



**UPDATE ON THE 2009 PROVINCIAL STRATEGY
DOCUMENT ON VULNERABLE ADULTS AND
CAPABILITY IN BRITISH COLUMBIA:
A Discussion Paper and Reference Guide**



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ABOUT THE CCEL

The CCEL conducts legal research, writing, analysis, and community engagement activities to examine the legal and policy issues that impact us as we age. As part of its work the CCEL consults with stakeholders, collaborates with community agencies, and publishes legal, policy and practice resources, including recommendations for law reform, and educational tools. The CCEL is a division of the BC Law Institute (BCLI), BC's not-for-profit, independent law reform agency.



ABOUT CREA

The Council to Reduce Elder Abuse was a commitment under the 2013 BC Government's "Together to Reduce Elder Abuse – B.C.'s Strategy". CREA (1) promotes and facilitates awareness building and training on elder abuse prevention, recognition and response and (2) galvanizes society to commit, both collectively and individually, to reduce elder abuse and ensure that it is not tolerated in British Columbia. The Council is made up of representatives from various sectors including finance, policing, health, and law, and sustains its work partly with thanks to financial support provided by the BC Ministry of Health.



ABOUT THE COLLABORATIVE

The BC Adult Abuse and Neglect Prevention Collaborative, established in 1995, is an informal forum that works to enhance the provincially coordinated response to adult abuse, neglect and self-neglect. The Collaborative supports the development, identification and sharing of promising approaches and best practices among regional and provincial leaders. The Collaborative is made up of representatives from the *Adult Guardianship Act* designated agencies, provincial non-profits serving adults in a variety of circumstances, advocates, police, legal, and government agencies and the Public Guardian and Trustee.

Written by Krista James and Sara Pon.

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Executive Summary

In 2009 the BC Adult Abuse and Neglect Prevention Collaborative (the Collaborative) published the report, *Provincial Strategy Document: Vulnerable Adults and Capability Issues in British Columbia* (the Vanguard Report). The publication was prepared by the Canadian Centre for Elder Law (CCEL) with funding from the Law Foundation of BC. The report summarized the state of the law in BC and included 17 recommendations for enhancing law, policy, and practice in relation to incapability and vulnerable adult abuse and neglect prevention and response. The Vanguard Report materials included two background papers by Charmaine Spencer which addressed, respectively, housing and immigration issues in relation to incapability and adult abuse, and also contained recommendations. The 17 recommendations contained in the main report were developed by a sub-committee of the Collaborative with support from the CCEL. The recommendations contained in the two background papers were developed by Charmaine Spencer.

This discussion paper and reference guide was produced for the Collaborative and the BC Council to Reduce Elder Abuse (CREA) to update the Vanguard Report. The paper identifies developments related to each of the recommendations, summarizes recent court decisions, provides an update on the status of key legislation, and reviews trends in academic research, media, government, and non-profit sector work. The paper includes a summary chart with updates on each of the recommendations, and identifies potential priorities for future work of the Collaborative or CREA to address outstanding recommendations that fall within their respective mandates. In terms of methodology, the CCEL reviewed material available in the public domain, and invited all members of CREA and the Collaborative to share their views. Nine members requested a telephone interview.

PROGRESS SINCE 2009

In the 12 years since the publication of the Vanguard Report there have been significant developments in law, policy, and practice related to vulnerable adults and incapability in BC. Aspects of Bill 29, the *Adult Guardianship and Planning Statutes Amendment Act*, 2007, were finally brought into force: advance directives became available (2011); the provisions allowing the Public Guardian and Trustee of BC (PGT) to be appointed statutory property guardian by a non-court certificate process became law (2014); and the care facility admission provisions of the *Health Care (Consent) and Care Facility (Admission) Act (HCCCFAA)* were implemented (2019). In 2019, amendments to the assisted living framework enhanced elder abuse prevention and response. Some aspects of the legal framework have not changed. Although guardians are now required to involve adults with incapability issues in decision-making, the *Patients Property Act (PPA)* and the committeeship regime remain in place. It is unclear whether the provisions in Bill 29 related to the appointment by the court of personal and property guardians will ever be brought into force.

This update on the Vanguard Report recommendations identifies progress in the following key areas:

1. Though under-funding remains a barrier, the non-profit sector provides robust leadership through agencies such as the BC Association of Community Response Networks (BCCRN), Seniors First BC (SFBC), and the Canadian Network for the Prevention of Elder Abuse (CNPEA). Further, CREA was created in 2013 to provide cross-sector elder abuse leadership in BC.
2. While few resources would meet the rigour of a “best practice tool”, organizations such as the PGT, Vancouver Coastal Health (VCH), the CCEL, the National Initiative for the Care of the Elderly (NICE), and Community Living BC (CLBC) have developed critical resources and training tools to support best practices in vulnerable adult abuse and neglect response.
3. A number of organizations have created cultural safety and humility training resources. In particular, the Provincial Health Services Authority’s San’yas Indigenous Cultural Safety Training is being accessed by many key agencies and is recommended by most professional colleges in BC. However, *Being Least Intrusive* remains one of the few vulnerable adult abuse and neglect response resources that is grounded in a cultural safety and humility lens.
4. The BC Law Institute (BCLI) Report on Common-Law Tests of Capacity explored the need for greater harmonization of capability standards and made recommendations for reform.
5. Programs such as the SFBC Elder Law Clinic, the Access Pro Bono Wills Clinic, and RISE Women’s Legal Centre now provide legal assistance to vulnerable adults in BC. The Community Legal Assistance Society (CLAS), the Disability Alliance of BC Law Program, and SFBC can help people challenge the PGT’s appointment under *Adult Guardianship Act (AGA)* Part 2.1. However, significant access to justice issues remain, particularly for adults with incapability issues.
6. BC’s *Family Law Act* expanded the definition of family violence to include some relatives not living in the home and any relative living within the home, and the types of abuse were expanded to include psychological and financial abuse. These changes make the provisions more relevant to vulnerable adult abuse response.
7. BC Employment and Assistance’s policy on sponsorship breakdown and abuse was amended to reflect the definition of family violence found in the new *Family Law Act*, and to require an applicant fleeing abuse to provide some evidence of abuse only after one year. The sponsor will not be contacted by the Ministry while the risk of abuse continues.

OUTSTANDING VANGUARD RECOMMENDATIONS

In spite of the above progress, many challenges remain. This discussion paper concludes with a list of opportunities for the Collaborative and CREA to take leadership in addressing Vanguard Report recommendations which still require action. The list of short and long-term priorities include:

Financial abuse

- Ask the Financial Abuse Investigators Action Group of CREA to identify any next steps with regard to understanding financial institutions' policies and protocols in relation to vulnerable adult abuse and neglect response and capability issues
- Enhance the participation of the credit union sector in CREA

System response and mapping

- Produce a cross-disciplinary mapping of agencies involved with adults who have incapability issues, or are suspected of diminished capability. Clarify the scope of the ideal map
- Audit the list of educational modules and core professional competencies found in this discussion paper for key gaps. Consider whether any of these gaps could lend themselves to a project led by CREA of the Collaborative
- Advocate for robust evaluation of the *AGA* system, including quantitative and qualitative data

Criminal justice

- Research and analyze barriers and supports for adults with diminished capability who are involved in the criminal justice system
- Research how criminal justice system policies have been applied in a vulnerable adult abuse or neglect context. Support the development of a policy on victims, offenders, and witnesses with capability issues
- Support amendments to BC's Violence Against Women in Relationships Policy and Provincial Domestic Violence Plan to consider aging and disability related issues

Access to justice

- Map access to justice barriers faced by adults with capability issues. Advocate for increased legal aid funding to address gaps
- Support clarification of legislation and Law Society of BC rules such that adults may obtain legal counsel to challenge a finding of incapability, or representation agreements and powers of attorney created under undue influence or through fraud

Housing and wrap-around supports

- Advocate for housing and related wrap-around supports such as clean-up services for unsafe home environments, repairs/modifications to existing homes to meet individual needs, access to equipment, extra home supports, supervised visits, and one-on-one workers for people in very vulnerable circumstances with unstable, inappropriate, or no housing to facilitate hospital discharge
- Advocate for more safe housing geared toward the needs of older people. Support research into the unique transitional housing models that might better suit older adults and younger adults with multiple challenges
- Advocate to support individual transition houses to develop protocols for helping older adults and adults with disabilities

Housing resources

- Develop a resource for older adults on tenancy rights and options that includes assisted living issues
- Develop material for landlords on options if they see abuse of vulnerable adults in their housing
- Support the development of training modules on assisting survivors of abuse who are older or have an intellectual disability

Immigrant populations

- Advocate for the inclusion of neglect in the BC Employment and Assistance Policy on sponsorship breakdown and abuse
- Support research and knowledge exchange to better understand health authorities' practice and the role of ethno-cultural community-serving non-profits in reducing neglect among immigrants
- Support the development of training on incapability assessment that includes family violence, trauma, cultural humility, and cultural safety

Working with government

- Consider strategies for successful engagement of key government ministries in Collaborative and CREA work
- Support greater inter and intra-ministerial coordination within the BC Government. Support greater federal and provincial coordination in relation to adults with capability issues

Some of these activities are better suited to the Collaborative and others to CREA, and a number of them should ideally be approached with collaborators from the seniors or community living sector who may have greater relevant subject matter expertise.

Most of the research gaps identified in the Vanguard Report continue to exist. The above list of priority activities includes research that might fit CREA or Collaborative mandates. Other key topics that continue to require study include:

- Family violence and older adults;
- Housing and victimization of older people, including homelessness and housing discrimination based on age and disability; and
- Sponsorship debt and default.

The scope of research in each area could be broadened to include all vulnerable adults in order to better match the Collaborative's mandate. Research on these subjects remains critical to developing evidence-based policy to support vulnerable adults who have experienced abuse or neglect.

NEW ISSUES TO EXPLORE

If written in 2009, different issues may have been identified in the Vanguard Report. When the CCEL consulted with members of the Collaborative and CREA to produce this discussion paper, members identified the following interests:

1. Expand abuse and neglect policy discussions to better include other sectors, such the intellectual disability community and the domestic violence sector;
2. Examine how the criminal justice system uses KGB statements (recorded statements under oath) in situations of abuse or neglect of vulnerable adults;
3. Research the laws and supports related to abuse under powers of attorney and representation agreements, including how to terminate authority under these documents, what education already exists on this topic, and what gaps exist in law and services;
4. Expand consideration of ageism to reflect intersectionality, in particular attention to 2SLGBTQ+ and Indigenous people, and reject practices of “othering”; and
5. Ensure laws, policies, and practices align with Indigenous perspectives on health, wellness, kinship, and community.

Recent court decisions have highlighted areas for policy development. The decision of the Supreme Court of BC in *AH v Fraser Health Authority* considered the emergency removal and detention powers in section 59 of the AGA. Justice Warren found that detention for over 11 months had exceeded the meaning of emergency and violated the vulnerable adult's Charter rights, despite the recognition that protective actions were taken to prevent the occurrence of very serious harms. Another significant decision, *Bentley v Maplewood Seniors Care Society*, clarified that assistance with feeding was personal

care, not health care, and so not subject to the *HCCCCFAA*. The judge determined that ceasing to provide nutrition and hydration to bring around the death of a woman in late stage Alzheimer's through starvation and dehydration would constitute neglect under the *AGA*. The court noted that while a capable adult may refuse food or drink, it is not clear that a substitute decision-maker has the authority to refuse food or drink on behalf of an incapable vulnerable adult. The judges' discussions of capability in the series of decisions in the Bentley case suggest a need for clarification and guidance regarding the meaning of capability. The various issues addressed in these two cases might serve as a useful focal point for future CREA or Collaborative work.

In terms of current events, the Wettlaufer inquiry and the Covid 19 pandemic have thrust abuse and neglect in long-term care into the fore, raising policy questions about how to keep vulnerable adults safe in congregate housing settings.

There is still much work to be done to enhance law, policy, and practice related to vulnerable adult abuse and neglect prevention and response in the province of BC. Many of the Vanguard Report recommendations remain outstanding and other important issues have emerged since 2009. In closing, it is worth noting that while the 17 recommendations contained in the main Vanguard Report were developed by a sub-committee of the Collaborative, the recommendations found in the immigration and housing background paper were composed solely by Charmaine Spencer. This dynamic explains some of the thematic overlap but also raises the question of whether the Collaborative and CREA ought to review those recommendations for alignment with their mandates

Although this discussion paper and reference guide was produced for the Collaborative and CREA, it will take much broader cross-sector action to address the critical issues identified. We hope this document will be a resource to governments, professionals, communities, non-profits, regulatory bodies, funders, and other stakeholders interested in enhancing law, policy, and practice in BC.

List of Abbreviations

AGA	<i>Adult Guardianship Act</i>
AGPAC	Adult Guardianship Provincial Advisory Group
AL Regulation	Assisted Living Regulation
Atira	Atira Women's Resource Society
BCCA	BC Court of Appeal
BCCRN	BC Association of Community Response Networks
BC HRT	BC Human Rights Tribunal
BCLI	BC Law Institute
BC OIC	BC Office of the Information and Privacy Commissioner
BCSC	BC Supreme Court
CBA	Canadian Bankers Association
CCALA	<i>Community Care and Assisted Living Act</i>
CCEL	Canadian Centre for Elder Law
Charter (the)	Charter of Rights and Freedoms of Canada
Collaborative (the)	BC Adult Abuse and Neglect Prevention Collaborative
CLAS	Community Legal Assistance Society
CLBC	Community Living BC
CREA	BC Council to Reduce Elder Abuse
CRT	Civil Resolution Tribunal
ESL	English as a second language
FNHA	First Nations Health Authority
FOIPPA	<i>Freedom of Information and Protection of Privacy Act</i>
GIS	Guaranteed Income Supplement
HCCCFAA	<i>Health Care (Consent) and Care Facility (Admission) Act</i>
Housing Background Paper	Housing, Abuse and Capability Issues Background Paper
Immigration Background Paper	Immigration, Abuse and Capability Issues Background Paper
LSS	Legal Services Society
NICE	National Initiative for the Care of the Elderly
OAS	Old Age Security
PGT	Public Guardian and Trustee of BC
PIPEDA	<i>Personal Information Protection and Electronic Documents Act</i>
PPA	<i>Patients Property Act</i>
PPE	personal and protective equipment
RSW	Registered Social Workers
RTA	<i>Residential Tenancy Act</i>
Seniors Code (the)	CBA voluntary code on Delivery of Banking Services to Seniors
TRAC	Tenants Rights Advocacy Centre
TSDM	temporary substitute decision-maker
Vanguard Report (the)	Provincial Strategy Document: Vulnerable Adults and Capability Issues in British Columbia
VCH	Vancouver Coastal Health
VPD	Vancouver Police Department



1 | Introduction

In 2007 Seniors First BC (then the BC Centre for Elder Advocacy and Support) hired the BCLI to conduct an international review of:

- Laws governing capability for decision-making which currently inform guardianship practice; and
- Policies, protocols, and guidelines that inform incapability assessment.

This work was undertaken by BCLI's division, the CCEL, on behalf of the BC Adult Abuse and the Collaborative, with funding from the Law Foundation of BC. As part of this contract, the CCEL produced a report to summarize the state of the law in BC and guide the practice of health care, medicine, law, policy, and criminal justice practitioners who work with adults with abuse, neglect, self-neglect, or capability issues. The complete work, published in 2009, included:

- *Vulnerable Adults and Capability Issues in British Columbia Provincial Strategy Document: (the Vanguard Report)*;
- *Housing, Abuse and Capability Issues Background Paper* (Housing Background Paper); and
- *Immigration, Abuse and Capability Issues Background Paper* (Immigration Background Paper).¹

Each document contained a series of recommendations related to law reform, policy, practice, public education, and professional development. The Vanguard Report recommendations were developed by



a sub-committee of the Collaborative with support from the CCEL. The recommendations contained in the two background papers were developed by Charmaine Spencer, the author of both papers.

This discussion paper and reference guide was produced for the Collaborative and CREA to update activity related to each of the recommendations, and review developments in law and practice linked to vulnerable adult abuse and neglect and capability issues in BC. The document includes the following sections:

1. This introduction;
2. Status of recommendations—reviews each recommendation and identifies relevant recent activity, including new publications and policies; identifies possible next steps;
3. Legal developments in vulnerable adult abuse and neglect response in BC—sets out the status of key legislation and summarizes relevant recent court and tribunal decisions;
4. Trends in abuse, vulnerability, and capability issues—reviews trends in academic research, media, government, and non-profit sector work;
5. Recommendations summary chart—summarizes what has been accomplished in a table format; provides the CCEL's view of possible next steps;
6. Priority areas for future work—identifies potential short and long-term work the Collaborative or CREA could undertake in order to take action on the recommendations that fall within their respective mandates; and
7. Concluding remarks.

All members of CREA and the Collaborative were invited to comment on a draft of this document, and CCEL staff interviewed nine members to complete this publication.

This is a dense document. For readers who are looking for a summary update of the status of the recommendations, we suggest you review sections 5 and 6 of this discussion paper as well as the Executive Summary or the Conclusion. Each recommendation update in section 2 is fairly self-contained, such that readers may skip ahead to explore recommendations that address topics within their area of practice.



2 | Status of Recommendations

This section provides an update on the status of recommendations found in the following three documents:

- The Vanguard Report;
- Housing Background Paper; and
- Immigration Background Paper.

Below we re-print each recommendation as well as some of the background included in the original documents.² The sub-sections labeled “Findings” reflect new research by the CCEL and interviews with members of CREA and the Collaborative. A summary table follows in section 5 containing suggested next steps with respect to each recommendation. We make suggestions for possible short and long term priority actions by CREA and the Collaborative in section 6.

2.1 VANGUARD REPORT RECOMMENDATIONS

2.1.1 Knowledge Communities

Recommendation

A variety of “knowledge communities” be created and supported to provide leadership, education, and training around issues of adult abuse, capability, and vulnerability.”

Background from the Report

Knowledge communities are nodes of expertise that bring together diverse experts, moderators, facilitators, and the general public. Knowledge communities facilitate interactions and learning between its members, and thus provide its members with additional perspective. Creating and supporting these relationships will enrich the level of discourse and lead to better creation and distribution of knowledge.

Findings

BC has a strong foundation in place. A variety of organizations exist in BC and across Canada which meet, or collect information on, abuse, vulnerability, and capability. These groups include:

- CREA
- The Collaborative
- Adult Guardianship Provincial Advisory Group (AGPAC)
- BCCRN
- SFBC
- CNPEA
- NICE
- Healthy Aging CORE

Still to be done

Knowledge communities should stay engaged with each other and the community.

2.1.2 Best Practice Tools

Recommendation

Best practice tools be developed to support the work of different knowledge communities working with vulnerable adults with capability issues.

Background from the Report

At a minimum, legal professionals, health care workers, social workers, the criminal justice system and financial institutions need best practices to guide their work in this area. The guidelines should reflect the interdisciplinary nature of the practice, and be written in an accessible fashion that bridges health and legal principles.

Findings

What is a best practice?

While “[t]here is no universally accepted definition of a best practice. At a minimum, a best practice must:

1. demonstrate evidence of success;
2. affect something important (e.g., contribute to the organization’s mission or program goals); and
3. have the potential to be replicated or adapted to other settings.”³

Below we summarize existing practice tools that are relevant to the work of knowledge communities working with vulnerable adults who have capability issues or are experiencing abuse or neglect. While many of these resources have not been tested or evaluated to determine their effectiveness or success, they all identify useful suggestions for practice, and were developed based on research or practice experience. The resources are divided into the following four categories:

- adult guardianship;
- elder abuse;
- people with disabilities; and
- professional guidelines.

Tables of Practice Resources

Adult Guardianship

Tool	Who Created It	Who Is It For	Description
Practice Guidance: Adult Guardianship: Important Legislative changes regarding the Adult Guardianship Act ⁴	British Columbia College of Social Workers	Social workers	This practice guideline discusses legislative changes to the AGA, the certificate of incapability process, and available training on how to conduct incapability assessments
How to Assist an Adult Who is Abused, Neglected or Self-Neglecting: A Decision Tree for Effective Referrals ⁵	Fraser Health, Public Guardian and Trustee of British Columbia and RCMP E Division	People working with adults in vulnerable circumstances	This decision tree helps those working with adults in vulnerable circumstances to refer the individual to the correct organization if abuse or neglect is suspected
A Guide to Court Applications under Part 3 of the Adult Guardianship Act: Support and Assistance for Abused and Neglected Adults ⁶	PGT	Designated agencies	This is a guide for designated agencies on how to obtain warrants, restraining orders, support and assistance orders, orders with consent, and support orders under <i>the Family Law Act</i> , and how to change, cancel and renew orders. It addresses rules on service of documents, and presenting cases to provincial court

Tool	Who Created It	Who Is It For	Description
A Guide to the Certificate of Incapability Process under the Adult Guardianship Act ⁷	PGT and the BC Ministry of Health	People involved in issuing certificate of incapability	This guide is meant to promote best practices for the process of issuing certificate of incapability under Part 2.1 of the AGA
Act on Abuse and Neglect: Manual for VCH Staff ⁸	VCH	Health authority staff	This is a manual for VCH staff on how to deal with suspected cases of abuse, neglect, and self-neglect of vulnerable adults
ReAct Materials ⁹	VCH	Health authority staff	Materials include: It's your Duty Brochure, Quick Assessment Guide, It's Your Duty Poster, Flow Chart Poster on Response, Manual for VCH Staff, First Nations Edition ReAct Manual, and Capability and Consent Tool
Online Course: Recognizing and Responding to Adult Abuse ¹⁰	VCH	Health authority staff, caregivers	This course teaches how to recognize and respond to adult abuse. It is geared toward those providing care or services
Private Committee Handbook ¹¹	PGT	Private committees	This handbook is for private committees, explaining the role, responsibilities, and resources

Elder Abuse

Tool	Who Created It	Who Is It For	Description
Financial Literacy 102: A knowledge based approach to preventing financial abuse of older adults: A guide for professionals ¹²	BCLI	Finance professionals	This guide provides professionals who work with older adults with a general overview of financial abuse of older adults and financial literacy and financial planning for older adults
Counterpoint Project ¹³	BCLI	Health care professionals social workers	These tools (discussion paper, guideline, tools, videos) help health care and social service providers negotiate the legal and ethical challenges in elder abuse prevention and response
Practical Guide to Elder Abuse and Neglect Law in Canada ¹⁴	BCLI	People working with older adults	This tool summarizes the elder abuse and neglect laws in each province and territory, and identifies obligations to respond to abuse and neglect. Also identifies guiding principles for best practice
Undue Influence Checklist ¹⁵	CCEL	People who draft wills	This project provides a set of recommended practices for will drafters to follow to ensure that wills represent the genuine independent wishes of their clients and are insulated against challenge on the basis of undue influence
Understanding and Responding to Elder Abuse E-Book ¹⁶	British Columbia Ministry of Public Safety and Solicitor General	People working with older adults	This book describes what elder abuse is, and what provincial resources are available for people experiencing elder abuse

Tool	Who Created It	Who Is It For	Description
Reference Guide for Service Providers Assisting Older Adults ¹⁷	SFBC	People working with older adults	This guide describes what elder abuse is, and what service providers can do to help those experiencing elder abuse
Sexual Abuse of Older Adults Factsheet ¹⁸	Elder Abuse Protection Ontario	Anyone	This factsheet provides information on what abuse is and where to get help
Promising Practices Across Canada For Housing Women Who Are Older And Fleeing Abuse ¹⁹	Atira Women's Resource Society (Atira)	Those helping women fleeing violence	This report identifies best practices to help older women who are fleeing relationship violence
Elder Abuse: Assessment and Intervention Reference Guide ²⁰	NICE	Police and others working with older adults	Elder abuse practice tools for police and others working with older adults
TTT-EM: Train the Trainer in Elder Mistreatment ²¹	NICE	Organizations working with older adults	Guide on how to train others on identifying and addressing elder abuse. Developed by Jeanette Lindenbach
IOA: Indicators of Abuse ²²	NICE	Health care practitioners	Checklist to assess whether an older adult is being abused. Developed by Myrna Reis and Daphne Nahmiash
BLI: Being Least Intrusive ²³	NICE	People working with older adults	Information on how to respond to elder abuse in a culturally safe manner. Developed by Lindsay Risk and April Struthers
CASE: Caregiver Abuse Screen ²⁴	NICE	Those working with older adults or caregivers	Screening tool on assessing if an older adult is being abused by their caregiver. Developed by - Myrna Reis and Daphne Nahmiash
CCR: Coordinated Community Response to Abuse of Seniors ²⁵	NICE	Community Response Networks	Tool for community response networks to use in crafting responses to elder abuse
DMEA: Defining and Measuring Elder Abuse ²⁶	NICE	Anyone	Defines elder abuse
In Hand: An Ethical Decision-Making Framework ²⁷	NICE	Psychosocial practitioners	A guide for psychosocial practitioners on how to address elder abuse when there is no legal framework for elder abuse. Developed by Marie Beaulieu
ROW: Resources for Older Women- BC ²⁸	NICE	Older women	A resource for women experiencing abuse that identifies helpful agencies
Theft by Person(s) Holding Power of Attorney Investigation Reference Guide ²⁹	NICE	Investigators and police	A tool to help those investigating whether an attorney with a power of attorney has committed theft or abuse

People with Disabilities

Tool	Who Created It	Who Is It For	Description
Addressing Personal Vulnerability Through Planning ³⁰	CLBC	People living with disabilities and families	This guide helps people living with disabilities, families, and service providers to identify and plan for safeguards to reduce a person's vulnerability
Safeguard Resources ³¹	CLBC	People living with disabilities and families	These resources help people living with disabilities and families and their supporters plan and implement safeguards to reduce risk of harm and feel safe pursuing their goals
When the PGT is the Substitute Decision-Maker Information for Service Providers ³²	CLBC	Service providers	This resource describes the role of the PGT as substitute decision-maker and important life changes or incidents about which PGT should be notified
Critical Incidents Policy ³³	CLBC	CLBC staff and service providers	This policy describes the responsibilities to report and respond to critical incidents involving service delivery and clients of CLBC funded services
A statutory framework for the right to legal capacity and supported decision making ³⁴	Inclusion Canada	Government, health care professionals	This report makes suggestions for updating statutory frameworks to support the legal capacity and rights of people with reduced capability, and implement Article 12 of the United Nations Convention on the Rights of Persons with Disabilities
Right to be safe: Creating inclusive services for women with disabilities experiencing violence ³⁵	Disability Alliance BC	Service providers	This booklet provides resources for service providers. It covers violence against women with disabilities and the barriers they face, and includes communication tips
Inclusive Communication, Outreach, and Engagement ³⁶	Disability Alliance BC	Service providers	This booklet provides information for community anti-violence service providers on how to support Indigenous women living with disabilities and all women living with disabilities who have experienced sexual assault

Professional Guidelines

Tool	Who Created It	Who Is It For	Description
BC Guidelines: Cognitive Impairment ³⁷	BC Government, Guidelines and Protocols and Advisory Committee	Health practitioners	Guideline discusses: -personal planning documents; -self-neglect/neglect/abuse response; and -challenges with culturally and linguistically diverse groups, including screening, and culturally appropriate support and care options

Tool	Who Created It	Who Is It For	Description
BC Guidelines: Frailty in Older Adults ³⁸	BC Government	Health practitioners	This guideline identifies isolation as a risk factor for frailty. Elder abuse is listed as an area of assessment in geriatric assessment of frailty under the subheading of managing at home
Professional Guideline: Disclosure of Patient Information to Law Enforcement Authorities ³⁹	College of Physicians and Surgeons of British Columbia	Physicians	No professional guidelines directly on abuse; however, guideline notes there is a public safety exception to confidentiality where an imminent risk of harm is present, which would likely include elder abuse
Code of Professional Conduct for British Columbia ⁴⁰	Law Society of British Columbia	Lawyers	The rules place limits on a lawyer's ability to represent a client who is incapable - Rule 3.2-9 sets out a lawyer can represent a client who may not be capable and must as much as possible maintain a normal lawyer-client relationship
Legal Issues in Residential Care: An Advocate's Manual ⁴¹	SFBC	Lawyers and advocates	This guide addresses legal issues that a person may face while in long-term care
Advisor Insights Fact Sheets: Protecting Investors from Financial Exploitation ⁴²	The Investment Funds Institute of Canada	Financial advisors	Checklist describing signs for abuse and what to do if you observe signs of abuse
Advisor Insights Fact Sheets: Meeting the Needs of Investors with Cognitive Decline ⁴³	The Investment Funds Institute of Canada	Financial advisors	Checklist describing signs of cognitive decline and what to do if you observe signs of cognitive decline
When she tells you about the violence - Tips for General Practitioners ⁴⁴	Battered Women Support Services	Physicians	Information for Canadian doctors on identifying and responding to relationship violence
Guidelines for Recovery-Oriented Practice ⁴⁵	Mental Health Commission of Canada	Person living with a mental illness, practitioners	A guideline for following a recovery-oriented practice when working with people who are living with a mental illness

Still to be done

These lists can be reviewed to identify gaps in available critical resources. Diverse organizations may take responsibility for developing resources to address the gaps. Ideally all relevant sectors will support the development of best practices resources related to mental capability for their sector.

