

# Civil Investigation and Abuse of Vulnerable Adults in Calgary: An Exploratory Study



## Background:

Since 2004, Calgary's Action Group on Elder Abuse (AGEA), an initiative of the Alliance to End Violence, has engaged community stakeholders in identifying gaps and building community capacity in addressing the issue of abuse of older adults. In 2007, AGEA engaged the community in developing a coordinated community response model for older adult victims of abuse in Calgary. The consultations on the response model led to discussions regarding a civil or non-criminal investigation procedure for responding to situations where abuse or the risk of abuse of an older adult is alleged in the community, as it was recognized that a gap in protection exists in Alberta for this population. AGEA approached the Canadian Research Institute for Law and the Family (CRILF) in 2010 to conduct an exploratory study on how civil investigation may fit into Calgary's community response model for abuse of older adults.

## The objectives of the study were:

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

To meet these objectives, an environmental scan, legislative review and community consultation were conducted.

As protection of older adults often falls under the scheme of adult protection, the protection of vulnerable adults in general was examined. "Vulnerable adults" were defined as persons over the age of majority who are impaired in their ability to make decisions about abuse and/or neglect and who are, by reason of their circumstances, more vulnerable to victimization and abuse than others. "Civil" or "non-criminal" responses refer to powers to investigate or provide service in situations where an adult is in need of protection, particularly when the abuse or neglect does not meet the threshold for response under other statutes (e.g., Criminal Code, Guardianship and Trusteeship Act).

## Environmental Scan - Civil Investigation in Adult Protection: Canada and Abroad

### Canada

- Adult protection is under the jurisdiction of each province. Adult protection models involving civil investigation can be categorized as "comprehensive" or "protectionist" (British Columbia Abuse/Neglect Collaborative, 2009).
- Comprehensive regimes strive to balance the independence and self-determination of the adult with safety from abuse/neglect by using the least intrusive measures, involving him/her in the process, and assuming the adult has the ability to make decisions unless there is reason to believe otherwise. Reporting is voluntary. General powers for investigation are provided, while more intrusive measures must be granted by court order. Provision of service is by consent of the adult unless the adult lacks the ability to consent, in which case a court order may be sought.
- Protectionist regimes aim to preserve the welfare of the adult. Reporting is mandatory for everyone. General powers for investigation are provided, while more intrusive measures must be granted by court order. Provision of service is by consent of the adult unless the adult lacks the ability to consent, in which case a court order may be requested.

### United States

- Federal legislation provides funds for every state to offer Adult Protective Services – advocacy and services for adults who are unable to act on their own behalf or manage their own affairs due to physical or mental limitations, neglect, exploitation, or unsafe living conditions.
- Each state is responsible for developing its own model of adult protection; as a result, there is variation among states in what protection is offered. Some offer comprehensive protection to all vulnerable adults, whereas others offer protection to specific groups of adults (e.g., older adults, adults with disabilities).

### United Kingdom

- England and Wales have a piecemeal approach to adult protection; there is currently no comprehensive adult protection framework.
- Scotland uses an adult protection model similar to Canadian comprehensive models, with local government councils acting as the designated authority. The model is guided by principles of freedom of choice and least restrictive measures, with mandatory reporting for some professionals, powers to investigate suspected harm, and service provision by consent; persons with disabilities are entitled to protection by other legislation. Emergency protection orders for assessment, banning, and/or removing may be granted by the court.

## Legislative Review - Mapping Alberta's Legislated Protection Coverage

Alberta has a piecemeal approach to adult protection, provided by four main Acts:

### ***Adult Guardianship and Trusteeship Act***

- Has a complaint reporting process NOT an abuse reporting process.
- Has a two-part test to initiate a response:
  1. The guardian, trustee, or co-decision maker is failing to comply with an order or their duties under the *AGTA*; and
  2. This failure is likely to cause harm to the assisted or represented adult – physically, mentally, or financially (including loss to the property of the unrepresented adult).
- Reports are made to the Complaint Officer; investigators are available to conduct investigations.
- Outcomes may include: Guardianship Order; Trusteeship Order; Temporary Protection Order; and/or Guardianship Orders in urgent cases.

### ***Personal Directives Act***

- Has a complaint reporting process NOT an abuse reporting process.
- Has a two-part test to initiate a response:
  1. There is reason to believe an agent of the maker is failing to comply with the personal directive or the duties of an agent; and
  2. The failure is likely to cause harm to the physical or mental health of the maker.
- Designated persons are responsible for the investigation.
- Outcomes may include: application to the court for an order related to the personal directive; application for guardianship under the *AGTA*; referral of cases to the appropriate authorities if applicable.

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

- Exists to protect persons receiving PDD funded support services from abuse.
- Not a statutory instrument – no legislative authority for PDD to investigate alleged abuse or to intervene.
- Authority to conduct a review comes from a signed contractual agreement with PDD.

### ***Protection for Persons in Care Act***

- Has an abuse reporting process for adults receiving care and support services from a service provider.
- Conditions that initiate a response:
  1. A person must be receiving care and support services from a residential government-funded service provider;
  2. There must be reasonable and probable grounds to believe that there has been abuse against a client; and
  3. There must be a direct connection between the abuse and the service provider.
- Reporting is mandatory, investigation is discretionary.
- In the case of an investigation, the investigator submits an investigation report with recommendations.
- Recommendations pertain primarily to education, policies, prevention, and disciplinary measures.

