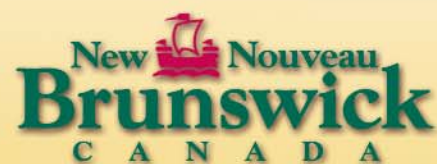



ADULT VICTIMS OF ABUSE



P R O T O C O L S

Adult Victims of Abuse Protocols



New  Nouveau
Brunswick
C A N A D A

September 2005

Adult Victims of Abuse Protocols

published by:

The Government of New Brunswick

P.O. Box 6000
Fredericton, NB
E3B 5H1

ISBN 1-55396-626-0

printed in New Brunswick, Canada

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1.0 Interdepartmental Statement

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The Government of New Brunswick continues to strive towards a society in which all persons can live safely and with dignity and respect. These Adult Victims of Abuse Protocols reflect the Government’s commitment to the vision that all New Brunswick families must live in a secure, nurturing environment free of abuse and violence.

The purpose of these protocols is to ensure that all efforts of the Government of New Brunswick to protect adult victims of abuse and neglect are effective and sensitive to their needs. Due to the number of factors involved, no one group can resolve the issue in isolation. A cooperative effort is essential. Therefore, various departments worked together to update these protocols, following consultations with a variety of key external organizations and agencies.

We endorse these Adult Victims of Abuse Protocols and consider it essential that all professionals who operate under the authority of the Departments of Family and Community Services, Health and Wellness, Justice, Public Safety, and Training and Employment Development adopt them as an integral part of their regular operations. As well, it is anticipated that individuals, organizations and professionals who have not been specifically identified in these protocols may, from time to time, be sought out to assist adult victims and the protocols will assist them as well.

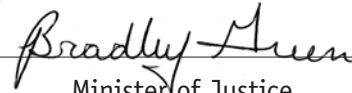
Signed:



Minister of Family and Community Services



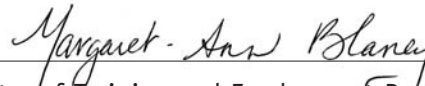
Minister of Health and Wellness



Minister of Justice



Minister of Public Safety



Minister of Training and Employment Development and Minister Responsible for the Status of Women

1.1 Introduction

The abuse and neglect of adults with disabilities and seniors is an ongoing, complex and socially unacceptable problem which cuts across all socio-economic levels, and all ethnic, cultural, rural and urban populations. The content of this document focuses on what happens when abuse is suspected.

Adults with disabilities and seniors may be subject to various forms of abuse, including: physical, sexual, psychological/emotional, financial/exploitative, chemical or neglect. Certain aspects of abuse may fall under either the Criminal Code or the Family Services Act.

The abuser may be a relative or a person in a position of trust or influence. A relative may be a spouse, sibling, daughter or son. The person in a position of trust or influence can include a staff person, a home care worker or a neighbour. Abuse occurs in the home, community and institutional settings such as hospitals and nursing homes.

1.2 Target Group

The information in this document is applicable to adults with disabilities and seniors. These individuals may be victims of, or in danger of becoming victims of, abuse as defined under section 2.1.

Whenever the following terms are utilized throughout this document, the meaning is as follows:

Adult: a person who has reached the age of majority (19).

Adult with a disability: a person who has reached the age of majority (19) and who, because of physical or mental impairment/disorder, including congenital or genetic abnormality, experiences absence or reduction of functional ability to carry out normal activities.

Elderly person or senior: one who has reached the age of 65 years, and, in the absence of positive evidence of age, means a person who apparently has reached that age.

Adults with special communication needs: those individuals who, because of level of literacy or mental/physical disability, require assistance to enhance their ability to communicate or to be understood by others and to participate in activities aimed at addressing incidences or allegations of abuse or neglect.

1.3 Statement of Principles

The following principles, which serve as the foundation for these protocols, apply to all adults, regardless of age or disability:

1. Adults have basic rights and fundamental freedoms, including legal rights, a right to security of the person, a right to be protected from exploitation of their property and a right to accept or reject assistance, intervention or medical treatment.
2. Adults have a right to self-determination and a right to choose the manner in which they wish to live, provided that the decision is voluntary, is not contrary to the law and does not infringe upon the rights and safety of others.
3. Adults have a right to the basic necessities of life (i.e., food, water, shelter, heat, clothing, hygiene, safety).
4. Adults have a right to clear and widely disseminated information in formats meeting the requirements of assisted communication devices.
5. Adults are entitled to appropriate intervention and assistance designed to meet their specific needs. Efforts to accommodate these needs must be directly proportionate to the needs of the individual.
6. Adults are entitled to fair and equal access and participation in the criminal justice system.
7. The abuse of an adult is a societal, as well as an individual, problem.

8. Adults have a right to the least invasion of their privacy and interference with their freedom that is compatible with their own interests and those of society. The wishes of the adult are of primary importance.
9. Interactions with adults should be conducted without discrimination while remaining sensitive to culture, religion, race, gender, sexual orientation and ability.
10. Individuals have a right to confidentiality, in that whatever information they choose to share or whatever information becomes known about them will remain confidential to the extent that is possible within the requirements of agency practices and the law.
11. An adult is competent and capable unless legally declared incompetent or certified incapable. Adults should be supported to make their own decisions wherever they are able.
12. Competent adults have the right to provide their own instructions, make their own decisions and manage their own affairs. These directives are to be taken from the individuals themselves, rather than a family member or other person purporting to be acting for the adult.
13. Adults should be supported in telling their own story to the extent possible, rather than having all control taken over by a family member or other person purporting to be acting for the adult.
14. Both the abuser and the victim may benefit from intervention. It is recognized that adults with disabilities and seniors who are offenders may require specialized interventions.
15. It is recognized that abuse can happen to men or women.

The overall goal is empowerment of the individual to restore his/her dignity as well as to assure his/her safety and welfare.

1.4 Myths and Facts

Many myths and stereotypes exist regarding the abuse of adults with disabilities and seniors. To ensure recognition of and appropriate responses to abuse, it is important to dispel myths and stereotypes. Following are several of the more common ones.

Myth: The abuse of adults with disabilities and seniors is rare.

Reality: Adults with disabilities and seniors are victims of all forms of abuse. Accurate estimates of the numbers who are victimized are difficult to obtain and thought to be under-reported due to a number of factors such as: not being out in public (in comparison to children, for example, where abuse may be noticed in the school); wishing to protect the abuser, who is often a caregiver; shame; dependency on the abuser for care; fear of consequences such as loss of support, institutionalization or reprisal; and lack of professional awareness and knowledge regarding the phenomenon.

Myth: Most abuse is perpetrated by strangers.

Reality: The abuser is often a caregiver or other individual known to the abused adult. The abuser can often be dependent on the victim for financial support and housing.

Myth: Seniors are not sexually abused.

Reality: Sexual assault is difficult to acknowledge but case studies show that seniors are victims of all forms of sexual abuse.

Myth: Men are not abused by their spouses and children.

Reality: Men also experience abuse. They may find it more difficult to disclose family violence because of a prevalent societal belief that men are not abused and their own belief that being victimized is shameful and inconsistent with the masculine role.

Myth: Certain cultural communities are immune to abuse and neglect.

Reality: People of all cultural heritages, races and religions encounter the problem of abuse and neglect. Abuse is not unique to any particular social or economic group.

Myth: Spousal abuse stops at age 60.

Reality: Until recently there has been little recognition of the continuation of spousal abuse as couples age. Services have been developed to accommodate the needs of younger men and women and children resulting in the mistaken impression that older men and women do not require such services.

Myth: Adults with disabilities and seniors are not sexually assaulted because they are either asexual or sexually unattractive.

Reality: This myth involves three misconceptions. The first misconception is that adults with disabilities and seniors are unattractive. The idea is untrue; all adults share the same range of attractive/unattractive attributes.

The second misconception is that only attractive persons arouse the need to be sexually abusive in the abuser. Sexual abuse has very little to do with sexual arousal and much to do with the abuser's need to exercise power and control over the victim.

The third misconception is that sexual abuse is a sexual act. Sexual abuse is not primarily motivated by the need for sexual gratification. It is an act of physical violence in which sexual activity is used by the abuser as a weapon and as a means for exercising power and control over the victim.

Myth: Victims are somehow responsible for the abuse or neglect done to them.

Reality: No one ever deserves to be abused or neglected. Responsibility for abuse or neglect rests solely with the abuser. Prior relationships between the victim and the abuser cannot excuse current forms of abuse or neglect. For example, it is unacceptable to assume that an elderly parent is currently being abused because he/she was neglectful or abusive to the current abuser in an earlier stage of their relationship.

Myth: Most abuse/neglect is the result of caregivers being overly stressed.

Reality: Placing too much emphasis on "caregiver stress" as a contributing factor tends to "forgive the abuser and promote victim-blaming" (Tomita, 1990). While reducing caregiver stress may have a preventive effect, no amount of stress excuses abuse or neglect. More attention needs to be focused on the characteristics of abusers rather than victims.

Regardless of the factors involved, nothing justifies the abuse and neglect of others.

2.0 Definitions, Causes, Indicators

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2.1 Definitions

Abuse is defined as any action/inaction which jeopardizes another’s health or well-being. It may include:

Psychological/Emotional Abuse

Any act which may diminish the sense of identity, dignity or self-worth of the adult with disabilities or senior. Such behaviour includes: confinement, physical and social isolation; verbal assault, harassment, humiliation, intimidation or infantilization; denial of information, privacy, visitors, or religious worship; coercion, compulsion by threat, or unlawful constraint to force an adult with disabilities or a senior to do some act that otherwise he/she would not have done.

Physical Abuse

Any act of violence or rough treatment causing injury or physical discomfort to adults with disabilities and seniors. Such behaviour includes: any kind of physical assault such as slapping, pushing, pulling, kicking, punching; injury with any object or weapon; deliberate exposure to severe weather; and the inappropriate use of restraints and/or forcible restraint.

Sexual Abuse

Any act involving unwanted touching/activity of a sexual nature or a situation in which an adult with disabilities or senior consents or submits to sexual activity because a person in a position of trust or with authority over him/her has used that trust/authority to gain that consent. Such behaviour would include sexual assault, sexual harassment, or any act designed to use the adult with disabilities or senior for the perpetrator’s sexual gratification.

Financial Abuse/Exploitation

Any act which involves the misuse/abuse of funds and/or assets belonging to an adult with disabilities or senior. Such behaviour includes: obtaining property and funds without the person’s knowledge or consent or by using undue influence; or in the case of a person who is not mentally competent, not acting in his/her best interests.

Chemical Abuse

Any misuse of medications and prescriptions, including the withholding of medication and over-medication.

Neglect

Any situation in which the basic needs of an adult with disabilities or a senior (e.g., food, water, shelter, heat, clothing, hygiene, safety) are not being met by self or others, and/or proper medical, dental or psychiatric treatment is not being received. Neglect may be the result of action or inaction and may be intentional or unintentional. Unintentional neglect refers to situations resulting from lack of experience, information or capability.

2.2 Causes

Some factors that may increase the likelihood of an individual becoming abusive or neglectful include:

- a history of childhood abuse;
- spousal abuse continuing into mature and late adulthood;
- financial dependency on the victim (e.g., unemployed adult children who return home to live with the victim);
- alcohol and drug abuse;
- caregivers who themselves have a disability or are elderly and no longer able to provide adequate care for others;
- lack of family ties;
- lack of family members or close friends living nearby;

- lack of regular (daily or weekly) contact with someone other than the primary caregiver;
- greed;
- lack of awareness of existing community resources;
- lack of community resources;
- lack of knowledge regarding how best to work with adults with disabilities and seniors;
- lack of awareness about how one's behaviour results in the abuse or neglect of others; and
- lack of common decency.

2.3 Indicators of Abuse and Neglect

The following may be indicators of abuse or neglect of adults with disabilities or seniors, and should serve to alert professionals to the possibility of abuse. These indicators warrant further investigation but are not necessarily proof of abuse.

General Indicators

- recurring physical ailments with no apparent somatic base
- eating disorders
- extreme, unusual behaviour (aggression, compliance, depression, or withdrawal)
- unusual fear of a particular person or people
- sudden change in feelings about a particular person or place
- nightmares and sleep disturbances
- self destructive behaviour such as drug/alcohol abuse, self-mutilation or running away
- lack of attachment to caregivers
- compulsive lying, and/or confusion regarding personal reality (i.e., dissociation, multiple personalities)
- regression to infantile behaviour

Psychological/Emotional Abuse (all forms of abuse and neglect almost always include these indicators.)

- appears shamed
- excessive passivity
- shows fear and inappropriate guilt
- reverts to infant-like/child-like behaviours
- is treated like a child
- seems frightened/eyes dart about, avoids eye/verbal contact with caregiver
- appears nervous in presence of caregiver
- threatened with institutionalization, eviction, etc.
- caregiver speaks for adult with disabilities or senior
- withdrawn, apathetic, depressed
- unresponsive
- physical indicators of imposed isolation (no telephone or radio, locks on door)
- caregiver blames adult for incontinence or wandering
- caregivers are passive, withdrawn, or uninterested in the person; refers to adult as "it"
- seeks frequent medical attention with vague, unsubstantiated complaints
- excluded from family gatherings, not permitted to have friends visit, to go to church, denied access to children/grandchildren
- unsure, helpless about making decisions
- inappropriate control by others of activities engaged in by at-risk adult

Physical Abuse

- unexplained loss of hair, abrasions, bruises, burns, bumps, contusions, falls, fractures, dislocations, grip marks, bites, haematomas, immobility, infections, internal injuries, lacerations, pain, restricted movement, rope marks, swelling, tenderness, skin ulcers, welts

- unusual patterns of bruises, e.g., in the shape of objects such as belts or hairbrushes or grip marks in the shape of fingers or hands
- muscle contractures, immobility, shuffling, weakness
- pushing, pulling or rough handling of the individual
- unusual markings on bed or furniture may indicate the use of physical restraints
- shivering, cyanosis (blue discoloration), flushing, lowered/elevated body temperature
- delays in seeking treatment
- reluctance to give information
- history of falls, accidents, injuries for which explanations do not fit the evidence
- seeking medical attention from an excessive number of doctors
- sores, injuries which have not been treated/partially healed
- burns in shapes of objects, such as stove burners or cigarette ends; burns from restraints or bath immersion burn patterns
- bruise on both upper arms, as would result from being grabbed or shaken badly

Sexual Abuse

- pain, bruising and bleeding in the genital areas
- existence of sexually transmitted diseases
- pregnancy
- stained, torn or bloody underclothes
- foreign bodies in genital, rectal or urethral openings
- pain, itching in the genital area or throat
- difficulty passing urine or defecating
- semen about the mouth, genitals or on clothing
- enlarged vaginal opening or redness in the genital area

- unusual or offensive odour
- significant change in sexual behaviour or attitude
- excessive masturbation
- simulated sexual acts or sexual attention to pets or animals
- compulsive sexual behaviour (grabbing breasts or genitals or compulsively removing clothes)
- prostitution, or indiscriminate sexual activity

Financial Abuse and Exploitation

Fraud, misuse of money/property may include:

- being overcharged for home repairs, pre-paid funeral arrangements, room and board, etc.
- illegal use of possessions, property, investments for profit, or personal gain
- depletion of savings without owner's knowledge
- overdrawn/depleted bank account
- discrepancy between standard of living and financial assets
- unusual transactions conducted on behalf of the account holder
- cashing of pension or other cheques/insurance without permission
- disappearance of jewellery, art or other personal possessions
- forced to sign over control/power of attorney
- forced to sell house, change will
- sale or transfer of property by person who seems unsure and confused about reason for selling
- nervous when at the bank with another person, especially if making a large withdrawal
- deliberate financial exploitation (i.e., improper financial compensation)

Chemical Abuse

- over-sedation, reduced physical/mental activity, groggy, confused, pills scattered about may be signs of inappropriate use of drugs, medications and/or alcohol
- reduced/absent therapeutic response to prescribed treatment may be the result of under-medication
- failure to fill prescriptions
- if the caregiver is a substance abuser, he or she may be giving drugs or alcohol to the person he/she is caring for

Neglect

- malnourished, excessive weight loss, lack of groceries/food supplies, empty cupboards, emaciated, no dentures, dehydration, mouth sores, confusion may be signs of withholding of nutrition and fluids
- impaired skin integrity, bed sores, rashes, urine burns, soiled linen, unkempt appearance may be signs of inadequate hygiene, personal care
- clothes in poor repair or dirty, inappropriate for season, bug infestation, insufficient clothing

- no glasses or hearing aid
- dangerous environment may be the result of a lack of safety precautions being taken and lack of adequate supervision
- unattended, tied to chair/bed
- wandering alone without needed supervision
- not taken to the doctor or dentist/therapist may be the withholding of medical/treatment services
- deserted/rarely seen outside place of residence
- padlocks on doors (bedroom, where food is kept)
- lack of attention to health care needs may include:
 - *prevention of access to health care services*
 - *inappropriate hospital discharge*
 - *inappropriate transfer within an institution*
- care provider attitudes/lack of understanding, custodialism, paternalism

3.0 Legislative Provisions

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The following information is a summary of the various legislative provisions most frequently applied when dealing with cases of abuse of adults with disabilities and seniors. Please refer to the appropriate legislation for full details.