2.1.3 Financial Institution Policies

Recommendation

Financial institutions should create protocols and policies at both the head office and the branch office regarding persons with capability issues and/or vulnerable persons. Core professional competencies in dealing with documents which refer to vulnerable adults or adults with diminished capability should be established and routinely tested as part of a required professional knowledge base.

Background from the Report

Financial institutions play a significant role in the lives of persons who experience capability challenges and/or vulnerability.... As financial institutions often act in a fiduciary role to these adults, they bear the responsibility to ensure that staff is well-versed and prepared to deal with this client group and their associated financial/legal needs.

Findings

Canadian Bankers Association Seniors Code

On July 25, 2019 the Canadian Bankers Association (CBA) announced it had created a voluntary code on *Delivery of Banking Services to Seniors* (the Seniors Code).⁴⁶ Voluntary codes are commitments banks make to customers. These codes are not legislated. However, once a bank has committed to a code of conduct, the Financial Consumer Agency of Canada monitors the bank's compliance with the code of conduct.⁴⁷

The Seniors Code was adopted January 1, 2020, with dates of implementing specific principles to follow in 2021 and beyond. The Seniors Code applies to banks that are members of the CBA and offer retail banking services. Under the Seniors Code, seniors are defined as people who are 60 years of age and older and conducting personal banking transactions (business transactions are excluded).⁴⁸

The Seniors Code sets out seven principles for banks to follow to better deliver services to seniors:

1. Banks will establish and implement appropriate policies, procedures, and processes to support this code.⁴⁹
2. Banks will communicate effectively with seniors.⁵⁰
3. Banks will provide appropriate training to their employees and representatives who serve seniors⁵¹ (including on financial abuse, fraud and scams, resources on seniors' banking needs, escalation process).
4. Banks will make appropriate resources available to client-facing employees and representatives to help them understand matters relevant to seniors' banking needs⁵² (including on financial abuse, fraud, scams, incapability, commitment on power of attorney and joint bank deposits).

5. Banks will endeavor to mitigate potential financial harm to seniors.⁵³
6. Banks will take into account market demographics and the needs of seniors when proceeding with branch closures.⁵⁴
7. Banks will publicly disclose the steps they have taken to support the principles set out in the Code.⁵⁵

The Seniors Code requires banks to designate a member of management to be the ‘Seniors Champion’ who is responsible for leading the implementation of the Code.⁵⁶

Other CBA Developments

The CBA also has a *Code of Conduct on Commitment on Powers of Attorney and Joint Deposit Accounts* (2014), which some banks have signed on to. This code states that “Banks that accept Powers of Attorney from or open joint deposit accounts for clients agree to provide clients with certain information to help clients understand the implications of using them.”⁵⁷

In addition to the applicable voluntary codes, the CBA and many member banks offer public education to seniors on financial abuse, fraud protection, and financial literacy. For example, the CBA’s Your Money Seniors seminar includes information on how to avoid frauds and scams, how to protect from financial abuse, and risks of powers of attorney and joint bank accounts.⁵⁸

Amendments to Privacy Legislation

The federal Personal Information Protection and Electronic Documents Act (*PIPEDA*) contains provisions relevant to elder abuse identified by bank employees. *PIPEDA* applies to federally regulated private organizations, such as banks.⁵⁹ Under section 7(3), personal information can be disclosed without consent only when certain requirements are met. These provisions apply to financial abuse in the case that disclosure is:

- (d.3) made on the initiative of the organization to a government institution, a part of a government institution or the individual’s next of kin or authorized representative and
 - (i) the organization has reasonable grounds to believe that the individual has been, is or may be the victim of financial abuse,
 - (ii) the disclosure is made solely for purposes related to preventing or investigating the abuse, and
 - (iii) it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the ability to prevent or investigate the abuse;⁶⁰

Credit Unions

Credit unions have some policies and programs to educate staff and the public. Below are some examples from BC credit unions. It may be beneficial to speak directly to credit unions to find out more about their policies and training on financial abuse. As there is currently no credit union member on CREA, we were unable to get significant input from that sector in producing this paper.

Vancity Credit Union has several initiatives:

- In 2014, Vancity released the report *The Invisible Crime: Seniors Financial Abuse*, which presented survey results of how many seniors had experienced financial abuse, and made recommendations on how to reduce financial abuse in the credit union sector.⁶¹
- Vancity's loss prevention team has provided education for employees on scams and red flags of financial abuse.
- Vancity offers a variety of education programs for seniors on financial abuse, scams, financial literacy, and financial planning.⁶²

Coast Capital Savings

- Coast Capital has adopted the Seniors Code.⁶³
- Coast Capital's service agreements discuss disclosure rules and other policies in regard to suspected financial abuse, frauds, or crime.⁶⁴

Still to be done

The above summary does not reflect the breadth of the work by financial institutions in the area of vulnerable adult abuse and neglect response and capability issues. However, it may not be possible to get a full picture of financial sector policies as financial institutions will maintain some confidentiality of their policies and protocols in the interests of customer protection. CREA can ask the Financial Abuse Investigators Action Group of CREA to identify any next steps with regard to understanding financial institutions' policies and protocols in relation to vulnerable adult abuse and neglect response and capability issues.

CREA should explore how to enhance the participation of the credit union sector in CREA. The loss of Credit Central as a member has hampered CREA's work.

2.1.4 Mapping of Key Agencies

Recommendation

There is a need for the creation of a thorough cross-disciplinary mapping of agencies involved with dealing with adults who may have been assessed as incapable, or are suspected of diminished capacity.

Background from the Report

This research will both support ongoing practice and highlight gaps in service.... At present, there appear to be significant gaps in resources, which prevent the legal framework from working correctly or adequately. It is impossible to work on service quality improvement, consistency of service or best practice without a thorough understanding of "who is doing what" in what agency.

Findings

We have not been able to locate a thorough cross-disciplinary mapping of agencies. However, several documents have been published since the Vanguard Report which describe key resources or services available to someone who may be incapable of making certain decisions:

- The RCMP E Division, Fraser Health, and the PGT developed “How to Assist an Adult Who is Abused, Neglected or Self-Neglecting: A Decision Tree for Effective Referrals (the Decision Tree);⁶⁵
- The PGT has several publications describing options for adults in terms of personal planning, decision making and how to protect adults from abuse;⁶⁶ and
- SFBC has legal information resources for both older people and professionals on incapability and abuse.⁶⁷

Interviews with members of CREA and the Collaborative indicate an interest in developing a mapping of agencies that is as broad as possible. Members would like the map to include:

- RCMP and municipal police, PGT, designated agencies, SFBC and the BCCRN;
- Potential community response network members; and
- The broad range of agencies that support and assist adults who have experienced abuse and neglect or who may have capability issues, such as Immigrant and settlement organizations, the violence against women sector, mental health services, and Aboriginal Friendship Centres.

Some members would like this map to include all organizations that interact with older adults, not just those that deal with incapable adults or organizations that are intended to support vulnerable adults. These members identified financial institutions, pharmacists, notaries, and personal services providers such as hairdressers as belonging within the agency map.

Still to be done

There is still a need for a cross-disciplinary mapping of agencies involved with adults who have incapability issues, or are suspected of diminished capability. While CREA or the Collaborative could take on this mapping work, questions remain regarding the ideal scope of the map that could be clarified.

2.1.5 Shared Lexicon of Key Terms

Recommendation

Knowledge communities develop consistent visions and terminologies of key terms—a shared lexicon.

Background from the Report

A barrier to interdisciplinary collaboration is the varied use and meaning of language including key terms such as “capability”, “vulnerability”, and “abuse” etc.

Findings

It could be advantageous for CREA and the Collaborative to develop consistent definitions of key terms. Possible issues include:

- The CREA mandate to address abuse does not seem to include neglect; however, some definitions of abuse do include neglect.
- CREA and the Collaborative might help clarify the language around capability and incapability. For example, the term “incapable adult”, which was used in the Vanguard Report, and is still commonly used, is increasingly problematic, as few people are incapable of all decisions. Most adults with capability issues are able to understand enough information to make some of their decisions. Further, the expression “capability assessment” is still in use. As capability is presumed under many statutes, the appropriate expression would be “incapability assessment”.
- Terminology does not seem to be a comparatively pressing issue among the members we interviewed.

Still to be done

The Collaborative and CREA may wish to confirm whether greater terminology harmonization is truly a critical issue in relation to vulnerable adult abuse and neglect response and capability.

2.1.6 Learning Modules and Core Professional Competencies

Recommendation

Core agencies and organizations such as government, designated agencies, police, health care professions, lawyers, social workers, justice workers, housing agencies and financial agencies develop modules on adult abuse and neglect, and establish core professional competencies in these work areas.

Background from the Report

Adult abuse and neglect is a current and growing concern. To adequately respond to enquiries and operationalize BC’s new substitute decision-making and guardianship regime, key professions and government need to become very familiar with how to respond to adult abuse and neglect in their own fields.

Findings

Educational modules on vulnerable adult abuse, neglect, self-neglect, and capability response exist which target various community and professional groups. Most were developed by provincial and local non-profits, educational institutions, designated agencies, police, and professional regulators.

Below is a chart of existing educational resources on vulnerable adult abuse, neglect, self-neglect, and capability response. These are targeted at a variety of audiences, including the general public, older adults, and professionals working with older adults or vulnerable populations.

Elder Abuse Modules

Tool	Who Created It	Who Is It For	Description
A Practical Guide to Elder Abuse and Neglect Law in Canada ⁶⁸	CCEL	Mixed professional audience	Guide summarizes the law across Canada and identifies best practices
Elder Abuse Reduction Curricular Resource ⁶⁹	BC Campus	Post-secondary educators	An instructor's guide and a presentation for teaching core competencies in elder abuse prevention, detection, and response in BC
Elder Abuse and Neglect: What Volunteers Need to Know ⁷⁰	CCEL	Volunteers working with older adults	This PowerPoint presentation and handouts is an introductory elder abuse workshop for volunteers working with older adults and Boards of Directors for agencies that serve older adults
Act on Abuse and Neglect: Manual for VCH Staff ⁷¹	VCH	Health authority staff	This is a manual for VCH staff on how to deal with suspected cases of abuse, neglect, and self-neglect of vulnerable adults
ReAct Materials ⁷²	VCH	Health authority staff	Includes Brochure, Quick Assessment Guide, Poster, Flow Chart Poster on Response, Manual for VCH Staff, First Nations Edition ReAct Manual, and Capability and Consent Tool
Online Course: Recognizing and Responding to Adult Abuse ⁷³	VCH	Health authority staff, caregivers	This course teaches how to recognize and respond to elder abuse, geared toward those providing care or services to older adults
ReAct Clinical Assessment Tools ⁷⁴	VCH	Health care providers	A variety of tools to help health care providers assess abuse, neglect, or self-neglect
Gatekeeper Program ⁷⁵	BCCRN	People working with older adults	This program teaches members of the community how to recognize signs of abuse and neglect, where to refer an older adult, and best practices

Tool	Who Created It	Who Is It For	Description
It's Not Right! Neighbours, Friends & Families Program ⁷⁶	BCCRN, based on work by the Centre for Research on Education on Violence against Women and Children	Public	This course, initially developed nationally, teaches about warning signs, risk factors, the role of ageism in abuse, how to have a supportive conversation with an adult experiencing abuse and how and to whom to refer
Elder Abuse Awareness and Response for Front-line Service Providers ⁷⁷	BC Crime Prevention Association	Police, victim services, health care professionals	This project developed a PowerPoint module and handouts for training individuals who will be training police, victim services, and health care professionals on identifying elder abuse
Safety Awareness for Elders (SAFE) Program ⁷⁸	Vancouver Police Department	Public	Public education on elder abuse, including PowerPoint presentation, wallet cards, magnets, and a website
Roads to Safety ⁷⁹	West Coast LEAF	Front line workers	This project created a legal information handbook and workshop for front-line workers
West End Collaborative to Address Abuse of Elderly Renters ⁸⁰	West End Seniors' Network	Landlords and building managers	This program educated landlords and building managers on elder abuse

For Designated Agencies and provincial health authorities, there are also detailed internal policies on responding to adult abuse and neglect. These internal policies are not publicly available but can be accessed by staff working in adult abuse or neglect at the Designated Agency.

Below is a chart of education or learning modules for regulated health professionals which are either included in the required education prior to becoming a registered member of the profession, or as continuing education.

Resources Provided by Professional Regulatory Bodies

Health Profession	Education Module	Description
Physicians	College Legislative Guidance	The College of Physicians and Surgeons of BC have Legislative Guidance on the Duty to Report under the various applicable legislation and code of ethics and the Professional Guidance on Disclosure of Patient Information to Law Enforcement Authorities, both of which could apply in cases of adult abuse or neglect ⁸¹
Nursing Professionals	Web Learning Modules	The College offers web learning modules for continuing education The Privacy and Confidentiality module includes discussions of when a nurse can or must disclose potential abuse of a patient ⁸²

Health Profession	Education Module	Description
Nursing Professionals	Nursing Standards	The College's nursing standards contain two relevant provisions to adult abuse: Duty to Report practice standard and Privacy and Confidentiality practice standard Both discuss requirements to report abuse or neglect ⁸³
Registered Social Workers (RSW)	College Practice Guidance and Scope of Practice	The BC College of Social Workers has practice guidance for registrants on the 2014 changes to the AGA Lists the required training courses for registrants who are employed by certain health authorities acting as qualified health care providers under the Act Has a Scope of Practice for RSWs acting as qualified health care providers under the AGA Part 2.1 for conducting assessments for incapability ⁸⁴
Emergency Medical Assistants (Paramedics)	Education program medical content requirements	-For a program to be recognized, they must have all the required medical content -Included in the required medical content is to "comply with ethical and legal reporting requirements for situations of abuse" ⁸⁵

Regulatory colleges provide some practice guidelines for responding to concerns about abuse and neglect. For adult abuse, this guidance focuses on privacy laws. Most colleges do not post detailed information on their education curriculum or education program requirements for education on abuse and neglect, reporting, and capability issues. Most continuing professional development programs are only accessible to registrants. Future work could expand this review to all health professionals in the province in order to develop a complete inventory of college resources and requirements.

Still to be done

It would be useful to audit these lists of educational modules and core professional competencies for key gaps. CREA and the Collaborative may wish to consider whether any of these gaps could lend themselves to a project led by either organization.

2.1.7 Government Funding

Recommendation

Key Provincial ministries commit to advocating for funds to support BC's abuse response prevention scheme.

Background from the Report

The Ministry of Health, Attorney General, Solicitor General, and the ministries responsible for seniors and persons with disabilities, with one ministry taking the lead, make a joint Treasury Board submission to better support Designated Agencies and Community Response Networks to fulfill their statutory and community-based responsibilities pursuant to the AGA and other applicable legislation.

Findings

To our knowledge there has been no joint Treasury Board submission; however, the Ministry of Health provides funding to the BCCRN, SFBC, and CREA. The CREA funding in turn supported 12-14 scalable community capacity building initiatives. The Ministry of Health led the development of the Together to Reduce Elder Abuse Strategy and established the Office to Reduce Elder Abuse that coordinated a number of initiatives, including the founding of CREA and the Inter-Ministry Committee on Elder Abuse. This office closed in early 2017.

Still to be done

CREA and the Collaborative could articulate the ideal response, identify gaps, and determine how best to advocate to address the gaps.

2.1.8 Cultural Competency, Humility, and Safety

Recommendation

People working with adults who have capability challenges become culturally educated.

Background from the Report

Many aspects of working with vulnerable adults require a respect for each individual's life experience and cultural values. It is important to use individual-referencing for assessing an individual's capability and the creation of any guardianship plan. Training must occur at all levels of service delivery to build and strengthen service providers and government staff's cultural competence. People working with adults who have capability/capacity challenges must ensure that they do not stereotype or impose their own values and beliefs on the adult.

Findings

The expression “cultural competency” has fallen out of favour in recent years because it implies a person can become competent in the culture of others through basic training.⁸⁶ The expressions “cultural humility” and “cultural safety” are more commonly used. The First Nations Health Authority defines cultural humility as follows:

Cultural humility is a process of self-reflection to understand personal and systemic conditioned biases, and to develop and maintain respectful processes and relationships based on mutual trust. Cultural humility involves humbly acknowledging oneself as a life-long learner when it comes to understanding another's experience.⁸⁷

The term cultural safety is similar, being described the following way in a report by West Coast LEAF:

Putting cultural safety into practice means recognizing that historical, economic, and social contexts, coupled with structural and interpersonal power imbalances, shape people's

outcomes and experiences with systems like the child welfare system. [...] For Indigenous peoples, this means naming and recognizing the past and present role of colonialism.

Cultural safety also requires the people who hold positions of power in these systems to actively reflect and challenge the “largely unconscious and unspoken, assumptions of power held” [...] in their roles, including the policies and culture of their institutions and systems.⁸⁸

Various resources exist to support learning about cultural humility and safety. The tables below identify available training available for the following sectors:

- health care;
- government;
- justice; and
- community.

We also identify requirements and recommendations of select health colleges in BC.

Health Care Sector Resources

Tool	Who Created It	Who Is It For	Description
San'yas Indigenous Cultural Safety Training ⁸⁹	Provincial Health Services Authority in BC	Health authority employees	This training program for BC health authority employees is intended to increase cultural safety by developing knowledge and skills
VIHA Cultural Safety Training “For the Next Seven Generations – for the Children” ⁹⁰	Island Health’s Aboriginal Health Program	Island Health employees	This self-paced course focuses on enhancing cultural awareness to improve health outcomes
Cultural Safety in First Nations, Inuit and Metis Public Health ⁹¹	National Collaborating Centre for Aboriginal Health	Health care sector	Outlines school training, accreditation standards, and continuing education for health care workers
Indigenous Communities and Family Violence: Changing the Conversation ⁹²	National Collaborating Centre for Aboriginal Health	Health and violence sectors	Report examines the discourse on Indigenous family violence, and presents key principles to be used in interventions for family violence
Overcoming Barriers to Culturally Safe and Appropriate Dementia Care Services and Supports for Indigenous Peoples in Canada ⁹³	National Collaborating Centre for Aboriginal Health	Dementia care workers	Report examines the challenges Indigenous peoples face in receiving dementia care. Presents a framework for providing culturally safe dementia care

Tool	Who Created It	Who Is It For	Description
#itstartswithme FNHA's Policy Statement on Cultural Safety and Humility ⁹⁴	First Nations Health Authority (FNHA)	Health care sector	Policy statement provides the FNHA's view on creating cultural safety and humility for First Nations in the health care system
Our History, Our Health ⁹⁵	FNHA	Health care sector	This video and document series outlines Indigenous health practices pre-contact, the deleterious effect of colonization on health, and the work of the FNHA
FNHA Cultural Safety & Humility Resources ⁹⁶	FNHA	Health care sector	A variety of printed resources, videos, and webinars on cultural safety and humility for health care workers in BC
Cultural Safety & Humility Resources ⁹⁷	BC Patient Safety & Quality Council	Health care sector	In conjunction with the FNHA, this website lists cultural safety and humility resources, including Action Series webinars
Cultural Safety Modules ⁹⁸	University of Victoria	Nurses, nursing students, instructors	These training modules discuss cultural safety in the nursing practice, designed for nurses and nursing students
UBC Medicine Cultural Safety Resources ⁹⁹	UBC Faculty of Medicine Continuing Professional Development	Physicians	The faculty has a video series on cultural safety, including during the context of the pandemic
Cultural Supports BC Women's and Children's Hospitals ¹⁰⁰	BC Women's Hospital & health Centre	Patients at BC Children's and BC Women's Hospitals	Describes cultural supports available to patients, including Indigenous patient liaisons, traditional healing, sacred spaces, Elders, and spiritual advisors
FHA Aboriginal Health Resources ¹⁰¹	Fraser Health	Patients in Fraser Health Authority	The health authority describes programs for Indigenous patients, including the health liaison program, and resources from other organizations
In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care Report ¹⁰²	Independent review conducted by Mary Ellen Turpel-Lafond	Health care sector	This report is the result of a BC independent investigation into Indigenous-specific discrimination in health care. The report presents the findings of the investigation and survey, and makes recommendations to reform the system, behaviours, and beliefs

Health College Requirements and Recommendations

Tool	Who Created It	Who Is It For	Description
Cultural Safety and Humility commitments ¹⁰³	College of Physicians and Surgeons of British Columbia	Physicians	Recommends the San'yas course and asks on its licence renewal form whether the individual physician has completed this
Cultural Safety and Humility ¹⁰⁴	British Columbia College of Nursing Professionals	Nurses	Recommends nurses complete training programs on cultural safety and humility, including the San'yas Course
Indigenous Cultural Competency Online Training Program (ICC) ¹⁰⁵	College of Pharmacists of British Columbia	Pharmacists	The college recommends pharmacists take the ICC course offered by the PHSA
CSHBC Cultural Safety & Humility ¹⁰⁶	College of Speech and Hearing Health Professionals of British Columbia	Speech and hearing professionals	The college states its commitment to cultural safety and humility and links to the San'yas Course
Indigenous Cultural Safety Resources ¹⁰⁷	College of Psychologists of British Columbia	Psychologists	The college lists training available to registrants through the college, and links to the San'yas training and FNHA resources
CDHBC Cultural Safety and Humility Policy ¹⁰⁸	College of Dental Hygienists of British Columbia	Dental hygienists	The college outlines its policy that all registrants be culturally safe in their practice, and lists resources

Government

Tool	Who Created It	Who Is It For	Description
Aligning the Truth and Reconciliation call to actions with our work ¹⁰⁹	City of Vancouver	Municipal employees	The City of Vancouver provides cultural competency training for municipal staff including police
Indigenous Relations Behavioural Competencies ¹¹⁰	British Columbia Provincial Government	Provincial employees	The provincial government has created behavioural competencies in Indigenous relations which employees can work toward obtaining
Cultural Competence: A Guide to Organizational Change ¹¹¹	Citizenship and Immigration Canada	Organizations	This guide aims to help organizations enhance cultural competence and diversity, including practical tools

Justice Sector Stakeholders

Tool	Who Created It	Who Is It For	Description
Cultural Competency Resources ¹¹²	The Continuing Legal Education Society of British Columbia	Lawyers	Lists resources for lawyers to develop cultural competency
Learning from Lost Lives ¹¹³	Vancouver Police Department (VPD)	VPD	This report discusses what actions the VPD can take to address the Calls for Justice regarding Missing and Murdered Indigenous Women and Girls, including enhancing cultural competency training and trauma informed practice
BC Law Enforcement & Diversity Network Speaking Engagements ¹¹⁴	BC Law Enforcement & Diversity Network	BC peace officers	The network offers speaking engagements on diversity and policing topics to participating BC law enforcement agencies
Communicating Effectively with Indigenous Clients ¹¹⁵	Aboriginal Legal Services	Lawyers	Outlines barriers Indigenous peoples face in the legal system, including biases around Aboriginal English, and recommendations for lawyers to more effectively represent their Indigenous clients

Community Organizations

Tool	Who Created It	Who Is It For	Description
Finding Home ¹¹⁶	Association of Neighbourhood Houses of BC	Seniors, community organizations	This community-based project contains tools, resources, and training on elder abuse capacity building by facilitating senior-led programs
Stopping Elder Abuse in the BC Japanese Canadian Community ¹¹⁷	Tonari Gumi Japanese Community Volunteer Association	Volunteers	This project created brochures on elder abuse in Japanese, and provided training to community leaders and volunteers and elder abuse
Outreach to Chinese Immigrant Communities in Metro Vancouver ¹¹⁸	SUCCESS	Seniors, volunteers, health care workers, workshop facilitators	This program conducted workshops with seniors, volunteers, and health care and help line workers on elder abuse within Chinese communities, and created a guide and vignette for workshop facilitators
Being Least Intrusive: An Orientation to Practice in Responding to Situations of Abuse, Neglect and Self-Neglect of Vulnerable First Nation Adults ¹¹⁹	April Struthers, Lindsay Neufeld	Those working with vulnerable Indigenous adults	Working Paper and slides
Connecting with Aboriginal Communities Regarding Adult Abuse and Neglect ¹²⁰	BCCRN	Community Response Networks	Backgrounder describing initiatives, outcomes, and current projects

Tool	Who Created It	Who Is It For	Description
BCCRN First Nations Protocol ¹²¹	BCCRN	Community Response Networks	Provides information on the history and context of First Nation Communities, the CRN's role, resources and further learning
Promising Approaches for Addressing/Preventing Abuse of Older Adults in First Nations Communities: A Critical Analysis and Environmental Scan Of Tools and Approaches ¹²²	Health Canada – First Nations and Inuit Health Branch	Community organizations	This report by April Struthers, Georgina Martin, and Alison Leaney describes best practices and tools for responding to and preventing elder abuse in First Nations communities
National First Nations ReAct Manual ¹²³	VCH for Health Canada, First Nations and Inuit Health Branch	People who are working with vulnerable adults	This manual teaches staff working with older adults about elder abuse in First Nation communities, and how to respond; the manual describes the responsibilities of specific groups such as CRNs, police, victim services, designated agencies and the PGT
I'm Culturally Competent, Now What? ¹²⁴	The Federation of Community Social Services of BC	Community services sector	This training provides information on the reality Indigenous peoples face and how to put cultural competency into action
KAIROS Blanket Exercise ¹²⁵	The Federation of Community Social Services of BC	Community services sector	This experiential program teaches the relationship between Indigenous and non-Indigenous peoples and how to support reconciliation
The Village Workshop Series ¹²⁶	Kathi Camilleri	Public	This experiential workshop teaches about the life of Indigenous peoples before colonization, the history of colonization, and how participants can make changes and work towards reconciliation

Still to be done

It is critical that all sectors continue to emphasize the importance of cultural humility and safety in vulnerable adult abuse and neglect practice. CREA and the Collaborative can continue to emphasize the importance of cultural humility and safety training for all individuals who work with vulnerable adults who have experienced abuse or neglect or may have capability issues.

