

***Adult Protection Act***

**Provincial Policy Manual  
(effective June 30, 2014)**



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## **Introduction**

*The Adult Protection Act* (the “Act”) is the legislative authority for the delivery of services to adults in need of protective intervention. It replaces the *Neglected Adults Welfare Act*.

The overall intent of the Act is to provide a legislative framework where adults who are at risk of abuse and neglect, and do not understand or appreciate that risk, are protected.

Under the Act, an adult in need of protective intervention means an adult who lacks capacity and is either incapable of caring for himself or herself or who refuses, delays or is unable to make provision for adequate care and attention for himself or herself; or is abused or neglected.

Service principles outlined in the Act presume every adult has the capacity to make decisions unless the contrary is proven. If the adult is capable and does not harm him / herself or others, he/she may choose to live as he/she wishes.

An adult may be capable of making a decision in one area but not another. If an adult’s capacity is questioned when an allegation of abuse and/or neglect occurs, a thorough assessment of his/her ability to make specific decisions must be completed.

The adult’s method of communication must not be used to determine his/her ability to make a decision. The adult has the right to be heard and to participate to the greatest extent possible in decision-making relating to him/her. As service provisions permit, every reasonable effort must be made in order for the adult to be clearly understood. This support may include assistance from family and friends whom the adult has identified as helpful to him/her in understanding choices and communicating decisions.

The delivery of services to an adult who is or may be in need of protective intervention should be the most effective but the least restrictive and intrusive form of support or protection that can be accommodated within program and service guidelines.

The best interests of the adult must always be the primary consideration. When appropriate, the preservation of family ties and contacts must be accommodated. The adult who is or may be in need of protective intervention must have services reviewed and revised as needed.

This manual includes step by step procedures about how to assess an adult’s capacity, and to determine whether abuse, self-neglect and/or neglect are factors contributing to an adult’s risk of harm. It describes the evaluation of all reports

and the completion of the investigations of adults who may be in need of protective intervention. A service plan is developed and implemented for each adult who has been evaluated and investigated. If an adult is declared by a judge to be in need of protective intervention, the service plan must be reviewed and revised to include any court orders.

Legal proceedings under the Act are heard in the Provincial Court or the Supreme Court of Newfoundland and Labrador, Trial Division. Proceedings under the Act are considered to be civil actions. If during an investigation there is evidence of criminal activity, there may be a need to notify the police.

This manual establishes policies intended to provide consistent and quality implementation of the Act throughout the province. These policies were developed by the Department of Health and Community Services (DHCS), through consultation with the Provincial Adult Protection Steering Committee, the Aboriginal Adult Protection Committee, and the Abuse, Capacity and Tracking sub-committees as well as consumer and stakeholder groups. The policies are grouped in sections as indicated in the *Table of Contents*.

The *Glossary* provides definitions of terms used both within the Act and throughout the policy manual. When applicable, sections of the Act are included.

In addition there are three sections of the manual organized which are consistent with the layout of the Act. Section one, *Application and Service Principles*, outlines the philosophical basis of the Act and identifies the target population. In this section, the premise that adults are presumed capable unless proven otherwise is addressed. Further, adults who lack capacity shall/must be provided protection from abuse, neglect and self-neglect. Adults have the right to be heard on their own or through a spokesperson and to participate in decision-making. This section describes a set of principles upon which the Act is based. Lastly, it addresses the roles of a provincial director, regional directors and a review process.

Section two, *Adult in Need of Protective Intervention*, outlines the reporting requirements, evaluation and investigation process. It also clearly describes the necessary steps following an investigation including applications to the court, emergency intervention and the appeal process. These provisions provide investigators with the authority to intervene, evaluate, and secure the safety, health and wellbeing of adults in accordance with the service principles of the Act.

Section three, *General*, describes how to prepare, implement and evaluate a service plan for an adult who has been evaluated, investigated and may be declared in need of protective intervention. It also addresses confidentiality and other issues.

Lastly, the *Appendices* include resources that will assist in the implementation of the Act such as guidelines for assessing capacity and risk, and forms for reporting and evaluating an adult who may be in need of protective intervention.

This manual presents information in a consistent format. For each policy, the *Statutory Provision* provides the actual citation from the Act. This is followed by the *Policy* which provides the minimum requirements necessary to meet provincial expectations. When appropriate, this is followed by *Procedures* which outline specific step by step processes that are needed for practice.

Responsibility for review of the manual including revisions and additions rests with DHCS. The DHCS must review the entire manual at least once every five years; however, specific issues may be reviewed as they arise. Upon review and appropriate consultation, any changes and additions must be forwarded to users of the manual. The manual will be available on the DHCS website.