3.1 Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms* prohibits in section 15(1) any discrimination on the basis of age, and physical and mental disability, among other grounds.

3.2 Criminal Code

The *Criminal Code* is federal legislation which applies uniformly across the country by virtue of the federal government’s constitutional authority over criminal law. The *Criminal Code* provides sanctions for offences.

Where evidence of a crime exists and a charge is laid, the criminal justice process can be brought to bear against an accused person. The consequences of this are considered serious in terms of possible penalties. A wide range of dispositions can be imposed upon a person convicted of a criminal offence including imprisonment, probation supervision, conditional sentence and other restrictions on freedom and liberty or combination thereof. Thus, the criminal process is required by the Charter of Rights and Freedoms to ensure fairness in the treatment of an accused by the courts and criminal justice personnel.

Protections which are extended to the accused by the Charter of Rights and Freedoms arise from the traditionally high standard of admissibility of evidence and burden of proof beyond a reasonable doubt in criminal proceedings. These protections arise primarily from the fundamental principle of criminal law which is that the accused is

presumed to be innocent until proven guilty beyond a reasonable doubt. This is further protected by the Charter of Rights and Freedoms under section 11(d) which states that:

Any person charged with an offence has the right...(d)to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

Offences

The criminal law can deal with the following types of abuse: physical, sexual, psychological/emotional, financial/exploitation and neglect. The sections specifically mentioned are not intended to be exhaustive. Depending upon the circumstances, a variety of Criminal Code offences could be charged.

The following offences included in the *Criminal Code* could apply in situations of physical/sexual abuse:

(s. 265) Assault

According to the definition of “assault” contained in the *Criminal Code*, a person commits an assault when:

- without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has present ability to effect his purpose; or
- while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

(S. 266) Assault

Assault is either an indictable or a summary conviction offence depending on the seriousness of the assault. For an indictable assault, a person is liable to imprisonment for a term not exceeding 5 years. For a summary conviction assault, a person is liable to a fine of not more than \$2,000.00 or to imprisonment for 6 months or to both.

(S. 267) Assault with a Weapon or causing Bodily Harm

Aside from assault, there is an offence known as assault with a weapon or causing bodily harm. This occurs when, in committing an assault, a person carries, uses or threatens to use a weapon or an imitation of a weapon or causes bodily harm to the victim. This section defines “bodily harm” as any hurt or injury to a person that interferes with their health or comfort and that is more than merely transient or trifling in nature. This is an indictable offence and punishable by a term of imprisonment not exceeding 10 years.

(S. 268) Aggravated Assault

An aggravated assault is committed when a person wounds, maims, disfigures or endangers the life of a person. Everyone who commits an aggravated assault is guilty of an indictable offence and is liable to imprisonment for a term not exceeding 14 years.

(S. 38(2)) Deemed Assault

A trespasser who resists an attempt by a person who is in peaceable possession of a dwellinghouse or real property, or a person lawfully assisting him or acting under his/her authority to prevent his entry or to remove him, shall be deemed to commit an assault without justification or provocation.

Other assault related Criminal Code provisions include s. 269 Unlawfully causing bodily harm; s. 269.1 Torture

(s. 271) Sexual Assault

The definition of assault as stated above applies to all forms of assault including sexual assault. An assault becomes a sexual assault when it is committed in circumstances of a sexual nature. Whether an assault is sexual or not depends on several factors including the sexual or carnal context, the part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act and all other circumstances surrounding the conduct, including threats, force, intent and motive. A husband or wife can be charged with any of the sexual assault offences whether or not the spouses were living together at the time of the incident.

Sexual assault can be summary conviction with a maximum \$2,000.00 fine, 6 months imprisonment or both if it is of a relatively minor nature. When it is more serious, it can also be an indictable offence punishable by a term of imprisonment not exceeding 10 years.

(S. 272) Sexual Assault with a Weapon, Threats to a Third Party or Causing Bodily Harm

This offence is committed when, in committing a sexual assault, a person carries, uses or threatens to use a weapon or an imitation weapon, threatens to cause bodily harm to a person other than the complainant or causes bodily harm to the complainant. The punishment is for an indictable offence and for a term of imprisonment not exceeding 14 years.

(S. 273) Aggravated Sexual Assault

An aggravated sexual assault is committed when, in committing a sexual assault a person wounds, maims, disfigures or endangers the life of the complainant. Everyone who commits an aggravated sexual assault is guilty of an indictable offence and is liable to imprisonment for life.

Defences to Assault**Consent**

It is an important part of the offence of assault that the victim did not consent to the act complained of. Whether or not there is a defence of consent will depend on the facts of each individual case.

The *Criminal Code* in S. 273.1 provides that no consent is obtained where the complainant submits or does not resist by reason of:

- the application of force to the victim or to a person other than the victim;
- the victim is incapable of consenting to the activity;
- the accused induces the victim to engage in the activity by abusing a position of trust, power or authority;

- the victim expresses, by word or conduct, a lack of agreement to engage in the activity; or
- the complainant, having consented to the sexual activity, expresses by word or conduct, a lack of agreement to continue to engage in the activity.

Further:

- threats or fear of the application of force to the complainant or to a person other than the complainant; fraud; or the exercise of authority.
- Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, must instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

Drunkenness

Generally, self-induced drunkenness is not a defence to an assault unless the state of intoxication is so advanced that the accused was not aware of what he was doing or that what he was doing was wrong.

Self-Defence

The *Criminal Code* states that everyone is justified in using force to defend himself or anyone under his protection from assault, if he uses no more force than is necessary to prevent the assault or the repetition of it. However, it is also clearly stated that there is no legal justification for the wilful infliction of any hurt or mischief that is excessive, having regard to the nature of the assault that the force was intended to prevent. To rely on this defence, an accused must have been faced with an actual assault, something which he must defend against, and that assault must be life-threatening before he can be justified in killing in defence of his person or that of someone under his protection.

Provocation

Provocation by blows, words or gestures is not a defence to assault but will be considered by the Court as a mitigating circumstance when the accused is sentenced.

Forcible Confinement

(S. 279 (2)) Everyone who without lawful authority confines, imprisons or forcibly seizes another person is guilty of either an indictable or summary offence. The fact that the victim did not resist is not a defence unless the accused can prove that the failure to resist was not caused by threats, duress, force or exhibition of force.

Incest

(S. 155) Every one commits incest who has sexual intercourse with a person they know to be their parent, child, brother, sister, grandparent or grandchild.

Murder/Attempted Murder

A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being. Homicide is culpable or not culpable. Homicide that is not culpable is not an offence. Culpable homicide is murder or manslaughter (or infanticide). A person commits culpable homicide when he causes the death of a human being by committing an unlawful act such as assault.

(s. 229) Culpable homicide is murder:

- a) where the person who causes the death of a human being;
 - i. means to cause his death; or
 - ii. means to cause him bodily harm that he knows is likely to cause his death and is reckless whether death ensues or not,
- b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to affect his object without causing death or bodily harm to any human being. Murder can be committed where a person causes the death of a human being while committing or attempting to commit a sexual assault or sexual assault with a weapon or sexual assault causing bodily harm, whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if he means to cause bodily harm for the purpose of committing the offence or facilitating his flight after committing or attempting to commit the offence, and death ensues from the bodily harm.

(S. 231) Murder is first degree murder or second degree murder.

Murder is first degree murder when it is planned and deliberate. Irrespective of whether a murder is planned and deliberate, murder is first degree murder when the victim is a peace officer, or a prison official. **(S. 230)** Also irrespective of whether a murder is planned and deliberate, murder is first degree murder when death is caused while committing or attempting to commit a sexual assault, a sexual assault with a weapon, sexual assault causing bodily harm or aggravated sexual assault. **(S. 231 (c))** Also, irrespective of whether a murder is planned and deliberate, it is first degree when the death is caused by that person while committing or attempting to commit an offence under s 264 (Criminal Harassment) and the accused intended to cause the person murdered to fear for the safety of the person murdered or the safety of anyone known to the person murdered. All murder that is not first degree murder is second degree murder.

Murder Reduced to Manslaughter

Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.

A wrongful act or an insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is sufficient provocation to act as a defence to murder if the accused acted on it on the sudden and before there was time for his or her passion to cool. The questions whether a particular wrongful act or insult amounted to provocation and whether the accused was deprived of the power of self-control by the provocation that he or she alleges were received, are questions of fact to be determined at the time of trial.

Attempted Murder

An attempted murder is committed when a person has an intent to commit murder and does or admits to do anything for the purpose of carrying out that intention whether or not it was possible under the circumstances to actually commit the offence.

Other culpable homicide:

(S. 222 (c)) A person commits culpable homicide when he causes the death of a human being by causing that human being to do anything that causes their own death by means of threat or fear of violence or by deception.

(S. 222 (d)) A person commits culpable homicide when he causes the death of a human being by willfully frightening that human being, in the case of a sick person (or a child).

Counselling or Aiding Suicide

(S. 241) Every one who counsels or aids or abets a person to commit suicide is guilty of an indictable offence.

Criminal negligence

(S. 219) Every one is criminally negligent who in doing anything or in omitting to do anything shows reckless disregard for the lives or safety of other persons. (The test for criminal negligence is whether there has been a marked departure from the standard of the reasonable person).

Defences to Murder

Drunkenness/Drugs

Since murder is a crime that requires a specific intent in the mind of the accused to kill the victim, depending on the facts of each particular case, and the degree of intoxication, drunkenness may reduce murder to manslaughter if there is sufficient evidence to raise a reasonable doubt that the accused person intended to commit murder. This legal effect can also operate in the case of the excessive influence of drugs on the mind of the accused at the time of the offence. However, where there is evidence of self-induced intoxication by alcohol or drugs, this test will be very strictly applied.

Provocation

As described above, murder can be reduced to manslaughter if the person who committed the murder did so in the heat of passion caused by sudden provocation. A wrongful act or an insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of selfcontrol is provocation if the accused acted on it on the sudden and before there was time for his or her passion to cool.

Self-Defence

This is the only absolute defence to a charge of murder. The defence is available to a person who is unlawfully assaulted and who causes death or grievous bodily harm in repelling the assault if he or she causes it under reasonable apprehension of death or grievous bodily harm from the violence and there are reasonable grounds to believe that he or she cannot otherwise preserve himself or herself from death or grievous bodily harm.

Criminal Code, Other Conduct

Other sections of the *Criminal Code* which may apply in a case of psychological/emotional abuse situations are:

(S. 264.1) Uttering Threats

This offence is committed when a person in any manner knowingly utters, conveys or causes any person to receive a threat to cause death or serious bodily harm to any person; to burn,

destroy or damage real or personal property or to kill, poison or injure an animal or bird that is the property of any person. A person found guilty of a threat to a person has committed an indictable offence and is liable to imprisonment for a term not exceeding 5 years. A person found guilty of a threat against property or an animal or bird, can commit either an indictable offence punishable by 2 years or a lesser summary conviction offence depending on the seriousness of the facts.

(S.264) Harassment

This may either be an indictable offence liable to imprisonment for a term not exceeding five years or an offence punishable on summary conviction. This offence is committed when a person without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed does the following:

- repeatedly follows the other person or anyone known to them;
- repeatedly communicates directly or indirectly with the other person or anyone known to them;
- besets or watches the dwelling-house or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- engages in threatening conduct directed at the other person or any member of their family. The court must consider as an aggravating factor for sentencing that the accused was in contravention of the terms or conditions of a prohibition order, peace bond or other order or recognizance made or entered into under the common law or the *Criminal Code* or any other Act or Parliament or a province.

(372) Harassing Telephone Calls

It is an offence to make or cause to be made repeated telephone calls to a person without lawful excuse and with intent to harass that person. This is a summary conviction offence punishable by a fine of \$2,000.00 or to a term of imprisonment for six (6) months or both.

False Messages:

It is an offence to convey, or cause or procure to be conveyed by letter, telegram, telephone, cable, radio or otherwise information that he knows is false with the intent to injure or alarm another person. This is an indictable offence and liable to imprisonment for a term not exceeding two years.

Indecent telephone calls:

It is an offence to make any indecent telephone call to a person with the intent to alarm or annoy that person. This is an offence punishable on summary conviction.

Peace Bond

A peace bond is requested by a person who fears that another person will cause personal injury to him or her, a spouse or child or that another person will damage his property.

A peace bond request is made by the complainant personally in the presence of a judge by the swearing of an information or charge. This procedure may be used when the conduct complained of is not an "offence" under the *Criminal Code*. *Criminal Code* "offences" are commenced by a police officer laying an information, not the victim.

If the defendant agrees to a peace bond or if the Court is satisfied that there are reasonable grounds for the complainant to be afraid after a hearing, the defendant will sign a "recognizance", which is a binding agreement with the Court, to keep the peace and be of good behaviour for any period not exceeding 12 months. There are often specific conditions attached in relation to contact with the complainant or others and to staying away from a place of residence and/or place of employment. A peace bond is enforceable anywhere in the province. It is a criminal offence to breach a peace bond and if convicted, the defendant is liable on summary conviction to a fine of \$2,000.00 or six months imprisonment or both. A peace bond is appropriate only in situations where there is fear of personal injury or damage to property. Unless it is of a minor nature, an assault should not be dealt with under this section. This provision was intended as a means of

preventing an assault from happening, not as a means of punishing an assault which has already occurred.

Other sections of the Criminal Code which may apply in a case of financial/exploitation abuse situations are:**(S. 322) Theft****(S. 366) Forgery**

Every one commits forgery who makes a false document, knowing it to be false, with intent

- (a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or
- (b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not.

Making a false document includes

- (a) altering a genuine document in any material part;
- (b) making a material addition to a genuine document or adding to it a false date, attestation, seal or other thing that is material; or
- (c) making a material alteration in a genuine document by erasure, obliteration, removal or in any other way.

Extortion

(S. 346) Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

Fraud

(S. 386) Every one who fraudulently registers title to real property by making a material false statement or representation; or by suppressing or concealing from a judge or registrar any material document, fact, matter or information; or is privy to any of the above is guilty of an indictable offence.

(S. 387) Every one who fraudulently sells real property knowing of an unregistered prior sale, grant, mortgage, hypothec, privilege or encumbrance is guilty of an indictable offence.

(S. 388) Use of misleading receipts is an indictable offence.

Other sections of the Criminal Code which may apply in a case of neglect are:

(S. 219) Criminal Negligence

Every one is criminally negligent who in doing anything, or in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons.

(S. 215) Failure to Provide the necessaries

Every one is under a legal duty:

- as a parent, foster parent, guardian or head of a family, to provide necessaries of life for a child under the age of sixteen years;
- to provide necessaries of life to their spouse or common-law partner; and
- to provide necessaries of life to a person under his charge if that person:
 - *is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and*
 - *is unable to provide himself with necessaries of life.*

Every one commits an offence who, being under a legal duty within the meaning above, fails without lawful excuse, the proof of which lies on him, to perform that duty, if the person to whom the duty is owed is in destitute or necessitous circumstances, or the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or in the case of a person under their charge, the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

3.3 Family Services Act

The New Brunswick *Family Services Act* is administered by the Minister of Health and Community Services. The provisions of the *Act* provide the authority for individuals, who have been designated to act on behalf of the Minister, to investigate situations involving the abuse and/or neglect of persons with disabilities or persons who are 65 years of age or over.

Section 35 of the legislation requires that, if there is reason to believe that a senior or disabled adult is neglected or abused, an investigation shall take place. The neglect may be self neglect or that perpetrated by a caregiver or other. The abuse may be physical, sexual and/or psychological/emotional.

Financial exploitation is not recognized in the *Family Services Act* as abuse at this time. Therefore, individuals acting on behalf of the Minister do not have the authority to intervene in situations involving financial exploitation unless it is accompanied by abuse or neglect as defined in the *Act*.

The type of action taken following an investigation depends upon:

1. the findings as they relate to abuse and/or neglect,
2. the willingness of the victim to receive assistance or protection, and
3. the victim's level of mental competency.

Consequently, if a victim refuses to accept services, the matter is only pursued if there is reason to believe that he or she is mentally incompetent. If that is found to be the case, and the victim is thought to be in immediate or imminent danger, then he/she will be taken into Protective Care (subsection 37(1.1) 1 of the *Act*). If not in immediate or imminent danger, a court order may be applied for under 39(1).

In summary, subsections 34(1) to 42(2) of the *Family Services Act* provide individuals acting on behalf of the Minister with the following direction and authority:

Investigation

Subsections 34(1) - 35(1) of the *Family Services Act* make it mandatory to investigate any suspected situation of abuse and/or neglect if the person is 65 years of age or over or is a disabled adult. The *Family Services Act*, section 35.1 (1) authorizes a professional person to disclose information to the Minister without the consent of the person concerned.