2.1.9 AGA Evaluation

Recommendation

The BC *Adult Guardianship Act* regime be comprehensively evaluated, based on both quantitative and qualitative data to examine its effectiveness in terms of both process and outcomes.

Background from the Report

The new *Adult Guardianship Act* [Part 2.1 Statutory Property Guardians] is untested. Its implementation should be monitored via quantitative and qualitative analyses of the experience of vulnerable adults going through the system. This should include tracking individuals through case studies and also include broad evaluation of the regime.

Findings

There has been some evaluative work done on aspects of the *AGA* Part 2.1. However, comprehensive evaluation has not occurred, and quantitative data does not exist on the experiences of vulnerable adults going through the guardianship system. A thorough evaluation, including both quantitative and qualitative data, is still needed—though some of the amendments to the *AGA* have not yet been brought into force.

The original recommendation from the Vanguard Report referred to *AGA* Part 2.1 only, which was brought into force in 2014. Part 3: Support and Assistance for Abused and Neglected Adults has also not been evaluated, although the Office of the Seniors Advocate has asked various agencies, including the designated agencies to whom Part 3 is directed, to collect data, and has recently embarked on a review.

The table below summarizes critical reflection on the *AGA* in the time since the Vanguard's writing. Margaret Hall's work is the most significant contribution to this area. None of the work below constitutes a robust evaluation of the system.

Reviews of the AGA Framework in BC

Name of Work	Author	Description of Work
No longer your decision: British Columbia's process for appointing the public guardian and trustee to manage the financial affairs of incapable adults ¹²⁷	Office of the Ombudsperson, British Columbia	Investigates the process of the PGT becoming committee of estate by the certificate process for an adult after they have been declared incapable by the health authority Examines the guardianship framework found in the <i>AGA</i> , <i>PPA</i> , and <i>Public Guardian and Trustee Act</i> Data includes reports to the PGT, PGT investigations, health authority investigations, issuing certificate of incapability, reassessments, and appeals of declaration of incapability
Monitoring Seniors' Services Reports ¹²⁸	Office of the Seniors Advocate, British Columbia	Lists the rates of use of elder abuse services by seniors in BC, including the PGT, BCCRN, SAIL, BC211, and RCMP
Mental Capacity in the (Civil) Law: Capacity, Autonomy and Vulnerability ¹²⁹	Margaret Isabel Hall	Examines the current conceptualization of mental capability, arguing it does not work well in context of guardianship, and proposes an alternate approach

Name of Work	Author	Description of Work
Dementia, Decision-Making, and the Modern (Adult) Guardianship Paradigm: <i>Bentley v Maplewood Seniors Care Society</i> ¹³⁰	Margaret Isabel Hall	Examines how to balance the concepts of substitute decision-making and autonomy for people living with dementia Discusses the <i>Bentley</i> case re when previously-expressed wishes when capable should prevail
Rethinking adult guardianship: Mental capacity and vulnerability in the context of dementia in old age ¹³¹	Margaret Isabel Hall	Considers the current medico-legal guardianship model, identifies problems with the model, and proposes a new model
Mental Health Law for the Old: Defining the Category, identifying the Issues ¹³²	Margaret Isabel Hall	Discusses mental health and old age, including the guardianship frameworks
Person-centred guardianship and supported decision making: an assessment of progress made in three countries ¹³³	A. Frank Johns, Editor	Discusses the guardianship framework in Canada and internationally and provides some analysis of it
Abandonment or autonomy: How do social workers know the difference? ¹³⁴	Louise Holland	Examines how designated agency staff balance the requirements of the AGA to uphold a person's autonomy while also addressing abuse or neglect
Autonomy, vulnerability, and dementia: Operationalization of Adult Guardianship Legislation in British Columbia ¹³⁵	Keya Russell	Examines how well the AGA framework works for people living with dementia in protecting their rights and autonomy while also protecting them from harm

Still to be done

BC requires a comprehensive evaluation of the *AGA* system, including quantitative and qualitative data. CREA and the Collaborative can be critical voices in advocating for robust evaluation.

2.1.10 Harmonizing Capability Tests

Recommendation

A law reform project be undertaken to review statutes and court rules with a view to harmonizing use of terms which reference an adult's capacity.

Background from the Report

A thorough examination needs to occur including determining consistency in terms of the meaning and consequences of diminished or diminishing capacity. A broader review of legislation is required than was possible within the limited scope of this project. While this study identified some inconsistencies, it is likely that others exist. Correcting this largely technical law reform problem will have a significantly beneficial result for all British Columbians.

Findings

Many commonwealth law reform projects have examined capability standards. The chart below summarizes recent Canadian, Australian, and United Kingdom law reform projects in this area. These law reform projects have not been unanimous in their conclusions regarding harmonization. The BCLI fairly thoroughly considered harmonization of common law test of capability and made recommendations. Greater harmonization of statutory capability standards through law reform has not yet been explored in BC.

Recent Reports and Studies (Commonwealth Jurisdictions)

Report	Jurisdiction	Summary of Projects
Conversations about Care: The Law and Practice of Health Care Consent for People Living with Dementia in BC ¹³⁶	British Columbia: CCEL	Considers capability in context of health care consent Discussed conflicting tests for capability in terms of retaining counsel and creating a s 7 RA
Report on Common-law Tests of Capacity ¹³⁷	British Columbia: BCLI	Examines the common-law tests of capability: making a will; making an inter vivos gift; making a beneficiary designation; nominating a committee; entering into a contract; retaining legal counsel; marrying; separating from a spouse; and entering into an unmarried spousal relationship Recommends adding a presumption of capability for making a will Recommends adopting a legislative test of making a representation agreement with non-standard provisions Recommends clarifying the law re when a lawyer can represent a person with diminished capability
Incapacity Assessments: A Review of Assessment and Screening Tools ¹³⁸	Dr. Deborah O'Connor for the PGT	Reviews the place of assessment and screening tools in the assessment context under BC laws, and reviews individual purpose, evidence base, pros, and cons
Legal Capacity, Decision-making and Guardianship ¹³⁹	Ontario: Law Commission of Ontario	Reviews the system of capability, decision-making, and guardianship Found the system to be confusing and complex. Identified a lack of clarity and consistency with incapacity assessments, and barriers to incapacity assessments Recommended identifying the purpose and principles for capability, decision-making, and guardianship legislation, and the government move toward supported decision-making
Elder Abuse – A National Legal Response ¹⁴⁰	Australia: Australian Law Reform Commission	Briefly discusses decision-making, stating terminology across legislation on supported and representative decision-making is not consistent
Review of the Guardianship Act 1987 ¹⁴¹	Australia: New South Wales Law Reform Commission	Finds no consistent definition of decision-making ability (capability) in legislation Suggested the new act should provide a clearer definition that focuses on ability for a particular decision, (acknowledging decision-making can vary), introduce a presumption of capability, and prefer supported decision-making as it is a less restrictive option (leaving formal substitute decision-makers as a last resort)

Report	Jurisdiction	Summary of Projects
Review of the Guardianship and Administration Act 1995 ¹⁴²	Australia: Tasmania Law Reform Institute	Discusses decision-making capability and different capability standards Suggests the government should decide whether there should be more than one tests or just one In Australia, each test requires one to have a disability, but international law may mean disability should not be part of test Recommends greater clarity in the law re how a person's incapability is assessed and whether they can be compelled
Mental Capacity and Deprivation of Liberty ¹⁴³	United Kingdom: Law Commission	Examines the deprivation of liberty safeguards which are supposed to protect people who lack mental capability but need to be given care and treatment in a hospital or care home Finds complaints process too complex and bureaucratic
Adults with Incapacity ¹⁴⁴	United Kingdom: Scottish Law Commission	Considers amending the <i>Adults with Incapacity Act</i> in response to a case in which a person was detained not according to law Recommends amending the legislation to include a legal process to authorize measures preventing adult from going out of hospital and a more detailed legal process for scrutiny of significant restriction of liberty of adult in care home or other placement

Still to be done

CREA and the Collaborative may wish to consider whether greater harmonization of statutory capability standards and terminology related to capability would be helpful.

2.1.11 Justice System Practice and Incapability

Recommendation

Research in criminal law and procedural aspects of adult incapability be undertaken.

Background from the Report

This study focused on civil law measures, including adult abuse and guardianship legislation. To globally support vulnerable adults and adults with capability issues, a broader examination of criminal offences and the justice system is required. This investigation must examine and track outcomes of police responses to adult abuse complaints.

Findings

The chart below lists recent academic studies on individuals with mental capability issues in the criminal justice system. These studies mainly focus on sexual assault and witnesses during trial.

The Office of the Seniors Advocate in British Columbia, in its annual reports on monitoring seniors services, gathers statistics on referrals and investigations of abuse, neglect and self-neglect to the PGT and designated agencies, calls to help lines, and abuse reports to the RCMP and VPD.¹⁴⁵ However, there are no statistics gathered on the engagement of vulnerable adults and adults with capability issues in the justice system as victims, witnesses, or offenders.

Academic Literature—the Justice System and Incapability

Article Title	Author	Citation
The sexual assault of older women: Criminal justice responses in Canada ¹⁴⁶	Isabel Grant & Janine Benedet	(2016) 62:1 McGill Law Journal 41
A situational approach to incapacity and mental disability in sexual assault law ¹⁴⁷	Janine Benedet & Isabel Grant	(2011-2012) 43:1 Ottawa Law Review 1
Taking the stand: Access to justice for witnesses with mental disabilities in sexual assault cases ¹⁴⁸	Janine Benedet & Isabel Grant	(2012) 50 Osgoode Hall Law Journal 1
More than an empty gesture: Enabling women with mental disabilities to testify on promise to tell the truth ¹⁴⁹	Janine Benedet & Isabel Grant	(2013) 25:1 Canadian Journal of Women and the Law 31
The Landscape of Elder Abuse ¹⁵⁰	Kimberly A. Whaley	(2015) 34:3 Advocates' Journal 17
Mediation in Cases of Elder Abuse and Mistreatment: The case of University of Windsor mediation services ¹⁵¹	Gemma Smyth	(2011) 30 Windsor Review of Legal and Social Issues 121
Developments in the law of evidence ¹⁵²	Maureen E. Armstrong & Steven G. Frankel	(2012) 59 Supreme Court Law Review (2d) 143
Intersecting challenges: Mothers and child protection law in BC ¹⁵³	Judith Mosoff, Isabel Grant, Susan B. Boyd, & Ruben Lindy	(2017) 50 UBC Law Review 435
Elder Mediation: Promising approaches and potential pitfalls ¹⁵⁴	Joan Braun	(2012) 7 Elder Law Review 1
The intellectually disabled witness and the requirement to promise to tell the truth ¹⁵⁵	Jonas-Sebastien Beaudry	(2017) 40:1 Dalhousie Law Journal 239
Is the law of evidence ready for the aging population? ¹⁵⁶	Helene Love	Paper delivered at the Canadian Elder Law Conference, Vancouver, 2 November 2017

Still to be done

There is a need for research into criminal law practice regarding barriers and supports for adults with diminished capability.

2.1.12 Criminal Justice System Policies

Recommendation

The criminal justice system workers develop their own internal procedures for dealing with this community.

Background from the Report

Police, Crown, court and victim service workers should establish internal procedures for dealing with vulnerable adults who may have capability issues. Consistent response throughout the province is important.

Findings

The BC Prosecution Service Crown Counsel Policy Manual contains three policies relevant to vulnerable adults who may have reduced capability:

1. Charge Assessment Guidelines;
2. Elder Abuse – Offences Against Elders; and
3. Vulnerable Victims and Witnesses – Adult.

These policies are summarized below.

1. **Charge Assessment Guidelines**¹⁵⁷
 - This policy existed in 2010.
 - Recent changes to the policy include:
 - ▶ Altering the wording of public interest factors to now refer to “the relative vulnerability of the victim”; and
 - ▶ Adding “offence motivated by age” as a public interest factor
2. **Elder Abuse – Offences Against Elders**¹⁵⁸
 - This policy existed in 2010.
 - Recent changes to the policy include:
 - ▶ Removing of the reference to making reasonable efforts to advise victims of the victims assistance program; and
 - ▶ Noting that “Family ties often make reporting difficult for elderly victims when the source of the abuse is within the family.”

3. Vulnerable Victims and Witnesses – Adult¹⁵⁹

- Created in 2015, following the Pickton Inquiry, to address barriers faced by witnesses in testifying.¹⁶⁰
- Summary of the policy:
 - ▶ All victims and witnesses should have equal opportunity to participate, and vulnerable individuals will require support throughout all the stages of prosecution.
 - ▶ A person is considered vulnerable if they would not be able to participate in the process without support or accommodation.
 - ▶ Crown counsel should give information on supports, arrange for accommodations, and expedite the process.
 - ▶ Where possible, the crown counsel assigned should be one who has received training in relevant areas.
 - ▶ Video evidence may be used if a witness has difficulty communicating due to a disability.
 - ▶ The crown should request direct indictment if the witness may be significantly adversely affected.
 - ▶ Crown counsel should consider providing supervision or counselling if charges are not laid.
 - ▶ Safety planning for the victim or witness should be considered if the accused is to be released on bail.
 - ▶ Crown counsel should ask for accommodation for witnesses, including using testimonial aids.
 - ▶ Crown counsel should take measures to protect the victim or witness if the accused is given probation or a conditional sentence.

We were not able to locate any information on the application of these policies. There is a need to explore how these policies are applied to adults with capability issues, what supports and accommodation are provided to enable to the meaningful participation of adults with capability issues in the criminal justice system, and whether this set of policies is adequate to address the needs of vulnerable adults in BC.

There does not seem to be any specific policy regarding working with victims and offenders with capability issues.

Members of CREA and the Collaborative expressed an interest in exploring the criminal justice system policies and law and practice with respect to using KGB statements for older and vulnerable adults. KGB statements are recorded statements under oath of a victim or witness which may be used

later in court if the witness or victim dies, becomes mentally incapable, recants, or changes their mind about continuing with criminal proceedings. KGB statements could also be useful if an adult has capability issues, or for example, fluctuating capability. The Crown Counsel Policy Manual does not have any publicly listed policies on KGB statements in these circumstances; however, there may be internal policies or directives on this matter, and there is likely case law on this topic that could be explored in a future research project.

Still to be done

There is a need for research into how criminal justice system policies have been applied in the context of abuse or neglect of vulnerable adults. Further, CREA and the Collaborative could support the development of a policy on victims, offenders, and witnesses with capability issues.

2.1.13 Access to Legal Counsel

Recommendation

Access to legal counsel for adults with capability related issues must be consistently and affordably provided.

Background from the Report

Vulnerable adults whose capability is at issue must be provided with access to legal counsel to advise them on their rights and the implications raised by a challenge to their capability. They must also be provided with legal representation at any subsequent hearing or proceeding that impinges on their rights to make their own decisions as it has significant impact on their personal liberty.

Findings

Access to legal counsel has largely not improved since the writing of the Vanguard Report. Significant developments include the creation of the SFBC Elder Law Clinic in September 2008 and the Disability Alliance BC Disability Law Clinic in 2020. Gaps in legal aid coverage remain.¹⁶¹ Publicly-funded legal representation is generally available through Legal Aid BC or community legal clinics. Below we summarize access to publicly funded legal representation.

Legal aid

- Primarily provided by Legal Aid BC, which provides legal information, legal advice, and representation to low-income people who meet the eligibility criteria.
- Limited to criminal matters (for accused, not victims), family law matters involving children, immigration matters that involve removal from Canada, and some limited mental health matters.

- Unavailable to adults wishing to challenge findings of incapability or decisions made by substitute decision-makers or health care providers.

Currently, legal aid is not available for challenging:

- Findings of incapability;
- Choice of temporary substitute decision-maker (health care) and substitute decision-maker care facility admission);
- Health care and care facility admission decisions by a substitute decision-maker;
- Interpretation of an advance directive or other pre-expressed wish; or
- An application to be appointed committee of the person.¹⁶²

Community legal clinics include CLAS, Access Pro Bono wills clinic, SFBC, the Disability Alliance BC Disability Law Clinic, and student legal clinics run through the Peter A. Allard School of Law and the University of Victoria Faculty of Law. They provide some services to low-income vulnerable adults. Some of the clinics can draft documents like representation agreements and wills, and assist with housing matters, and human rights complaints. Assistance with *AGA* matters available through the Elder Law Clinic.

Still to be done

We would reiterate a need for the provincial government to increase funding for legal aid and ensure legal aid is available to people challenging a finding of incapability. A broad mapping of access to justice barriers for people with capability issues is needed.

2.1.14 Instructing Legal Counsel

Recommendation

Relevant rules and legislation confirm that adults whose capability is at issue have the right to instruct counsel.

Background from the Report

Vulnerable adults whose capability is at issue have a right to instruct counsel when they choose. The *Adult Guardianship Act*, the Law Society's Professional Conduct Manual, and all other relevant legislation and court rules must be amended to clearly affirm the adult's legal rights. A lawyer's ability to take instructions from such clients should be assured and should not result in negative consequences to the lawyer acting in good faith and with professional competency.

Findings

The Law Society of British Columbia amended its rules (the *Code of Professional Conduct for British Columbia*) in 2013. These rules set out the ability of a lawyer to represent a client whose capability may be at issue. Below is a description of the current state of the law regarding capability to retain and instruct counsel in BC:

- To determine if an individual is capable of instructing counsel, the lawyer must assess the client based on the facts of the particular legal issue at that time.
- The capability required to instruct counsel is a high threshold, requiring an understanding of the legal and financial issues involved.
- Capability to create a section 7 representation agreement is a lower threshold, below that required to make a contract.
- The rules limit a lawyer's ability to represent a client who is incapable, but Rule 3.2-9 states a lawyer can represent a client who may not be capable and must as much as possible maintain a normal lawyer-client relationship.¹⁶³
- A BCLI report found that lawyers are hesitant to accept retainers from clients who may be incapable, which imposes barriers for adults accessing legal counsel.¹⁶⁴
- BCLI and CCEL reports have recommended BC legislation be amended to allow a person whose capability is at issue to retain and instruct counsel for the purpose of challenging a finding of incapability or an application for the appointment of a committee.¹⁶⁵

Members of CREA expressed an interest in extending this recommendation to include a right to retain counsel to challenge a representation agreement or power of attorney created under undue influence or fraud.

Still to be done

There remains a need to clarify legislation and Law Society of BC rules such that adults may obtain legal counsel to challenge a finding of incapability, or representation agreements and powers of attorney created under undue influence or through fraud.

2.1.15 Discriminatory Language

Recommendation

Discriminatory language should be eliminated.

Background from the Report

Professional organizations, government policies, legislation, court rules, and official documents should be reviewed to eliminate language that is discriminatory. This work should be completed with a particular focus on ageism and ableism.

Findings

Some tools do exist to address ageist and discriminatory language. See the table below. Going forward, we encourage a broad intersectional approach not be limited to age and disability discrimination.

Anti-Ageism Resources

Tool	Who Created It	Who Is It For	Description
Relating to Older People Evaluation ¹⁶⁶	NICE	Anyone	This questionnaire allows people to assess whether they display any ageist behavior
It's Not Right! Neighbours, Friends & Families Program ¹⁶⁷	Centre for Research on Education and Violence Against Women and Children	Anyone	This public education program on abuse and neglect of older adults includes a discussion of the role of ageism in abuse
Ageism and an Age Friendly Legal Services and Workplace ¹⁶⁸	SFBC	Workplaces	This staff training program can be presented in-person or by written material
Developing an Anti-Ageist Approach Within Law ¹⁶⁹	Law Commission of Ontario	Legal professionals	This paper describes how to use an anti-ageist lens in examining legislation
A Framework for the Law as it Affects Older Adults ¹⁷⁰	Law Commission of Ontario	Government, community, advocates	This paper describes how to examine the impact of laws on older adults
Finding the Frame: An Empirical Approach to Reframing Aging and Ageism ¹⁷¹	Frameworks Institute	Non-profit organizations	This paper describes how organizations can communicate in a manner which promotes a positive view of aging
Age-Friendly Communication Facts, Tips, and Ideas ¹⁷²	Public Health Agency of Canada	Government, businesses, communities	This guide describes how to communicate in an age-friendly way
Human Rights in British Columbia: Age Discrimination ¹⁷³	British Columbia Provincial Government	Anyone	This fact sheet describes age discrimination

Still to be done

CREA and the Collaborative may continue to support anti-ageist practice and expand their vision to include an intersectional approach that covers all grounds of discrimination protected under human rights law.

2.1.16 Maintaining Strategic Relationships with Government

Recommendation

Key stakeholders from a number of Provincial ministries be briefed on the work done to develop protocols and sit as active members of the BC Adult Abuse and Neglect Prevention Collaborative.

Background from the Report

Representatives from several Provincial ministries should attend, participate and represent their ministries as members of the BC Adult Abuse and Neglect Prevention Collaborative. In particular, there should be representation from provincial ministries with purview over seniors, community living, health, housing, attorney general and the solicitor general. This will enable everyone (sic) to maintain up-to-date knowledge on the work done so far to develop protocols locally and provincially with regard to vulnerable adults along the capability continuum. This will also enable everyone (sic) to support direct implementation of protocol development and of this overall strategy.

Findings

The Collaborative's membership was intended to include government representatives from multiple ministries, such as Attorney General, Solicitor General, Health, Housing, and Social Development and Poverty Reduction. In practice, only a few ministry representatives attend meetings, and they do not come on a regular basis. Representatives from each of the health authorities and CLBC attend, but there are no general Ministry of Health representatives who attend. A representative from Victim Services does attend. Newer advocacy offices with a mandate to support accountability of particular ministries, such as the Advocate for Service Quality and the Seniors Advocate, do regularly send representatives to meetings.

The desire to have provincial ministry representatives be members of the Collaborative is still alive within the membership. However, based on past practice, it is unlikely that representatives from all relevant ministries will attend consistently. The Collaborative should continue to strategize regarding alternative methods for engaging the government ministries in the Collaborative's work with a view to identifying where funding and further action are needed.

Still to be done

The Collaborative and CREA can consider strategies to successfully engage key government ministries in their work.

2.1.17 Inter and Intra-Ministerial Coordination

Recommendation

Provincial ministries develop internal and inter-agency protocols for coordinated responses to adult abuse, vulnerability and capability.

Background from the Report

In order to ensure communication and coordinated responses to incidents involving incapability and vulnerable adults, the protocols must be implemented at both the provincial and local service delivery levels.

Findings

There is an ongoing need for provincial ministries to coordinate response to abuse, vulnerability, and capability. These issues are not the sole responsibility of the designated agencies, police, or the PGT. Responses will be more effective if all government ministries consider how their work can help prevent and respond to abuse, and coordinate this work so as to avoid gaps and overlap. There may be an opportunity for the Collaborative to support other Ministries to develop policy responses that recognize older people and adults with disabilities who are abused, neglected or self-neglecting, or have capability issues.

Discussions at Collaborative meetings and interviews with members reinforced the need for increased coordination on abuse and neglect response. At the provincial level, members wish for both increased coordination between provincial ministries, as well as increased coordination between Designated Agencies and the provincial ministries.

Members also discussed hurdles they face in coordinating with the federal government when trying to support an incapable adult who does not have a pre-existing substitute decision-maker. For example, it can be challenging to set up a pension trusteeship with the Canada Revenue Agency. Federal agencies will not always confirm they have received the trusteeship application, citing privacy laws. Members of CREA and the Collaborative expressed an interest in expanding Recommendation 17 to encompass broader needs for coordination between ministries, agencies, and bodies at all levels of government.

Still to be done

CREA and the Collaborative can support greater inter and intra-ministerial coordination within the BC Government and greater federal and provincial coordination in relation to adults with capability issues.

2.2 HOUSING BACKGROUND PAPER

2.2.1 Rights Information

a & b) Housing for Older Adults and Vulnerable Persons

Recommendation

The provincial government should provide funding for the development of legal education resources on a range of housing issues affecting older adults and other vulnerable persons. A three prong approach should be taken to legal education in this area, tailoring special information for service providers, renters and housing providers on aging, capacity, renters' rights and operators' responsibilities.

Findings

Resources tailored to specific groups such as renters and housing providers do exist. Most of the legal education material on housing issues targets a general audience, although there are a few resources for newcomers to Canada, and a number were developed specifically for older adults. Legal education resources on housing rights are needed to address issues specific to older and vulnerable adults. In particular, it would be useful to create a booklet or other resource on what to do about specific tenancy problems when living in assisted living or various kinds of independent housing. The chart below identifies existing resources for service providers, renters, and housing providers.

Resources for Service Providers

Tool	Who Created It	Description
Know your Rights Handbook: A Guide for People Who Rely on Public Space ¹⁷⁴	Pivot Legal Society	This handbook describes rights for people who live on public property such as tents, including rights with police, security guards, and bylaw enforcement and rights in the home
Legal Issues in Residential Care: An Advocate's Manual ¹⁷⁵	SFBC	This manual for lawyers and advocates describes legal issues clients may face in long-term care and avenues to help
LSLAP Manual: Landlord and Tenant Law ¹⁷⁶	Law Students Legal Advice Program	This chapter discusses laws on residential tenancy issues in BC, including the dispute resolution process

Resources for Renters

Tool	Who Created It	Description
Know your Rights Handbook: A Guide for People Who Rely on Public Space ¹⁷⁷	Pivot Legal Society	See above chart on resources for service providers
Tenants' Rights Cards ¹⁷⁸	Pivot Legal Society	This card explains a person's rights when police want entry into their residence
Learning about the Law Part 3: Working in BC & Renting a Home ¹⁷⁹	People's Law School	This booklet describes legal rights in renting and buying a home, including discrimination issues
When I'm 64: Services for Seniors ¹⁸⁰	People's Law School	This booklet covers health care and housing services including assisted living and long-term care
Residential Tenancy for Older Adults Workshop ¹⁸¹	SFBC	This workshop explains rights under BC's residential tenancy laws
Can't Pay Your Mortgage? What you can do if you're facing foreclosure ¹⁸²	Legal Services Society (LSS)	This booklet explains the procedure when a homeowner can't pay their mortgage
Tenant Survival Guide ¹⁸³	TRAC	This guide explains rights for renters including repair, evictions, and disputes with a landlord
Template Letters ¹⁸⁴	TRAC	These templates can be used by tenants to communicate with landlords
Tenant Infoline ¹⁸⁵	TRAC	Phone line for questions about residential tenancy issues
Renting it Right Course ¹⁸⁶	TRAC	This online course teaches legal information on finding and renting a home
Residential Tenancy ¹⁸⁷	Dial-a-Law	This publication outlines the residential tenancy laws in BC
Neighbour Law ¹⁸⁸	Dial-a-Law	This publication outlines legal rights and where to go for help if someone is having difficulties with a neighbour
5 Ways to Protect Yourself When Renting Video ¹⁸⁹	TRAC	This video, available in multiple languages, explains what one can do to protect oneself legally when renting such as getting things in writing
Housing for Newcomers ¹⁹⁰	Canadian Mortgage and Housing Corporation	This document, available in multiple languages, explains the laws on renting and owning a home
Housing Help Guides ¹⁹¹	Justice Education Society of BC	These fact sheets give legal information on topics related to renting and owning a home
A Home for Finola and I: Barriers to Pet-Friendly Housing ¹⁹²	Atira	This booklet outlines barriers renters face in keeping a pet in their home and why having a pet is beneficial

Resources for Housing Providers

Tool	Who Created It	Description
Landlord Guide: Information for Landlords in British Columbia ¹⁹³	TRAC, LSS	This guide explains landlord responsibilities and rights, including discrimination
First Nation Communities and Housing Organizations ¹⁹⁴	Canadian Mortgage and Housing Corporation	This publication gives resources for housing issues on reserve lands
Privacy Guidance for Landlords and Tenants ¹⁹⁵	Office of the Information and Privacy Commissioner for BC	This guide explains privacy rules for landlords

Still to be done

There is a need to develop:

- Resources for older adults on tenancy rights and options that include assisted living issues;
- Material for landlords on options if they see abuse of vulnerable adults in their housing.

c) Housing and Family Law

Recommendation

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

Findings

There are a significant amount of rights information resources on abuse and family law, and much of this material is available in languages other than English. However, there is a lack of material targeting older and vulnerable adults, and there are few materials in non-written formats. No resources specifically for older men could be identified. The chart below lists available resources on family law.

