non-criminal investigative tool to enhance Calgary’s coordinated community response to the abuse of vulnerable adults?

- What are the advantages (e.g., less invasive, protection, etc.)?
- What are the disadvantages (e.g., privacy, rights, etc.)?

4.2.2 Do you believe adult protection legislation in Alberta should be reformed to provide powers for civil investigation?
4.2.3 Should reporting of abuse/neglect of vulnerable adults be mandatory for certain professionals in the community?

4.2.4 What forms of abuse/neglect do you believe should be considered mandatory to report?

4.2.5 What are your views on mandatory investigation?
   - Should they be mandatory?
   - In what situations?
   - Should consent be required?
   - Does capacity make a difference?

4.2.6 What qualifications should investigators have?

4.2.7 What investigative powers be granted (e.g., without the consent of those involved)?
   - Home visits?
   - Review of records?
   - Interviews with victim? Witnesses? Perpetrators?

4.2.8 What do you believe should be the outcome of a civil investigation?
   - Recommendations?
   - Court order?
   - Referrals to service?

4.2.9 Should there be a legal requirement to follow recommendations made as a result of a civil investigation? Who should be responsible?
   - Situation specific?

4.3 Civil Investigation and Calgary’s Coordinated Community Response Model to the Abuse of Older Adults

4.3.1 Do you believe that civil investigation would be an important part of Calgary’s community response model to the abuse/neglect of vulnerable adults?

4.3.2 What might this model look like? What would be required for it to work?
   - Referral process?
   - Centralized vs. decentralized
   - Service?
   - Legislation?
4.3.3 What issues do you foresee if Calgary were to adopt this model?

4.3.4 Would your organization support suggestions for legislative reform in order to increase investigative and protective measures for vulnerable adults who are abused/neglected?

4.3.5 Are you aware of any individuals in Alberta who would champion this change in legislation?
APPENDIX G

DIAGRAM OF PROTECTION COVERAGE
LEGISLATED PROTECTION COVERAGE IN ALBERTA

**SLALA**
- complaint procedure
- adults living in a supported living accommodation where the legislated facility standards are not being complied with

**PDD Protocol**
- complaint procedure
- adults with a developmental disability who receive funding and support from PDD
- protects against abuse by a service provider.

**AGTA**
- complaint procedure
- adults subject to a Guardianship Order
- protects against physical or mental harm as a result of the failure of the guardian

**AGTA**
- complaint procedure
- adults subject to a Co-Decision Making Order
- protects against physical or mental harm as a result of the failure of the co-decision maker.

**AGTA**
- complaint procedure
- adults subject to a Trusteeship Order
- protects against financial harm (including property loss) as a result of the failure of the trustee

**PDA**
- Adults with a personal directive in effect
- protects against harm to the physical or mental health of the adult as a result of the failure of the agent

**PPCA**
- Adults receiving care or support services from a government funded facility such as:
  - nursing homes,
  - hospitals,
  - group homes,
  - seniors’ lodges,
  - shelters,
  - mental health facilities,
  - addictions treatment centres,
  - supportive living settings
*Provided a direction connection exists b/w the abuse and the service provider.

**PAFVA**
- Family members who are the subject of family violence on whose behalf an application for EPO or Queen’s Bench Order is made
- Adults (with or without diminished capacity) living in their homes/private facility, who experience abuse or neglect (including self neglect) who require assistance, but for whom no court order or personal directive exists.

**Legend**

- All vulnerable adults, including adults with varying levels of diminished capacity, adults whose first language is not English, and adults with physical impairment, who experience abuse or neglect.
- Vulnerable adults covered by protection legislation
- Adults with access to complainant initiated protection remedies
- Vulnerable adults who likely have no access to protection remedies