Subsections 35 and 36 define the activities that may be undertaken as part of the investigation (i.e., medical examination, entering property, the use of warrants).

Service Options/Protective Care

Sections 37, 37.1 and 37.2 provide the authority to:

1. refer the case to a community social services agency or other government department or agency, etc.,
2. provide service,
3. take the victim into protective care, and/or
4. seek a court order.

Court Orders

Sections 39 and 40 describe the types of court orders which may be sought.

3.4 Mental Health Act

The New Brunswick *Mental Health Act* contains several provisions designed to protect adults who may be at risk because of a mental disorder and who are referred for examination and treatment as involuntary patients. The following is a summary of those provisions:

Order for examination

1. A physician may require a person to go to a psychiatric facility to be examined if he/she believes the person to be suffering from a mental disorder and requires hospitalization in the interests of the person's safety or the safety of others and this person does not agree to be examined voluntarily (section 7.1[1]).

2. A judge may order that an individual go to a psychiatric facility to be examined by a psychiatrist (section 9).
3. If a police officer believes an individual is suffering from a mental disorder and is a threat to harm self or others, or is showing a lack of competence to care for himself/herself, the police officer may take that person to a doctor or hospital for examination (section 10).
4. This person may then be held at a psychiatric facility for not longer than 72 hours for observation, assessment and examination (section 8[3]).
5. The person must promptly be informed of the reason for detention, where they are being taken, and of his/her right to retain and instruct counsel without delay (section 10.1).
6. The facility will inform the person's closest relative in writing:
 1. of the detention and the reasons for and place of detention; and
 2. of the person's right to retain and instruct counsel (section 7.3).

Psychiatric Patient Advocate Services

1. It is the duty of a psychiatric patient advocate service to offer advice and assistance to persons who are detained in a psychiatric facility involuntarily (section 7.6[2]).
2. The administrator of a psychiatric facility will notify the psychiatric patient advocate of each person detained in the facility, and any order by a review board authorizing treatment without consent (section 7.6[3]).
3. The psychiatric patient advocate has the right to meet with all persons detained in the facility, attend hearings held by tribunals, access all records and other documents, and access all locations in the facility (section 7.6[4-7]).

Involuntary admission

1. In order for an individual to be detained as an involuntary patient beyond 72 hours, the attending psychiatrist must apply to the chair of the Tribunal stating the reasons the involuntary status is necessary (section 8[4]).
2. The attending psychiatrist filing the application must also determine if the patient is mentally competent to give consent or to refuse to give consent for treatment (section 8.01[1]).
3. The attending psychiatrist will also ask the Tribunal for authorization to provide treatment without consent if the patient is:
 1. *not mentally competent to give or refuse consent*
 2. *mentally competent but refuses to consent (section 8.01[3]).*
4. The Tribunal may order an involuntary admission and treatment for one month (section 13[4][a]).
5. The administrator of the psychiatric facility where a patient is ordered admitted as an involuntary patient must notify the patient's closest relative in writing (section 8.2).
6. Unless otherwise ordered by a tribunal, a patient who is mentally competent has a right to refuse or give consent for treatment (section 8.4 [1]).
7. The following individuals may be asked to make a decision to give or refuse consent for treatment for an involuntary patient who is not competent to make this decision:
 1. *patient's guardian*
 2. *patient's spouse*
 3. *adult child of patient*
 4. *parent of patient*
 5. *adult brother or sister of patient*
 6. *psychiatric patient advocate (section 8.6[1])*

Access to records

Anyone who is 16 and mentally competent can examine and copy their own clinical records and can request corrections be made or have a record of their disagreement with the record be included in the file (section 16).

Right to communicate

No one can interfere with or obstruct communication written to or sent by a patient (section 19).

Review board

1. A psychiatrist can apply to a review board for an inquiry into whether treatment should be given to an involuntary patient if this permission is refused by the Tribunal (section 30.1[1]).
2. An involuntary patient, or anyone on behalf of an involuntary patient, can apply to a review board for an inquiry into whether:
 1. *the involuntary patient suffers from a mental disorder;*
 2. *there is substantial risk of harm to self or others;*
 3. *the involuntary patient could be a voluntary patient;*
 4. *less restrictive alternatives would be appropriate;*
 5. *hospitalization is required for the patient's safety or the safety of others (section 31[1]).*
3. The chair of the review board must send a copy of the decision in writing within 14 days to:
 1. *the administrator (of the facility);*
 2. *the patient;*
 3. *the patient's nearest relative;*
 4. *the applicant (if not the patient); and*
 5. *the attending psychiatrist (section 31.1[5]).*

Administrator of estates

1. When a patient is admitted to a psychiatric facility he/she will be examined by a psychiatrist to determine if he/she is competent to manage his/her estate (section 36[1]).
2. If the psychiatrist is of the opinion the patient is not competent to manage his/her estate, the estate will be managed by the "Administrator of Estates" (section 36[3]).
3. A patient may appoint in writing the Administrator of Estates as manager of his/her estate at any time while in hospital (section 36[5]).
4. The attending psychiatrist can cancel the patient's certificate of incompetence after an examination (section 39).
5. Upon discharge from a psychiatric facility, a patient whose estate is being managed by the Administrator of Estates must be examined regarding his/her competence to manage his/her estate. This arrangement will be cancelled or continued for three months based on this evaluation of competence (section 40[1], 41).
6. The patient may apply to the chair of the review board to inquire whether the patient is competent or not to manage his/her estate (section 42[1]).

3.5 *Infirm Persons Act*

The *Infirm Persons Act* is administered by the Minister of Justice/Attorney General. The Act provides that the Court of Queen's Bench has full jurisdiction and authority over and in relation to the person and estates of mentally incompetent persons.

An application may be made to the Court by the Attorney General, by the wife or husband of the alleged mentally incompetent person, by a relative, whether by blood or affinity, by a friend or any other person who is concerned for the well-being of the alleged mentally incompetent person or by a creditor.

The trial of the issue may take place in judge's chambers and will be without a jury. The evidence must establish beyond a reasonable doubt the alleged mental incompetency.

The Court may make orders for the custody of mentally incompetent persons and the management of their estates.

Note:

It is intended that legislation creating a public trustee will be introduced in the Legislature in 2005.

4.0 Vision for a Collective Response

Our approach to helping the adult victim of abuse, must represent a balance between intervening to stop the abuse while respecting the fact that adults have a right to the least invasion of their privacy and interference. The wishes of the adult are of primary importance.

The following is a vision for a person-centered “collective response” to assist and support adults at risk or victims of abuse.

Compassionate helpers

- Services are available in the community. Service providers know what is available in the community and are able to provide information, make referrals, and connect the adult to services or resources that are helpful.
- The adult understands that he/she has control over what services and supports are wanted or needed.
- The adult is treated with respect and understanding.
- Professionals are well trained in recognizing the signs and symptoms of abuse. They convey the message that abuse is never acceptable and the range of options is fully explored to find the best solution for the adult. They view the community as a resource and work towards developing appropriate supports.
- Investigations proceed quickly and efficiently.
- The adult is kept informed of what is happening and what can be expected.
- Every effort is made to maintain continuity in professional involvement.
- The adult knows the names of professionals involved and how to reach them.
- Appropriate professionals and/or supports are brought in throughout the process so that the adult continues to be supported during the entire process.
- Provisions are made to accommodate any communication difficulties, including the use

of interpreters, augmentative communication devices, and independent individuals who can act in a support role.

- The adult’s ability to cope is always being assessed. Change can be very difficult to accept. The adult is supported in making those transitions. Helpers must respect the adult’s right to self-determination.
- On-going training is offered to helpers so they are aware of new practices, research, and current information that can assist in working more effectively with adult victims of abuse.

Ensuring Safety

- Adults must be protected from abuse. Each member of society sees it as his/her responsibility to report abuse or suspicions of abuse. Individuals know what to do and do not hesitate to act.
- Risk assessments are routinely completed in order to take appropriate action.
- The adult is assisted in developing a safety plan.
- The adult is encouraged and supported in choosing a safe non-abusive option. Violence free environments are always the best option.
- The adult’s safety and protection is the primary consideration through disclosure, investigation and resolution of the problem.

Counselling and support

- Support and counselling are made available to assist with the trauma of disclosure, decision to stop the abuse, healing and adaptation to subsequent changes.
- Specific interventions, such as court preparation, are offered and provided as appropriate.
- The adult is assisted in exploring and identifying his/her support systems such as family and friends who may be called upon when support is needed.
- Long-term counselling is provided as necessary.

On-going prevention and education

- Prevention and sensitization on the issue of the risk of abuse and neglect of seniors and adults with disabilities is the responsibility of all citizens.
- Prevention and education initiatives are consistently a primary focus throughout government, community and the family network.
- Violence, in its many forms, is considered to be a criminal act which should be addressed collectively by government and communities.
- Social development and community mobilization are facilitated.
- Programs and services are evaluated on a regular basis to ensure continued effectiveness.
- Stakeholders work together in partnership to address violence issues on an on-going basis.

Community, friends and family

- All stakeholders recognize that abuse is unacceptable. They promote awareness and prevention.
- A shared responsibility to protect, to advocate for and watch over our most vulnerable adults evolves from awareness and partnerships.

5.0 Department of Family and Community Services Intervention Guidelines

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5.1 Introduction

As a government department which provides services to both adults with disabilities and seniors, we are committed to educate and sensitize all employees to respond effectively to this issue. Endorsement of these protocols is an important step to ensure consistent responses to incidents of abuse and neglect; and to promote cooperation among the agencies and other departments involved. It is anticipated that these protocols will facilitate the achievement of some consistency in identification and response to allegations of adult abuse throughout the province.

Adult abuse victims are often reluctant to report their abuse or neglect; therefore, it is important for all employees of the Department of Family and Community Services to be alert to the possibility of abuse and neglect, and to seek help for any suspected victim. The elimination of adult abuse will only be reached through effective prevention strategies, greater public awareness, and appropriate ways of responding to suspected abuse.

Adults with disabilities and seniors may be subject to various forms of abuse, including physical, sexual, chemical, neglect, or financial abuse. Financial abuse alone may be a criminal offence and it should be reported to the police. Otherwise, if you have any suspicion whatsoever that a client has been abused and/or neglected, you have a responsibility to report to the Access and Assessment Unit of this Department. If the client’s health and safety are in immediate danger, every effort will be made to protect the individual from harm, including police contact if the situation warrants it.

5.1.1 Nursing Homes/Adult Residential Facilities/Adult Day Centres/ADAPT

Staff involved with nursing homes, adult residential facilities, adult day centers and ADAPT (Adult Development Activities Program Training) have an important role in assisting adult victims of abuse/neglect. These protocols can be used to facilitate early detection and intervention as well as the prevention of further victimization.

A victim may be a resident of a facility or could be participating in a day program and could potentially be victimized by a relative, visitor, patient/resident, care provider, staff member or a volunteer.

Although there is no legislation that binds private facilities to abide by these protocols, the Department wants to ensure proper guidelines are established to offer these adults the care they deserve. Directors of these programs need to refer to program standards as they are bound by legislation to follow regulations and standards. They have a responsibility to ensure the vulnerable adults entrusted to their care and supervision receive appropriate protection from harm.

In interviewing the alleged victim regarding possible abuse/neglect, provision shall be made for:

- privacy, without the alleged perpetrator present,
- accommodation of any communication difficulties (i.e., use of resource people),
- maintenance of confidentiality.

5.2 Principles

The following are legislative requirements, administrative, reporting and follow-up procedures developed for staff of the Department to ensure that a coordinated and formalized process is in place to report a situation of adult abuse.

1. The reporting by employees of abuse/neglect of adults with disabilities and seniors shall be encouraged.
2. Although by law it is not mandatory to report the abuse of adults it is essential that all employees recognize that the abuse of any person is not to be tolerated and that reporting of adult abuse/neglect is a social responsibility.
3. If an employee suspects that a staff member is implicated in an abuse/neglect situation, he/she must immediately inform the Access and Assessment Unit.
4. All FCS employees shall familiarize themselves with this Protocol document to insure they are aware of the indicators of abuse and neglect, and of the procedures and guidelines to follow in reporting any suspected incidents.
5. Confidentiality shall be respected when reporting the alleged abuse/neglect.
6. The Regional Director, or designate, may be consulted by an employee who has encountered a situation that may be considered as abusive or neglectful.

5.3 Procedures for Referral and Follow-up

1. Any employee who has witnessed mistreatment of a senior or a person who is disabled or suspects there has been abuse shall immediately notify the Access and Assessment Unit.
2. Within 24 hours following a verbal referral, a written referral using the Abuse Referral Form (see section 10.0, Appendix A) shall be completed by the employee reporting the suspected abuse/neglect, and then submitted to the Access and Assessment Unit of the Department of Family and Community Services.

3. A copy of the written referral should be retained in a confidential file.
4. The investigation will be conducted by Access and Assessment and/or the police. Other FCS employees and staff in facilities are not to interview the abused adult or their family regarding the suspected incident.
5. The reporting employee shall ensure that his/her director is kept informed of any referral undertaken.

5.3.1 Reporting

Reporting of abuse/neglect of adults with disabilities and seniors to the Access and Assessment Unit, Department of Family and Community Services, should be encouraged as outlined below, although by law it is not mandatory. The *Family Services Act* provides legal protection for a professional who uses a victim's name in a report without written consent. After regular business hours, during weekends or holidays, reports of abuse/neglect will be made through "After Hours Emergency Social Services" (AHESS) at **1-800-442-9799** or **453-2145** in the Fredericton region.

If victim consents:

A report shall be made immediately to the Access and Assessment Unit, Department of Family and Community Services.

If no consent and victim appears to be mentally competent:

Written information on resource options available should be provided to the victim for future reference.

If no consent and victim appears to be mentally incompetent:

A report shall be made immediately to Access and Assessment Unit, Department of Family and Community Services.

If there are reasonable grounds to believe that a staff member or volunteer is an abuser:

The appropriate Director/Administrator shall be notified immediately. In addition, if there are reasonable grounds to suspect that a member of a

health discipline is an abuser, a written report shall also be submitted to the relevant health discipline association.

5.3.2 Assessment

When abuse/neglect is suspected (see section 2.3 for indicators), an assessment shall be carried out promptly to assess the basis for the suspicion, physical and mental health status, relevant social factors, and options available for support and/or assistance. The assessment should be done by the health professional(s) appropriate to the circumstances, (i.e., nurse, physician(s), social worker, psychologist). If appropriate, an injury location map shall be completed.

5.3.3 Avoiding Secondary Victimization of the Abused

Secondary victimization occurs when the system fails to identify abuse/neglect and/or follow-up effectively, with consequent negative affects on the quality of care provided to the victim. In effect, the victim becomes victimized again, often unintentionally, by the attitudes, actions or lack of actions of professional caregivers.

Staff shall recognize the potential for secondary victimization and prevent it from occurring by:

- sensitizing personnel to the existence of abuse/neglect and potential abusive situations/abusers;
- educating personnel to identify abuse/neglect and intervene effectively;
- ensuring that any suspicion of possible abuse/neglect shall be followed up in a sensitive and caring manner;
- ensuring appropriate policies/procedures/protocols are in place to direct personnel;
- ensuring comprehensive documentation regarding identification, assessment, intervention, follow-up/referral;
- using resources as appropriate and providing information on other available community resources.

5.3.4 Special Considerations: Adult Residential Facilities/Nursing Homes

The roles and responsibilities of operators of adult residential facilities are described in the Standards and Procedures for Adult Residential Facilities. In accordance with those standards and procedures, any suspected abuse of the residents is to be reported to the Department. It is the role of the Coordinator for Adult Residential Facilities to ensure that all approved facilities are inspected for on-going compliance with standards. When receiving a report of suspected abuse/neglect in an adult residential facility, the Coordinator will follow with investigation procedures as described in the Adult Residential Facility Coordinators Standards.

To follow-up on suspected abuse/neglect in nursing homes, the procedures (e.g., medical examination, appropriate discharge plans, etc.), shall be established by the individual nursing home in accordance with its specific needs. If abuse/neglect is confirmed, the victim's safety shall be the primary consideration.

5.4 Access and Assessment and Adult Protection Services

The legislation requires that all reported situations of suspected abuse/neglect of a senior or disabled adult be investigated under the authority of the *Family Services Act* except in situations involving financial abuse. Although suspected abuse/neglect is to be reported to the Access and Assessment Unit of the Department, these investigations will be carried out under the Adult Protection provisions of the *Family Services Act*.

Adult Protection is a complex program which must strike a balance between society's responsibility to protect adults with disabilities and seniors and the inherent rights of an adult to live his or her life according to his or her beliefs and wishes. The legal mandate, policies and procedures of Adult Protection Services must recognize that:

- All adults have the right to autonomy and self-determination and the right to enjoy fundamental rights and freedoms prescribed in the Canadian Charter of Rights and Freedoms.