Family Law—Resources Tailored for Older Adults and their Advocates

Resource	Who Made It	Description	Formats	Language
Learning About the Law Part 2: Family Law, Young People & Elder Law ¹⁹⁶	People's Law School	This booklet covers retirement benefits, pensions, wills, personal planning tools, and elder abuse, among other topics	Print	English
Roads to Safety: Legal Information for Older Women in BC ¹⁹⁷	West Coast LEAF	This project produced a handbook for those working with older adults and multilingual wallet cards with lists of supports and legal information	Print	Handbook in English; Wallet cards in Arabic, Chinese, Tagalog, French, Hindi, Farsi, Punjabi, Spanish, Urdu, Vietnamese, specialized services for Indigenous women
Seniors' Rights and Elder Abuse ¹⁹⁸	Dial-a-Law	This publication explains what elder abuse is and how to get help. Limited family law content	Print	English

Family Law Resources— General

Resource	Who Made It	Description	Formats	Language
Family Violence & Abuse ¹⁹⁹	People's Law School	This document explains the legal options to address family violence	Print	English
Clear Skies ²⁰⁰	LSS	This graphic novel tells a story about family violence and legal options to leave an abusive relationship	Graphic Novel	English
For Your Protection: Peace Bonds and Family Law Protection Orders ²⁰¹	LSS	This document outlines the law and procedures for obtaining peace bonds and family law protection orders	Print	English, Chinese (simplified), Chinese (traditional), Punjabi, French, Farsi
Leaving Abuse ²⁰²	LSS	This graphic novel tells a story about family violence and legal options to leave an abusive relationship	Graphic Novel	English
Live Safe, End Abuse ²⁰³	LSS	These fact sheets outline what abuse is and where to get help	Print	English, French, Spanish, simplified Chinese, traditional Chinese, Farsi, Punjabi
Peace Bonds and Assault Charges ²⁰⁴	Dial-a-Law	Explains what a peace bond is and how to obtain one	Print	English
Family Violence ²⁰⁵	Dial-a-Law	Explains what family violence is and where to get help	Print	English

Resource	Who Made It	Description	Formats	Language
Victim of Domestic Violence ²⁰⁶	BC Ministry of Public Safety & Solicitor General	This document outlines what domestic violence is and where to get help for victims of domestic violence	Print	English
Toolkit for Immigrant Women Working with a Lawyer ²⁰⁷	Battered Women's Support Services	This document gives tools for immigrant women in the process of obtaining help from a lawyer	Print	English
Toolkit for Lawyers: Best Practices in Working with Battered Immigrant Women ²⁰⁸	Battered Women's Support Services	This document gives practice tools for lawyers on assisting an immigrant woman who has experienced abuse	Print	English
Help Guides on Family Law ²⁰⁹	Justice Education Society of BC	These guides and videos explain family law topics including domestic violence	Print Video	English

Still to be done

Family law materials are needed in accessible non-written formats, such as audio and video.

2.2.2 Social and Legal Research

a) Social Science Research on Pathways of Violence

Recommendation

Qualitative research should be conducted to develop a deeper understanding of the different patterns and pathways of violence experienced in families in later life.

Findings

Limited recent academic research explores family violence in the lives of older adults. The chart below lists recent academic research.

Research on Family Violence and Older Adults

Article Title	Author	Citation
State of the science on prevention of elder abuse and lessons learned from child abuse and domestic violence prevention: Toward a conceptual framework for research ²¹⁰	Jeanne A Teresi et al.	(2016) 28:4-5 Journal of Elder Abuse & Neglect 263
Socioeconomic status, social relations and domestic violence (DV) against elderly people in Canada, Albania, Colombia and Brazil ²¹¹	Kimitri Taurino Guedes et al.	(2015) 60:3 Archives of Gerontology and Geriatrics 492
Family violence among older adult patients consulting in primary care clinics: Results from the ESA (Enquête sur la santé des aînés) services study on mental health and aging ²¹²	Michel Preville et al.	(2014) 59:8 The Canadian Journal of Psychiatry 426
The critical-ecological framework: Advancing knowledge, practice, and policy on older adult abuse ²¹³	Deborah Norris, Pamela Fancey, Erin Power & Pamela Ross	(2013) 25:1 Journal of Elder Abuse & Neglect 40

Still to be done

There is very little research on victimization and housing among older adults. The Collaborative and CREA can support or advocate for the need for research on family violence and older adults.

b & c) Social Science Research on Housing and Vulnerable Adults

Recommendations

Legal and social research should be undertaken to examine:

- the connections between housing and victimization of vulnerable persons, particularly in the context of systemic harms;
- the legal barriers affecting homeless persons' access to housing; and
- the circumstances in which special legal documents such as a power of attorney for real estate and the land title system for registering these powers of attorney might be misused.

Research should systematically review mental health, housing and social assistance policy to take account downstream costs on third parties such as older family members to provide a better foundation for policy.

Findings

Some research exists on housing and aging, and homelessness and aging. Research is primarily focused on long-term care and homelessness. See the tables below for details. For legal research, see section 2d below.

Research examining housing, family violence and aging

Article Title	Author	Citation
Strengthening social capital through residential environment development for older Chinese in a Canadian context ²¹⁴	Hai Luo	(2016) 59:1 Journal of Gerontological Social Work 16
When injustice gets old: A systematic review of trans aging ²¹⁵	Sabine Finkenauer, Jackson Sherratt, Jean Marlow & Andrea Brodey	(2012) 24:4 Journal of Gay & Lesbian Social Services: The Quarterly Journal of Community & Clinical Practice 311
Got a room for me? Housing experiences of older adults living with HIV/AIDS in Ottawa ²¹⁶	Charles Furlotte, Karen Schwartz, Jay J Koornstra & Richard Naster	(2012) 31:1 Canadian Journal on Aging 37
Housing concerns of vulnerable older Canadians ²¹⁷	Lori E Weeks & Kristal LeBlanc	(2010) 29:3 Canadian Journal on Aging 333
It's about the people...: Seniors' perspectives on age-friendly communities ²¹⁸	John L Lewis & Arlene Groh	in Thibault Moulart & Suzanne Garon, eds, <i>Age-friendly cities and communities in international comparison: Political lessons, scientific avenues, and democratic issues</i> , vol 14 (Switzerland: Springer International Publishing, 2016) 81

Research examining homelessness and aging

Article Title	Author	Citation
A case study of Canadian homelessness intervention programme for elderly people ²¹⁹	Jenny Ploeg, Lynda Hayward, Christel Woodward & Riley Johnston	(2008) 16:6 Health & Social Care in the Community 593
Oscillating in and out of place: Experiences of older adults residing in homeless shelters in Montreal, Quebec ²²⁰	Victoria Burns	(2016) 39 Journal of Aging Studies 11
Homelessness and aging: the contradictory ordering of 'house' and 'home' ²²¹	Amanda Grenier, Rachel Barken & Colleen McGrath	(2016) 39 Journal of Aging Studies 73
Growing old' in shelters and 'on the street': Experiences of older homeless people ²²²	Amanda Grenier, Tamara Sussman, Rachel Barken, Valerie Bourgeois-Guerin & David Rothwell	(2016) 59:6 Journal of Gerontological Social Work 458

Article Title	Author	Citation
A literature review of homelessness and aging: Suggestions for a policy and practice-relevant research agenda ²²³	Amanda Grenier, Rachel Barken, Tamara Sussman, David Rothwell, Valerie Bourgeois-Guerin & Jean-Pierre Lavoie	(2016) 35:1 Canadian Journal on Aging 28
Exploring opportunities for healthy aging among older persons with a history of homelessness in Toronto, Canada ²²⁴	Natalie Waldbrook	(2015) 128 Social Science & Medicine 126
Homelessness, stable housing, and opportunities for healthy aging: Exploring the relationships ²²⁵	Natalie Waldbrook	(2015) 75:7 Dissertation Abstracts International Section A: Humanities and Social Sciences
Formerly homeless, older women's experiences with health, housing, and aging ²²⁶	Natalie Waldbrook	(2013) 25:4 Journal of Women & Aging 337

Still to be done

There is very little research on victimization and housing among older adults. The Collaborative and CREA can support or advocate for the need for research in this area.

d) Legal Research on Housing Discrimination and Vulnerable Adults

Recommendation

Legal research should be conducted on housing discrimination in British Columbia, with a particular focus on how it may intersect with victimization, aging and capacity issues.

Findings

There is limited relevant research. Below is a chart of current research on housing discrimination.

Housing Discrimination and Vulnerable Adults—Research

Article Title	Author	Citation
Identifying pathways to and experiences of street involvement through case law ²²⁷	Suzanne Bouclin	(2015) 38 Dalhousie LJ 345
Creating conflict: legal strategies for housing the homeless in Vancouver's downtown eastside ²²⁸	Robert Tarantino	(2010) 28 WRLSI 109
Charter eviction: litigating out of house and home ²²⁹	Margot Young	(2015) 24 J L & Social Policy 46

Still to be done

There is very little research on housing discrimination specific to older adults. The Collaborative and CREA can support or advocate for the need for research in this area.

2.2.3 Domestic Violence Legislation and Policy

Recommendation

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

Findings

Family law legislation went through a complete overhaul in 2011. The new *Family Law Act*²³⁰ addresses some types of abuse that are particularly relevant to older adults experiencing abuse in the home.

The definitions of abuse by a family member has been expanded to include any family member living in the home with the older adult, and more family members who may not live in the home. This change was accomplished by expanding the definition of family member and family violence. The definition of “family member” now reads:

- (a) the person’s spouse or former spouse,
- (b) a person with whom the person is living, or has lived, in a marriage-like relationship,
- (c) a parent or guardian of the person’s child,
- (d) a person who lives with, and is related to,
 - (i) the person, or
 - (ii) a person referred to in any of paragraphs (a) to (c), or
- (e) the person’s child,

and includes a child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (e);²³¹

The definition of family violence now includes psychological abuse, emotional abuse, and some aspects of financial abuse and neglect:

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,

- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence;²³²

There are a few government policies on domestic violence which can be applied to older adults, such as:

British Columbia's Violence Against Women in Relationships Policy²³³

- This policy does not specifically discuss older women, although it would apply to them.
- This policy does discuss groups at increased risk of experiencing domestic violence such as Indigenous women, women under 25, immigrant and visible minority women, women living in poverty, and women living with a disability.

British Columbia's Provincial Domestic Violence Plan²³⁴

- This plan does not address older adults specifically, but the document identifies the Seniors Abuse and Information Line as a possible referral agency.

There are a few academic articles discussing domestic violence protections for older women:

- Isabel Grant & Janine Benedet, "The sexual assault of older women: Criminal justice responses in Canada" (2016) 62:1 McGill Law Journal 41.
- Janine Benedet & Isabel Grant "A situational approach to incapacity and mental disability in sexual assault law" (2011-2012) 43:1 Ottawa Law Review 1.
- Janine Benedet & Isabel Grant "taking the stand: access to justice for witnesses with mental disabilities in sexual assault cases" (2012) 50 Osgoode Hall Law Journal 1.
- Nicole Simes, "The impact of spousal sponsorship laws on intimate partner violence: a Canadian-American comparison" (2010) 7 Journal of Law & Equality 91.

If the provincial government considers amending the *Family Law Act* or introducing a specific family violence statute the provisions should be reviewed to consider the needs and experiences of older and vulnerable adults. BC's Violence Against Women in Relationships Policy could be amended to address the unique needs of older women.

Still to be done

The Collaborative and CREA can:

- Consider whether recent amendments to the *Family Law Act* adequately address the experiences of vulnerable adults; and
- Support amendments to BC's Violence Against Women in Relationships Policy and Provincial Domestic Violence Plan to consider aging and disability related issues.

2.2.4 Safe Housing Resources

a) Types of Emergency Housing

Recommendation

Appropriate emergency, short- and long-term housing alternatives should be developed for these groups of persons (abused and neglected older adults and other vulnerable adults) and expanded.

Findings

There are a range of housing options for people who are fleeing abuse. However, these housing types are still typically geared to younger women with or without children. Housing is not typically geared toward older women. There are no housing programs for older men (other than shelters).

There is still an urgent need for emergency safe places for adults who are removed from very dangerous circumstances under s. 59 of the *AGA*.

BC Housing has four types of housing available for short or long-term stays:²³⁵

Transition Houses

- Transition houses are intended for short stays of up to 30 days
- Services typically include emotional support and safety planning

Safe Homes

- Safe homes are provided in remote communities, located in apartments, private homes, or hotels
- Safe homes provide short-term stays
- Services include emotional support and safety planning

Second Stage Housing

- Second stage housing provides longer term stays of up to 18 months
- This housing is typically provided in private residences such as apartments or townhouses
- Services include emotional support, safety planning, and service referrals.

Priority Placement

- This program gives priority access to social housing units for women who have experienced abuse

Atira operates one transition house specifically for women age 55 and older, Ama Transition House, since 2004. Ama House in Surrey permits longer stays in recognition of how challenging it is for older women to transition to safe, long-term housing. Research could explore whether the four types of housing described above address the needs of older adults and consider alternative approaches to transitional housing for older people.

In recent years there have been affordable housing initiatives by the federal government and the BC provincial government which could be utilized as a source of funding for new projects to meet the housing needs of older adults.

In 2018 the BC government released their *Homes for B.C.: A 30-Point Plan for Housing Affordability in British Columbia* to address the rapidly rising prices for renting and buying housing and the lack of affordable housing. Of the 30 actions listed, several would apply to housing for seniors and vulnerable populations:

- Invest \$6 billion in affordable housing
- Create rental units for seniors
- Create housing for women and children experiencing violence
- Invest in housing for Indigenous communities
- Increase benefits for seniors living independently²³⁶

The federal government released their National Housing Strategy in 2017, providing money to initiatives to increase affordable housing and reduce homelessness. The strategy includes several initiatives to increase shelter spaces for people fleeing violence, such as:²³⁷

- The federal government is investing money to support building affordable housing for low-income seniors;
- The federal government is providing the provinces and territories with money to build and renovate shelter spaces for people fleeing violence, with the intention of providing 5,900 new spaces across the country;

- The National Housing Co-Investment Fund provides loans to projects building or repairing social housing across the country. This program includes funding to increase the number of shelter spaces and create affordable housing for older adults and people living with disabilities;
- The Federal Community Housing Initiative provides funding for community housing operated by non-profits and co-operative housing providers whose federal funding agreements are ending to support them on an ongoing basis with new ongoing funding programs; and
- The Canada Housing Benefit is a joint initiative whereby a province or territory signs an agreement with the federal government to create a program in that province or territory. The programs would provide money directly to the person or household to help low-income households afford housing, especially in areas with high average market rent rates.²³⁸

Still to be done

Housing gaps remain for vulnerable adults. In particular, the Collaborative and CREA can:

- Advocate for more available safe housing geared toward the needs of older people; and
- Support research into the unique transitional housing models that might better suit older adults and younger adults with multiple challenges.

b) Training for Shelter Workers

Recommendation

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

Findings

The BC Society of Transition Houses is an organization made up of transition houses. The society provides training for shelter workers on a variety of topics.²³⁹ The following training courses are relevant to serving vulnerable adults:

- **Reducing Barriers:** This training identifies how to reduce barriers to transition houses for women with mental health or substance use issues.
- **Increasing Access for Indigenous Women:** This training examines the different types of relationship violence experienced by Indigenous women and tools for providing service to Indigenous women.

- **Building Supports Promising Practices:** This training gives shelter workers knowledge and tools for addressing the unique needs of immigrant and refugee women.

The remainder of the training courses do not directly address elder abuse or disability, but cover general topics related to violence against women and transition housing, such as how to apply an intersectional feminist lens to examine violence against women.

Victoria Women's Transition House Society offers a range of community education workshops for a variety of audiences, including the general public, support service workers, professionals, and neighbourhood house staff. The following workshops cover elder abuse topics:

- Legal and Mediated Agreements
- Elder Abuse²⁴⁰

Training modules do not address the unique needs of older women experiencing violence. However, we are aware that workshops on serving older women survivors have been delivered at numerous conferences in recent years (by West Coast LEAF, SFBC, and Atira, for example).

Still to be done

The Collaborative and CREA can support the development of training modules on assisting survivors of abuse who are older or who have an intellectual disability.

c) Length of Stay

Recommendation

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

Findings

Length of stay is fairly consistent at up to 30 days for transition houses and up to 18 months for second stage housing. Interviews with CREA and Collaborative members revealed that while most transition houses have length of stay policies of 30 days, women are often permitted to stay longer than 30 days. The housing affordability crisis makes obtaining affordable longer-term housing difficult. See the chart below under 4d for a list of transition houses in the lower mainland and their policies on length of stay.

Still to be done

Length of stay barriers are addressed in Atira, *Promising Practices in Housing Women who are Older and Fleeing Abuse*.²⁴¹ The Collaborative and CREA can advocate for implementation of the report.

d) Mental Health Resources

Recommendation

Appropriate mental health assessment and support should be provided for abused or neglected older persons and other vulnerable adults.

Findings

Safe housing provides a range of mental health services including counselling, advocacy, and outreach services. However, services are not geared toward older or vulnerable adults. As explained in Atira's *Promising Practices in Housing Women who are Older and Fleeing Violence or Abuse*²⁴² supports need to address the unique needs of older women fleeing violence. See the chart below for a list of mental health resources offered by individual transition houses.

Safe Housing Policies and Services

Organization	Length of Stay Policies	Mental Health Resources	Protocols for Older Adults
Ishtar Women's Resource Society ²⁴³	Ishtar House and Libra House are described as "temporary, emergency accommodation"	Outreach Services: referrals and advocacy on matters such as legal issues and government supports Victim Services Programs: safety planning and information on navigating the justice system Short-term Counselling: individual and group counselling	Offer services of community-based victim service programs
Cythera Transition House Society ²⁴⁴	Up to 30 days	Counselling Centre: provide safety planning, resources, and education Community Education: teach how to prevent violence	None
Monarch Place Transition House ²⁴⁵	Up to 30 days	Counselling Support Groups Multicultural outreach services Peer support groups	None
North Shore Crisis Service Society ²⁴⁶	Sage Transition House: up to 30 days Sage Second Stage Transition House: up to 15 months	Outreach Services: advocacy and support through justice system Multicultural Outreach Services Homelessness Prevention Program	None
Chimo Community Services ²⁴⁷	Nova Transition House: up to 30 days	Support for immigrants Counselling and crisis line Outreach and advocacy on immigration, financial issues, mental health, and violence	None

Organization	Length of Stay Policies	Mental Health Resources	Protocols for Older Adults
Options Community Services ²⁴⁸	No list of length allowed	Advocacy Counselling, emotional support, and education Assistance navigating government services, employment, and the legal system	None
Atira Women's Resource Society ²⁴⁹	Ama Transition House (55+): 30-180 days Shimai Transition House: 30-90 days Koomesh 2nd Stage Housing (Koomesh residents only): 3-24 months	Advocacy Emotional support Court accompaniment Alcohol and drug therapy Support groups	Ama Transition House is specifically for women 55+ and allows a longer stay (30-180 days)
Helping Spirit Lodge Society ²⁵⁰	Transition House: Up to 30 days Second stage Transition: up to 18 months	Education and skill development Referrals to specialized counsellors	None
Vancouver Rape Relief & Women's Shelter ²⁵¹	No listed length	Crisis Line, peer counselling Support groups Advocacy Legal Clinics	None
Dixon Transition Society ²⁵²	Dixon House Emergency Home: Up to 30 days Wenda's Place Second Stage Housing: Up to 2 years	Counselling Advocacy on areas such as accessing government benefits, housing, multicultural supports Skills coaching Resources and referrals	None
Tri-City Transitions ²⁵³	Joy's Place Emergency shelter: Up to 30 days Second Stage Housing: Up to 1 year	Information and education Advocacy Crisis Intervention and counselling Victims services Referrals to legal services, housing, counselling, employment services	None
YWCA Metro Vancouver ²⁵⁴	Arbour House Second Stage Transition: up to 9 months (possible extension to 2 years)		
Domestic Elder Abuse Services ²⁵⁵	Eva's House Second Stage Shelter: up to 6 months (possible extension)		
Act 2 Child and Family Services ²⁵⁶	Safe Choice Transition House (Second Stage): Up to 12 months		

Still to be done

Transition houses are often not geared toward the needs of older or vulnerable adults, whose needs are discussed in the above noted report by Atira.²⁵⁷ The Collaborative and CREA can advocate for implementation of the report.

e) Protocols for Older Adults

Recommendation

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

Findings

Most transition houses do not have services or resources specifically for older adults. Few outside protocols or policies for older adults exist. Services are not geared toward older or vulnerable adults. The chart above provides a list of protocols geared toward older adults in specific transition houses. Below is a description of some policies and best practices for older adults living in transition housing.

Promising Practices in Housing Women who are Older and Fleeing Violence or Abuse – Atira²⁵⁸

- This document explores the needs of older women who are fleeing abuse, and the diversity of their backgrounds
- This guide identifies practices to better support older women

BC Housing: Women's Transition Housing and Supports Program Framework²⁵⁹

- The framework sets out the expected stay length at the housing options: up to 30 days for transition houses, and around 6 to 18 months for second stage housing
- Transition houses should offer supports including personal support, referrals, advocacy, and help accessing services
- The framework sets out that women do not have to have legal status in Canada to access transition houses or their services

BC Society of Transition Houses: Policy Template Guide²⁶⁰

- This policy template sets out potential policies for transition house to use
- The policy template suggests lengths of stay of up to 30 days for transition houses, but that transition houses should set out in what circumstances stays can be extended
- Length of stay for second stage housing should be up to 18 months but set out in what circumstances stays can be extended

Still to be done

As noted above, transition houses are often not geared toward the needs of older or vulnerable adults, which are discussed in the Atira Report. The Collaborative and CREA can advocate for implementation of report and to encourage and support individual transition houses to develop protocols for helping older adults.

2.2.5 Coordination of Services

Recommendation

Community agencies and government bodies should endeavour to work together in a coordinated manner, helping to remove barriers and bridge gaps.

Background from the Paper

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

This recommendation does not lend itself to a research update. See Recommendation 17.

2.2.6 Improving Access to Justice - Legal Aid

Recommendation

Gaps in legal aid coverage should be addressed on a priority basis.

Findings

Gaps in legal aid coverage still exist which need to be addressed. See discussion under Recommendation 13 above.

2.2.7 Improving Access to Justice – Housing Tribunals

a) Dispute Resolution Process regarding Seniors' Housing Issues

Recommendation

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

Findings

Residential tenancy issues are still addressed using the Residential Tenancy Branch dispute resolution process conducted by an arbitrator for claims under \$35,000. For larger claims, individuals must go to the BC Supreme Court.²⁶¹ The Civil Resolution Tribunal does not have jurisdiction over residential tenancy issues, although it can address issues with a roommate or a short-term rental under \$5,000, or strata-related issues.²⁶² Housing advocacy, including Residential Tenancy Branch hearings, forms a significant percentage of the workload of the SFBC legal advocate.

On review of the *Housing Background Paper*, it is not clear why BC ought to consider a specialized tribunal with jurisdiction over the housing issues of older people. We do not find this recommendation to be supported by the research and arguments contained in the original paper.

b) Training for Arbitrators

Recommendation

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

Findings

If a person living in supportive housing has a dispute, this matter is still governed by the *Residential Tenancy Act (RTA)*. No information could be found on what training arbitrators currently receive.²⁶³ However, the broader need for elder-friendly courtrooms and tribunals remains a live issue in BC.

Still to be done

The Collaborative and CREA can support the development of training for arbitrators.

2.2.8 Provincial and Regional Policy and Practice

a) Crime Free Housing Eviction Policy

Recommendation

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

Findings

BC Housing has not reviewed its eviction policy for its impact on abused older adults and other vulnerable adults. The Ontario Human Rights Commission's report *Housing Discrimination and the Individual* discussed negative impacts of similar crime free addendums for women and other groups.²⁶⁴

Still to be done

The Collaborative and CREA can review the Crime Free Housing Policy for impacts on abused older adults and other vulnerable persons.

b) Visitor Policies

Recommendation

House policies on matters such as visitors should be reviewed to ensure they comply with the RTA.

Findings

There has been no general review of house policies to ensure they comply with the RTA. There have been two recent BC Supreme Court decisions on visitor policies in social housing. These decisions found that the buildings' visitors policies which required visitors to sign in or restricted visitors' access to the building were contrary to the RTA. The cases are:

*Atira Property Management v Richardson*²⁶⁵

- This Vancouver-area Single Room Occupancy property required visitors to provide ID to enter the building, which was declared in violation of the RTA.

*PHS Community Services Society v Swait*²⁶⁶

- This Victoria building restricted overnight guests, required visitors to provide ID to enter, and did not allow children in the building. Both policies were declared in violation of the RTA.

During COVID-19, there have been significant restrictions on visitors to long-term care, assisted living, hospitals, and other health care facilities. There has been media attention on visitor restrictions,²⁶⁷ and academic analysis of the health impacts of visitor restrictions, but there has been little academic or policy analysis of the legality of these visitor policies.

Some reports have examined visitor policies and their impact on residents, patients, and families, but none have examined the legality of the policies. See, for example:

- Office of the Seniors Advocate BC: *Staying Apart to Stay Safe: The Impact of Visit Restrictions on Long-Term Care and Assisted Living Survey*²⁶⁸
- BC Care Providers Association *Review of the response to COVID-19 in seniors care and living: A dialogue with providers*, prepared by the Howe Group²⁶⁹
- Royal Society of Canada: *Restoring Trust: COVID-19 and the future of long-term care*²⁷⁰

Some academic articles, mostly in medical or gerontology journals, have examined the physical and psychological impact of visitor restrictions on older adults in long-term care.²⁷¹

Still to be done

The Collaborative and CREA can support the ongoing need for review of policies to consider the impact on the rights of vulnerable adults.

c) Duty to Accommodate

Recommendation

A human rights consultation paper should be developed on housing providers' duty to reasonably accommodate older adults and persons with mental or physical disabilities across the range of housing.

Findings

No paper has been published in BC in recent years on the topic of a housing providers' duty to accommodate older people and people living with disabilities. The Ontario Human Rights Commission has developed some e-learning tools on a housing provider's duty to accommodate a person with a disability:

- *Discrimination based on disability and the duty to accommodate: Information for housing providers*:²⁷² This document explains the law on discrimination in rental housing and when using services and facilities.
- *Human Rights and Rental Housing*:²⁷³ This series of e-learning videos for the public provides information on rights and responsibilities in rental housing.