Other notable protection legislation includes the *Protection Against Family Violence Act*, the *Supportive Living Accommodation and Licensing Act*, and the *Powers of Attorney Act*.

### **Gaps in Alberta adult protection legislation include:**

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

To address these gaps, the following could be considered:

1. Adopt new legislation that focuses on vulnerable adults who live in the community and who are not the subject of any formal substitute decision making instrument. This may be a matter of filling current gaps or adopting comprehensive adult protection legislation; or
2. Amend one or more existing pieces of legislation to increase the current scope and capacity to address the gaps.

## Calgary Community Consultation

Focus groups/interviews with 34 key stakeholders and community members examined three general themes:

### 1. General Perceptions of Protection of Older Adults in Calgary

- Participants defined vulnerability and abuse/neglect of vulnerable adults in a number of ways, but most recognized that focused interventions are required for this population.
- Most acknowledged that Calgary has made tremendous progress with the development of a community response model. However, the most recognized gap was that there are not enough powers to protect vulnerable adults in the community who are not protected by existing legislation, and whose abuse/neglect is not criminal in nature.
- A civil arm of legislation may address this gap – but it was cautioned that this may jeopardize the independence of the adult.

### 2. Perceptions of Civil Investigation

- Generally, respondents felt that something is needed to fill the protection gaps in Alberta, but that any change would need to be conditional of a number of issues – the degree of intrusiveness, power dynamics, ongoing support following intervention, etc. Balancing independence and safety was a particular concern.
- Some felt that the current approach was sufficient, where others felt that legislation could be introduced with the flexibility to be subjective; however, parameters would need to be in place in order for it to be effective.

Respondents were asked a number of questions about the process of civil investigation:

- Reporting:** participants felt that it should not be mandated for the public, but perhaps for certain professionals that have care of vulnerable people or their assets; however, concern was expressed from front-line workers that this may jeopardize their professional position. It was recognized that if it were to be mandatory, those who were mandated would need to be trained in identifying abuse.
- Parameters:** participants felt that the process should be triggered when there is reasonable cause to believe abuse or neglect is occurring.
- Types of abuse:** all types of abuse should be reported, including property transfers and financial abuse.
- Investigation:** views ranged from strong support to strong opposition. Some felt that “able bodied, mindful” people should not be forced to be investigated and that level of vulnerability should be assessed before any investigation proceeds; consent could be used for those who can decide. Mandatory investigation was suggested to have a protective element by taking the onus off the adult, possibly avoiding retaliation by the perpetrator.
- Conditions of investigation:** investigations require clear guidelines - a gatekeeper, parameters, involvement of the adult in the process, and awareness about how process works. Investigators need to be well-trained and experienced.
- Powers:** many felt that there should be a preliminary assessment at intake. If there is reasonable cause to believe abuse is occurring, a home visit could be conducted (partnership with police is essential to ensure safety). Powers to interview the victim and others involved were also viewed as necessary, as was access to records. Some felt that records should be accessed to accurately understand the issue, others were more hesitant. Ethical, practical, and consent issues were discussed.
- Outcome:** Participants felt that clear recommendations from the investigation are important, and service/support should be offered – however, consent should determine whether service is provided. Long term follow up is vital, as is financial support and a well-resourced plan for families; cultural needs should be addressed. Important to any recommendations are accountability, service coordination, power to provide care in cases where the adult is in danger or unable to make decisions, and resources.

## Calgary Community Consultation - Cont'd

### 3. Civil Investigation in Calgary's Community Response to Abuse/Neglect of Older Adults

- Respondents were divided – while some felt that civil investigation is an essential piece of the puzzle, others felt it was too soon to know.
- It was suggested that the current system and resources be re-evaluated to determine whether resourcing, coordination, and communication between agencies would address the gaps.
- For any model to work, a number of factors would need to be considered:
  - ◊ Legislative reform
  - ◊ A government department to coordinate efforts
  - ◊ An independent agency to receive reports, investigate, and monitor outcomes
  - ◊ Intake/assessment at first contact
  - ◊ A coordinated response requiring communication and ingenuity among agencies, case management, and follow up involving key partners to avoid gaps in service
  - ◊ Partnership with police
- Foreseen issues related to privacy (e.g., FOIP) and confidentiality, resources, and effective communications between agencies were discussed.

## What's Next?

The following recommendations emerged from the study:

1. Revisit Alberta's adult protection ideology.
2. Establish a better understanding of the problem by conducting a study of the incidence of abuse/neglect of vulnerable adults in Alberta.
3. Re-evaluate Calgary's current response to determine whether modifications to the existing response could address the gaps.
4. Look to other jurisdictions (e.g., British Columbia) to determine the best approach.

Key recommendations from community stakeholders that attended the seminar in October 2010 to discuss findings from the study:

1. Begin to collect consistent and standardized data to demonstrate the need and lay the foundation for the case for legislative expansion/change.
2. Look further into other legislation, such as British Columbia's.
3. Increase coordination between Action Group on Elder Abuse (AGEA) and Calgary Leadership on Elder Abuse Committee (CLEAR) in Calgary to play leadership roles.
4. Explore other models, in particular, Massachusetts Disabled Persons Protection Commission.
5. Determine the scope of legislative requirements (gaps) and determine if this is a case for expansion and coordination or development of new legislation.

### **“Civil Investigation and Abuse of Vulnerable Adults in Calgary: An Exploratory Study”**

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