- All adults are entitled to receive the most effective, least restrictive and least stigmatizing form of assistance.
- The use of protective care, court procedures and court orders should occur only as an absolute last resort and only after the provision of supports and assistance have been either attempted or carefully considered.

The detailed procedures for investigating and intervening in an abuse or neglect situation are contained in the Adult Protection Standards which are made under the authority of the *Family Services Act*. What follows is a summary of those procedures for intervening in situations of physical abuse, sexual abuse, chemical abuse, psychological/emotional abuse, self-neglect or neglect by others. The mandate of the Act does not extend to situations of financial abuse. If workers become aware of a situation involving financial abuse alone, the matter should be referred to the police.

5.4.1 Investigation Guidelines

The purpose of an investigation is to determine if an individual has been a victim of:

- physical, sexual, chemical, or psychological/emotional abuse, and/or
- neglect by self or others.

The investigation also serves to identify the type and level of intervention which should be undertaken as a means of protecting the victim.

In situations where the reported abuse or neglect appears to involve immediate or imminent danger to the adult's health, safety or well-being, the investigation is to be launched immediately. In all other situations the investigation is to be started within 10 working days from the date upon which the referral was first received by the Access and Assessment Unit or the Adult Protection Investigators.

The legislative mandate provides for the protection of all disabled and elderly persons regardless of where they are residing. Therefore, Access and Assessment staff or the Adult Protection Investigator has a responsibility to investigate allegations of abuse/neglect in

nursing homes, hospital facilities, and adult residential facilities, as well as those reported to have occurred in the home or community. Within 2 weeks of completing the assessment/investigation, a feedback form is to be provided to the referral source (see section 10.0, Appendix C).

Police Interface

An investigation conducted under the Adult Protection provisions of the *Family Services Act* is not dependent upon the launching of a criminal investigation. However, where a preliminary investigation reveals abuse or neglect which may constitute an offence under the *Criminal Code* (e.g., alleged assault, sexual assault, or deliberate neglect by an individual who has a duty to provide care, etc.) the police are to be consulted about the appropriateness of conducting a joint investigation. If the alleged victim appears to be mentally competent, the police are only to be contacted with the victim's consent.

Adult Residential Facilities/Nursing Homes

When the alleged victim resides in an adult residential facility or in a nursing home, the investigation is to be conducted jointly by the Adult Protection Investigator and the person responsible for licensing the facility.

When the alleged victim resides in a nursing home or in an adult residential facility, the administrator/operator of the facility is to be notified of the referral and advised that an investigation will take place except where he/she is directly implicated in the case.

For facilities approved under the *Family Services Act*, it is an offence for operators to interfere or obstruct the carrying out of the investigation. If such circumstances exist, the investigation worker will undertake appropriate legal steps to remedy the situation.

If nursing home staff interfere with or obstruct the carrying out of the investigation, the Adult Protection Investigator is to immediately advise the provincial Director of Nursing Home Services. If, as the result of the investigation, the investigating worker has reason to believe that a resident is in immediate danger of death or

serious physical harm, the provincial Director of Nursing Home Services is to be immediately notified, in person or by phone, and forwarded a copy of the investigation report. If there is suspected abuse or neglect but no immediate danger, then a copy of the investigation report is to be sent by courier to the provincial Director of Nursing Home Services within 2 working days of the completion of the investigation.

If the referral is unsubstantiated, a copy of the investigation report is to be sent to the provincial Director of Nursing Home Services and the governing board where the alleged abuse/neglect took place within 30 working days of the completion of the investigation.

All substantiated and unsubstantiated referrals of abuse/neglect in nursing homes and adult residential facilities are to be recorded as an incident/complaint on the departmental information system.

5.4.2 Intervention Guidelines

The type and level of intervention taken depends upon the following:

1. the degree of danger to the victim
2. the victim's willingness to accept service
3. the apparent level of mental competency of the victim
4. whether or not the victim appears to be suffering from a mental disorder
5. whether or not the victim is considered to be a danger to self or others

Degree of Danger

If the victim's health and safety are in immediate or imminent danger, every effort will be made to protect him/her from harm; however, the type of action which will be taken is dependent upon the other factors (2 to 5) listed above.

Person Willing to Accept Services

If the client is willing to accept help, the type of intervention by the worker is determined by the following:

Where there is no interference from the caregiver or next of kin, etc., the worker is to help the

client, to the extent possible, identify the services and interventions which would best serve his/her needs and interests. The services may then be provided by the Department of Family and Community Services or the case may be referred to any other appropriate department, agency or service provider. **If the victim appears to be suffering from a mental disorder** contact the Community Mental Health Centre to determine the appropriate action. If after hours, consult with the "on-call" staff of the Community Mental Health Centre, if appropriate, or take him/her to the nearest hospital emergency department. If he/she is thought to be a danger to self or others request police accompaniment.

If there is interference from the caregiver or next of kin, etc., the action will depend upon the apparent degree of mental competency of the victim.

1. **If the victim appears to be mentally competent** then the intervention options are restricted because it is assumed that a mentally competent victim has the ability to request police protection, apply for a peace bond or restraining order, etc. and, therefore, the worker is not to undertake any such action on his/her behalf. However, if the victim appears to be coerced or has a physical impairment which restricts his/her ability to take action, the worker is to provide support and assistance as needed. Options should be explained so the victim can make an informed decision.
2. **If the victim appears to be mentally incompetent**, he/she may need to be taken into Protective Care. This will be done in accordance with Adult Protection Standards in the following manner:
 1. *contact the Crown Prosecutor in order to obtain the necessary warrants (for details consult the Adult Protection Standards)*
 2. *request police assistance with gaining entry*
 3. *administer the Screening Test for Mental Incompetency contained in the Adult Protection Standards*

4. *if test results suggest that the victim could be mentally incompetent, take him/her into Protective Care and request to have him/her examined by a physician. In situations of physical or sexual assault every effort should be made to have an injury location map completed during the medical examination (see section 10.0, Appendix B).*

Person Not Willing to Accept Service

If the victim is not willing to accept service, the type of intervention will be determined by the level of mental competence and the appearance of mental disorder.

1. **If the victim appears to be mentally competent**, the worker may offer assistance and make suggestions regarding appropriate action (e.g., medical attention, legal action, etc). In certain instances it may be appropriate to solicit help from the family. However, the individual's rights must be respected and at no time is the worker to take any action that does not meet with the approval of the victim (e.g., enter the premises, attempt to remove the victim from the premises, remain on the premises once asked to leave, etc).
2. **If the victim appears to be mentally incompetent**, the worker may need to take him/her into Protective Care following the procedure outlined in this section under "Person Willing to Accept Service".
3. **If the victim appears to be suffering from a mental disorder and is thought to be a danger to self or others**, have the police take him/her to the nearest hospital emergency department.

5.5 Abuse by FCS staff

If a staff member has observed abuse/neglect indicators or has a client disclose that another staff member has abused a person, he/she must immediately inform the Regional Director and, where applicable, file a written report with the appropriate professional association. Such incidents also require reporting to departmental senior management.

5.6 Legislative Requirements

Section 3.0 of this document provides a summary of the various legislative provisions most frequently applied when dealing with cases of abuse of adults with disabilities and seniors. Please refer to the appropriate legislation for full details.

5.7 Conclusion

It is imperative that all employees of the Department of Family and Community Services endorse and adopt these Protocols, and make them an essential part of their commitment to the elimination of adult abuse.

6.0 Department of Health and Wellness Intervention Guidelines

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6.1 Introduction

The Department of Health and Wellness (DHW) provides a full range of health-related services through the regions. Health service providers working in program/service areas may, in the course of their work, encounter situations in which adult abuse or neglect is suspected. The DHW is committed to ensuring that its health service providers contribute, whenever possible, to the identification of abuse or neglect of adults by reporting any suspicions of abuse/neglect to the Access and Assessment Unit, Department of Family and Community Services.

Service delivery is organized under the responsibility of the DHW or Regional Health Authorities either through direct or contracted

services. The DHW has updated these protocols with the following DHW service groups in mind.

6.1.1 Addiction Services

Addiction Services provides community-based services from education and prevention to treatment and counseling to individuals, families and communities coping with substance abuse, problem gambling and smoking cessation. Clients, on an outpatient or inpatient basis, may disclose adult abuse to Addictions staff who provide detection, screening, treatment, counseling, referral and prevention services as part of their role in responding to adult abuse.

6.1.2 Hospitals

Hospitals provide a range of health care services to clients who are either receiving care as inpatients or via ambulatory services such as clinics, outpatient departments or emergency services. Responsibilities include detection; provision of safety to the client and staff; assessment and prioritization of needs (triage); treatment and management of immediate symptoms and problems; referrals for support and counseling, both immediate and long-term; and documentation.

6.1.3 Ambulance Services

Pre-hospital care providers must understand the unique problems inherent in situations where they encounter or suspect abuse. Responsibilities include: detection, including recognition of victims and their injuries; an understanding of patterns of abuse and how this affects care; care of the victim using standard protocols and procedures; safety of the client and any children present or elsewhere, and of the provider; preservation of evidence; documentation; reporting; and informing the receiving facility of any suspicions and observations.

6.1.4 Community Mental Health Centres

Community Mental Health Centres are established in every health region in the province along with satellite centres in outlying areas. Mental Health staff may detect abuse during the course of a therapeutic relationship with a client suffering from a mental illness. The following services are

provided to adults who experience abuse: screening and assessment of mental illness; situational and suicidal crisis intervention for adults; referral to other community resources as indicated by the needs of the adult/senior/family.

6.1.5 Public Health

Public Health nurses, nutritionists, physicians and inspectors play a key role in the prevention and management/control of communicable disease; the promotion of healthy families; and the promotion of environmental health and community protection. These professionals, by virtue of the broad involvement and non-threatening working relationships with individuals, families and communities are in unique front-line positions to contribute to the primary prevention, early identification, and referral of potential at-risk situations for adults.

6.1.6 Extra-Mural Program

The Extra-Mural Program provides comprehensive healthcare services to New Brunswickers in their home and/or community. Nurses, occupational therapists, physiotherapists, registered dietitians, respiratory therapists, social workers and speech language therapists provide core services. These services include assessment; intervention (treatment, education, and consultation); service planning/coordination; and Long Term Care Program assessments. EMP staff may encounter or suspect abuse of adults while delivering services to clients.

6.1.7 Tele-Care

Experienced nurses provide telephone triage advice for non-urgent health conditions, 24 hours a day, 7 days a week, through a toll free line. Callers may disclose situations of adult abuse where the nurse would provide triage advice, preliminary counseling and referral.

6.1.8 Community Health Centres

Community Health Centres provide a comprehensive range of community-targeted primary health care services. Their role includes: primary prevention; health education; detection; providing safety to the client and children, as well

as staff; assessing and prioritizing needs; initial treatment and management; referrals for support and counseling, both immediate and long-term; and documentation.

6.1.9 Rehabilitation Services

Rehabilitation Services are offered in a variety of settings in New Brunswick. Services are provided on an in-patient and out-patient basis through specific hospital facilities. This program also extends into the home and community, via the New Brunswick Extra-Mural Program. These services are delivered by audiologists, occupational therapists, physiotherapists, and speech language therapists. Responsibilities include: assessment; intervention (treatment, education, and consultation); service planning/coordination; and documentation.

6.2 Reporting Legislation Affecting Health Workers

An Act Respecting Health Professionals received Royal Assent in 1996 and the *An Act to Amend An Act Respecting the New Brunswick Medical Society and the College of Physicians and Surgeons of New Brunswick* was correspondingly enacted in 1997. Since the passage of *An Act Respecting Health Professionals*, the Act's requirements have been incorporated into all new health legislations. These acts impose a legal obligation on health professionals to report any cases of alleged sexual abuse by other health professionals to that professional's regulatory body. Failure to file a report when the professional knows the alleged abuser's name constitutes professional misconduct under their own professional legislation.

6.3 Community Mental Health Centres

6.3.1 Introduction

The following guidelines are for staff of Community Mental Health Centres (CMHC) who come in contact with an adult who, because of a mental disorder, has been or is at risk of being abused, either physically, sexually, psychologically/emotionally, financially, or through neglect by self or others.

Staff involvement with abused or neglected adults with mental disorders may occur as a result of:

1. an intake assessment;
2. a referral to assess and treat serious psychological or emotional damage resulting from abuse/neglect;
3. the discovery of abuse/neglect of an individual who is actively receiving treatment from Community Mental Health Centres;
4. a referral by courts for assessment of mental competence.

Intervention strategies for individuals with mental disorders suspected of being abused/neglected are based primarily on a combination of three factors:

1. danger to self or others;
2. level of mental competence to protect self from harm; and
3. willingness to accept service.

An additional element which will determine the nature of the intervention will be the extent of the social support system available to the person. The most frequent source of abuse/neglect, unfortunately, are family members or other primary caregivers; therefore the support system is often inadequate (Canadian Mental Health Association, 1995).

If the supports available to the individual are adequate and able to protect the person from further abuse/neglect, the role of CMHC staff may be to provide support, guidance and follow-up to family, relatives, friends, caregivers or others.

CMHC staff has greater responsibility for intervention, support and follow-up when natural supports are inadequate or the family/caregiver is responsible for the abuse/neglect. Persistent intervention, designed to help develop a safe, supportive environment, is not only key to preventing further abuse but fundamental to the avoidance of regression and the need for hospitalization.

6.3.2 Intervention

A danger to him/herself or others:

If the person is suicidal the appropriate intervention guidelines are to be observed.

Willing to accept service:

If the person, depending on the risk level, is a danger to him/herself or others and willing to accept service, the clinician will arrange for:

1. access to the crisis intervention service available at the Community Mental Health Centre, or
2. an assessment by a physician/psychiatrist to determine the need for hospitalization on a voluntary basis.

Not willing to accept service:

Staff shall contact the police and if the officer is of the opinion the person is apparently suffering from a mental disorder and is a danger to self or others and unwilling to accept service, a police officer may take the individual to a physician/psychiatrist for examination as per the *Mental Health Act*, section 10(c).

Not a danger to self:

Appears to be mentally competent and willing to accept service:

The therapist's role would typically be supportive and include helping the person formulate a plan to ensure his/her safety in the event of a threat or risk of abuse/neglect. Intervention, with the person's consent, may also include assisting in reporting the abuse/neglect to the police.

Appears to be mentally competent and not willing to accept service:

Provide information regarding the services available and respect the decision not to access service. No further action is required.

Appears to be mentally incompetent:

Report the concern to the Access and Assessment Unit, Department of Family and Community Services, and jointly decide on an appropriate intervention strategy/case plan (i.e., arranging for a competency assessment, seeking a court order

under the *Family Services Act*, contacting police, etc.).

6.3.3 Reporting Requirements

Abuse/neglect by caregivers:

In all cases where an individual has disclosed or where staff has observed indicators (section 2.3) of abuse/neglect, he/she will consult with the supervisor and report the abuse immediately to the Access and Assessment Unit, Department of Family and Community Services. If it involves a paid caregiver, the incident would also be reported to the employer of the caregiver if not self-employed and, where applicable, a written report filed with the relevant health discipline association.

Abuse by Community Mental Health Centre staff:

If a staff member has observed abuse/neglect indicators or has a client disclose that another has abused a person, he/she must immediately inform the Manager and where applicable, file a written report with the appropriate professional association. Such incidents also require reporting to DHW senior management.

Individuals Accused of a Crime:

Individuals accused of committing a crime and who have a mental disorder are regarded as at risk and may require special consideration by the court. When such individuals are referred for assessment, consult: "Guidelines to Forensic Services" (Canadian Mental Health Association; January 31, 1995).

6.4 Health Services

6.4.1 Introduction

Health Services include hospital facilities, psychiatric facilities (psychiatric units, Centracare, Restigouche Hospital Center), Addiction Services, Tele-Care Services, Extra-Mural Program, community health centres, health centres, Rehabilitation Services, Public Health and Ambulance Services.

Health Services have an important role in assisting adults who are victims of abuse or neglect. These protocols are intended to facilitate early detection and intervention as well as the prevention of further victimization. An abuser may be a relative, visitor, patient/resident, care provider, staff member or volunteer.

6.4.2 Detection

Health service providers may be in the situation to identify abuse/neglect of adults. Health service providers are responsible for developing a working knowledge of the information provided in sections 1.0 - 4.0 of this document. They should also be familiar with the intervention guidelines of other departments, outlined in relevant sections of this document.

6.4.3 Assessment

When abuse/neglect is suspected (see section 2.3 for indicators), an assessment shall be carried out promptly to assess the basis for the suspicion, physical and mental health status, relevant social factors, and options available for support and/or assistance.

The assessment should be done by the health professional(s) appropriate to the circumstances, (i.e., nurse, physician(s), social worker, psychologist, paramedics).

In interviewing the alleged victim regarding possible abuse/neglect, provision shall be made for:

- privacy, without the alleged perpetrator present,
- accommodation of any communication difficulties (i.e., use of resource people),
- maintenance of confidentiality.