In BC, CLAS has published an article on accommodation in rental housing, titled *Accommodating right means accommodating rights*.²⁷⁴ The recent creation of the Office of the BC Human Rights Commissioner may generate further work on the duty to accommodate in housing.

Still to be done

The Collaborative and CREA can support or undertake consultation in BC to identify the housing accommodation barriers experienced by older adults and people with mental or physical disabilities, and consider appropriate recommendations.

d) Housing and Wrap-Around Supports to Facilitate Hospital Discharge Planning

Recommendation

Hospitals should review their discharge planning process to assess for safety and well-being upon returning home, and to help families giving care.

Findings

The only health authority in BC which has a publicly available policy on discharge planning is Interior Health. The policy “AH1060 – Discharge of Vulnerable Emergency Department Patients”²⁷⁵ outlines that vulnerable patients need to be assessed before they are discharged to determine what supports they will need in the community. It may be beneficial for all health authorities in BC to have policies on discharge planning that apply to all departments. Given the strong presence of health authority staff on the Collaborative, this may be a topic the Collaborative could pursue.

The Providence Health Care ethics department has created a working group and paper on the ethics of discharge for patients who are extremely vulnerable and have nowhere to go other than a shelter, where they will be at immediate high risk of harm.²⁷⁶ The paper contemplates a possible two-stage housing model with a variety of proactive wrap-around supports. Certainly, there are significant housing gaps in BC, some of which are discussed earlier on in this paper. Hospitals cannot delay discharge of vulnerable adults indefinitely due to lack of appropriate housing and supports; they also cannot discharge vulnerable adults when they have nowhere to go.

In interviews with members of CREA and the Collaborative, lack of appropriate housing and wrap-around supports for an adult being discharged from the hospital was a topic of great interest.

Still to be done

CREA and the Collaborative can advocate for housing and related wrap-around supports such as clean-up services for unsafe home environments, repairs/modifications to existing homes to meet individual needs, access to equipment, extra home supports, supervised visits, and one-on-one workers

for people in very vulnerable circumstances with unstable, inappropriate, or no housing to facilitate hospital discharges.

2.2.9 Legislative Reform—Supported Housing and Assisted Living

a) Regulation of Supportive Housing

Recommendation

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

Findings

Supported housing and assisted living are still covered under separate statutes. Assisted living is governed by the *Community Care and Assisted Living Act (CCALA)* and supportive housing still falls under the *RTA*. Emergency shelters and transition houses are excluded from the *RTA* as they are temporary living spaces. The *Residential Tenancy Policy Guideline 46: Emergency Shelters, Transitional Housing, Supportive Housing* (2016) outlines the legislation governing these different types of housing.²⁷⁷

The BC government has amended the *CCALA* and brought in a new *Assisted Living Regulation*, in force December 1, 2019. These amendments retain the different legislative frameworks for assisted living and supported housing.

Still to be done

The Collaborative and CREA can consider whether they have a position on the issue of the legal and policy separation of supportive housing and assisted living in BC.

b) Dispute Resolution Process in Assisted Living

Recommendation

An independent arms-length alternative resolution process be developed to address tenancy/ consumer protection in assisted living.

Findings

A single arms-length alternative resolution process still does not exist to address tenancy and consumer protection in assisted living. There are different mechanisms to address issues arising in assisted living:

Application to a court or tribunal

- Court determination of civil lawsuit in negligence
- Human rights tribunal determination of complaint alleging discrimination under the *Human Rights Code*.

Patient Care Quality Office and Review Board

- This would cover complaints about any health care services provided under the jurisdiction of the health authorities, such as home care visits, but would not include tenancy issues or hospitality services.

Complaints to the Assisted Living Registrar

- The Assisted Living Registrar can investigate complaints about an assisted living facility where a resident's health or safety would be at risk.

Community Care and Assisted Living Appeal Board

- This would cover complaints about licencing, registration, and certification of the facility.

Office of the Ombudsperson

- The Ombudsperson can investigate complaints about administrative actions or decisions of public agencies, which would include health authorities and health-related agencies. This would cover health care provided in an assisted living residence.²⁷⁸

Civil Resolution Tribunal (CRT)

- Some contractual matters may be within the jurisdiction of the CRT if the facility is not run by a provincial health authority.

The Ombudsperson has noted that this level of fragmentation has led to “confusion, gaps in the complaint process, and overlapping jurisdiction in some areas.”²⁷⁹ The BCLI's 2013 Report on Assisted Living in BC recommended an integrated, multi-stage dispute resolution process for BC with sufficiently separate investigative and adjudicative functions so as to avoid a reasonable apprehension of bias. It recommended specifically that:

Recommendation 45

The Assisted Living Registry should be empowered to receive, investigate, and attempt to resolve complaints relating to the operation of an assisted living facility or arising from relations between residents and the operator, regardless of the subject-matter of the complaint.²⁸⁰

Still to be done

The Collaborative and CREA can advocate for implementation of the BCLI's recommendation to expand the powers of the Assisted Living Registry to address complaints.

2.2.10 Legislative Reform - *Family Relations Act*

Recommendation

Any change to the *Family Relations Act* to address family violence should include a definition of family violence that represents the kinds of harm that older adults and other vulnerable persons can experience. This includes physical abuse, forcible confinement, psychological or emotional abuse, neglect, such as depriving a person of food or clothing or other basic necessities, financial abuse, and sexual abuse, or sexual assault. This definition should also include not only abuse by adults, but also harms by family members who may be teenagers (grandchildren).

Findings

BC's family law legislation went through a complete overhaul in 2011. The new *Family Law Act*²⁸¹ did address some of the needed changes, expanding both the list of family members and the definition of family violence. Neglect is still not clearly covered.

Still to be done

See Housing Recommendation 3 above.

2.2.11 Advocacy Resources

Recommendation

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

Findings

Legal aid is discussed above under recommendation 13. Below is a list of legal clinics where advocates and lawyers are available to help vulnerable or older adults with tenancy or other housing issues:

Seniors First BC²⁸²

- Provides legal help to people 55 years of age and older who are low income
- The Legal Advocate program can help with residential tenancy or housing matters
- The Legal Clinic can assist with legal issues from assisted living or long-term care

Access Pro Bono Residential Tenancy Program²⁸³

- The Residential Tenancy Program helps people with low incomes who are having residential tenancy issues or are appearing before the Residential Tenancy branch

TRAC Housing Law Clinic²⁸⁴

- This clinic provides legal advice or representation on housing law issues, including getting a review of a Residential Tenancy Branch decision, enforcing a Residential Tenancy Branch monetary order in small claims court, or housing issues outside of the *RTA*
- The program also provides legal advocates to help in the Residential Tenancy Branch dispute resolution process in certain circumstances

CLAS Legal Assistance Services²⁸⁵

- CLAS's services can help people with tenancy issues in which they may lose their home. The matters include where they have lost a case at the RTB and have been ordered to leave, the landlord has asked for the court to review an RTB case found in the client's favor, a house is being foreclosed on, or a co-op is terminating a person's membership

UBC Law Students' Legal Advice Program²⁸⁶

- This legal program assists people in the greater Vancouver area with a low income with legal issues, including residential tenancy, representation at Residential Tenancy Branch arbitrations, and small claims issues.

UBC Indigenous Community Legal Clinic²⁸⁷

- This legal clinic assists Indigenous peoples who have a low income with a variety of legal issues, including civil law matters

University of Victoria Law Centre²⁸⁸

- The Law Centre helps people living in the greater Victoria area with low incomes with legal matters such as tenancy issues

Thompson Rivers University Community Legal Clinic²⁸⁹

- This clinic helps people living in the interior with low incomes with various legal issues, including residential tenancy and small claims

North Shore Community Resources, Community Legal Service Program²⁹⁰

- This program provides legal advocacy for a variety of legal issues, including tenancy, for people living on the North Shore with low incomes

MOSAIC Legal Advocacy Program²⁹¹

- This program helps immigrants and refugees with low incomes who need help with legal issues involving housing

Seniors Services Society Housing Navigation Program²⁹²

- The Seniors Services Society has a program to help older adults find appropriate housing by providing information and helping older adults determine their eligibility for housing programs. This program does not provide direct advocacy or legal help.

Disability Alliance BC Disability Law Clinic²⁹³

- This program provides free legal advice to people with disabilities about human rights and discrimination issues, including housing.

We have not conducted an audit of whether (non-lawyer) legal advocacy services are adequate to address need. The Povnet BC website is available to help people search for an advocate in their community.²⁹⁴

Still to be done

See Recommendation 13 regarding access to legal aid.

2.2.12 Incapability Assessment

Recommendation

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

Findings

One academic article was located on incapability assessment in the context of abuse.²⁹⁵ We understand that the PGT and designated agencies are in the process of collaborating to offer incapability assessment training in the abuse, neglect, and self-neglect contexts under Part 3 of the *AGA*.

Still to be done

We reiterate the need for incapability assessors to be trained on issues of family violence and how it impacts incapability assessment. The Collaborative and CREA can support the development of training on incapability assessment that considers family violence and trauma.

2.3 IMMIGRATION BACKGROUND PAPER

2.3.1 Length of Sponsorship

Recommendation

Reduce length for parents/grandparents from ten years to three years to match other sponsored classes.

Background from the Paper

The legal obligation to financially support individuals for ten years creates and reinforces dependency, leaving many sponsoring families subject to significant responsibilities and leaving sponsored immigrants very vulnerable to victimization by family or others. It is suggested that the federal government reduce the length of sponsorship for sponsored parents and grandparents to three years. This would match other sponsored groups including sponsored spouses and sponsored refugees. The length of spouse sponsorship was reduced several years ago from ten years to three years following research underscoring its impact in family violence. Three years is the minimum length of time before a permanent resident can become a citizen.

Findings

In January 2014, the government increased the length of sponsorship for parents or grandparents to 20 years. The current length of sponsorship is as follows:

- Spouse, common-law partner, or conjugal partner: 3 years
- Dependent child under 22 years: 10 years or until reach age 25
- Dependent child 22 years of age or older: 3 years
- Parent or grandparent: 20 years
- Other relative: 10 years²⁹⁶

Still to be done

Sponsorship periods have been lengthened instead of shortened since the writing of the *Immigration Background Paper*. One possible approach for tackling this issue is to query whether the policy discriminates against older people, who are subject to the most lengthy sponsorship periods.

2.3.2 Poverty and Old Age Security

a) Refugee Transportation Loan

Recommendation

Eliminate the travel loan repayment as it places undue economic stress on refugee families.

Background from the Paper

Refugees are required to pay back their transportation costs, within six years of arrival. It has been recommended in many quarters that the federal government eliminate the travel loan repayment, as it places undue economic stress on refugee families. This (in combination with the many other stressors) may leave refugee families vulnerable to many harms, including neglect of children and older family members.

Findings

Travel loan repayments have not been eliminated. However, there were changes brought in February 2018 to lessen the burden:

- Going forward, interest is eliminated;
- Repayment now begins after one year; and
- Repayment period is now two years longer.²⁹⁷

Still to be done

The Collaborative or CREA can consider whether to advocate for elimination of travel loan repayment for refugees.

b) Old Age Security

Recommendation

Federal government review policy of reduced benefit and reconsider in context of practical effect on older immigrants and their families, as well as human rights framework.

Background from the Paper

Old immigrants (e.g. those aged 65+) are only eligible for old age security benefits if they have lived in Canada 10 years and met other criteria. The amount they receive from Old Age Security (OAS) varies with their age when they came to Canada as a permanent resident. Those coming to Canada at age 65 or older when they become eligible will receive the least amount of OAS- often one quarter of the amount that other citizens receive. This

percentage does not increase with their length of residency in Canada. While they may be eligible for the Guaranteed Income Supplement because they have low income, the continued reduced level leaves older immigrants financially dependent on family even after sponsorship ends, creating a long-lasting economic burden on families.

Findings

Old Age Security (OAS) and Guaranteed Income Supplement (GIS) benefits are still reduced for older immigrants if they were not in Canada for a certain period before receiving the benefit:

OAS²⁹⁸

- Must have lived in Canada for at least 40 years to qualify for full benefit
- Must live in Canada for 10 continuous years prior to taking benefit
- For a partial benefit, they will get 1/40 of the benefit for each year lived in Canada

GIS²⁹⁹

- No benefit if lived in Canada for less than 10 years
- Exception: if the sponsor is in bankruptcy, if the sponsor is in prison for at least 6 months, the sponsor dies, or the sponsor is convicted of abusing the benefit recipient

The CCEL Older Women's Dialogue Project Report 2 recommended that the Government of Canada "Review Old Age Security and Guaranteed Income Supplement eligibility criteria respecting access for older immigrant women who otherwise have no financial support."³⁰⁰ There has been no indication that the Government of Canada will be making changes to the OAS framework to improve the circumstances of immigrant seniors.

Still to be done

The Collaborative or CREA can advocate for implementation of the CCEL's recommendation that the Government of Canada review OAS and GIS eligibility criteria respecting access for older immigrant women who otherwise have no financial support.

2.3.3 Sponsorship Debt

a) Debt Collection

Recommendation

Make policy distinctions between sponsors who are unwilling to support versus unable to support due to financial/economic difficulties, inability to carry out responsibilities, death, or change in economic circumstance.

Background from the Paper

If a sponsor becomes unwilling or unable to support a sponsored immigrant, the sponsorship breaks down. The sponsored immigrant may need to seek social assistance benefits from the provincial government. This then becomes a debt that the sponsor is required to repay to the provincial government with interest, and can lead to garnishment, liens etc. There is a fundamental difference between a sponsor being unwilling and being unable to continue to support an immigrant. Both levels of government need to recognize this in pursuing these debts. The debt can be an extreme financial burden and can create significant conflict and tension in the family, and may escalate the harm to the sponsored individual or couple.

Findings

Collection of sponsorship debt remains unchanged. There is still no difference in collection policy whether the sponsor is unwilling to support the individual or whether the sponsor is unable to support the individual.³⁰¹

The Supreme Court of Canada considered whether the government had discretion in the collection of sponsorship debt in *Canada (Attorney General) v Mavi*.³⁰² The court found that sponsorship undertakings are not strictly contractual but rather statutory as collection of sponsorship debt is found in federal legislation and regulations. Governments have discretion in some aspects of collection, such as timing of repayments to the government. However, the government cannot decline to collect on sponsorship debt because the sponsor's economic situation has changed. The court found that the government did not want the costs of supporting sponsored relatives to fall on the public.

Based on this case, the government would likely have to amend the *Immigration and Refugee Protection Act* in order to eliminate the requirement to collect on sponsorship debt when the sponsor is willing but unable to support the individual. Any efforts to change the collection of sponsorship debt would need to be focused on legislative change, which will be more onerous than policy change.

Still to be done

If the Collaborative or CREA wishes to take action on this issue, they can advocate for reform of the *Immigration and Refugee Protection Act* to grant the government discretion in the collection of sponsorship debt in cases of economic hardship.

b) Evidence-based Decision-making

Recommendation

Conduct research on extent of default in BC, actual circumstances of defaults, and impact on families to better inform policy making.

Background from the Paper

There is a perception or unstated assumption that sponsors and immigrants in general are trying to “milk the system” by defaulting on sponsorship obligation/receiving social assistance.

Findings

No research has been conducted on sponsorship default in BC.

Still to be done

The Collaborative or CREA can consider advocating regarding the need for research on sponsorship default in BC.

2.3.4 Income Assistance—Proving Abuse in Sponsorship Default

Recommendation

Issue of proof be relaxed or broadened, away from just physical harms to include psychological abuse and neglect.

Background from the Paper

Sponsored immigrants leaving an abusive situation are eligible for social assistance in British Columbia. However, they must show third party verification for abuse. The current focus of acceptable evidence is largely on physical harms, not the types of harms that older immigrants, for example, may face—including psychological abuse or neglect.

Findings

There have been some changes to the BC Employment and Assistance program since the writing of the Vanguard Report. For applicants or recipients who are fleeing abuse, the definition of abuse is now the definition of “family violence” found in the new *Family Law Act*. This new definition extends beyond physical abuse to include physical, sexual, psychological, and emotional abuse.³⁰³ Neglect is not included in this definition.

Under the current policy, when an applicant first reports they are fleeing abuse they do not have to prove the abuse. However, after one year, and each year subsequent, the Financial and Administrative Services Branch can ask for documentation proving that the risk of harm continues. This evidence could include:

- Police report;
- Court order;
- Hospital records of physical injuries;
- Doctors reports of the current abuse, either physical or psychological;
- Report from transition house or support worker.³⁰⁴

If the applicant or recipient is a sponsored immigrant and is fleeing abuse, there are certain policy provisions relevant to them. While the risk of abuse continues, the sponsor will not be contacted by the ministry. The government will not try to pursue repayment from the sponsor while the risk of abuse is occurring, even though the sponsor will be considered to have defaulted on the sponsorship undertaking. Once the applicant or recipient is no longer at risk for harm, the government will contact the sponsor and try to obtain repayment of the sponsorship debt.³⁰⁵

In 2019 the federal government introduced policy that if someone who has come to Canada and does not have permanent status experiences domestic violence they can receive a free temporary resident permit that will allow them to obtain a work permit and health care coverage.³⁰⁶

Still to be done

The Collaborative or CREA can advocate for inclusion of neglect in the BC Employment and Assistance Policy on sponsorship breakdown and abuse.

2.3.5 Cultural Competency, Humility and Safety of Provincial Government Staff

Recommendation

Provincial government staff who are in contact with immigrants, especially abused or neglected immigrants, receive cultural competency training.

Background from the Paper

There is a need for government staff and community services providers to become more “culturally competent” about immigrant and ethnocultural families, with greater awareness and responsiveness to their strengths, the kinds of supports they need and the types of harm being experienced. In the context of abuse and neglect, there is a need for culturally sensitive guidelines and definitions that reflect the kinds of harms that sponsored immigrants’ experience.

See Vanguard Recommendation 8.

2.3.6 Reducing Isolation

a) Language

Recommendation

ESL classes expanded to be more available and relevant (for living and social language skills not just employment) to older immigrant, be free/low cost, and provide childcare.

Background from the Paper

English language (ESL) skills are fundamental to integration and inclusion, and reduction of immigrants' isolation. The resources and program delivery for English as a second language are problematic for many refugees and immigrants. Refugees are only eligible for ESL if they are outside the Lower Mainland. Sponsors must pay for the courses for sponsored parents/grandparents. Sponsored parents/grandparents often provide child care, and the ESL classes seldom offer child care, so sponsored parents/grandparents cannot attend. The ESL program and teaching method is geared more to employment language skills than living and social language skills.

Findings

Some ESL classes do target older immigrants, are free or low cost, or provide childcare, although these features are not consistent across programs. See below for examples of programs and services available in the lower mainland.

ESL Classes for Older Immigrants

Program	Older Immigrants	Free	Childcare
SUCCESS Language Instruction for Newcomers to Canada ³⁰⁷	Social, cultural, and economic information	Yes	Yes
MOSAIC Seniors Club: English Conversation Circle ³⁰⁸	Yes	Yes	No
Mount Pleasant Neighbourhood House: Seniors English Conversation Circle ³⁰⁹	Yes	Yes	No
PICS Community Adult Literacy Program ³¹⁰	Employment related	Yes	Yes
Surrey Libraries ESL Classes ³¹¹	No	Yes	No
Coquitlam Public Library ESL Programs ³¹²	No	Yes	No
Vancouver Public Library Adult Literacy Services ³¹³	No	Yes	No

Still to be done

The Collaborative or CREA can consider advocating for improved ESL access for older immigrants.

b) BC Bus Pass Program

Recommendation

Expand the BC bus pass program to those below 65 who have financial need.

Background from the Paper

Bus passes are an important means of reducing isolation for immigrants, as well as aiding social integration. There are a number of groups that are eligible for the bus passes, including low income sponsored immigrants over the age of 65 years (who otherwise would be eligible for OAS and GIS if they had lived here 10 years). This is an important benefit that significantly helps improve the ability to get around and reduces isolation. However many immigrants are unaware of the program and those under age 65 may not be covered if they are not receiving social assistance.

Findings

In BC, bus passes are available to people 60 and older who have financial need, or to people who are living with a disability and receiving disability assistance. Immigrants under age 60 who do not receive disability assistance are not eligible for the bus pass program.³¹⁴

The BC provincial government announced in 2019 that they are providing over one million dollars to community groups to expand or upgrade their community transportation programs for seniors. This may help seniors who do not qualify for low-income bus pass programs but still need transportation assistance.³¹⁵

Still to be done

The Collaborative or CREA can consider advocating for bus pass program access for people under age 60 who are not receiving income or disability assistance.

2.3.7 Negotiating Extremely Complex Systems

Recommendation

Develop a robust advocacy system (or enhance advocacy support) to help sponsored and other immigrants navigate systems including social assistance, and streamline and simplify service delivery to immigrants.

Background from the Paper

One of the most consistent remarks among immigrant serving agencies is the general lack of awareness among government bodies and community agencies about immigrants from cultures other than the “white mainstream”, as well as the lack of awareness about the depth of the challenges and complexities of systems that many immigrants are trying to work within. In particular, immigrants and immigrant supportive agencies point out that persons working within government as well as public and private organizations tend to be extremely unaware of the challenges that immigrants face in trying to figure out myriad of immigration, social assistance, employment, and housing systems. People are also generally unaware how complex and often contradictory these systems are.

Findings

There are several immigrant serving agencies in BC, as well as some legal aid clinics, where immigrants may be eligible to access a lawyer or advocate. However, as discussed in previous sections on legal aid availability, legal aid still needs to be bolstered, especially for areas which do not pertain to criminal matters or removal from Canada.

See below for a chart listing immigrant serving agencies and what services they offer to support system navigation. Legal clinics in BC that offer advocacy for housing issues are summarized under Housing Recommendation 11. Many of these organizations can also assist immigrants with other legal matters. Advocates are also available through community agencies across BC. The Povnet BC website is available to help people find an advocate in their community.³¹⁶

Immigrant Serving Agencies—System Navigation Support

Organization	Services	Resources/Information
Immigrant Services Society of BC ³¹⁷	ESL Classes Assistance finding work Assistance making community and interpersonal connections No direct advocacy services	Newcomer support such as what public services are available ESL Support Career development
MOSAIC ³¹⁸	Settlement worker Social and educational groups and workshops Community outreach and advocacy Legal advocacy program, offering help navigating the legal system, providing information, referrals, and representation in family, immigration, and poverty law	Legal information guides Food guides Links to resources Safety tips

Organization	Services	Resources/Information
SUCCESS ³¹⁹	Immigrant Settlement & Integration program Adult Day Centres Assisted Living Counselling Employment Services Seniors Services Training Programs for specific groups such as seniors, women, and children	Offer a variety of publications
Vancouver & Lower Mainland Multicultural Family Support Service Society ³²⁰	Offers services to immigrants, visible minorities, refugees, and women without immigration status who are experiencing family violence, in 20 languages Counselling, both individual and group Crisis intervention Advocacy Victim Services Referrals	Offers a variety of publications and education on elder abuse and child abuse, available in a number of different languages Offers information on community resources and navigating the criminal justice system

Still to be done

See Recommendation 13 regarding the need to advocate for increased legal aid funding for adults with capability issues.

2.3.8 Rights Information

Recommendation

Rights information should be available in a manner most useful to immigrants, including use of simple English and access to language interpretation, victims' services and Multicultural Outreach workers. Information should be available in forms suitable to people who cannot read any language.

Background from the Paper

Immigrants need good information before coming to Canada, and afterwards. Some, particularly older persons, may not be literate in their own language let alone English, which increases their vulnerability. Translation of material to various languages is a useful step, but not the only needed one. Providing information on multicultural radio or television stations can be useful, as can alternate means, such as the use of social theatre to highlight abuse issues within that culture as well as to identify solutions and community resources.

Findings

There are a variety of rights materials available for immigrants and older adults. The majority of these materials are only available in print, and most of the resources only come in English. Funding is needed for organizations to develop their rights information into other formats, such as video, or translate them into other languages. The chart below lists the rights information resources available, and languages or formats in which they are available. The People’s Law School information, as seen below in the chart, is still only available in print in English. Only one publication is available in other languages. The BC Newcomers’ guide is a good example of a resource which has been translated in many languages and is also available in video format.

The VictimLinkBC phone line, which is available across the province at any time of day, offers services in 110 languages and can provide victim service support to individuals who require interpretation services to access victims’ services supports.³²¹ The SFBC victim assistance program also provides services to immigrants age 50 and older, with language interpretation available from 9 am to 4 pm Mondays to Fridays.

Rights Information Resources for Immigrants—Elder Abuse and Family Violence

Resource	Who Made It	Description	Formats	Language
Addressing the Issue of Elder Abuse in Minority Communities ³²²	University of Victoria Institute on Aging and Lifelong Health and CCEL	Raise awareness of elder abuse and where to get help	Poster	Chinese, Punjabi
Stopping Elder Abuse in the BC Japanese Canadian Community ³²³	Tonari Gumi Japanese Community Volunteer Association	This project created brochures on elder abuse, and provided training to community leaders and volunteers and elder abuse	Brochure	Japanese
Roads to Safety ³²⁴	West Coast LEAF	This project created wallet cards with emergency contact numbers	Wallet Cards	Arabic, Chinese, English, Tagalog, French, Hindi, Farsi, Punjabi, Spanish, Urdu, and Vietnamese.
Sponsorship Breakdown ³²⁵	LSS	This document describes what someone can do if their sponsor is no longer supporting them	Document	English, Chinese Simplified, Chinese Traditional, Punjabi, Spanish, Farsi, French, Arabic
Abuse is Wrong in any Language ³²⁶	Canada Department of Justice	This document outlines what elder abuse is and where to get help	Document	English, Arabic, Chinese Traditional, Dari, French, Korean, Punjabi, Russian, Somali, Spanish, Tamil, Urdu

Resource	Who Made It	Description	Formats	Language
Talking About Abuse: Sexual Assault and Dating Violence ³²⁷	People's Law School	This video describes what sexual assault is and where someone can go to help	Video	English, Farsi, Korean, Mandarin, Russian, Tagalog
Talking About Abuse; Immigration and Sponsorship Breakdown ³²⁸	People's Law School	This video discusses the law on family violence and where to get help	Video	English, Farsi, Korean, Russian, Tagalog
Live Safe, End Abuse ³²⁹	LSS	This document describes abuse, the process of leaving an abusive partner, and where to get help	Document	English, Chinese Simplified, Chinese Traditional, Farsi, French, Punjabi, Spanish
Our Ethnic Media Outreach: DVDs on Wife, Child and Elder Abuse ³³⁰	Vancouver & Lower Mainland Multicultural Family Support Service Society	This video series describe cases of elder abuse, child abuse, and spousal abuse for use in education	Videos	Chinese (Mandarin/Cantonese), Spanish, and Punjabi
Wife Abuse Pamphlet ³³¹	Vancouver & Lower Mainland Multicultural Family Support Services Society	This pamphlet describes types of abuse and where a person can go for help, translated into 9 languages	Document	Arabic, Chinese, English, Tagalog, Korean, Persian, Polish, Punjabi, Spanish, Vietnamese

Other Health and Legal Information Resources for Immigrants

Resource	Who Made It	Description	Formats	Language
Dementia in the Workplace Curriculum for Newcomers ³³²	Building Trust	This project provides information on dementia to be incorporated into ESL classes	Presentation	English
Navigating to Care Video ³³³	MOSAIC	Information on dementia and navigating the health care system	Video	Korean
Learning About the Law ³³⁴	People's Law School	Describes basic legal rights, laws specific to families, youth, and older adults, and the laws governing employment and housing	Various resources including wikibook and printable materials	English
Human Trafficking in Canada ³³⁵	People's Law School	This document describes the law on human trafficking	Document	English, French, Chinese Simplified, Punjabi, Spanish, Tagalog

Resource	Who Made It	Description	Formats	Language
Legal Issues for Newcomers: Information about Income Security and Government Services for Newcomers to Canada Residing in BC ³³⁶	MOSAIC	This document outlines rights to government programs and services such as health care and income security	Document	English, Arabic, Chinese Simplified, French, Korean, Persian, Spanish
Family Law Act Factsheet ³³⁷	MOSAIC	This factsheet outlines rights and responsibilities under family law	Document	English, Chinese Simplified, Punjabi, Spanish
Safety Tips for International Students in Canada ³³⁸	MOSAIC	This document outlines safety tips and related legal rights	Document	English, Chinese Traditional, Japanese, Korean
Debt and Consumer Law Factsheets ³³⁹	MOSAIC	Topics include bogus educational institutions, various types of debt, and fraudulent immigration consultants	Documents	English, Arabic, Persian, Vietnamese
Need Help with your Refugee Claim? ³⁴⁰	LSS	This brochure outlines what legal aid is available for refugee claims	Brochure	English, Arabic, Dari, Farsi, French, Kurdish, Pashto, Spanish
Fundamentals of the Law: People in a Courtroom ³⁴¹	People's Law School	This video describes roles of individuals in the justice system	Video	English
BC's Newcomers' Guide ³⁴²	British Columbia provincial government	This guide and its accompanying videos describe the basics of coming to the province including becoming employed, finding a home, obtaining health, financial and legal services, and transportation	Document Videos	Arabic, English, Farsi, French, Hindi, Japanese, Korean, Portuguese, Punjabi, Russian, Chinese Simplified, Spanish, Tagalog, Chinese Traditional, Vietnamese
Navigating the Health System Factsheets ³⁴³	BC Women's Hospital & Health Centre	These factsheets and videos describe the public health care system and health care providers	Fact Sheets Videos	Arabic, English, Farsi, French, Korean, Mandarin, Punjabi

Still to be done

See Housing Recommendation 1 regarding the need to develop more family law materials in non-written formats, such as audio and video. The Collaborative and CREA could audit the above lists of resources to identify key gaps and support the development of missing resources in appropriate languages.

2.3.9 Professional Development for Judges

Recommendation

Cultural issues be included in continuing education for judges, so the judicial system can craft more culturally appropriate solutions.

Findings

Bodies that provide training to judges do provide resources to support professional development on cultural humility and safety. These courses are not mandatory. Only one academic article could be located discussing cultural competency of judges.³⁴⁴ See below for a list of judicial organizations and the training they provide.

National Judicial Institute³⁴⁵

- Offers courses for judges all over Canada in variety of formats
- Topics on social context:
 - ▶ Safety and Security of Women
 - ▶ Indigenous Law Seminar
 - ▶ Judges with Community: Deepening our Understanding of Mental Health
 - ▶ Assessing and Building Intercultural Competence
 - ▶ Judging Alone in Small Communities

Canadian Association of Provincial Court Judges³⁴⁶

- Provides annual conferences, intensive educational programs, and skills-based programs

Canadian Judicial Council³⁴⁷

- Offers professional development to federally-appointed judges
- Courses include:
 - ▶ Building Cultural Capacity

- ▶ Annual Conference on Diversity
- ▶ Assessing and Building Intercultural Competence
- ▶ Judging as Canada Changes: Safety and Security of Women

Still to be done

The Collaborative and CREA could consider advocating for cultural humility and safety training for judges.

2.3.10 Cultural Competency

Recommendation

Training be provided at all levels of service delivery to build and strengthen service providers and government staff's cultural competence.

Background from the Paper

It is extremely important that service providers gain a better understanding of immigrants' cultural values, and how these can be different or similar to their own values. This can be very important for developing useful interventions and assistance efforts in abuse and neglect, to avoid stereotypes or misconceptions, and to avoid re-victimizing the abused person. The notions of gender equality and power and control in families differ and "can play out" differently according to religious and cultural belief systems and traditions

Findings

See Vanguard recommendation 8 for a list of cultural humility and cultural safety training programs and resources. Most of the professional colleges and the provincial government do provide some training or encourage people to take the San'Yas training.

Still to be done

See Recommendation 8.

2.3.11 Neglect

Recommendation

Provincial health authorities should explore alternatives to reduce risk of neglect among immigrants, such as supporting families to provide care at home, and ensuring long-term care facilities meet social, cultural, and religious needs.

Background from the Paper

It is important to understand how neglect can occur in some immigrant families. This may reflect cultural norms for caring for older members at home but also the lack of culturally appropriate long term care.

Findings

The health authorities have not published any analyses of strategies for reducing neglect among immigrants. There are two recent reports from the federal government discussing neglect or isolation among immigrant seniors:

- National Seniors Council, *Who's at Risk and What Can Be Done About It? A review of the literature on the social isolation of different groups of seniors*³⁴⁸
 - ▶ Among other groups, the report examines the experiences of immigrant seniors
 - ▶ The report notes that newer immigrants are more likely to live alone, immigrant seniors are more likely to be lonelier than Canadian born seniors, and loneliness is more common among those who do not speak English or French as their first language
 - ▶ While more research is needed, the report notes that efforts to reduce loneliness should consider culture, language, and the broader family environment
- Employment and Social Development Canada: *Social Isolation of Seniors: A focus on new immigrants and refugee seniors in Canada*³⁴⁹
 - ▶ The report briefly discusses elder abuse and how it interacts with social isolation

Still to be done

The Collaborative and CREA may wish to support research and knowledge exchange to better understand health authorities' practice and the role of ethno-cultural community-serving non-profits in reducing neglect among immigrants.

2.3.12 Incapability Assessment

Recommendation

Review incapability assessment processes from a cultural perspective to ensure they can give accurate assessment of person's capacities.

Background from the Paper

Mental capacity issues for immigrants can arise in the context of deteriorating physical or mental health, brain injury, or environmental risk factors. It is important to understand the role of trauma for immigrants and refugees, recognize that some will be experience post-traumatic stress disorder, and recognize how that may affects reactions. It is essential that the assessment process be much more culturally appropriate and culturally sensitive; that includes the assessment tools being used. Assessment tools are often not reliable for persons with little education, low literacy or poor English language skills.

Findings

There are no academic articles reviewing the mental capability assessment process in relation to immigrants. The American Bar Association *Handbook for Lawyers: Assessment of Older Adults with Diminished Capacity* does briefly discuss using a cultural perspective in assessing mental capability.³⁵⁰ The PGT released a report prepared by Dr. Deborah O'Connor on incapability assessment in 2009 (*Incapability Assessments: A review of assessment and screening tools Final Report*) which discussed the need for cultural competency in conducting assessments.³⁵¹

Still to be done

The Collaborative and CREA can advocate to ensure incapability assessment resources include a cultural humility and safety lens.

2.3.13 Protocols

Recommendation

Any protocols that are developed use a cultural lens.

See Vanguard Recommendation 8.



3 | Legal Update

3.1 LEGISLATION

3.1.1 Status of the *Adult Guardianship and Planning Statutes Amendment Act, 2007* – Bill 29 Provisions

Bill 29, *Adult Guardianship and Planning Statutes Amendment Act*, 2007³⁵² was developed to overhaul BC's guardianship framework. This bill received Royal Assent on November 22, 2007 but had yet to be brought into force at the time of the Vanguard Report's writing in 2009. The bill amended:

- *Adult Guardianship Act (AGA)*;³⁵³
- *Health Care (Consent) and Care Facility (Admission) Act (HCCCFAA)*;³⁵⁴
- *Power of Attorney Act*;³⁵⁵ and
- *Representation Agreement Act*.³⁵⁶

Bill 29 was ultimately meant to repeal the *Patients Property Act (PPA)* as well.³⁵⁷

Some of the changes found in Bill 29 have now been brought into force—notably the ones which:

- Add categories of people to the list of temporary substitute decision makers for health care;

- Permit people to provide or decline consent to treatment in advance via an advance directive;
- Clarify aspects of planning via an enduring power of attorney; and
- Allow the PGT to be appointed statutory property guardian through a non-court process.

We discuss these four changes below.

The substantial changes to the guardianship framework that were to repeal the *PPA* remain not in force. These provisions would create a court-appointed personal and property guardian system to replace committee framework.

3.1.2 New Provisions in Force

Temporary Substitute Decision Makers

The *HCCCFAA*, in force since 2000, allows for a temporary substitute decision maker (TSDM) in the event that an adult is not capable of making a health care decision.³⁵⁸ In section 16, the list of people who can give consent was expanded to include grandparents, grandchildren, a close friend, or a person immediately related by marriage. Section 19, which sets out the duties of a TSDM, requires the TSDM to consult with the adult to the greatest extent possible, and make a health care decision based on the adult's previously expressed wishes or instructions. If the adult's previously expressed wishes are not known, the TSDM must make a health care treatment decision based on the adult's best interest. When considering what is in the adult's best interests, the TSDM must consider the adult's current wishes, beliefs and values, the likelihood of improvement with the proposed treatment, the benefits versus risks, and what is the least restrictive or intrusive option.

Advance Directives

The provisions of Bill 29 which impact planning for incapability came into force by order in council on September 1, 2011.³⁵⁹ Bill 29 provisions regarding advance directives are also now in force, found in sections 19.1 through 19.91 of the *HCCCFAA*. A capable adult can create this written document which sets out what health care the adult would consent to or not consent to in the future in the case that they are no longer capable. Section 19.5 sets out the formal requirements that must be followed for an advance directive to be valid. Advance directives can be changed or revoked, but changes or revocations must be done in writing in a set manner. The advance directive does not have to be followed if the advance directive is unclear, the directive does not give explicit consent to the specific health care decision at issue, medical knowledge or technology has changed significantly since the writing of the directive, or the adult's wishes, values, or beliefs have changed. An adult cannot be required to make an advance directive.

The hierarchy for who can make a health care decision in the case that an adult is incapable has been altered by these provisions coming into force. Currently, the order is:

1. A personal guardian, which currently means a committee of the person under the *PPA*;
2. A representative, which means a person authorized by a representation agreement;
3. Consent of the adult previously expressed in a valid advance directive;
4. A TSDM under the *HCCCFAA*;
5. The Public Guardian and Trustee as temporary substitute decision maker of last resort.

Enduring Powers of Attorney

Bill 29 amended the *Power of Attorney Act*. Now, when creating an enduring power of attorney, the adult can choose when the attorney can start to act. The powers can take effect immediately or upon the adult becoming incapable. In the case that the power of attorney begins while the adult is capable, the document can state whether the attorney can continue to act once the adult becomes incapable of making financial decisions. Note that in BC an attorney can only act in financial or legal matters, and cannot make personal or health care decisions.

Statutory Property Guardians

Bill 29, when fully brought into force, will create a new guardianship system. The committee system will be abolished, replaced with three types of guardians: statutory property guardians, personal guardians, and property guardians. On December 1, 2014 the statutory property guardian framework was brought into force,³⁶⁰ but the property guardians and personal guardians have not yet been brought into force.

A statutory property guardian can be appointed via a certificate process without going to court, and the PGT is the appointed statutory property guardian. The process of appointing a statutory property guardian begins with:

- any person notifying the PGT that the adult may be incapable of managing their financial affairs, or
- a health care provider requesting an incapability assessment because they believe the adult may be incapable of managing their financial affairs.

A qualified health care provider will assess the adult and send the report to the health authority designate. The health authority designate must determine if the adult needs a statutory property guardian, in consultation with the PGT. Issuing an incapability certificate requires establishing the following:

- The adult needs to make decisions about their financial affairs;
- The adult is incapable of making decisions about the financial affairs;
- The adult needs a statutory property guardian;

- There are no other ways to assist the adult in making financial decisions; and
- There is not already another decision-making mechanism in place, such as a power of attorney or representation agreement.

The health authority designate may issue a certificate of incapability, and if this is done, the PGT becomes the statutory property guardian from the date of signature. The statutory property guardianship ends if:

- The PGT determines the adult no longer needs a statutory property guardian;
- The adult is reassessed and determined to now be capable;
- The court ends the statutory property guardianship; or
- The court appoints a committee under the *PPA*.

3.1.3 Not In Force: Personal and Property Guardians

The provisions which create personal guardians and property guardians are not yet in force. If these provisions do come into force, they will allow the court to appoint guardians for personal, health care, or financial decisions. The adult would be assessed, and the court would appoint a guardian if:

- The adult needs to make these decisions;
- The adult is found to be incapable;
- The adult needs a guardian; and
- There is no other way of allowing the adult to get help in making decisions.

Multiple people will be able to be guardians, and the court will be able to appoint a different personal guardian and property guardian. An adult's wish as to who should be appointed will need to be considered. The guardian will be required to make decisions based on the adult's pre-expressed wishes. Additionally, the guardian will need to include the adult in decision-making as much as is reasonable. These changes will bring the duties of the guardian into better alignment with those of representatives under a representation agreement and attorneys under a power of attorney.

Currently, if a person is found to be incapable, the committee system under the *PPA* is in place. If a person applies to court for an order declaring the adult is incapable, the court may appoint a committee of the estate or committee of the person. The process requires two medical practitioners to express the opinion that the adult is incapable of managing their financial or personal affairs. Any person can be appointed committee, but the court prefers to appoint a family or friend who knows the adult well.

On December 1, 2014, when the statutory property guardianship provisions were enacted, section 18(2) of the *PPA* was amended to require that “[a] committee must, to the extent reasonable, foster the independence of the patient and encourage the patient’s involvement in any decision making that affects the patient.” This change effectively requires the committee to consult with the adult when making a decision, and engage the adult in the decision-making process.

3.1.4 Care Facility Admission: In Force

Part 3 of the *HCCCFAA* was brought into force on November 4, 2019.³⁶¹ This change means BC now has legislation governing admission to long-term care, including in a private hospital, high-level extended care in a hospital, in-patient rehabilitation in a hospital, or any other facility designated as a care facility. Before Part 3 was enacted, there was no one legally authorized to provide substitute consent to admission to a care facility for an adult who was incapable of consenting and who had neither a section 9 representative or a committee of the person.³⁶² This gap in the law created admission challenges for adults with capability issues.

Under the new provisions:

- There are three ways an adult can be admitted to a care facility (section 20):
 - ▶ The capable adult gives consent;
 - ▶ A substitute decision-maker gives consent if the adult is incapable of making an admission decision; or
 - ▶ The adult is admitted on an emergency basis without prior consent.³⁶³
- Section 21 sets out that the adult, if capable of making an admission decision, must give voluntary consent after being given all the information a reasonable person would need to make this decision, including what care the adult will receive, and the circumstances under which they can leave the facility. The manager is required to communicate “in a manner appropriate to the adult’s skills and abilities” and allow a person to assist the adult in communicating and making this decision, which enables supported decision-making.³⁶⁴
- Substitute consent can be obtained for an adult who is incapable of making an admission decision. Section 22 sets out who can be a substitute decision-maker and how to qualify. The list matches the list of who can currently be a TSDM for general health care decisions under section 16 the *HCCCFAA*.³⁶⁵ Capability is presumed, and substitute consent requires an incapability assessment meeting the criteria set out in the Act.³⁶⁶
- The provisions identify two ways that a person can be admitted in emergency without consent. Both provide temporary solutions:
 - ▶ The adult does not have capability to consent (an incapability assessment regarding care facility admission having just occurred) and immediate admission is required to preserve life, prevent serious physical or mental harm to the adult or serious physical harm to others. Substitute consent must be obtained within 72 hours to continue admission; or
 - ▶ One of the designated agencies is admitting the adult under s 59 of the *AGA* to address urgent circumstances involving abuse or neglect of an adult who appears to be incapable of giving or refusing consent. The designated agency is expected to investigate the situation following the emergency admission but no specific time limit is provided in either the *AGA* or the *HCCCFAA*.

- New provisions of the Health Care Consent Regulations set out the process for incapability assessments.

3.1.5 Assisted Living Regulation: In Force

On December 1, 2019 the provincial government brought into effect changes to the *Community Care and Assisted Living Act (CCALA)* and a new *Assisted Living Regulation (AL Regulation)* into force.³⁶⁷ These changes:

- Create new classes of assisted living;
- Enhance the powers of the Assisted Living Registrar to provide oversight;
- Change the number of services that assisted living residences may offer;
- Define who is not eligible to live in assisted living; and
- Set out more detailed regulation of assisted living, which should allow for greater protection of residents' rights.

Section 3 of the new AL Regulation creates three classes of assisted living residences—housing for adults receiving assisted living primarily due to:

- a “mental disorder” (category called “Mental Health”);
- chronic or progressive conditions linked to aging or disability (category called “Seniors and Persons with Disabilities”);
- substance use (category called “Supportive Recovery”).³⁶⁸

Assisted living residences may now offer as many “assisted living services” as they would like under the updated *CCALA*. These services were formerly called “prescribed services” and residences had been limited to providing two services. The list of assisted living services has remained largely the same. An “other types” category has been added, which allows residences to provide a wider array of services.³⁶⁹

The new *CCALA* provisions set out who is not eligible for assisted living in section 26.1. A person is not eligible for assisted living if they:

- cannot make decisions to keep them safe in daily life;
- cannot respond appropriately in an emergency;
- act in a way which would put others at risk; or
- need “on a regular basis, unscheduled professional health services.”³⁷⁰

Several sections have been added to the *CCALA* to increase protection of residents from abuse.

- Section 28.2 protects employees or others who report abuse of a resident from having adverse action taken against them. Services to a resident cannot be changed due to the suggested or actual report of abuse.³⁷¹

- Section 28.1 seeks to prevent financial crime by not allowing the assisted living operator or any of their employees or agents to encourage a resident to change their will, give a gift, create a benefit, or act as their representative.³⁷²
- In the AL Regulation, abuse (neglect or emotional, financial, physical, or sexual abuse) is considered a reportable incident and must be reported to the Registrar within 24 hours. This provision will reconcile practice with the rules for long-term care facilities.³⁷³

3.2 TABLE OF LEGISLATION CHART

Provisions in Force	Provisions Not In Force
Temporary Substitute Decision-Makers (<i>HCCCF</i> s 16 & 19) Advance Directives (<i>HCCCF</i> s 19.1-19.91) <i>Power of Attorney Act</i> Statutory Property Guardians (<i>AGA</i> Part 2.1) Care Facility Admission Provisions (<i>HCCCF</i> Part 3 & new regulations) Assisted Living Regulations (<i>CCALA</i> & <i>Assisted Living Regulation</i>)	Personal and Property Guardians (<i>AGA</i> Part 2)

3.3 COURT DECISIONS

3.3.1 Cases Interpreting the *Adult Guardianship Act*

In the ten years since the Vanguard Report was published, there have been several cases interpreting provisions of the *AGA*, both new and old provisions. We will outline the developments in these cases below. Some decisions deal with issues that have come up in transitioning to the new statutory guardianship provisions, such as declaring someone capable, and transfer of property by an incapable adult. One case examines whether capability and consent can be inferred from behaviour. The most recent decision critically examines how the emergency assistance provisions can be used.

Declaring a Person No Longer Incapable – Gap in Legislation

*Senini (Re)*³⁷⁴ illustrated a gap in the legislation that emerged because statutory property guardians were enacted without the rest of the new guardianship framework under Part 2 of the *AGA* being put into effect. In this case, the then Vancouver Island Health Authority issued a Certificate of Incapability in 2008, and the PGT became the statutory property guardian/committee of the estate under the *PPA* framework. Cindy Senini had a mental illness (psychotic depression). In 2011, Ms. Senini's sister successfully applied to the court to replace the PGT without providing any medical evidence to the court.

In 2016, Ms. Senini petitioned the court for removal of her sister's committee, arguing that she was no longer incapable. In *Senini* the court found that Ms. Senini did not meet the criteria under the *PPA* because the court had not declared her incapable in 2011. The court described the appointment of the sister as committee as having been a court error. However, as Ms. Senini had never been declared incapable of managing her financial affairs by the court, she did not fall within the definition of a "patient" under the *PPA*; therefore, the judge could not declare her to be no longer incapable under section 4 of the Act. Section 35(4) of the *AGA* also could not be used to declare Ms. Senini no longer incapable because the PGT's appointment as statutory property guardian/committee had ended and the certificate of incapability had been cancelled in 2011 (as a result of the court order appointing the sister as committee). A gap in the legislation emerged because while there was no evidence that Ms. Senini was incapable, there was no authority under the *PPA* to declare her no longer incapable.

In this case, the court found it could use its inherent (*parens patriae*) jurisdiction to declare Ms. Senini capable and thus end the committee. The court noted that without being able to use their *parens patriae* jurisdiction, there would have been no way to confirm that Ms. Senini was capable and discharge her sister as committee. The *parens patriae* jurisdiction is an old remedy that allows the court to act in some circumstances where there is no explicit legislative authority to act. It is often invoked to prevent harm to minors, and has historically also been used to protect vulnerable adults. The court noted it was willing to exercise this jurisdiction because it found the evidence of capability presented by Ms. Senini to have been adequate.

Confidentiality of Designated Agency Reports

Section 46(2) of the *AGA* allows a person to report suspected abuse or neglect to a designated agency and have their identity kept confidential. In the case of *Order F09-23; Vancouver Coastal Health Authority*,³⁷⁵ a family member of an adult made a freedom of information request on a report of abuse and neglect made to a designated agency. A report had been sent in that an adult was being abused or neglected, which was found to be unfounded after investigations were completed. The family member was concerned they had been wrongfully accused, and argued that the *Freedom of Information and Protection of Privacy Act (FOIPPA)*³⁷⁶ gave them a right to this information. The court considered how the competing interests in these two acts should be weighed.

The court determined that while section 46(2) of the *AGA* did not automatically take precedence over *FOIPPA*, the statutory wording of the *AGA* led to the conclusion that reports of abuse or neglect to a designated agency were intended to be confidential. The information contained in abuse or neglect reports included the opinions of people within the program mandate, and the names of people providing information. In this case, disclosing such information did not contribute to public scrutiny of public agencies. It was not possible to summarize the information in the report without disclosing the identity of the reporter. Therefore, the family was refused the portions of the report that could identify who made the abuse or neglect report.

Affirmation of the Presumption of Capability

In several cases, a complainant brought forth an argument that an adult was incapable. The court in these cases affirmed that the presumption of capability in the *AGA* was robust and needed to be upheld.³⁷⁷ For example, in *Temoin v Marshall*, in a petition to have a person declared incapable, the trial judge noted that there was a presumption of capability, and there needed to be *prima facie* evidence of incapability before a judge would force an unwilling adult to undergo an incapability assessment.

Transfers of Property by an Incapable Adult

In *Broad v Broad*,³⁷⁸ the court considered the provisions on transfer of property by a person who has been declared incapable. In this case, the attorney under the power of attorney had tried to transfer the adult's property to herself through her attorney powers, but this transfer was invalidated. The attorney then had the adult sign the property over to the attorney and himself jointly. The PGT sought to have this transfer invalidated. The issue in this case was whether this transfer was void or voidable.

Section 60.2 of the *AGA* now governs such transfers. It states that a transfer of property of an incapable person is voidable unless full consideration was paid or a reasonable person would not have known the adult was incapable. A previous case, *Zak v Zak* had considered this provision, but did not end up making a decision based on the interpretation of Section 60.2. In *Broad*, the court found that section 60.2 did codify the common law presumptions of fiduciary duty, resulting trust, and undue influence. The onus under section 60.2 is for the PGT to prove that the adult was incapable when the property was transferred; the other party then has the onus of proving that a reasonable person would not have known the adult was incapable.

To Whom does a Designated Agency owe a Duty

*Hoffman and another v BC (Ministry of Social Development) and another*³⁷⁹ examined to whom a designated agency owes a duty under the *AGA*. Hoffman, an adult living with a disability, and his mother both brought claims of discrimination against CLBC, among others, for discrimination arising from his transition from care under the children's system to CLBC, and the reduction in funding that went along with this transfer. They also made arguments related to the removal under the section 59 emergency powers. The court found that the CLBC did not owe any duties under the *AGA* to parents or caregivers. The "public" that is served under the *AGA* is limited to adults with developmental disabilities who are receiving their services.

The Meaning of Neglect

In *Bentley v Maplewood Seniors Care Society*,³⁸⁰ family members of Ms. Bentley requested the long-term care facility stop giving her food and water. Ms. Bentley had Alzheimer's Disease. Her dementia was very advanced, and she was no longer making much physical movement, and had not spoken in several years. She could not eat or drink on her own. The practice of the facility was for staff to put a spoon or glass to her lips at meal times, and to stop offering food or water when she did not open her mouth. The long-term care facility, Maplewood Seniors Care Society, along with Fraser Health Authority, argued

that ceasing to provide nutrition and hydration would bring around her death through starvation and dehydration, cause discomfort, and constitute neglect under the *AGA*.³⁸¹

The court considered whether or not assistance with feeding was considered health care or personal care, as this issue was not clearly addressed in the *HCCCFAA*. The court decided that assistance with feeding was personal care. As a result, the *HCCCFAA* did not apply to the feeding.

The court considered whether not providing assistance with feeding would fall under the meaning of neglect in the *AGA*. The court noted it was clear Ms. Bentley would be considered an adult in need of support and assistance, given the advanced stage of her Alzheimer's Disease left her unable to feed herself. The court would consider failing to provide assistance with feeding to be neglect within the meaning of *AGA*. A designated agency, in this case Fraser Health Authority, would thus have to intervene to protect Ms. Bentley from the withdrawal of nutrition. The court noted a capable adult is allowed to refuse food or drink. But it is not clear law that a substitute decision-maker has the authority to refuse food or drink on behalf of an incapable adult even if Ms. Bentley had a substitute decision-maker for personal care. The court found it was not intended that a substitute decision-maker could refuse personal care that would lead to the adult's death. Therefore, if Ms. Bentley were found to be incapable of making the decision to accept nourishment (which she was not in this case), it would be neglect to refuse food and drink.

In addition to considering the meaning of neglect, the court also considered Ms. Bentley's previous expressions of her wishes. Prior to her diagnosis, Ms. Bentley had written a statement of wishes that she did not want to be kept alive by artificial or heroic measures, or given nourishment or liquid if she were not expected to recover. In another statement of wishes written after her diagnosis she stated she did not want to be kept alive by artificial means, such as tube feeding, but did want to be kept pain free. The trial court found that these documents, while reflecting some of her wishes, did not fulfill the criteria to be considered either a valid advance directive or a representation agreement.

The court considered whether Ms. Bentley was able to make a decision to accept nourishment. The court noted that there was a presumption of capability in relevant legislation, and that capability was not all or nothing. The court found there was a great deal of evidence that Ms. Bentley was capable of making the decision to eat or drink, and she was communicating this consent through behaviour. Therefore, the long-term care facility must keep offering nourishment. The case was decided on this point, since if Ms. Bentley was capable, all other arguments regarding substitute decision-making and advance directives were irrelevant. However, the court still noted how it would have decided the other issues.

This case was appealed on the issue of whether it should have been considered battery for the long-term care facility staff to prompt Ms. Bentley to eat or drink and there was thus a reverse onus to prove consent.³⁸² The court dismissed the appeal, stating the supreme court decision did not make any errors in the analysis, and the court must give effect to the wishes of the adult in the present time regardless of what they may have written or expressed in the past. The lower court had addressed whether Ms. Bentley was consenting, and this consent was a complete defence to battery. Neither party has made a further appeal of this decision.