The results of the assessment shall be documented and if appropriate, an injury location map shall be completed (Section 10, Appendix B).

6.4.4 Safety Considerations

There shall be written policies and procedures to ensure that physical and/or chemical restraints are only used on a physician's order and that appropriate supervision is maintained. Written policies and procedures specific to Ambulance Services on the use of physical restraints by paramedics should be developed.

If abuse/neglect is confirmed, the victim's safety shall be the primary consideration. The procedures to be followed (e.g., medical examination, appropriate discharge plans, etc.), shall be established by the individual health service in accordance with its specific needs.

6.4.5 Avoiding Secondary Victimization of the Abused

Secondary victimization occurs when the health care system fails to identify abuse/neglect and/or follow-up effectively, with consequent negative affects on the quality of care provided to the victim. In effect, the victim becomes victimized again, often unintentionally, by the attitudes, actions or lack of actions of professional caregivers.

Health services and health service providers shall recognize the potential for secondary victimization and prevent it from occurring by:

- sensitizing personnel to the existence of abuse/neglect and potential abusive situations/abusers;
- educating personnel to identify abuse/neglect and intervene effectively;
- ensuring that any suspicion of possible abuse/neglect shall be followed up in a sensitive and caring manner;

- ensuring appropriate policies/procedures/protocols are in place to direct personnel;
- ensuring comprehensive documentation regarding identification, assessment, intervention, follow-up/referral;
- using resources as appropriate and providing information on other available community resources. For information on resources and services available for victims of abuse, please refer to Section 10, Appendix D.

6.4.6 Reporting

Although it is not mandatory by law to report the suspected abuse/neglect of adults, health service providers should recognize that such abuse is not to be tolerated and that there is a societal responsibility to report, in accordance with the statement of principles outlined in section 1.3 of this document.

Health service providers who require guidance with regard to specific cases of suspected abuse/neglect of adults are encouraged to discuss the situation with their appropriate manager or director. It should be recognized, however, that the decision to report does not require and should not be based, solely, on the approval/opinion of a manager or director.

Reporting of abuse/neglect of adults to the Access and Assessment Unit, Department of Family and Community Services, should be encouraged as outlined below. After regular business hours, during weekends or holidays, reports of abuse/neglect will be made through "After Hours Emergency Social Services" (AHES) at **1-800-442-9799** or **453-2145** in the Fredericton region. The *Family Services Act* provides legal protection for a professional who uses a victim's name in a report without written consent.

Investigations will be conducted by the Access and Assessment Unit, Department of Family and Community Services and/or the police.

Documentation is required when reporting suspected abuse/neglect of adults.

If victim consents:

A report shall be made immediately to the Access and Assessment Unit, Department of Family and Community Services.

If no consent and victim appears to be mentally competent:

Information on resource options available should be provided to the victim for future reference. For information on resources and services available for victims of abuse, please refer to Section 10, Appendix D.

If no consent and victim appears to be mentally incompetent:

A report shall be made immediately to Access and Assessment Unit, Department of Family and Community Services.

If there are reasonable grounds to believe that a staff member or volunteer is an abuser:

If a staff member has observed abuse/neglect indicators or has a client disclose that another has abused a person, he/she must immediately inform the Manager and where applicable, file a written report with the appropriate professional association. Such incidents also require reporting to DHW senior management.

7.0 Department of Justice and Attorney General Intervention Guidelines

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7.1 Introduction

The Department of Justice is committed to ensure that its employees will contribute, whenever possible, to the identification of abused and neglected adults with disabilities and seniors by reporting any suspicions to the Access and Assessment Unit, Department of Family and Community Services, in an effort to put a stop to abuse. The Department of Justice recognizes that this type of abuse is present in our society and it is important that all employees are sensitized to the presence of this type of abuse. These guidelines have been prepared to assist staff to respond and report in a uniform fashion when suspecting abuse/neglect of a senior or an adult with disabilities or following disclosure of a third party of possible abuse/neglect. It is crucial that staff familiarize themselves with the Adult Victims of Abuse protocols, in particular with the definitions of abuse found in section 2.1, the indicators described in section 2.3, and the reporting policy outlined below.

7.1.1 Reporting Procedure

- Staff shall report abuse/neglect to the Access and Assessment Unit, Department of Family and Community Services. The reporting of such suspicions/incidents is not required by law. However, once a report is made, the investigation of such a report by the Department of Family and Community Services is required by law if there is reason to believe that an adult with disabilities or senior is abused/neglected.

- Any report shall be made directly to the Access and Assessment Unit, Department of Family and Community Services or to “After Hours Emergency Social Services” at 1-800-442-9799 or 453-2145. If appropriate, the local police will also be notified. There is no obligation to discuss the report with the employee’s supervisor.
- The Regional Director of Court Services and Regional Crown Prosecutor will be responsible for communicating the principles, definitions and indicators of abuse/neglect of adults with disabilities and seniors as well as the procedures for reporting any suspicions of abuse/neglect of an adult with disabilities or senior.
- An employee of the Department of Justice does not interview or assess the adult with disabilities or senior to determine whether or not there is in fact abuse/neglect nor is the employee required to obtain consent from the person for intervention services, which responsibility lies with the Access and Assessment Unit, Department of Family and Community Services, where the report is forwarded.
- Victims of abuse/neglect may be reluctant to seek help or obtain help and may therefore be reluctant to provide sufficient information to the employee to enable him/her to make a report to the appropriate authorities. If this is the case, the employee cannot force the person to disclose any information.
- Within 24 hours of the verbal referral to the Access and Assessment Unit, Department of Family and Community Services or After Hours Emergency Social Services, a written referral using the Abuse Referral Form (see section 10 Appendix A) shall be completed by the employee and submitted to the Access and Assessment Unit of the Department of Family and Community Services. The referral shall include (when possible):

- *adult's name, telephone number, age, sex, living arrangements;*
- *details of incident/suspected abuse/neglect - only facts should be reported, not opinions or speculations as to the circumstances surrounding the incident/situation; and*
- *name of employee who has witnessed the incident or suspects abuse/neglect.*

The employee shall notify the Regional Director of Court Services or Regional Crown Prosecutor that the referral has been made to the Access and Assessment Unit, Department of Family and Community Services. A copy of the Referral Form shall be retained in a confidential file.

- In cases where an employee has reasonable grounds to suspect that a staff member is abusing a client, such suspicion will immediately be reported to his/her immediate supervisor, who will take appropriate action in accordance with departmental policy.

7.2. Public Prosecutions

Some adults with disabilities and seniors are reluctant to follow through with complaints or even to make complaints at all. They are frequently in a vulnerable situation because of their dependency and/or infirmity. Where they have been victims of conduct which constitutes criminal behaviour, Public Prosecutions will proceed with appropriate charges and take a firm position on sentencing.

7.2.1 Role of the Crown Prosecutor

- The Crown Prosecutor is charged with the responsibility for the conduct of the case. One of the first and most important decisions he/she must make is whether or not to recommend to police that a charge should be laid. This decision may be particularly difficult to make in a situation where there has been abuse of a person with communication needs. Every effort must be made to ensure that the recommendation to charge or not to charge is reached dispassionately after as much deliberation as circumstances allow, while considering the following factors:

- *sufficiency of evidence*
- *public interest factors*
- *seriousness of the offence*
- *complainant's attitude*
- *complainant's mental capacity and ability to communicate evidence*
- Prosecution of cases involving a victim/witness with special communication needs should be pursued wherever sufficient evidence exists unless public interest considerations dictate otherwise. Where a decision is made not to recommend charges, the reasons therefore should be discussed with the victim/witness and, where appropriate, the victim/witness's support person. Such discussion should be held before the prosecution file is closed. In addition, the reasons for not recommending charges are to be stated in the file. It should be noted that it is the Crown Prosecutor's role to make the recommendation as to whether or not a charge is to be laid but if there is a strong disagreement with the investigating officer regarding the matter, the Crown Prosecutor should consult with the Regional Crown Prosecutor before a final recommendation is made on the file. If the circumstances warrant, further consultation will take place with the Director of Public Prosecutions. However, it must be borne in mind that the peace officer (or, indeed, a private citizen) has an absolute right in law to lay a charge and may actually do so.
- Whenever a charge is laid which involves a victim/witness with a special communication need, the Crown, as soon as is practicable, should meet with the victim/witness provided this can be arranged with the investigating officer in appropriate circumstances.

- At any meetings between the Crown and the victim/witness, a support person is to be permitted to attend, if so desired by the victim/witness, unless this interferes with the Crown Prosecutor's conduct of the case. Also, at such meetings, interpreters or special equipment necessary or other assistance as required to enable the Crown to understand the victim or witness should be used.
- Public Prosecutions will place a high priority on ensuring that a Crown Prosecutor is assigned to a case involving a victim/witness with a special communication need at the earliest opportunity and that the assigned Crown will remain with the case until it is concluded.
- In cases involving a victim/witness with a special communication need, the Crown will make a referral to Victim Services, Department of Public Safety.
- In all cases involving a victim/witness with a communication need, the Crown will ensure that the victim/witness and, where appropriate, his/her support person, is kept informed of the status of the case.
- On the day of the court hearing, the Crown is to make reasonable efforts to ensure that the victim/witness has a private and comfortable place to wait before going into the court room to testify.
- The Crown, in cases involving a victim/witness with a special communication need, is to make every reasonable effort to obtain an early court date.
- The Crown will ensure that reasonable steps are taken to enable the victim/witness to be understood by the judge and/or jury.
- The Crown will ensure that, whenever reasonable and appropriate, the concerns of the victim/witness or his/her support person regarding the accused's release pending trial, or views regarding sentencing, are communicated to the court.
- The Crown will advise victims, in appropriate cases, of the provisions for compensation, and refer the victim to the Victim Services Program.
- Where a sentence has been imposed, the Crown Prosecutor is to explain the sentence imposed by the judge to both the victim and the support person.
- In the event of an appeal, the Crown Prosecutor conducting the appeal is to advise the victim and support person of the fact an appeal has been commenced and advise of the outcome once the appeal has been heard.

7.3 Court Services Division

The Court Services Division facilitates the judicial process by providing legal, administrative, mediation and counseling services to the public while supporting the judiciary. It also includes Sheriff Services which is responsible for court-related transportation of persons in custody; jury management; some court security; service of documents and execution of court orders in civil matters.

Several services are provided to citizens who are seeking to access the courts to resolve a legal dispute, to separating or divorcing spouses and to single parents seeking family support services. These services include:

- Client services: document processing (e.g., small claims, applications for support and custody, etc.), receipt of payment of fines, fees and other payments into court, case scheduling, providing general information to public, etc.
- Family Support Services: information and counseling, mediation, and support enforcement and screening for Domestic Legal Aid.
- Court Attendance: attending court sittings, preparation of transcripts of court proceedings, preparing court decisions and support services to the judiciary.
- Testimonial Aids: interpretation for hearing impaired persons, screens and other appropriate supports as deemed necessary.

These services are provided by the Regional Manager, legal officer acting as Clerk/Court Administrator, enforcement officers, bookkeepers, court social workers, court stenographers and administrative support staff.

In the course of providing services, staff may be in contact with adults with disabilities or seniors or become aware of abuse/neglect of adults with disabilities or seniors through disclosure of a third party. If and when staff encounter a situation which raise suspicions of abuse/neglect or where there is disclosure by a third party who suspects abuse/neglect, staff shall report such incident or suspicion or in cases of disclosure by third parties, encourage third parties to report such incident or suspicion in accordance with procedures set out.

8.0 Department of Public Safety Intervention Guidelines

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8.1 Introduction

The Department of Public Safety contributes to the protection of society by providing leadership in the areas of law enforcement, crime prevention and the delivery of a full range of community based services and correctional programs, services and interventions to offenders. It also assists victims of crime through the provision of services

to support their recovery and to enable their participation in the criminal justice process.

The Department recognizes that no one system can by itself resolve the issues surrounding violence against seniors and adults with disabilities. The coordination and use of both social and legal interventions is therefore critical to ensure adequate services to adult victims with a minimum of interference, to help create a safe environment in which seniors and adults with disabilities can recover and to provide maximum opportunities for the control and treatment of perpetrators of abuse. Service providers will also be sensitive to the adult victim’s needs when responding to situations where abuse has taken place.

The Department is committed to ensuring that employees contribute, whenever possible, to the identification of abused and neglected adults with disabilities and seniors by reporting any suspicions to the Access and Assessment Unit, Department of Family and Community Services, in an effort to put a stop to abuse. Moreover, professionals should make all reasonable efforts for meaningful accommodations for people who have special communication needs.

The protocols outlined in this section are aimed at assisting Police Forces and Community and Correctional Services personnel in responding and reporting in a uniform fashion when suspecting abuse/neglect of a senior or an adult with disabilities or following disclosure of a third party of possible abuse/neglect. It is crucial that staff familiarize themselves with these protocols, in particular with the definitions, indicators of abuse/neglect described in Section 2.0 and the reporting requirements outlined below.

The Regional Director/Superintendent will be responsible for communicating to Community and Correctional Services staff the principles, definitions and indicators of abuse/neglect of adults with disabilities and seniors as well as the procedures for reporting any suspicions of abuse/neglect.

8.1.1 Reporting Procedures

An employee of the Department of Public Safety who witnesses mistreatment or who suspects that abuse/neglect of an adult with disabilities or senior has occurred, will immediately notify the Access and Assessment Unit, Department of Family and Community Services. After regular business hours, during weekends or holidays, reports of abuse/neglect will be made through "After Hours Emergency Social Services" (AHESS) at **1-800-442-9799** or **453-2145** in the Fredericton region. The local Police Force will also be contacted, as appropriate.

- The reporting of suspicions/incidents involving adults with disabilities or seniors is not required by law. However, once a report is made, **an investigation by the Department of Family and Community Services is required by law if there is reason to believe that a senior or an adult with disabilities is abused/neglected.**
- There is no obligation to discuss the verbal report with the employee's supervisor.
- An employee of the Department of Public Safety will not interview or assess the adult with disabilities or senior to determine whether or not there is in fact abuse/neglect nor is the employee required to obtain consent from the person for intervention services, which responsibility lies with the Access and Assessment Unit, Department of Family and Community Services, where the report is forwarded.
- Adult victims of abuse/neglect may be reluctant to seek or obtain help and may therefore be equally reluctant to provide sufficient information to the employee to enable him/her to make a report to the appropriate authorities. If this is the case, the employee cannot force the person to disclose any information but should nonetheless remain responsive and supportive towards the adult victim.
- Within 24 hours of the verbal report, a written referral using the Abuse Referral Form (see Section 10.1, Appendix A) will be completed by the employee and submitted to the Access and

Assessment Unit, Department of Family and Community Services. The referral will include (where possible):

- *adult's name, telephone number, age, sex, living arrangements;*
- *details of incident/suspected abuse/neglect - only facts should be reported, not opinions or speculations as to the circumstances surrounding the incident/situation; and*
- *name of employee who has witnessed the incident or suspects abuse/neglect.*
- In cases where a written referral has been submitted, the employee will notify his/her immediate supervisor and the Regional Director/Superintendent (when he/she is not the employee's immediate supervisor) that the referral has been made to the Access and Assessment Unit, Department of Family and Community Services.
- A copy of the Referral Form will be retained in a confidential file and any further action taken will be documented.
- In cases where an employee has reasonable grounds to suspect that a staff member is abusing a client, such suspicion will immediately be reported to his/her immediate supervisor, who will take appropriate action in accordance with departmental policy.

8.2 Policing Services

The Criminal Code specifies that Police Forces are responsible for the criminal investigation process, which includes responding to adult victims of abuse cases, gathering sufficient evidence and collaborating with the Crown Prosecutor with respect to charges, where warranted.

Like other crimes, an officer's knowledge of the law and well-developed investigative skills can assist in the resolution of cases involving adult victims of abuse. However, some special investigative considerations may be required since it:

- is often a "hidden" crime or a form of abuse which requires acute observational and investigational skills;

- can involve older persons who may have special needs, especially when victimized; and
- may involve a victim/abuser relationship which is complicated by roles of dependency and trust.

Police Forces have written policy regarding procedural sequence of duties relating to complaints of abuse that are taking place, or may have occurred. The following protocols have been developed to further enhance existing policies specifically relating to adult victims of abuse cases.

8.2.1 Receiving a Complaint

Upon receipt of the initial complaint that abuse is taking place, preliminary information gathering is critical to further the investigation. The following information should be determined:

- whether the alleged abuse/neglect is current or occurred in the past;
- if the event is a current situation, determine whether the victim is in any immediate danger;
- whether the suspect(s) is/are currently in a position where further abuse/neglect could be occurring;
- whether the reported incident is criminal or non-criminal in nature; and
- the expediency of initiating a joint investigation approach.¹

8.2.2 Joint Investigations

Once it is determined that a joint investigation is most appropriate, the police officer will report the allegation to the Access and Assessment Unit, Department of Family and Community Services. This will form the nucleus of the investigating team. Often, the severity of the abuse is unclear and a team approach is more appropriate. It is also important to work collaboratively in order to meet the requirements of both the *Criminal Code* and the *Family Services Act*. Intervention should be planned from the commencement of the investigation and the police and the Access and

Assessment worker should meet to discuss strategies and share information as the investigation progresses.