Detention under the Emergency Assistance Provisions

The appeal in *AH v Fraser Health Authority*³⁸³ concerned the involuntary detention of AH by Fraser Health Authority under the section 59 emergency assistance provisions of the *AGA*. In a related decision, *Fraser Health Authority v AKH et al.*,³⁸⁴ the court had considered an application for a section 56 support and assistance order under Part 3 of the *AGA* (filed shortly after AH had made a petition to challenge her detention).

AH was a 39-year old Indigenous woman living with a number of intellectual disabilities, including Fetal Alcohol Spectrum Disorder, as well as mental health and substance use issues. She was a survivor of family violence and sexual abuse. Prior to the facts giving rise to litigation, she was residing primarily with her mother and other members of her family. Fraser Health Authority received reports that AH was being abused and neglected by her mother and others. Fraser Health Authority conducted an investigation and concluded that AH met the criteria for intervention under the *AGA* because she was experiencing abuse and/or neglect and was unable to seek support and assistance in order to respond to the abuse due to cognitive impairment. A support and assistance plan was put into place, to which both AH and her mother consented. Subsequently Fraser Health Authority received further reports alleging physical abuse, sexual exploitation by her mother and others, and other concerns. At this point, Fraser Health Authority made the decision to detain AH in hospital under 59 of the *AGA*.

AH did not want to be detained. She escaped three times, returning to her mother. She was ultimately detained in a secured ward for over 11 months, an experience which included denial of requests to go outside for fresh air, pressure to take sedating medication, and being tied her to her bed in one instance. She was not initially permitted to contact a lawyer or to get legal advice. When she was finally able to access a lawyer, she filed an *habeas corpus* application. By the time the matter was heard by the court, the detention issue was moot, as AH had been released from hospital, and was living in community pursuant to the terms of a support and assistance plan; however, she sought relief for what she felt to be a lengthy illegal involuntary detention, including violations of her rights under the *Charter of Rights and Freedoms* (the *Charter*). Fraser Health Authority had not applied for a section 56 support and assistance order during these nearly 12 months.

In a lengthy decision Justice Warren found the detention of AH to have been unlawful as the length of time for which she was detained—11 months and 13 days—exceeded the meaning of emergency under section 59(2)e), i.e. to “take any other emergency measure that is necessary to protect the adult from harm”. Justice Warren noted issues of eligibility for CLBC services, challenges finding appropriate housing, and the lack of applicability of the *Mental Health Act*. Justice Warren reasoned that, given the overall *AGA* framework, the concept of an “emergency” should capture only the length of time it would take to apply for an order imposing a support and assistance plan under s 56. Once the immediate threat was eliminated, the expectation is the designated agencies must apply for a section 56 order for support and assistance. Although the court accepted that staff “had good reason to believe that AH had been abused and that she was at risk of serious harm”, the court described the detention of AH as having overstepped authority under the statute. Justice Warren also concluded that AH was entitled to a declaration that numerous *Charter* rights had been violated.

The court also considered whether CLBC was a proper respondent since CLBC had not detained AH. The court found CLBC was appropriate to be a respondent in the case. CLBC did not detain AH or exercise authority until after the section 56 order was granted. However, CLBC was providing ongoing services to AH, and AH was seeking an order prohibiting a designated agency from detaining her in the future. Given the ongoing service relationship, the court found it was appropriate to have CLBC a respondent for the claim prohibiting future detentions under section 59.

At the time of writing, neither party has launched an appeal of the decision. A very recent case from Alberta affirmed some of the principles from *AH v Fraser Health Authority*. In the Alberta decision, *JH v Alberta Health Services*,³⁸⁵ an adult was detained under Alberta’s metal health legislation under the guise that he had a problem with memory and cognition such that he could not make decisions on his medical needs. However, he had no psychiatric condition and there was no incapability assessment. He was not told of his right to counsel or the reasons for his detention. The judge noted the similarities to the facts underlying the decision in *AH v Fraser Health Authority*. The judge stated that *AH v Fraser Health Authority* demonstrated that a detention under the *AGA*, and likewise the mental health legislation in Alberta, could trigger section 10(b) of the *Charter*. The judge found that not giving written reasons within a reasonable time was a breach of *Charter* rights, as was not being informed of the right to counsel within a reasonable time.

3.2.2 Cases interpreting the *Patients Property Act*

Choice of Person as Committee

*Re Matthews*³⁸⁶ concerned who would be appointed committee of the estate and committee of the person. In this case the family members were not in agreement regarding which two daughters should be appointed. Ms. Matthews had strong and consistent views on which daughter she wanted to be her committee of the person. She preferred one of her daughters despite the other daughter having been taking care of her for a long period of time and having a closer relationship with her. The court determined that Ms. Matthews’ views should be considered because they were strong and consistent, regardless of whether these feelings were rational. The court appointed the daughter that Ms. Matthews preferred as committee of person. The court did not find any other reason not to appoint this daughter. In this case, the PGT had previously been named committee of the estate because the daughters would have been unable to work together, and the court noted that there needed to be effective communication between both committees of the estate and person.

3.4 TABLE OF COURT AND TRIBUNAL DECISIONS

Case Name	Main Finding
<i>Senini (Re)</i> ³⁸⁷ (BCSC)	The court found a gap in legislation declaring a person no longer incapable The court used their <i>parens patriae</i> jurisdiction to overcome the lack of legislative authority to declare an adult no longer incapable

Case Name	Main Finding
<i>Order F09-23; Vancouver Coastal Health Authority</i> ³⁸⁸ (BC IPC)	Reports of abuse and neglect to designated agencies are intended to be confidential, and the identity of the reporter cannot be disclosed
<i>Temoin v Marshall</i> ³⁸⁹ (BCCA)	The court affirmed the presumption of capability
<i>Broad v Broad</i> ³⁹⁰ (BCSC)	Under the new AGA provisions governing the transfer of property by an incapable adult, the transfer is voidable unless there was full consideration, or a reasonable person would not have known the adult was incapable
<i>Hoffman and another v BC (Ministry of Social Development) and another</i> ³⁹¹ (BCHRT)	Designated agencies (CLBC in this case) do not owe duties under AGA to parents or caregivers For CLBC, 'the public' is limited to adults with developmental disabilities using their services
<i>Bentley v Maplewood Seniors Care Society</i> ³⁹² (BCSC & BCCA)	This case considered the meaning of neglect and how consent can be communicated Based on the facts, that Ms. Bentley was capable of deciding to eat or drink, and this decision could be communicated through behaviour Assistance with feeding was personal care, not health care, and therefore not covered by the HCCCFAA On appeal, the court found that it must give effect to decisions made in the present regardless of previously expressed wishes
<i>AH v Fraser Health Authority</i> ³⁹³ (BCSC)	The emergency provisions were only meant to capture a short time period to address an immediate threat while a designated agency applied for a s 56 order for support and assistance Detention for almost a year was beyond what was reasonable for an emergency detention. The court found multiple <i>Charter</i> right violations
<i>Re Matthews</i> ³⁹⁴ (BCSC)	The court should consider the views of the individual who is having a committee of the estate or person appointed when the views are strong and consistent, regardless of whether these feeling are rational

Abbreviations

BCCA	BC Court of Appeal
BCHRT	BC Human Rights Tribunal
BC IPC	BC Office of the Information and Privacy Commissioner
BCSC	BC Supreme Court

3.5 UNIMPLEMENTED VANGUARD RECOMMENDATIONS FOR LAW REFORM

Below is a list of direct law reform, justice system, and access to justice recommendations from the Vanguard Report which have not yet been implemented.

3.5.1 Direct Law Reform Recommendations

- **Recommendation 9, AGA Evaluation:** Comprehensively evaluate the effectiveness of the *AGA*
- **Recommendation 10, Harmonize Capability Tests:** Review statutory incapability tests and consider whether greater harmonization is needed
- **Recommendation 3 and Recommendation 10 (Housing Paper) Domestic Violence Protection:** Implementation of the *Family Law Act* included significant law reform of family violence law. Consider whether recent amendments adequately address the experiences of vulnerable adults
- **Recommendation 9 a (Housing Paper) Regulation of Supportive Housing:** Examine the feasibility of combining supportive housing and assisted living into a single statute that addresses tenancy, consumer protection, and health and safety concerns
- **Recommendation 1 (Immigration Paper) Length of Sponsorship:** Reduce the length of sponsorship for parents and grandparents down to 3 years
- **Recommendation 2 b (Immigration Paper) Old Age Security:** Review and reconsider the policy of reduced benefits for immigrants given the practical effect on older immigrants and their families

3.5.2 Justice System and Access to Justice Recommendations

- **Recommendation 11, Justice System and Incapability:** Evaluate how the criminal justice system interacts with adults with capability challenges, including as witnesses, victims, and offenders
- **Recommendation 12, Criminal Justice System Policies:** Develop internal policies for interacting with adults with reduced capability, and consider how the current prosecution policies are applied
- **Recommendation 13, Access to Legal Counsel:** Ensure adults with reduced capability have access to legal counsel that is affordable
- **Recommendation 14, Instructing Legal Counsel:** Have laws and rules firmly state that adults whose capability is at issue have a right to instruct counsel
- **Recommendation 6 (Housing Paper) Improving Legal Aid:** Expand legal aid to address gaps
- **Recommendation 7 a (Housing Paper) Housing Dispute Resolution Process:** Create a low-cost arm's length alternative process for dispute resolution of housing disputes with expertise in aging issues
- **Recommendation 9 b (Housing Paper) Dispute Resolution in Assisted Living:** Create an independent arms-length alternative dispute resolution process to address tenancy and consumer protection issues in assisted living housing



4 | Trends in Adult Abuse, Vulnerability, and Capability Issues

4.1 DEMOGRAPHICS

There are several notable population trends which are important in developing a roadmap for adult abuse and neglect response. Canadian census data shows that the share of seniors in Canada is increasing very quickly. Seniors now outnumber children, and this gap is likely to increase into the future.³⁹⁵ Life expectancy is also increasing, especially for men, who currently have lower life expectancies than women. The older-old populations are growing at a higher rate, especially those who are over 85 years of age and over 100 years of age. Therefore, there will be increasing numbers of individuals with complex medical needs, and an accompanying higher level of vulnerability. A high percentage of these older seniors are living in the community: only 32% of those 85 years and older, and 66.6% of those 100 years and older live in collective dwellings.³⁹⁶

In BC, the population is older than the national average. This may mean there is a larger population with diminished capability or increased vulnerabilities due to having multiple health conditions. Additionally, BC has a large number of municipalities which have a high proportion of residents over age 65 years. Four of these communities are located on Vancouver Island.³⁹⁷

4.2 KEY SECTORS

4.2.1 Media

The media has focused particularly on two elder abuse topics in recent years:

- concerns about financial abuse or mismanagement of an older person's money;³⁹⁸ and
- physical abuse and neglect of elders in long-term care homes.³⁹⁹

The three financial abuse issues to which news articles give the most attention are:

- mismanagement of funds, or abuse of responsibilities, by an attorney under a power of attorney;⁴⁰⁰
- financial scams; and⁴⁰¹
- advance planning issues.⁴⁰²

Abuse in long-term care homes has also been getting a lot of media coverage over the past few years, including criminal cases involving health care professionals and family members committing abuse.⁴⁰³ The most prominent example is *HMQ v Wettlaufer*,⁴⁰⁴ which prompted the Long-Term Care Homes Public Inquiry in Ontario.⁴⁰⁵

4.2.2 Academia

Academic articles on elder abuse tend to be grouped into four main areas:

1. Prevalence studies, which attempt to determine what elder abuse is, and how common it is. Of particular note, is the Canadian prevalence study led by Dr. Lynn McDonald of the NICE.⁴⁰⁶
2. Evaluation of community-based interventions aimed at preventing or responding to elder abuse.⁴⁰⁷
3. Practice issues in the health care field, such as detecting abuse and obtaining consent.⁴⁰⁸
4. Elder abuse of marginalized older adults, such as ethno-cultural older adults and immigrants, and abuse issues unique to certain cultural communities. This area is sparser than other areas of focus.⁴⁰⁹

Other topic areas include legal issues,⁴¹⁰ financial abuse,⁴¹¹ abuse in long-term care,⁴¹² MAiD,⁴¹³ aging well,⁴¹⁴ housing,⁴¹⁵ and disclosure and detection of abuse.⁴¹⁶

4.3 KEY ISSUES

4.3.1 Financial Abuse

Both the media and the Canadian government have been particularly concerned with financial abuse and scams targeting older adults. Areas of particular concern include:

- Financial abuse by family, such as:
 - misuse or lack of knowledge of power of attorney and representation agreement powers and responsibilities; and⁴¹⁷
 - persuasion or pressure to gift or lend money or property to other family members.⁴¹⁸
- Scams and fraud. Sources contend that older people are far more likely to get scammed through multiple means, such as by phone, email, or online dating platforms. The Government of Canada has developed many resources on financial elder abuse.⁴¹⁹

4.3.2 Frauds and Scams

Recent campaigns on frauds and scams include:

- The Financial Consumer Agency of Canada has developed information on identifying, preventing, and responding to various types of abuse, including identify theft, tax fraud, immigration and citizenship fraud, and online scams.⁴²⁰
- The Canadian Anti-Fraud Centre (a joint venture between the RCMP, Ontario Provincial Police, and Competition Bureau Canada) lists common types of scams such as mass marketing and internet fraud, provides information on how to protect yourself, and provides a system to report scams or frauds.⁴²¹
- The British Columbia Securities Commission's InvestRight program gives investors education and tools for how to invest in an informed manner and identify possible investment frauds.⁴²²
- CARP has developed a "Get Scam Smart" booklet outlining how to protect yourself from common scams such as the CRA, immigration, and inheritance scams.⁴²³
- The CCEL developed the Be a Savvy Senior Resources—fact sheets and animated videos (French and English versions).⁴²⁴

4.3.3 Gender Dynamics

A number of recent publications and projects shine a light on the impact of gender dynamics on abuse:

- *Promising Approaches in Housing Women who are Older and Fleeing Abuse*: Funded by the Federal Government as a Pan Canadian Elder Abuse Project, Atira led this project to

identify issues related to supporting older women survivors of violence. The work resulted in a knowledge sharing forum and a promising practices tool written by the CCEL and April Struthers.⁴²⁵

- With funding from a CREA capacity building grant, the CCEL and West Coast LEAF developed *Roads to Safety*, a legal information handbook, as well as a series of pocket tools.⁴²⁶
- The CNPEA explored access to justice for older adult survivors of sexual assault. Resources include a comprehensive literature review, training webinars, and practice tools.⁴²⁷
- The 2019 annual training forum hosted by Ending Violence Association focused on “Supporting Survivors across the Years”.⁴²⁸

4.3.4 COVID-19 Pandemic

The COVID-19 pandemic has had a significant impact on older adults and vulnerable populations, especially people living in long-term care. Some issues have attracted a great amount of attention, such as visitor restrictions and infection control in congregate care facilities. Others, such as the impact of the pandemic on home care supports and the incidents of abuse and neglect, have received less attention. This section will outline some of the research and work related to the pandemic and vulnerable populations, and the workplace experiences of CREA and Collaborative members that were reported during interviews.

The pandemic has had an impact on abuse and neglect. While there is not a lot of hard data on the incidence of abuse during the pandemic, the academic literature, news articles, and some recent surveys report an increase in elder abuse, among other types of domestic violence. The literature suggests this increase is due to greater isolation, less contact with outside people who may detect or intervene in abuse, and increased pressure on everyone (such as job loss, reduction in finances, and increased stress).⁴²⁹

Older adults have faced higher rates of hospitalization, intensive care, and death from COVID-19 than other age groups. Because of this, BC, like most other provinces and territories, initiated restrictions on visitors in long-term care and assisted living. For the first part of the pandemic, only essential visitors were allowed in, to facilitate communication assistance and supported decision-making. Later, one visitor was allowed, with significant restrictions on where, when, and how these visits could occur. Several reports have come out discussing the negative impact of the restrictions on residents. During the pandemic, twice as many residents had their condition deteriorate compared to the numbers before the pandemic, and the use of antipsychotics increased significantly. The impacts have been greater for residents with reduced capability or cognitive impairments, who may be confused about the PPE requirements and lack of visitors. Personal and protective equipment (PPE) use has created barriers to communication with the resident, such as when a resident is not able to see people’s faces due to mask requirements. Some families have experienced challenges being able to provide supported decision-making.⁴³⁰

There have also been impacts on community-dwelling vulnerable adults. Some academic literature explores how pandemic restrictions have increased isolation and loneliness for vulnerable populations. Isolation can have a damaging effect on older adults, who can experience deterioration in both mental health and physical health.⁴³¹ While little attention has been paid to the impact of the pandemic on home care supports, some academic and news sources suggest the home care sector has been largely ignored in the managing of the pandemic, resulting in reduced access to PPE compared to other health care sectors and increased worker vulnerability to contracting to COVID-19.⁴³² Consequently there has been a reduction in access to home care services. There have also been shortages in the availability of palliative care, both in Canada and internationally.⁴³³

Members of CREA and the Collaborative report challenges in their work due to the pandemic. Abuse and neglect have been harder to detect due to reduced home care supports and limits on visitors. It has become more challenging for designated agencies to respond to abuse or neglect because of restrictions on doing in-person interviews, challenges conducting clinical interviews over video conference, and a lack of proper PPE. Members have noticed older adults facing challenges getting legal documents signed and being increasingly targeted for financial frauds and scams. For the transition housing sector, emergency housing remained open at a reduced capacity due to the need for physical distancing. However, the sector has received extra funding to install necessary infection control measures.

4.3.5 The Opioid and Overdose Crisis in BC

On April 14, 2016 the BC provincial health officer declared a public health emergency due to the opioid crisis, which continues today. The COVID-19 pandemic has led to an increase in overdose deaths, partly due to reduced access to harm-reduction services.⁴³⁴ While a lot of the recent focus seems to be on the impact of COVID-19 on the opioid crisis, there is research and evidence linking substance use to past violence and trauma.⁴³⁵ Additionally, substance use (by either the person responsible for abuse or the older adult) is linked to increased risk of elder abuse.⁴³⁶ Links between the opioid crisis and abuse and neglect of vulnerable adults warrant further study.

4.3.6 Indigenous Communities and Indigenous Rights

Vulnerable adult abuse and neglect response should be approached with consideration of cultural humility and cultural safety. Interventions must recognize the holistic experiences of abuse and neglect of Indigenous peoples, historical and current rights violations that have created the context in which the abuse is occurring, and the need for Indigenous-led initiatives.

Research has demonstrated the significant barriers Indigenous peoples face in accessing health care, dementia care, and other services, including several reports from commissions and inquiries. Most recently, in 2020 Mary Ellen Turpel-Lafond conducted an independent investigation into Indigenous-specific discrimination and racism in BC health care. Her report identifies widespread systemic discrimination, and shares stories illustrating the racism, sexism, cultural differences, language issues, the hesitancy of western health practitioners to embrace Indigenous healing practices, poverty, lack of

attention to spiritual well-being, lack of all services in rural areas, lack of clean water, and jurisdictional barriers.⁴³⁷

Research examining family violence in Indigenous communities has found that family violence responses are often flawed. Western perspectives on family violence place the blame within families and use gendered colonial stereotypes of gender roles and the heterosexual nuclear family unit. The importance of intersectionality when examining abuse and neglect is often ignored, but the intersecting forms of violence experienced by Indigenous peoples must be considered. These intersecting forms of violence include colonialism, residential schools, and child apprehensions.⁴³⁸

Research explains that adult abuse and neglect response, health care, and social services must align with Indigenous perspectives on health, wellness, and kinship. Responses must recognize Indigenous health practices, cultural understanding of dementia and abuse, and views of family, community, and health. Colonialism must be recognized as the key determinant of health for Indigenous peoples. In responding to abuse or neglect, the conversation must shift to recognize Indigenous views of kinship structures, family, and community, and recognize the importance of kinship structures to wellness and self-determination. Responses to violence against women must fully include Indigenous women, girls, and 2SLGBTQ+ people and address their marginalization. Any solutions should be local and come from the community, not be imposed from the state, which has been an agent of oppression. Services and responses must combat the ongoing effects of colonialism, including power imbalances, and a lack of trust and respect in health care professions and government. The person's wishes and values must be respected, and services must be provided with cultural humility and safety.⁴³⁹

4.3.7 Community Living Sector

A recent case involving a 54-year-old woman with developmental disabilities who died in a private home due to neglect (malnourishment and starvation) has highlighted the vulnerability to abuse and neglect of adults who are living in community.⁴⁴⁰ The caregiver was in a residential home sharing agreement. Both she and the community care society that placed her have been charged with the neglect (criminal negligence causing death, and failure to perform legal duty to provide necessities).

In interviews with members of the Collaborative, members expressed a strong desire to make sure adult abuse and neglect response work addresses the needs and experiences of adults who are living with disabilities and are under 65 years of age. The language used in the abuse and neglect response world must be inclusive and reflect the entire vulnerable adult population. There is a need to reject language that “others” people living with disabilities of all ages.

4.3.8 Inclusion

In consultations with members of CREA and the Collaborative, members strongly advocated for adult abuse and neglect response and interventions to be more inclusive. The suggestions include:

- Moving to language of equity, diversity, and inclusion

- Reflecting the intersectional nature of abuse and neglect
- Not imposing cultural and personal values
- Avoiding “othering” language
- Not only considering abuse and neglect from a white ableist perspective
- Examining and incorporating the work in related sectors, including community living sector, violence against women sector, and the immigrant services sector
- Examining the needs of immigrant adults experiencing abuse or neglect—not just aspects of immigration law—and ensuring services and interventions are effective in helping immigrants
- Ensuring any cultural humility and safety training is truly increasing knowledge and capacity
- Ensuring examinations of abuse and definitions of abuse are not exclusionary, focusing beyond violence against women and child abuse to include all types of adult abuse and neglect
- Better supporting people experiencing abuse or neglect to tell their own story and not have someone else speak for them, and to be understood
- Within organizations, acknowledging that there are voices missing, and reaching out to include these perspectives
- Reflecting the experiences of all people in BC

There is already research and work in some of these areas that can be used to expand understandings of adult abuse and neglect. For example, the community living and the violence against women sector are robust and have resources that can be pulled on to support abuse and neglect work.

There is some research on the stigma, discrimination, and abuse that older 2SLGBTQ+ adults face. 2SLGBTQ+ older adults may have experienced a lifetime of stigma and discrimination that can lead to chronic stress, social isolation, and barriers in accessing health care, employment, housing, and services. Transgender older adults face the greatest stigma, discrimination, and barriers, and experience higher levels of abuse. 2SLGBTQ+ older adults face barriers in health care and long-term care, including discrimination and heteronormative practices and policies that fail to acknowledge and address their unique needs.⁴⁴¹ Substitute decision-makers are not always respectful of the older adult’s needs, wishes, and identity.⁴⁴²

There is some research and work on the experiences of immigrant women who are experiencing abuse and neglect. Immigrant women may face barriers due to immigration status, language abilities, literacy, and isolation, particularly if they have recently come to Canada. Immigrant women may fear getting help for abuse because they may believe they are reliant on a sponsoring relative for their continued immigration status in Canada. Older women, including immigrant women, may experience barriers accessing justice when they want a remedy for the abuse, including not knowing their legal rights and

options, not being able to afford a lawyer, being unaware of free legal services, lack of language interpretation, and lack of transition houses designed specifically for the needs of older women.⁴⁴³

4.4 ISSUES EMERGING FROM INTERVIEWS

CREA and the Collaborative members expressed an interest in developing recommendations to address emerging issues related to adult abuse and neglect and mental capability. Below we list topics that came up in discussion so both groups can consider exploring them in future work:

1. Expand abuse and neglect policy discussions to better include other sectors such the intellectual disability community and the domestic violence sector;
2. Update the recommendations regarding cultural competency to reflect the more current language of cultural humility and safety;
3. Examine how the criminal justice system uses KGB statements in situations of abuse or neglect of vulnerable adults;
4. Research the laws and supports related to abuse under powers of attorney and representation agreements, including how to terminate authority under these documents, what education already exists on these topics, and what gaps exist in law and services;
5. Support inclusion and intersectionality in vulnerable adult abuse and neglect policy and practice, and in particular reject practices of “othering”;
6. Expand Recommendation 17 on inter and intra-ministerial recommendation to include increasing coordination between the provincial government and designated agencies, and with the federal government; and
7. Shift the focus of Recommendation 8 d (Housing paper) regarding discharge planning to focus on advocating for housing and related wrap-around supports for people in very vulnerable circumstances with unstable, inappropriate, or no housing to facilitate hospital discharge.

5 | Recommendations– Summary Chart

Vanguard Recommendations

Recommendation	What Has Been Done	What Still Needs to be Done
1) A variety of “ knowledge communities ” be created and supported to provide leadership, education, and training around issues of adult abuse, capability, and vulnerability.	Knowledge communities exist in BC and Canada-wide, including CREA, Collaborative, BCCRN, SFBC, CNPEA	Stay the course Knowledge communities should stay engaged with each other and the community
2) Best practice tools be developed to support the work of different knowledge communities working with vulnerable adults with capability issues.	Many resources exist to support people working with older adults who may be experiencing abuse Few meet the criteria for a “best practices” or address capability	Identify and address gaps in available critical resources Support the development of best practices resources related to capability
3) Financial institutions should create protocols and policies regarding capability issues and/or vulnerability. Core professional competencies should be established and routinely tested as part of a required professional knowledge base.	CBA Code of Conduct for Delivery of Banking Services to Seniors created on July 25, 2019 CBA Commitment on Powers of Attorney and Joint Deposit Accounts (2014)	Ask the Financial Abuse Investigators Action Group of CREA to identify any next steps with regard to understanding financial institutions’ policies and protocols in relation to vulnerable adult abuse and neglect response and capability issues Enhance the participation of the credit union sector in CREA
4) There is a need for a thorough cross-disciplinary mapping of agencies involved with dealing with adults who may have been assessed as incapable, or are suspected of diminished capability.	PGT Decision Tree PGT and SFBC resources on Incapability and abuse	-Produce a cross-disciplinary mapping of agencies involved with adults who have incapability issues, or are suspected of diminished capability Clarify scope of ideal map.
5) Knowledge communities develop consistent visions and terminologies of key terms – a shared lexicon .	n/a	Confirm whether greater terminology harmonization is truly a critical issue in relation to vulnerable adult abuse and neglect response and capability.