The following factors are critical to a successful joint investigation:

- sharing information with the objective of protecting the adult victim of abuse;
- maximizing information from all discipline perspectives;
- obtaining sufficient information to determine if charges are warranted;
- ensuring the coordination of agency roles in order to reduce trauma to the adult victim of abuse and increase the effectiveness of the investigation;
- developing case management strategies throughout the investigative process; and
- ensuring that support to the victim is provided as required.

8.2.3 Interviews

The team will determine the sequence of interviews and the need to substantiate the initial allegation of abuse on a case by case basis. The team should carry out a full investigation even though the adult victim of abuse may recant his/her story subsequent to the original statement.

a) Victim

The team should exercise extreme sensitivity when interviewing or seeking to interview the adult victim of abuse. Interviews with the adult victim of abuse should be conducted jointly with either the police or Access and Assessment worker acting as the primary interviewer. The determination of who will act as the primary interviewer should be based on the skills and expertise of the interviewer in dealing with abused/neglected adults with disabilities and seniors. The investigator, who is not the primary interviewer, should only act as an observer/recorder of the interview.

¹ Police have sole responsibility for the criminal investigation of abuse/neglect incidents once it has been determined that a joint investigation approach is not an appropriate course of action.

The purpose of the interview as well as the respective roles of the police and Access and Assessment worker should be explained at the outset of the interview.

b) Non-Offending Family Member

A non-offending family member should be interviewed as soon as possible after the victim. During the interview, the following should be ascertained (at a minimum):

1. a determination of the non-offending family member's awareness of the abuse; and
2. an assessment of the non-offending family member's relationship with the suspect, including the degree of dependence or autonomy, and the presence of violence or fear of the suspect.

c) Victim/Witness With Special Communication Needs

- Where a victim/witness has a special communication need, the police shall ask the victim/witness if there is someone he/she wants to call to assist him/her during the interview. This person could be a family member, a friend, a co-worker, an advocate or another care provider.
- When police are unable to obtain a clear statement from the victim/witness, the police shall:
 - *arrange for a time and place to conduct an interview;*
 - *arrange for a support person to be present, seeking the permission of the victim/witness wherever possible, for the involvement of a support person²;*
 - *if necessary, seek an interpreter;*
 - *arrange for the use of audio/video equipment or other needed resources; and*
 - *inform the victim/witness and support person of the interview procedures.*
- Notwithstanding an established criminal investigation, the support person for the victim/witness should be permitted to be present during the interview regardless of whether an interpreter is also present.
- Police shall allow adequate time to conduct a thorough interview, taking into consideration the victim/witness's particular communication skills.
- Wherever possible, the interview with the victim/witness is to be audio/video taped.
- The police investigator is to maintain possession of any videotape or audiotape of the interview of the victim/witness. Any request of the police by the accused or defense counsel to view the tape is to be referred to the Crown Prosecutor. At their approval and direction, the Crown shall arrange a time and a place for the defense counsel and accused to view the tape.
- The police are to keep the victim/witness and support person informed about the progress of the investigation.
- If at any stage the investigation is discontinued, the victim/witness and the support person are to be promptly informed about the fact and the reason therefore. In addition, the police are to specify, in the police file, the reasons for discontinuing the investigation.
- Unless circumstances make it impossible, it is desirable that the officer who begins the investigation remains on the case through to its conclusion.
- Police shall ensure that the victim/witness and support person are referred, with their knowledge, to the Police-Based Victim Assistance Program (where operational). Please refer to Section 8.2.5 for further detail on the Police-Based Victim Assistance Program.

² The accompanying support person should be instructed to be a non-active participant, refraining from any interruptions or comments other than to support the victim/witness. It is also preferable that the support person be situated behind the victim/witness to avoid visual contact during interview. Where circumstances permit and once the adult is comfortable, the support person should be instructed to quietly leave the interview room.

- If a Police Force does not operate a Police-Based Victim Assistance Program, the referral will be made to the Department of Public Safety Victim Services Program, with the knowledge of the victim/witness and support person. Please refer to Section 8.3 for further detail on the Department of Public Safety Victim Services program.

d) Suspect

It is the police function to investigate a criminal offence and to identify the suspect. Guided by national and provincial policy, the investigator has the flexibility to determine the direction of the case as it unfolds and the sequence of interviews, including the interview with the suspect(s). Other agencies will be introduced immediately as required.

It is the police role to interview the suspect alone. As soon as possible after the interview, the police will disclose to the Access and Assessment Worker what was learned from the suspect. The police will use discretion in disclosing information which is unrelated to the abuse.

Where a person suspected of committing an offence has a special communication need, the police, before conducting an interview, shall:

- determine the extent of the suspect's understanding of the police caution and his/her Charter Rights. Should the officer have any reasonable doubt as to the suspect's ability to understand or communicate his/her understanding of the caution and his/her rights, he/she shall seek assistance from an interpreter or support person to facilitate communication;³ and
- if appropriate, allow a support person to be present during the interview. The police will determine, in consultation with the support person, the support role during the interview.

8.2.4 Legal Action

When an investigation is completed, and it is determined that an offence has been committed and a charge should be laid, the Police Investigator shall present the matter to the Crown Prosecutor. While it is recognized that the police have the right to lay a charge, the decision as to whether or not to proceed to Court with the charge rests with the Crown Prosecutor as the agent of the Attorney General.

The investigating officer will prepare a fully detailed report to be submitted to the Crown Prosecutor, containing the following:

- a summary of the officer's own investigation, including relevant victim information;
- a copy of the complainant's statement;
- a copy of all witness statements;
- a copy of the accused's statement, if any;
- any certificates, medical reports, drawings, maps or photographs; and
- a list of any exhibits which will be needed at a trial.

When the decision has been made to refer the matter for criminal proceedings, the Police Investigator and/or Police-Based Victim Assistance Coordinator (where operational), shall ensure that the Department of Public Safety Victim Services Coordinator is notified, for victim access to services including:

- Trauma Counselling Program;
- Court Support and Court Preparation Program;
- Victim Impact Statement; and
- Compensation for Victims of Crime Program.

Please refer to Section 8.3 for further detail on the Department of Public Safety Victim Services program.

³ The investigator should consider that the introduction of any expertise prior to charge may be perceived as promise, favour or threat and human rights contravention.

8.2.5 Police-Based Victim Assistance Program

If a Police Force operates a Police-Based Victim Assistance Program, the following services can be provided in cases of adult abuse:

- support during the immediate crisis and throughout the criminal justice process;
- information on the importance of making a safety plan (and assistance if requested);
- assistance with statements regarding the alleged offence;
- referrals to appropriate community agencies;
- information and support relating to the court process; and
- referrals to the Department of Public Safety Victim Services Coordinator for all matters pertaining to Trauma Counselling, Court Support and Preparation, Victim Impact Statements, and Compensation for Victims of Crime.

In all cases of adult abuse, the Investigating Officer will refer the matter to the Police-Based Victim Assistance Coordinator (where operational). If a Police Force does not operate a Police-Based Victim Assistance Program, the Investigating Officer shall refer the matter to the Department of Public Safety Victim Services program. Please refer to Section 8.3 for further detail on the Department of Public Safety Victim Services program.

The Police-Based Victim Assistance Coordinator may have access to police files for relevant information pertaining to the case which will assist in determining support services required. This includes information relating to the arrest, show cause hearings, conditions of release, plea dates, and sentencing. An important function of the Police-Based Victim Assistance Coordinator is to provide effective communication with Police, Crown Prosecutors and the Department of Public Safety Victim Services Coordinator. Linkages with these officials are critical to ensure proper communication throughout the legal process.

In the course of dealing with the adult experiencing abuse, the Police-Based Victim Assistance Coordinator may have direct contact with the alleged abuser and may as a consequence, witness a voluntary admission of guilt. A Court may see the Victim Assistance Coordinator as a “person in authority”. Therefore, when an accused person makes a statement to a “person in authority”, the statement in order to be admissible in Court must be proven to be given voluntarily and the appropriate Warning must have been given.

8.2.6 Statistics

In accordance with Statistics Canada Uniform Crime Reporting (UCR) and provincial data requirements, Police Forces will keep pertinent information on occurrences involving adult abuse.

8.3 Department of Public Safety Victim Services

The Department of Public Safety, Community and Correctional Services Division, is responsible for the provision and delivery of a range of support services to victims of crime, ensuring that they are adequately and fairly served by the Criminal Justice System and with a minimum of necessary inconvenience. It is also essential that victims be informed of the rights and remedies available to them.

The primary objectives of the Department of Public Safety Victim Services are:

- to ensure public safety through the provision of quality services for victims of crime;
- to reduce harm done to victims; and
- to establish a continuum of services for victims.

The following guidelines have been developed to specifically address the delivery of services to adult victims of abuse.

8.3.1 Intake/Case Assessments

In cases of adult victims of abuse, where the incident has been reported to the police and subsequently referred to the Department of Public Safety Victim Services, the Coordinator will establish contact with the victim and/or family or support persons, informing of available services and determining the level of assistance required.

When interviewing an adult who has experienced abuse, the Coordinator will:

- ask the victim/witness if he/she wishes to call a support person to assist him/her during the interview in cases of special communication needs. This person could be a family member, a friend, a worker, an advocate or another care provider. If the victim and/or the support person wish, the support person may attend all meetings between the Victim Services Coordinator and the victim. The Victim Services Coordinator will work with the victim and the victim support person to ensure that the victim receives accurate, understandable information;
- determine if the victim has a Department of Family and Community Services Caseworker (Adult Protection) and liaise with that worker throughout the criminal justice process to develop a case plan and ensure that appropriate and available services are in place;
- explain the services available through the Department of Public Safety Victim Services as well as other services in their local area (see Section 10.4, Appendix D);
- provide reassurances that nothing that he/she has done justifies the abuse and that he/she has nothing to be ashamed of;
- make referrals for services to community agencies as appropriate;
- determine in consultation with the Crown Prosecutor, where appropriate, if the victim should participate in the Trauma Counselling Program; and
- make the Crown Prosecutor aware of any special needs the victim has regarding testifying in court (e.g. the need for special equipment or an interpreter).

8.3.2 Trauma Counselling Program

The Trauma Counselling Program is available to assist victims of crime who are experiencing trauma to the extent that they are unable to cope with daily activities. The purpose of Trauma Counselling is to assist victims who, as a result of their victimization, are traumatized and need assistance to facilitate them testifying in court.

The Department of Public Safety Victim Services provides for direct payment for Trauma Counselling by a registered therapist of the victim's choice (to a maximum of 10 sessions). If the victim has special needs, all efforts will be made to provide the victim with the necessities required to assist him/her with the counselling process.

8.3.3 Court Support and Court Preparation Program

The objectives of the Court Support and Court Preparation Program are:

- to provide information concerning court procedures and rights and responsibilities of victims who are compelled to testify in criminal proceedings;
- to help alleviate fear through the provision of support; and
- to promote a safe environment throughout the court process.

In cases where the adult victim of abuse is compelled to testify, the Department of Public Safety Victim Services Coordinator will:

- arrange to meet with the victim and the victim support person, prior to the court appearance to determine the level of direct involvement required to assist the abused adult's participation in the court process;
- respond to specific questions;
- provide relevant information concerning the victim's rights, responsibilities and role as a court witness;
- explain the court process, role and responsibilities of court officials;

- liaise with the Crown Prosecutor's office and identify any special needs or circumstances of the victim prior to or during the court proceedings (e.g. the need for a support person⁴ while the victim/witness testifies, special equipment or an interpreter);
- liaise with the police and Crown Prosecutor as required, to ensure that the victim and the victim support person are continuously informed of the progress of the case;
- liaise with the Department of Justice Court Support Services, to ensure that the necessary Court support is in place to assist the victim to testify in Court (e.g. accompaniment of the victim by the support person, screens, interpreters), prior to required Court appearances; and
- advise the victim and the victim support person of the outcome of the court proceedings, including any court imposed conditions that may be applicable to issues of personal safety and responsibility with respect to any perceived violations (e.g. no-contact order).

8.3.4 Victim Impact Statement

A Victim Impact Statement is a written statement that describes the harm or loss suffered by a victim of a criminal offence. The Court considers the statement when determining the sentence of the offender, providing a Victim Impact Statement is voluntary. However, once a statement is filed with the court, the statement becomes a matter of record and the victim or the victim support person may be called upon to defend its content. A victim or the victim support person may read the statement aloud at the sentencing hearing if he/she chooses or present the statement in any other manner that the court considers appropriate (video-tape or audio-tape).

A **Court Victim Impact Statement** must be completed on an approved form and filed with the Court. The offender's counsel and the Crown Prosecutor receive a copy of the statement.

For Court requested Victim Impact Statements, Victim Services Coordinators will:

- notify the victim and the victim support person, including family members, of the right to prepare a Victim Impact Statement once the offender has been found guilty by the Court;
- in cases where the adult victim is incapable of making a Victim Impact Statement, notify the support person or family member that he/she may prepare the statement on the adult victim's behalf;
- provide the Victim Impact Statement Form to the victim and the victim support person taking into consideration any special communication or other needs of the victim;
- provide guidance in the preparation of the statement, ensuring appropriate content as required by legislation/regulation and assist with any reported limitations and/or disabilities;
- ensure that the victim and the victim support person fully understand that he/she may be subject to cross-examination on its content;
- file the statement with the Court once completed and signed by the author and the Coordinator, and prior to the sentencing hearing, in accordance with Court procedure concerning time limitations;
- advise the author of the right to read the statement aloud at the sentencing hearing or present it in any manner that the court considers appropriate (e.g. video-conference, videotape, or audio-tape); and
- provide information on the Victim Impact Statement transportation program to assist direct victims or survivors to be able to attend the sentencing hearing and read their statements in court if so desired by the victim or survivor.

⁴ The support person can be anyone of the victim's choice provided he/she is not also a witness.

A Review Board Hearing for a Person Found Not Criminally Responsible will consider the written Victim Impact Statement in accordance with Section 672.5(14) of the *Criminal Code of Canada*. Updates of Victim Impact Statements and appearance at Review Board Hearings can be made by the victims of accused persons found not criminally responsible. The Department of Public Safety Victim Services Coordinator will advise the victim and the victim support person at the time of sentencing on the procedures for registering to attend Review Board Hearings and will advise of pending hearing dates. Accompaniment to hearings will be done on a victim or victim support person request basis.

A Parole Board Victim Impact Statement must be completed on the approved National Parole Board Form and forwarded to the National Parole Board prior to the Parole Board Hearing. If the direct victim is incapacitated, a family member or a caregiver can register to make an updated statement and obtain pertinent information on the offender. A victim or a victim support person may describe the impact of the crime and any changes since sentencing as well as address any concerns he/she may have for his/her safety or the safety of the community.

Under the *Criminal Code of Canada* **Section 745.6 Hearing**, the Court will consider an updated Victim Impact Statement when an offender sentenced to life imprisonment makes an application for a reduction of his/her parole eligibility period. The direct victim's next of kin is able to read the updated statement in court at the time of the hearing if he/she wishes. Financial assistance from Justice Canada is available to attend these hearings. A Victim Services Coordinator will provide information and assistance in applying for the federal funding to attend these hearings.

8.3.5 Sentencing Follow-up

The Victim Services Coordinator will:

- provide debriefing to the victim and the victim support person following any court proceeding;
- advise the victim and the victim support person of the outcome of the sentencing hearing;
- forward a copy of the Victim Impact Statement to the appropriate correctional facility if the offender is sentenced to a period of incarceration;
- provide information to the victim and the victim support person on how to register with Correctional Services Canada or a provincial correctional facility for information on the release of the offender; and
- where applicable, provide information on hearings under Section 745.6 of the *Criminal Code*, the Mental Health Review Board and the Parole Board, along with subsequent hearing outcomes.

8.3.6 Compensation for Victims of Crime Program

This program is available to victims of violent crime who have suffered personal injuries or losses as a result of the crime. The intent of the program is to recognize that a crime has occurred and to assist victims with critical expenses that are directly the result of being victimized.

The victim may be eligible for such benefits as short term counselling, relocation expenses, physiotherapy expenses and medical expenses not covered by Medicare and possibly pain and suffering. Compensation must be applied for and there are limits on the benefits. An assessment will be conducted on a case by case basis.

In cases of adult victims of abuse, Victim Services Coordinators will:

- provide the victim or the support person with an application form for Compensation for Victims of Crime and explain the program including the maximum benefits prescribed in law;

- make referrals to registered therapists of the victim's choice for short term counselling and arrange for direct payment (maximum 10 sessions); and
- assist with financial payment for eligible expenses to a maximum of each relevant category.