Recommendation	What Has Been Done	What Still Needs to be Done
6) Core agencies and organizations such as government, designated agencies, police, health care professions, lawyers, social workers, justice workers, housing agencies and financial agencies develop modules on adult abuse and neglect, and establish core professional competencies in these work areas.	Many resources exist	Audit the list of educational modules and core professional competencies found in this discussion paper for key gaps. Consider whether any of these gaps could lend themselves to a project led by CREA or the Collaborative.
7) Key Provincial ministries commit to advocating for funds to support BC's abuse response prevention scheme.	Ministry of Health funds CREA, BCCRN, and SFBC's SAIL Line; however, funding for BC's abuse and neglect response remains piece-meal	Articulate the ideal response, identify gaps, and determine how best to advocate to address the gaps
8) People working with adults who have capability challenges become culturally educated .	Many good resources now exist Many sectors rely on San'yas program	Continue to emphasize the importance of cultural humility and safety training for all individuals who work with vulnerable adults who have experienced abuse or neglect or may have capability issues
9) The <i>Adult Guardianship Act</i> regime be comprehensively evaluated , based on both quantitative and qualitative data to examine its effectiveness in terms of both process and outcomes.	Limited system evaluation has occurred	Advocate for robust evaluation of the AGA system, including quantitative and qualitative data
10) A law reform project be undertaken to review statutes and court rules with a view to harmonizing use of terms which reference an adult's capability.	Law reform work has occurred in Canada, Australia, and the UK The BCLI report fairly thoroughly considered harmonization of common law test of capability and made recommendations	Consider whether greater harmonization of statutory capability standards and terminology related to capability would be helpful
11) Research in criminal law and procedural aspects of adult incapability be undertaken.	Studies primarily examine barriers to testifying in sexual assault cases Statistics limited to reports of abuse to police and other agencies	Support research into criminal law practice regarding barriers and supports for adults with diminished capability
12) The criminal justice system workers develop their own internal procedures for dealing with this community.	New policies: 2010 policy Elder Abuse – Offences Against Elders; 2015 New Crown Counsel Policy: Vulnerable Victims and Witnesses–Adult	Research how criminal justice system policies have been applied in a vulnerable adult abuse or neglect context Support the development of a policy on victims, offenders, and witnesses with capability issues
13) Access to legal counsel for adults with capability related issues must be consistently and affordably provided.	No developments	Map access to justice barriers Advocate for increased legal aid funding for adults with capability issues

Recommendation	What Has Been Done	What Still Needs to be Done
14) Relevant rules and legislation confirm that adults whose capability is at issue have the right to instruct counsel .	Law Society of BC Code of Professional Conduct amended in 2013 Rule 3.2-9 sets out a lawyer is permitted to represent a client whose capability may be impaired and as far as possible maintain a normal lawyer-client relationship	Support clarification of legislation and Law Society of BC rules such that adults may obtain legal counsel to challenge a finding of incapability, or representation agreements and powers of attorney created under undue influence or through fraud
15) Discriminatory language be eliminated.	Some anti-ageism resources do exist, including study papers, questionnaires and tip sheets	Continue to support anti-ageist practice Expand vision to include an intersectional approach that covers all grounds of discrimination protected under human rights law
16) Key stakeholders from a number of provincial ministries be briefed on the work done to develop protocols and sit as active members of the Collaborative.	A few government representatives occasionally attend Collaborative meetings	Consider strategies for successful engagement of key government ministries in Collaborative and CREA work
17) Provincial ministries develop internal and inter-agency protocols for coordinated responses to adult abuse, vulnerability and capability.	Seniors related issues tend to be silo'd within the Ministry of Health Other ministries tend not to consider impacts on seniors	Support greater inter and intra-ministerial coordination within the BC Government Support greater federal and provincial coordination in relation to adults with capability issues

Housing and Capability Issues Recommendations

Recommendation	What Has Been Done	What Still Needs to be Done
1a) & b) Rights Information: <ul style="list-style-type: none"> provide legal education resources on a range of housing issues tailor information for service providers, renters, and housing providers 	Resources for renters and housing providers exist Most of the legal education tools on housing issues are targeted at a general audience, although there are a few resources for newcomers to Canada	Develop <ul style="list-style-type: none"> Resources for older adults on tenancy rights and options that include assisted living issues Material for landlords on options if they see abuse of vulnerable adults in their housing
1c) Rights information: <ul style="list-style-type: none"> develop print resources for abused older people on key family law issues translate resources into major languages used in BC develop resources for people with low literacy skills 	There are many resources on abuse and domestic violence Much of this material is available in other languages	Develop family law materials in accessible non-written formats, such as audio and video
2a) Social and Legal Research: qualitative research be conducted on domestic violence in later life	Limited academic research has examined family violence in later life	Support or advocate for the need for research on family violence and older adults

Recommendation	What Has Been Done	What Still Needs to be Done
<p>2b) & c) Social and Legal Research: Examine:</p> <ul style="list-style-type: none"> • the connections between housing and victimization • legal barriers affecting homeless persons' access to housing • misuse of documents such as a power of attorney for real estate 	<p>Some research exists on housing and aging, and homelessness and aging</p>	<p>Support or advocate for the need for research on victimization and housing among older adults</p>
<p>2d) Social and Legal Research: Legal research be conducted on housing discrimination in BC, with a particular focus on how it may intersect with victimization.</p>	<p>Limited research exists on housing discrimination and poverty in the general population</p>	<p>Support further research on housing discrimination specific to older adults</p>
<p>3) Domestic Violence Legislation and Policy: Any future analysis or consideration of domestic violence protection for BC include the types of abuse, relationships and situations that older adults are likely to experience.</p>	<p>The new <i>Family Law Act</i> expands the definition of family violence to include some relatives not living in the home and any relative living within the home and psychological and financial abuse.</p>	<p>Consider whether recent amendments to the <i>Family Law Act</i> adequately address the experiences of vulnerable adults; and</p> <p>Support amendments to BC's Violence Against Women in Relationships Policy and Provincial Domestic Violence Plan to consider aging and disability related issues.</p>
<p>4a) Safe Housing Resources: appropriate emergency, short and long term housing alternatives be developed for these groups of persons, and expanded</p>	<p>Current housing options include transition houses, safe homes, second stage housing, and the priority placement program</p> <p>BC has only one transition house for older women (Ama House).</p>	<p>Advocate for more safe housing geared toward the needs of older people</p> <p>Support research into the unique transitional housing models that might better suit older adults and younger adults with multiple challenges</p>
<p>4b) Safe Housing Resources: Enhanced training be developed for shelter workers on helping abused older people and other vulnerable adults.</p>	<p>Training exists on topics of relationship violence, working with children, and addressing the needs of Indigenous women and immigrant women</p>	<p>Support the development of training modules on assisting survivors of abuse who are older or have an intellectual disability</p>
<p>4c) Safe Housing Resources: Transition house policies such as length of stay should adjusted to accommodate the complex needs of frail and vulnerable adults.</p>	<p>Most transition houses allow up to a 30-day stay</p> <p>Second stage housing allows not more than 18 months</p>	<p>Issue is addressed in Atira, <i>Promising Practices in Housing Women who are Older and Fleeing Abuse</i>. Advocate for implementation of the report</p>
<p>4d) Safe Housing Resources: Appropriate mental health assessment and support be provided for abused or neglected older or vulnerable adults</p>	<p>Safe housing provide a range of services such as counselling, advocacy, and outreach services</p>	<p>Services are not geared toward older or vulnerable adults</p> <p>See above comment re Atira publication</p>

Recommendation	What Has Been Done	What Still Needs to be Done
4e) Safe Housing Resources: Safe housing should work with community and government resources. Develop protocols for meeting the needs of abused and neglected vulnerable adults.	Most transition houses do not have services or resources specifically for older adults Few outside protocols or policies for older adults exist	Advocate to support individual transition houses to develop protocols for helping older adults
5) Coordination of Services: Community agencies and government bodies should work in a coordinated manner, to remove barriers and bridge gaps.	Recommendation does not lend itself to research	See Recommendation 17
6) Improving Access to Justice - Legal Aid: gaps in legal aid coverage must be addressed.	Gaps still exist	See Recommendation 13
7a) Improving Access to Justice – Housing Tribunals: Develop a low cost, independent/ arm’s length, alternative dispute resolution process which utilizes the skills of persons who have a sound knowledge on housing, aging, and rights issues.	No change	This recommendation was not supported by the research paper
7b) Improving Access to Justice – Housing Legislation: Arbitrators receive training on vulnerable adult and elder abuse issues. . .	Not clear that training occurs	Support the development of training for arbitrators
8a) Provincial and Regional Policy and Practice: BC Housing’s “Residential Tenancy Agreement Addendum for Crime Free Housing ” eviction policy be reviewed for its impact on abused older and vulnerable people.	BC Housing has not conducted a review Ontario Human Rights Commission discusses similar crime free addendums	Review policy for impacts on abused older adults and other vulnerable persons
8b) Provincial and Regional Policy and Practice: “ house policies ” on matters such as visitors be reviewed regarding compliance with <i>RTA</i> .	No review of house policies has occurred 2 recent court decisions address visitor policies which did not comply with the <i>RTA</i>	Support the ongoing need for review of policies to consider impacts on the rights of vulnerable adults
8c) Provincial and Regional Policy and Practice: a human rights consultation paper be developed on housing providers’ duty to reasonably accommodate older adults and persons with mental or physical disabilities across the range of housing	No paper in BC specifically on this topic but there is much litigation on disability discrimination in housing CLAS published an article on duty to accommodate in rental housing Ontario Human Rights Commission has e-learning tools on the duty to accommodate	Support or undertake consultation in BC to identify the housing accommodation barriers experienced by older adults and people with mental or physical disabilities, and consider appropriate recommendations

Recommendation	What Has Been Done	What Still Needs to be Done
<p>8d) Housing around Supports to Facilitate Hospital Discharge Planning: Hospitals review discharge planning processes to assess for safety and wellbeing upon returning home.</p>	<p>Interior Health has policy for discharge of vulnerable patients in the emergency department</p> <p>Providence Health Care ethics department has a working group and paper on the ethics of discharge for patients who are extremely vulnerable and have nowhere to go other than a shelter, where they will be at immediate high risk of harm</p>	<p>Advocate for housing and related wrap-around supports, such as clean-up services for unsafe home environments, repairs/modifications to existing homes to meet individual needs, access to equipment, extra home supports, supervised visits, and one-on-one workers for people in very vulnerable circumstances with unstable, inappropriate, or no housing to facilitate hospital discharges</p>
<p>9a) Legislative Reform – Supportive Housing and Assisted Living: the provincial government examine the feasibility of combining supportive housing and assisted living into one Act that is able to address both the health and safety standards and tenancy/consumer protection matters</p>	<p>2019 updates to the <i>CCALA</i> retain the different legislative frameworks for supportive housing and assisted living</p>	<p>Consider whether CREA or the Collaborative has a position on the issue of the legal and policy separation of supportive housing and assisted living in BC.</p>
<p>9b) Legislative Reform – Assisted Living: an independent arms' length alternative resolution process be developed to address tenancy/consumer protection in assisted living.</p>	<p>The BCLI's 2013 <i>Report on Assisted Living in BC</i> recommended an integrated, multi-stage dispute resolution process for BC under the auspices of the Assisted Living Registry</p>	<p>Advocate for implementation of the BCLI's recommendation to expand the powers of the Assisted Living Registry to address complaints.</p>
<p>10a) & b) Legislative Reform - Family Relations Act: -Include a definition of family violence that represents the kinds of harm that older adults and other vulnerable persons can experience.</p>	<p>The <i>Family Law Act</i> expanded the definition of family violence to include financial, psychological, emotional, and sexual abuse, and expanded the definition of "family".</p>	<p>See Housing Recommendation 3</p>
<p>11) Advocacy: legal and community advocates be funded and expanded to help more older adults throughout BC with housing issues.</p>	<p>Housing advocacy is available at a number of legal clinics.</p>	<p>See Recommendation 13: advocate for increased legal aid funding for adults with capability issues</p>
<p>12) Incapacity Assessment: persons carrying out incapacity assessments receive training on family violence and related issues to ensure that they are better able to give an accurate assessment of the person's capabilities.</p>	<p>Could not locate resources on incapacity assessment and family violence</p>	<p>Support the development of training on incapacity assessment that considers family violence and trauma</p>

Immigration, Abuse, and Capability Issues Recommendations

Recommendation	What Has Been Done	What Still Needs to be Done
1) Length of Sponsorship: Reduce length for parents/ grandparents from ten years to three years to match other sponsored classes.	Sponsorship remains too long Was increased to 20 years	Query whether the policy discriminates against older people, who are subject to the most lengthy sponsorship periods
2a) Poverty - Refugee Transportation Loan: Eliminate the travel loan repayment as it places undue economic stress on refugee families.	Eliminated interest, extended start of and length of repayment period	Consider whether to advocate for elimination of travel loan repayment for refugees
2b) Poverty - Old Age Security: federal government review policy of reduced benefit and reconsider in context of practical effect on older immigrants and their families, as well as human rights framework.	Recommendation reiterated in 2019 CCEL report	Consider advocating for implementation of CCEL recommendation that Canada review OAS and GIS eligibility criteria respecting access for older immigrant women who otherwise have no financial support
3a) Sponsorship Debt - Debt Collection: Make policy distinction between sponsors who are unwilling to support versus unable to support.	No policy changes Supreme Court of Canada decision found no discretion in collection of sponsorship debt	Advocate for reform of the <i>Immigration and Refugee Protection Act</i> to grant the government discretion in the collection of sponsorship debt in cases of economic hardship
3b) Sponsorship Debt - Evidence-based decision-making: Conduct research on the actual circumstances of defaults , and impact on families to better inform policy making.	No research exists on sponsorship default in BC	Consider advocating regarding the need for research on sponsorship default in BC
4) Proving Abuse in Sponsorship Default: Issue of proof be relaxed or broadened, away from just physical harms to include psychological abuse and neglect.	Definition now includes psychological and emotional abuse Proof may include police and hospital records, court orders, and reports from a doctor, transition house, or support worker	Advocate for inclusion of neglect in the BC Employment and Assistance Policy on sponsorship breakdown and abuse
5) Cultural Humility and Safety, Provincial Government Staff: Provincial government staff who are in contact with immigrants, especially abused or neglected immigrants, receive cultural competency training.	Many resources exist	See Recommendation 8
6a) Reducing Isolation - Language: ESL classes expanded to be more available and relevant to older immigrants, be free/low cost, and provide childcare (not just employment-related).	Some classes offer services to older immigrants, at no cost, and provide childcare	Consider advocating for improved ESL access for older immigrants

Recommendation	What Has Been Done	What Still Needs to be Done
6b) Reducing Isolation - BC Bus Pass Program : expand program to those below 65 who have financial need.	Available to low-income seniors 60 and older or people who receive BC disability assistance	Consider advocating for bus pass program access for people under age 60 who are not receiving income or disability assistance
7) Negotiating Extremely Complex Systems: Develop a robust advocacy system (or enhance advocacy support) to help sponsored and other immigrants navigate systems including social assistance, and streamline and simplify service delivery to immigrants.	Some immigrant serving agencies in BC offer system navigation support Some legal aid clinics provide access to a lawyer or advocate if the person qualifies	See Recommendation 13 regarding increased legal aid funding for adults with capability issues.
8) Rights Information : Rights information should be available in a manner most useful to immigrants (simple English, language interpretation, victims' services and Multicultural Outreach workers). Information should be available in forms suitable to people who cannot any read any language.	Some rights information is translated into other languages, but most resources are available only in print and in English	See Housing Recommendation 1c Audit list of resources to identify key gaps and support the development of missing resources in appropriate languages
9) Professional Development for Judges : Cultural issues be included in continuing education for judges, so judicial system can craft more culturally appropriate solutions.	Three bodies provide education to judges, including cultural competency training	Consider advocating for cultural humility and safety training for judges
10) Cultural Humility and Safety Training, Provincial Government Staff : Training be provided at all levels of service delivery to build and strengthen service providers and government staff's cultural competence.	Most of the professional colleges and the provincial government do provide cultural competency training for their employees or college members This training is not always mandatory	See Recommendation 8
11) Neglect : Provincial health authorities explore alternatives to reduce risk of neglect among immigrants, such as supporting families to provide care at home, and ensuring long-term care facilities meet social, cultural, and religious needs.	Two federal government reports on isolation and loneliness among immigrant seniors	Support research and knowledge exchange to better understand health authorities' practice and the role of ethno-cultural community-serving non-profits in reducing neglect among immigrants
12) Incapability Assessment : Review incapability assessment processes from a cultural perspective to ensure they can give accurate assessment of person's capacities.	No academic articles reviewing processes. PGT report discussed cultural competency in assessment process	Ensure incapability assessment resources include a cultural humility and safety lens
13) Protocols: any protocols that are developed use a cultural lens .	See Recommendation 8	See Recommendation 8



6 | Priorities for Future Work

Based on the above research, below are some areas of suggested future work for the Collaborative or CREA. Short Term Actions are those which could be addressed within a year. We indicate in brackets whether this work would fit the mandate of CREA, the Collaborative, or both groups. A number of the actions would ideally be approached with collaborators from the seniors or community living sector who may have greater relevant subject matter expertise.

6.1 SHORT TERM ACTIONS

Financial abuse

- **Recommendation 3, Financial Institutions:** Ask the Financial Abuse Investigators Action Group of CREA to identify any next steps with regard to understanding financial institutions' policies and protocols in relation to vulnerable adult abuse and neglect response and capability issues. Enhance the participation of the credit union sector in CREA (CREA).

System response and mapping

- **Recommendation 4, Mapping of Key Agencies:** Produce a cross-disciplinary mapping of agencies involved with adults who have incapability issues, or are suspected of diminished capability. Clarify scope of ideal map (Collaborative).
- **Recommendation 6, Elder Abuse and Resources:** Audit the list of educational modules and core professional competencies found in this discussion paper for key gaps. Consider

whether any of these gaps could lend themselves to a project led by CREA of the Collaborative (both).

Access to justice

- **Recommendation 13, Access to Justice:** Map access to justice barriers facing adults with capability issues. Advocate for increased legal aid funding to address gaps (both).
- **Recommendation 14, Access to Legal Counsel:** Support clarification of legislation and Law Society of BC rules such that adults may obtain legal counsel to challenge a finding of incapability, or representation agreements and powers of attorney created under undue influence or through fraud (both).

Housing

- **Recommendation 8 d, Hospital Discharge Planning (Housing Paper):** Advocate for housing and related wrap-around supports, such as clean-up services for unsafe home environments, repairs/modifications to existing homes to meet individual needs, access to equipment, extra home supports, supervised visits, and one-on-one workers for people in very vulnerable circumstances with unstable, inappropriate, or no housing to facilitate hospital discharges (Collaborative).

Immigrant populations

- **Recommendation 4, Proving Abuse in Sponsorship (Immigration Paper):** Advocate for inclusion of neglect in the BC Employment and Assistance Policy on sponsorship breakdown and abuse (both).
- **Recommendation 11, Neglect—Health Authorities Practice (Immigration Paper):** Support research and knowledge exchange to better understand health authorities' practice and the role of ethno-cultural community-serving non-profits in reducing neglect among immigrants (both).

6.2 LONG TERM ACTIONS

System response and mapping

- **Recommendation 9, Adult Guardianship Act Evaluation:** Advocate for robust evaluation of the *AGA* system, including quantitative and qualitative data (both).

Criminal justice

- **Recommendation 11, Justice System Practice and Incapability:** Research and analyze barriers and supports for adults with diminished capability who are involved in the criminal justice system (Collaborative).
- **Recommendation 12, Criminal Justice System Policies:** Research how criminal justice system policies have been applied in a vulnerable adult abuse or neglect context. Support

the development of a policy on victims, offenders, and witnesses with capability issues (Collaborative).

- **Recommendation 3, Domestic Violence Legislation and Policy (Housing paper):** Support amendments to BC's Violence Against Women in Relationships Policy and Provincial Domestic Violence Plan to consider aging and disability related issues (Collaborative).

Working with government

- **Recommendation 16, Maintaining Strategic Relationships with Government:** Consider strategies for successful engagement of key government ministries in Collaborative and CREA work (both).
- **Recommendation 17, Inter and Intra-Ministerial Coordination:** Support greater inter and intra-ministerial coordination within the BC Government. Support greater federal and provincial coordination in relation to adults with capability issues (both).

Housing

- **Recommendation 4 a, Safe Housing Resources (Housing Paper):** Advocate for more safe housing geared toward the needs of older people. Support research into the unique transitional housing models that might better suit older adults and younger adults with multiple challenges (Collaborative).
- **Recommendation 4 e, Safe Housing Resources, Protocol Development (Housing paper):** Advocate to support individual transition houses to develop protocols for helping older adults (both).

Housing resources

- **Recommendation 1 a, Rights Information (Housing paper):** Develop a resource for older adults on tenancy rights and options that includes assisted living issues (Collaborative).
- **Recommendation 1 b, Rights Information (Housing paper):** Develop material for landlords on options if they see abuse of vulnerable adults in their housing (Collaborative).
- **Recommendation 4 b, Safe Housing Resources, Training Modules (Housing paper):** Support the development of training modules on assisting survivors of abuse who are older or have an intellectual disability (Collaborative).

Immigrant populations

- **Recommendation 12, Incapability Assessment (Housing & Immigration paper):** Support the development of training on incapability assessment that includes family violence, trauma, cultural humility, and cultural safety (Collaborative).

Conclusion

PROGRESS SINCE 2009

In the 12 years since the publication of the Vanguard Report there have been significant developments in law, policy, and practice related to vulnerable adults and incapability in BC. Aspects of Bill 29, *Adult Guardianship and Planning Statutes Amendment Act, 2007* were finally brought into force: in 2011 advance directives became available; as of 2014, the PGT can be appointed statutory property guardian without a court order; and near the end of 2019, the care facility admission provisions of the *HCCCFAA* were implemented. In 2019, amendments to the assisted living framework were brought into force to enhance elder abuse prevention and response: abuse and neglect became reportable incidents, and provisions regarding undue influence and will-making became law. However, although guardians are now required to involve adults with incapability issues in decision-making, the *PPA* and the committeeship regime remain in place. It is unclear whether the provisions in Bill 29 related to personal and property guardians will ever be brought into force.

Our update on the Vanguard Report recommendations identified progress in the following key areas:

1. Though under-funding remains a barrier, the non-profit sector provides robust leadership through agencies such as the BCCRN, SFBC, and CNPEA. Further, CREA was created in 2013 to provide cross-sector elder abuse leadership in BC.
2. While few resources would meet the rigour represented by the concept of a “best practice tool”, organizations such as the PGT, VCH, the CCEL, NICE, and CLBC have developed critical resources and training tools to support best practices in vulnerable adult abuse and neglect response.
3. A number of organizations have created cultural safety and humility training resources. In particular, the Provincial Health Services Authority’s San’yas Indigenous Cultural Safety Training is being accessed by many key agencies and is recommended by most professional colleges in BC. However, *Being Least Intrusive* remains one of the few vulnerable adult abuse and neglect response resources that is grounded in a cultural safety and humility lens.
4. The BCLI Report on Common-Law Tests of Capacity explored the need for greater harmonization of capability standards and made recommendations for reform.
5. Programs such as the SFBC Elder Law Clinic, the Access Pro Bono Wills Clinic, CLAS, the Disability Alliance Law Program, and RISE Women’s Legal Centre have enhanced access to justice for vulnerable adults in BC; however, significant gaps remain, particularly for adults with incapability issues.

6. BC's *Family Law Act* expanded the definition of family violence to include some relatives not living in the home and any relative living within the home, and the types of abuse were expanded to include psychological and financial abuse. These changes make the provisions more accessible for vulnerable adult abuse and neglect response.
7. BC Employment and Assistance's policy on sponsorship breakdown and abuse was amended to reflect the definition of family violence found in the new *Family Law Act*, and to require an applicant fleeing abuse to provide some evidence of abuse only after one year. The sponsor will not be contacted by the Ministry while the risk of abuse continues.

Most of the research gaps identified in the Vanguard Report continue to exist. In section 6 of this discussion paper, we included as priority activities discrete research questions that might fit CREA or Collaborative mandates. Other key topics from the Vanguard Report that continue to require study include:

- Family violence and older adults;
- Housing and victimization of older people, including homelessness and housing discrimination based on age and disability; and
- Sponsorship debt and default.

The scope of research in each area could be broadened to include all vulnerable adults in order to better match the Collaborative's mandate. Research on these subjects remains critical to developing evidence-based policy to support vulnerable adults who have experienced abuse or neglect.

OUTSTANDING VANGUARD RECOMMENDATIONS

This review ends in section 6 with a list of opportunities for the Collaborative and CREA to take leadership in addressing Vanguard Report recommendations which still require action. The list of short and long-term priorities includes gaps in:

- Access to justice;
- Appropriate housing;
- Legal rights resources;
- Criminal justice policy; and
- Incapability assessment resources.

The paper contains lists of existing educational modules, practice resources, policies, and services that could be audited by the Collaborative and CREA to identify, and possibly address, critical gaps.

With the birth and demise of the Office to Reduce Elder Abuse, the relationships of CREA and the Collaborative with government have shifted. CREA and the Collaborative may wish to explore how to enhance the following in relation to adult incapability issues:

- The engagement of key government ministries with both groups;
- The extent of inter and intra-ministerial coordination within the BC Government; and
- The degree of federal and provincial coordination.

Importantly, robust evaluation of the *AGA* regime remains outstanding.

Some of the priority activities are better suited to the Collaborative and others to CREA. A number of them would ideally be approached with collaborators from the seniors or community living sector who may have greater relevant subject matter expertise.

NEW ISSUES TO EXPLORE

Much has changed since the writing of the Vanguard Report in 2009. If written today, different issues may have been identified. When the CCEL consulted with members of the Collaborative and CREA to produce this discussion paper, members identified the following interests:

1. Expand abuse and neglect policy discussions to better include other sectors such the intellectual disability community and the domestic violence sector;
2. Examine how the criminal justice system uses KGB statements (recorded statements under oath) in situations of vulnerable adult abuse or neglect;
3. Research the laws and supports related to abuse under powers of attorney and representation agreements, including how to terminate authority under these documents, what education already exists on this topic, and what gaps exist in law and services;
4. Expand consideration of ageism to reflect intersectionality, in particular attention to 2SLGBTQ+ and Indigenous people, and reject practices of “othering”; and
5. Ensure laws, policies and practices align with Indigenous perspectives on health, wellness, kinship, and community.

Recent court decisions have highlighted areas for policy development. The decision of the Supreme Court of BC in *AH v Fraser Health Authority* considered the emergency removal and detention powers in section 59 of the *AGA*. The court found that detention for over 11 months had exceeded the meaning of emergency and violated the vulnerable adult’s Charter rights. Another significant decision, *Bentley v Maplewood Seniors Care Society*, clarified that assistance with feeding was personal care, not health care, and so not subject to the *HCCCFAA*. The judge determined that ceasing to provide nutrition and hydration to bring around the death of a woman in late stage Alzheimer’s through starvation and dehydration would constitute neglect under the *AGA*. The court noted that while a capable adult may refuse food or drink, it is not clear that a substitute decision-maker has the authority to refuse food or drink on behalf of an incapable vulnerable adult. The judges’ discussions of capability in the series of decisions in the Bentley case suggest a need for clarification and guidance regarding the

meaning of capability. The various issues addressed in these two cases might serve as a useful focal point for future CREA or Collaborative work.

In terms of current events, the Wettlaufer inquiry and the Covid 19 pandemic have thrust abuse and neglect in long-term care into the fore, raising policy questions about how to keep vulnerable adults safe in congregate housing settings.

There is still much work to be done to enhance law, policy, and practice related to vulnerable adult abuse and neglect prevention and response in the province of BC. Many of the Vanguard Report recommendations remain outstanding and other important issues have emerged since 2009. In closing, it is worth noting that while the 17 recommendations contained in the main Vanguard Report were developed by a sub-committee of the Collaborative, the recommendations found in the immigration and housing background papers were composed by Charmaine Spencer without time for consultation with the group. This dynamic explains some of the thematic overlap but also raises the question of whether the Collaborative ought to review those recommendations for alignment with CREA and Collaborative mandates

Although this discussion paper and reference guide was produced for the Collaborative and CREA, it will take much broader cross-sector action to address the critical issues identified. We hope this document will be a resource to governments, professionals, communities, non-profits, regulatory bodies, funders, and other stakeholders interested in enhancing law, policy, and practice in BC.

Endnotes

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