8.4 Probation Services

Probation Services is the primary community-based correctional program responsible for the protection of society and provision of services to both adult offenders and young persons in the community. In cases dealing specifically with adult victims of abuse/neglect, Probation Officers are responsible for the supervision and treatment of perpetrators of abuse/neglect. Adult victims of abuse/neglect may also be identified amongst their clientele. In the latter case, it is recognized that adults with disabilities and seniors who are offenders may require special intervention. All reasonable efforts will be made for meaningful accommodations for people who have special communication needs.

8.4.1 Pre-Sentence Report

Probation Officers are often called upon to provide background information on the accused person at the sentencing stage of Court proceedings. While the contents and the procedural direction with respect to the preparation of Pre-Sentence Reports are strictly mandated by legislation and departmental policy, the following protocols were developed to assist with report preparation in cases where the offender is awaiting sentence for an offence involving adult abuse/neglect:

- provide the Court with information concerning treatment programs and the offender's motivation and willingness to participate;
- consult with the Victim Services Coordinator to determine if a Victim Impact Statement has been/is being prepared;

- where appropriate, attempt to contact the victim/support person for the purposes of conducting an interview to determine impact on the victim and to obtain information which may assist the Court for sentencing purposes; and
- inform the Court of any community-based treatment programs available to the offender.

8.4.2 Pre-Sentence Supervision Considerations

Probation Officers may be called upon to supervise individuals involved in incidents of adult abuse/neglect who have been released in the community under Court imposed orders and conditions, but prior to any determination of guilt having been made by the Court. They include:

Recognizance Order

In instances where a Recognizance Order with a condition to report to a Probation Officer is imposed upon an accused person who has allegedly committed an offence involving adult abuse/neglect, the supervising Probation Officer will:

- review the conditions of the Order with the accused person, emphasizing any specific conditions restricting contact with the victim and the implications of violating the Order;
- establish and maintain a reporting schedule with the accused person; and
- notify the police if the offender fails to comply with the conditions of the Recognizance Order.

Peace Bond

When a Peace Bond is issued with a condition that an individual report to a Probation Officer, the supervising Probation Officer will:

- review the conditions of the Peace Bond with the individual, emphasizing any specific conditions restricting contact with the victim and the implications of violating the Peace Bond;
- establish and maintain a reporting schedule with the individual;

- establish contact with police to ensure ongoing communication occurs concerning the conditions of the Peace Bond; and
- if the victim reports contact by the accused (where such restriction exists), notify the police of the condition violation for investigation.

8.4.3 Post-Sentence Supervision Considerations

Once a finding of guilt has been made by the Court, an offender may be released to the community under the supervision of a Probation Officer through the imposition of either a supervised Probation Order or a Conditional Sentence Order.

Where an offender involved in adult abuse/neglect is released to the community under a supervised Probation Order or a Conditional Sentence Order, the supervising Probation Officer will:

- develop a case plan, based on the information gathered from all collateral sources and assessment results from the Level of Service Inventory (LSI-R) and any other approved assessment tool;
- during the initial meeting and periodically thereafter, review with the offender the conditions of the Order emphasizing specific conditions restricting contact with the victim (where applicable) and the implications of violating the Order;
- develop a reporting schedule with the offender;
- where there is a treatment condition, refer the offender for assessment and admission into the appropriate treatment program;
- ensure that the offender is attending program sessions as required;
- as part of the case management process and where appropriate, the Probation Officer will provide guidance on how/where to access available community resources which offer family support/counselling services; and

- in cases where Probation follows a period of incarceration, information concerning the offender's behavior and programs attended in custody will be obtained from the releasing facility and/or the Client Information System.

8.4.4 Failure to Comply

In cases where an offender who is under supervised **Probation** fails to comply with conditions of the Order, the Probation Officer may consult with the Crown Prosecutor and/or may refer the matter to police for investigation and possible charges.

In the case of a **Conditional Sentence Order**, if the victim advises of contact by the offender (where such restriction exists), the Probation Officer shall take appropriate action in accordance with legal authority and departmental policy.

8.5 Correctional Facilities

The Department of Public Safety, Community and Correctional Services Division has overall responsibility for the delivery of programs to offenders confined to Provincial Correctional Facilities. The Division also has the responsibility of accommodating detained persons awaiting initial court appearances, accused persons awaiting adjudication, offenders awaiting their 30-day appeal period pending transfer to a federal penitentiary and Parole violators.

Adult offenders imprisoned for a period of less than two years are confined in a prison or place of confinement within the province in which they are convicted. While the place of confinement would normally be a place other than a (federal) penitentiary, the province of New Brunswick has entered into an agreement with Correctional Services Canada in which adult male offenders serving a term exceeding one year are transferred to a federal penitentiary located within the province. Offenders convicted of sexual offences and who receive a sentence exceeding six (6) months are also subject to this transfer.

The following protocols have been developed to respond to adult offenders who have been charged and/or sentenced to offences involving the abuse/neglect of adults with disabilities and seniors.

8.5.1 Admission Procedures

Upon admission of an offender to a Correctional Facility, the Institutional Programmer will:

- determine where possible, if the nature of the offence involves adult abuse/neglect from the Warrant of Committal, Remand Order, Client Information System and any other collateral information; and
- in cases where adult abuse/neglect has been confirmed, advise the Shift Supervisor of the circumstances so that all shift rotations are informed, and so that case planning activities and appropriate communication guidelines are enforced to protect the victim.

8.5.2 Telephone Communication

- Where the offender requests assistance from staff to communicate with the victim by telephone, the Institutional Programmer will determine if there is a Court Order with a condition restricting contact.⁵
- Where there is no court ordered condition restricting contact, the designated correctional staff member will contact the victim/support person to determine whether the communication is welcomed and, if so, whether a request is made to monitor the call.
- If the victim agrees to receive the call and requests that it be monitored, a designated correctional staff will be present to monitor the call, ensuring that no harassment or threat is made towards the victim.
- Where the offender making the request is under a remand status, the Superintendent will notify the Crown Prosecutor to determine whether there are any objections to the request being granted.

- In the event of misuse of the telephone, the offender may be subject to internal disciplinary measures as may be imposed by the Superintendent or designated staff member.

8.5.3 Correspondence

- The Institutional Programmer will determine if there is a Court Order with a condition restricting contact with the victim.
- If there is no condition restricting communication with the victim, the designated correctional staff member will contact the victim to determine whether the correspondence would be welcomed.
- Outgoing correspondence to the victim will be screened by a designated correctional staff member prior to mailing, to ensure appropriate content (eg. no threats, harassment, etc.).

8.5.4 Case Planning

- Where the offender is subject to the classification process, a case plan will be developed taking into consideration the treatment needs, the dynamics of adult abuse/neglect and release planning.
- The case plan may include services offered within the facility and referrals to outside community agencies offering appropriate services.
- Release planning will include referrals for follow-up services and, in cases where probation is to follow a period of custody, Probation Services will be advised of the upcoming release date.
- All relevant information will be entered into the Client Information System.

⁵ Offenders normally have access to an Offender Calling System, allowing them to make collect calls to any person who is willing to accept the charges.

8.5.5 Temporary Absence

- Upon receipt of an application from the offender for Temporary Absence and prior to making a recommendation, the institutional classification committee/case manager will review the offender's institutional behavior, involvement in programs, demonstrated attitudinal change and potential risk in the community.
- As part of the community assessment, the designated correctional staff member will attempt to contact the victim (either directly or through the Victim Services Coordinator), for comments relating to the offender's request for early release.
- The input/recommendation from Probation Services will be sought as part of the community assessment and considered in the decision-making process.
- The circumstances of some criminal offences normally associated, but not limited to, sexual misconduct and serious violence, may cause negative public reaction to an inmate's release and therefore, potential risk to the inmate and/or community. These offenders are considered high profile and a Temporary Absence will be considered only after consultation with the Regional Director and the Temporary Absence Coordinator/Operational Consultant.
- When a Temporary Absence is approved, the Superintendent/Regional Director will prepare the Temporary Absence Certificate outlining the terms, conditions, and restrictions for the release. The designated correctional staff member will explain all conditions to the offender prior to the release.
- The designated correctional staff member will attempt to contact the victim (either directly or through the Victim Services Coordinator), for notification of the pending release and associated conditions.

- In cases where the victim reports having been contacted by the offender (where such restriction exists), the Temporary Release may be revoked by the Superintendent/Regional Director.

8.5.6 Offenders Escaping Custody

When an offender escapes custody or becomes unlawfully-at-large, the Superintendent or designate will immediately inform the police, and attempts will be made to contact the victim (either directly or through the Victim Services Coordinator).

9.0 Department of Training and Employment Development Intervention Guidelines

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9.1 Introduction

The Department of Training and Employment Development (TED) offers training and employment programs and services on a regular basis to persons with disabilities. TED also funds literacy classes through NB Literacy Inc., some of which train special needs clients including intellectually impaired. The literacy instructors in these classes, however, are not TED employees, but will be provided with a copy of the protocols and may be invited to attend any training sessions.

The Department acknowledges that adults experiencing abuse may have difficulties in accessing and in keeping up with their training program or with long-term employment. In that respect, the Department joins government’s efforts in protecting any adult with disabilities whom its front line employees may be called upon to serve under employment or training programs.

Some of the divisions of the department have regional entities where officers may come in contact with adults who may disclose experiencing abuse. This may be the case for Employment Counsellors, Employment Standards Officers, NBCC personnel and Human Rights Officers. The nature of the duties of the Department’s front line employees does not include investigating, assessing or counseling of adult victims. Rather, staff has an important role to play in providing information on the resources available in their community to an adult victim who discloses

experiencing abuse. The Department will make sure employees, susceptible to receiving such confidences through their professional contact with persons with disabilities, are prepared to provide them with basic information and to refer them to existing support services available as indicated in the Adult Victims of Abuse Protocols. If there are reasonable grounds to believe that a staff member is abusing a client, the appropriate Director/Administrator shall be notified immediately and further action will be taken.

The Department of Training and Employment Development is also responsible to its own employees. Information on adults with disabilities experiencing abuse will be provided to staff in order to create awareness that it is everyone’s responsibility to ensure these persons receive the proper information on the resources available to them. Employees of the Department who are adults with disabilities and who disclose being abused are informed of the resources available under the Employee and Family Assistance Program (EFAP).

The Department will:

- post links on its Intranet and Internet sites referring to the Adult Victims of Abuse Protocols and the included information on abuse and how to deal with cases where a person with a disability discloses abuse;
- make every effort to provide safe and secure workplaces and service delivery points; and
- display or make available any information provided to the Department on services or help for adult victims.

The Training and Employment Development web site can be found at:

English: <http://www.gnb.ca/0105/index-e.asp>

French: <http://www.gnb.ca/0105/index-f.asp>

9.2 Employment Development Division

The Employment component of the Employment Development Division is responsible for the delivery of programs and services that are aimed at assisting unemployed New Brunswickers acquire the skills and employment experience necessary to

secure full-time employment. It is responsible for assisting New Brunswick employers find the right individuals for their jobs and for helping individuals and organizations find solutions to ongoing changes in the workplace created by new economic conditions. It is also responsible for disseminating to the general public, information on employment opportunities in New Brunswick.

9.2.1 Roles and responsibilities

Employees of the Employment Development Division who guide clients through employment programs may come in contact with an adult victim who discloses that he/she is being abused. In such circumstances, although the **employee's role is strictly limited to referring the client to the resources available** in their region, that role is important. It involves recognizing the particular challenges the client may be facing. Therefore, staff in every regional office should readily:

- determine how they can assist the client in the employment program related to their particular needs for employment;
- direct the person towards support services, as indicated in the Adult Victims of Abuse Protocols, according to the needs the person expresses (see Section 10, Appendix D); and
- provide information related to the existing services for persons living with abuse.

The Employment Development Division is well aware of the necessity to promote co-operation among the many agencies and departments involved in providing support to adults with disabilities experiencing abuse. It is by enhancing the potential of obtaining or retaining employment for these persons that TED employees will help them achieve autonomy and help them eventually escape their abusive situation.

Understanding the problem of abuse of persons with disabilities and its effects will enable Employment Development Division employees to respond within the limits of their responsibilities and make proper referrals whenever necessary.

In every Employment Regional Office, directors ensure that employees are familiar with the Adult Victims of Abuse Protocols and with the referral procedure for local community services.

Employment Counsellors provide the adult victim with any information provided to the Department on resources available to them in the community area.

9.2.2 Freedom of Choice and Confidentiality

Employment Counsellors and staff should at all times be sensitive to the client's freedom of choice. Assisting the adult victim should never go beyond the needs the person expresses. Keeping the information received from the client strictly confidential is also an important factor.

9.2.3 Employment Programs and Services

Regional Employment Offices are responsible for the delivery of programs and services locally. The detailed description of employment programs offered to those who are seeking employment and to employers is available on the Training and Employment Development website at:

English: <http://www.gnb.ca/0311/004e.htm>

French: <http://www.gnb.ca/0311/004f.htm>

The following outlines the type of services employees of the Department of Training and Employment Development can provide. Note that the Department of Family and Community Services provides other employment counseling services for social assistance recipients.

Career Decision Making and Planning

Employment Counsellors can help the individuals who want to work, but are not sure what they want to do. Counsellors can help the individual to:

- take stock of their skills and aptitudes;
- discover their work preferences;
- identify employment sectors offering good opportunities;
- determine their career goals; and
- develop and carry out an employment action plan.

Work Preparation

In the situation where the individual doesn't think they have the training and experience to get the job they want, Employment Counsellors, in cooperation with the Department's partners, can help an individual prepare for work through:

- education upgrading - the Department can help the individual get the education they need to get a job or to take employment training;
- training - the Department can help the individual get the skills they require to attain their career goals; and/or
- work experience - the Department can help the individual explore career choices, make contacts, develop their skills or acquire work experience.

Employment Counsellors can also provide the individual with information about student loans, training institutions and assistance to start a new business.

Job Search

In the situation where an individual is ready for work but doesn't know where to start, Employment Counsellors can advise them on how to do a job search. In TED's offices, the client will find many tools to help them in their search, such as:

- job listings;
- access to job-search sites on the Internet;
- job-search books and software;
- assistance to prepare a résumé and to prepare for an interview;
- computers, printers, faxes and photocopiers; and
- information on the labour market in their area and elsewhere.

Employment Counsellors can also provide information about local agencies that offer job-search assistance.

Persons with Disabilities

Persons with disabilities constitute a group very susceptible to abuse. For any person with disabilities, finding employment may be quite a challenge.

Employment Services for Persons with Disabilities (ESPD)

Employment Services for Persons with Disabilities (ESPD) provides training and employment interventions to persons with disabilities who want to make the transition to the labour market. Individuals who need assistance are able to meet with an Employment Counsellor in one of the many regional offices that are located throughout the province in order to develop an employment action plan.

Multiculturalism

The Department of Training and Employment Development coordinates initiatives across government that focuses on promoting harmony and maximizing the social and economic benefits of cultural diversity, as directed by the New Brunswick Policy on Multiculturalism. TED administers the Multicultural Grants Program that provides support to community organizations that offer multicultural programs and services to newcomers in the province.

The Department of Training and Employment Development recognizes that for some immigrant seniors and adults with disabilities experiencing abuse, notably because of cultural and language barriers, it may be difficult to obtain information on the services available to them in New Brunswick. Therefore, through its relations with the New Brunswick Multicultural Council and the various multicultural groups in the province, the Department will make recommendations to enhance awareness amongst immigrants by:

- recommending that the information on abuse of seniors and adults with disabilities be included in the Immigrant Settlement and Adaptation Program (ISAP) delivered to immigrants. Thus, immigrants to New Brunswick will be made aware that government works with agencies, communities and stakeholder groups at eliminating violence;

- recommending that the New Brunswick Multicultural Council distribute to all their associations across the province, the Adults Victims of Abuse Protocols as well as any information provided to them on persons experiencing abuse and on the services available to them. The Department will work with the multicultural associations so that their members are informed of the measures taken by the province of New Brunswick to reduce abuse.
- ensuring that the booklet *“Welcome to New Brunswick - Make Yourself at Home”* is updated with the most recent information on services available to adult victims of abuse.

9.3 New Brunswick Community College (NBCC)

Post-secondary education institutions play a very important role in supporting students in their education and training. The system helps young adults and learners of all ages to develop their full potential so that they are more able to avoid abusive relationships and are able to fully and freely participate on an equal playing field in the development of New Brunswick society.

The New Brunswick Community College (NBCC) is a bilingual, province-wide network of eleven training and educational institutions and have many adults with disabilities registered in their college programs.

The NBCC currently has a partnership with the New Brunswick Association for Community Living called “NBCC Connections”. The goal of this project is to promote and provide job training for persons with intellectual disabilities. There are currently 20 students in the program attending classes in 5 different campuses. This project will end in June 2005. The NBCC may then offer services for students with disabilities in all its 11 campuses. The NBCC currently has 250 students with documented disabilities. While the College has made significant improvements to its facilities to accommodate students with physical disabilities the same cannot be said for academic accommodations. The NBCC is in the process of implementing services for students with

disabilities. The NBCC Campbellton has a Learning Support Centre to offer services for students with disabilities. This Centre along with other services in all campuses should make it easier for students with disabilities to access post-secondary studies.

The NBCC has an inclusion policy entitled *“Students with Disabilities (4207)”*. The NBCC acknowledges that the fundamental requirement for successful inclusion of students with disabilities is recognizing that they are individuals with rights and responsibilities equal to those of other students.

The NBCC encourages, creates, and maintains a barrier-free environment insofar as its finances and resources allow. Barriers to access may be architectural, psychological, or systemic, but are not limited to those three types.

The NBCC is responsible to provide, upon request from students with disabilities, reasonable and appropriate academic accommodations. Factors such as maintenance of academic standards, public or personal safety, and financial constraints will come into consideration under those circumstances.

In the same way, the NBCC is responsible to provide reasonable and appropriate service accommodations. The Colleges inform staff, prospective applicants, students, and the community about the services available to students with disabilities.

The NBCC also makes sure that its employees and all committee members in contact with students with disabilities are well informed about the policy and the needs of individuals with disabilities.

College Student Services can respond to and offer to refer an adult who discloses experiencing abuse to a point of contact in their community area. Support services are available to these persons in every region of the province as indicated in the Adult Victims of Abuse Protocols. If a student expresses the need to take measures to eliminate the abuse and gain back control of their life, college personnel will refer them accordingly. Information documents are also available, which include contact persons and telephone numbers.

There are other initiatives the NBCC network undertakes that contribute to eradicating the impact of abuse of persons with disabilities such as:

- during orientation and within the student handbooks, information will be provided to inform students about abuse to persons with disabilities and how to get help;
- material provided to the NBCC on persons with disabilities experiencing abuse will be displayed so that all students have access to information on support services available whenever they need it;
- a yearly review of the college security plan will be carried out taking into consideration, within the limits of the college's capability, the situation of adults with disabilities experiencing abuse; and
- some college campuses may want to undertake special initiatives on an as-needed basis, such as forums, discussions on dating violence, guest speakers, etc. during violence prevention month (In New Brunswick, November is proclaimed Family Violence Prevention Month).

Those who are responsible for providing support services to persons with disabilities experiencing abuse can be change agents in these individuals' lives by promoting college level education. They may provide more detailed information on programs and services and on admission to the NBCC. The NBCC contact information is:

Tel: 1-800-376-5353 or 1-506-789-2404

Fax: 1-506-789-2430

Website: www.nbcc.nb.ca

Mailing address:

NBCC - College Admission Services

6, Arran Street

Campbellton, New Brunswick

E3N 1K4

9.4 Aboriginal Employment Strategy

The Department of Training and Employment Development has the lead on the Provincial Aboriginal Employment Strategy which aligned a number of initiatives and programs to assist Aboriginal people in accessing employment opportunities through education, skill development and training opportunities.

The Strategy is designed to achieve results in the following areas:

- a) more and better career development planning for Aboriginal people;
- b) better access to training opportunities;
- c) workforce experience that relates to career development plans;
- d) assistance with employment placement.

In pursuit of these objectives, the Department of Training and Employment Development and its partners, engage in a variety of activities under this Strategy that may provide support in the area of training and employment for Aboriginal adults experiencing abuse.

9.5 New Brunswick Human Rights Commission

The *Human Rights Act* states that "...the recognition of the fundamental principle that all persons are equal in dignity and human rights without regard to race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, political belief or activity, or social condition is a governing principle sanctioned by the laws of New Brunswick." The *Act* further provides that harassment and, in particular, sexual harassment, is a form of discrimination and therefore, illegal.

Adults, both seniors and those with disabilities have a right to protection and assistance. This is recognized by provincial, national and international laws. Both the United Nations Declaration on the Rights of Disabled Persons (1975) and the United Nations Principles for Older Persons (1991) recognize that adults should be able to live in dignity and security. They should

be free from exploitation, physical abuse and mental abuse. These laws also state that adults, seniors and those with disabilities should have protection from degrading treatment, discrimination, and abuse.

Discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits and advantages available to other members of society.

Adults who disclose abuse to a staff member of the Human Rights Commission will be directed to the appropriate services, as indicated in the Adult Victims of Abuse Protocols. They have the right to file a complaint with the Human Rights Commission if they allege discrimination on the basis of one of the prohibited grounds listed in the *Act*. The Human Rights Commission is responsible for investigating and conciliating such complaints.

If a substantiated complaint cannot be settled, it may be referred to a board of inquiry, which is an ad hoc quasi-judicial tribunal. The board of inquiry, after hearing the evidence, may dismiss the complaint or issue an order to remedy it. Such an order may include, for example, monetary compensation, declaratory relief ordering the discrimination or harassment to cease, ordering offender counseling or providing housing or employment where it was denied. Most often complaints are settled and the terms of settlement and the entire complaint process remain confidential. The process is free of charge.

The Commission's complaint files are confidential and are not subject to disclosure under the *Right to Information Act*. The Commission may disclose information to defense counsel and to the Crown in criminal proceedings only where the written request complies with the Commission's internal guidelines.

The Human Rights Commission may be contacted for advice or to file a complaint. Telecommunications Devices for the Deaf (TDD) services are

available. Twenty-four hour telephone service is available with next day response on calls received after 4:30 p.m. Individuals may also drop in at the Commission's head office in Fredericton, or its regional offices in Saint John (506-658-2414), Moncton (506-856-2422) and Campbellton (506-789-2574).

The Commission may be contacted at its head office in Fredericton, as follows:

Telephone: 506-453-2301

TDD: 506-453-2911

Fax: 506-453-2653

Toll Free: 1-888-471-2233

The *Human Rights Act* is available at:

English: <http://www.gnb.ca/0062/acts/acts-e.asp>

French: <http://www.gnb.ca/0062/acts/acts-f.asp>

The Human Rights Commission Web site:

English: <http://www.gnb.ca/hrc-cdp/e/>

French: <http://www.gnb.ca/hrc-cdp/f/>

Individuals will be provided information about the various options that are available. It is not necessary to provide a name to receive advice. It is illegal to retaliate against a person for filing a complaint. The incident in question must have occurred within the previous year, unless the Commission grants a time extension.

Roles and Responsibilities with respect to Adult Victims of Abuse Protocols

The New Brunswick Human Rights Commission is not the front line referral agency for adult victims of abuse. However, the Commission can assist these persons with complaints of discrimination and harassment.

If someone suspects that a person may be suffering from discrimination, as defined in the *Human Rights Act*, as well as abuse, that person can refer the individual to the Commission.

Guidelines to assist staff in responding to incidents of abuse of adults:

The Director of the Human Rights Commission:

- shall ensure that all individuals are responded to promptly;
- shall ensure that all individuals receive courteous, impartial and quality service in the official language of their choice; and
- shall ensure that when there is reported case of abuse, the adult victim has been provided with information on where he or she can obtain appropriate services.

Human Rights Officers:

- shall be familiar with the province's Adult Victims of Abuse Protocols and of services available to persons in these situations (see Section 10, Appendix D);
- shall investigate, conciliate and mediate situations where allegations of discrimination against a person have been made, if it is within the scope of the *Human Rights Act*;
- shall report to the Director of the Human Rights Commission any complaints that contain allegations of abuse; and
- shall respect the wishes of the person to proceed, or not to proceed, with a report of the abuse situation.

The Commission will participate with other government and community organizations to work towards a collaborative response to the abuse and neglect of seniors and adults with disabilities.

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10.1 Appendix A - Abuse Referral Form

Abuse Referral Form

Date: _____

Alleged Victim: Male Female Age Birthdate

Mr/Mrs/Miss/Ms

Address

Phone # Medicare

Living Arrangements:

Alone With Spouse With Family

Other (Please Specify)

Person making referral:

Name

Address

Phone # Relationship to victim

Date Referral Made to Access and Assessment Unit (FCS):

Name of Contact Person (FCS):

Date Report Made to Local Police Service:

Name of Police Contact Person:

Details of Suspected Abuse/Neglect: (Use other side of paper if necessary)

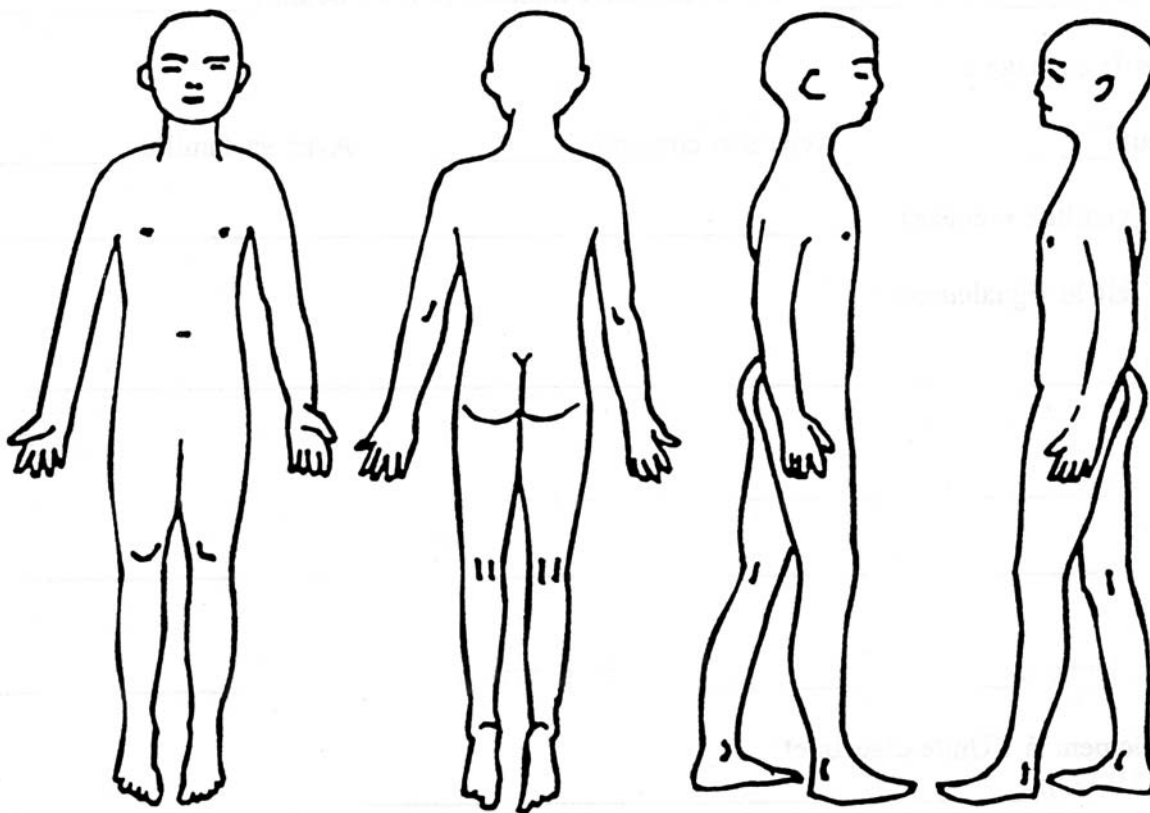
Signed: _____

10.2 Appendix B - Injury Location Map

General Injury Location Map

Name: _____ Sex: _____ Birthdate: _____

Draw the location, shape and colour of any marks including bruises, welts, burns, abrasions, scratches, swelling, lacerations, etc.



Date: _____

Name and Title of Examiners:

1 _____

2 _____

3 _____

General physical condition: (to be completed by a physician)

Height: _____

Weight: _____

General Condition: _____

Eyes: _____

Ears: _____

Skin: _____

Mouth and Throat: _____

Chest: _____

Abdomen: _____

Extremities: _____

Neurological: _____

Tanner Staging: _____

Genitals and Buttocks: _____

Pictures were taken: yes no _____

Name of Physician: _____

Address: _____

Postal Code: _____

Telephone: _____

10.3 Appendix C - Feedback Form

Adult Protection Referral Feedback Form

I wish to advise you that our investigation of your referral dated _____ is completed and we (have) (have not) been able to confirm your suspicions.

The person (will) (will not) be served as an adult protection case.

We (will) (will not) be contacting you regarding your role in the development and implementation of an intervention plan for the individual. Please contact the undersigned if you require more information or if you have any questions or concerns regarding our findings. Thank you for your referral of this adult/family.

Adult Protection Worker _____

Signature _____

Date _____

10.4 Appendix D - Directories of Services

New Brunswick Directory of Services to Victims of Abuse

<http://www.gnb.ca/0037/report/Directoryeng.pdf>

Seniors' Guide to Services and Programs

<http://www.gnb.ca/0017/Seniors/SeniorsGuide-e.pdf>

Directory of Services Offered to Persons with Disabilities in New Brunswick

<http://www.gnb.ca/0048/english/directry/index.htm>

Directory of Services and Programs Addressing the Needs of Older Adult Victims of Violence in Canada

<http://www.hc-sc.gc.ca/hppb/familyviolence/pdfs/2002-olderadultvictims.pdf>

10.5 Appendix E - References

Advocacy Resource Centre for the Handicapped.(1990).

Responding to the abuse of people with disabilities.

An Act to Amend An Act Respecting the New Brunswick Medical Society and the College of Physicians and Surgeons of New Brunswick. Statutes of New Brunswick, 1997 c. 71.

An Act Respecting Health Professionals. Statutes of New Brunswick, 1996 c. 82.

Canadian Mental Health Association. (1995). *Dealing with violence towards people with mental health problems: A guide to action.*

Care of Victims of Abuse, Assault and Neglect. The Moncton Facility, Region Hospital Corporation 1 (South-East), Moncton, NB, 1992.

Client-Centred Accreditation Program, Proposed Standards for 1995 (second draft). Canadian Council on Health Facilities Accreditation, 1994.

Committee for the Prevention of Elder Abuse and Neglect, Social Planning and Research Council of British Columbia, and B.C. Old Age Pensioners Organization. (1989).

Elder abuse and neglect: A guide to intervention.

Community Child Abuse Council Hamilton Wentworth. (1991).

Handbook for the prevention of family violence. (pp. 5.4 - 5.7). Hamilton, Ontario: Seldon Printing.

Consent, A Guide for Canadian Physicians. Canadian Medical Protective Association, 1989.

Crossmaker, M. (1986).

Empowerment: a systems approach to preventing assault against people with mental retardation and/or developmental disabilities Columbus, Ohio: National Assault Prevention Center.

Family Services Act. Statutes of New Brunswick, c. F-22.

Health Care Related to Abuse, Assault, Neglect and Family Violence, Guidelines. Health and Welfare Canada, 1989.

Hospital Emergency Department Guidelines: Care of Victims of Sexual Assault. Hospital Services Branch, Health and Wellness, New Brunswick, 1993.

Informed Consent to Medical Treatment. New Brunswick Hospital (Healthcare) Association, 1990.

Interdepartmental Working Group on Elder Abuse and Manitoba Abused Adults Directorate. (1993). *Abuse of the elderly: A guide for the development of protocols.*

InterMinistry Committee on Elder Abuse and Continuing Care Division, Ministry of Health and Ministry Responsible for Abused adults. (1992). *Principles, procedures and protocols for elder abuse.*

Mastrocola-Morris, E. (1989). *Woman abuse: The relationship between wife assault and elder abuse.* National Clearinghouse on Family Violence: Minister of Supply and Services Canada. (Catalogue Number H72-21/9-13-1989E).

Mental Health Act and Regulations. Statutes of New Brunswick, c.M-10.

Model Elder Abuse and Neglect Protocol For Saskatchewan Hospitals. Interhospital Domestic Violence Committee, Saskatchewan, September 1990.

Office for the Prevention of Family Violence (Alberta). (1991). *Elder Abuse and Neglect.*

P.E.I. Association of Social Workers. (1991). *Learning today for a better tomorrow: A handbook about elder abuse.* P.E.I.: Tea Hill Press.

Policy and Procedure: Assessing and Reporting Client Restraint. Extra Mural Program, 2000.

Podnieks, E. (1989). *Elder abuse: It's time we did something about it.* Minister of Supply and Services Canada. (Catalogue No. H72-21/9-7-1989E).

Podnieks, E., Pillemer, K., & Nicholson, J.P. (1990). *National survey on abuse of the elderly in Canada.* Toronto: Ryerson Polytechnical Institute.

Regional Health Authorities Act and Regulations. Statutes of New Brunswick, c. R-5.05.

Roeher Institute. (1992) *No more victims: A guide for police.* (pp. 33-34).

Services to Elderly Residents with Mental Health Problems in Long-Term Care Facilities, Guidelines. Health and Welfare Canada, 1990.

Standards for Ambulance Services. Province of New Brunswick, 1992.

Tomita, S. (1990). Addressing treatment issues of elder mistreatment: A historical perspective. In R. Roesch, D. G. Dutton, & V. F. Sacco (Eds.),

Family Violence: Perspectives on treatment, research and policy. (pp. 103-112). Burnaby: British Columbia Institute on Family Violence.