It is intended that the Act, and its accompanying policies, will promote the safety of adults who are unable to understand or appreciate their current level of risk and reduce instances of abuse, neglect and self-neglect.





## Glossary

**Abuse - Section 2(a)** - means the deliberate mistreatment of an adult who lacks the capacity to protect himself or herself that causes or is reasonably likely, within a short period of time, to cause the adult (1) serious physical, psychological or emotional harm, or (2) substantial damage to or substantial loss of assets. Abuse includes intimidation, humiliation and sexual assault.

**Adult - Section 2(b)** - means a person who is not a child or youth within the meaning of the *Children and Youth Care and Protection Act*.

**Adult in Need of Protective Intervention - Section 5** - means an adult who lacks capacity and who is (1) incapable of caring for herself or himself, or who refuses, delays or is unable to make provision for adequate care and attention for herself or himself; or (2) is abused or neglected.

**Authority - Section 2(d)** - means a regional health authority established under section 6 of the *Regional Health Authorities Act*.

**Best Interests - Section 8(b)** - is considered to be the 'best' approach to eliminate or decrease the assessed risk to the adult based on the services available, the support system of the adult and the ability of the adult to participate in the available services.

**Capacity - Section 6(2)** - means the ability of an adult to understand information relevant to a decision where that decision concerns his or her health care, physical, emotional, psychological, financial, legal, residential or social needs and to appreciate the reasonable foreseeable consequences of a decision or the lack of a decision.

**Clear Days - Section 22(k) of the Interpretation Act** - means the number of days excluding both the first and last days.

**Co-habiting Partner - Section 2(e)** - means either of 2 persons who have co-habited in a conjugal relationship outside of marriage for a period of at least one year.

**Court - Section 2(f)** - unless otherwise specified, means the Provincial Court or the Supreme Court of Newfoundland and Labrador, Trial Division.

**Department - Section 2 (g)** - means the Department of Health and Community Services (DHCS).

**Director - Section 2(h)** - means a person appointed by a regional health authority who has responsibilities under the Act. For the purpose of this manual, the Directors are referred to as Regional Directors.

**Investigator - Section 15** - means a person who is a social worker or another person or class of persons as defined in the regulations.

**Judge - Section 2(i)** - unless otherwise specified, means a Provincial Court judge or a judge of the Supreme Court of Newfoundland and Labrador, Trial Division.

**Minister - Section 2(j)** - means the minister of the Department of Health and Community Services.

**Neglect - Section 2(k)** - means the failure to provide care, assistance, guidance or attention to an adult who lacks capacity that causes, or is reasonably likely, within a short period of time, to cause to the adult serious physical, psychological or emotional harm or substantial damage to, or substantial loss of assets.

**Next of Kin - Section 2(l)** - means, in order of priority, the adult in need (or who may be in need) of protective intervention's (1) spouse or co-habiting partner, (2) children, or (3) parent(s) or guardian.

**Peace Officer - Section 2(m)** - means a member of the Royal Newfoundland Constabulary or the Royal Canadian Mounted Police and includes a person approved by the Attorney General to perform the duties of a peace officer.

**Provincial Director - Section 2(n)** - means the Provincial Director of Adults in Need of Protective Intervention.

**Self-neglect - Section 2(p)** - means the failure of an adult who lacks capacity to take adequate care of himself or herself where that failure causes, or is reasonably likely, within a short period of time, to cause serious physical or psychological harm or substantial damage to or substantial loss of assets. Self-neglect includes (1) living in grossly unsanitary conditions; (2) suffering from an untreated illness, disease or injury that, within a short period of time is likely to cause physical or psychological harm; (3) suffering from malnutrition to the extent that, without intervention, the adult's physical or mental health is likely to be severely impaired; and (4) creating a hazardous situation that will likely cause serious physical harm to the adult or others or cause substantial damage to or substantial loss of the adult's assets.

**Social Worker - Section 2(q)** - means a person registered under the *Social Workers Act*, and employed by an authority or by the province.

<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 1: Application and Service Principles</b>	<b>Subsection 1.1: Application</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## Statutory Provision

4. (1) This Act applies to every person who is not a child or youth as defined in the *Child, Youth and Family Services Act*\* including a person who is a patient or resident in
- (a) a facility operated by an authority established under paragraph 6(1) (b) of the *Regional Health Authorities Act*;
  - (b) a personal care home as defined in the *Personal Care Home Regulations*;
  - (c) a long term care home;
  - (d) a community care facility; and
  - (e) an assisted living facility.
- (2) This Act does not apply to a person who is the subject of a certificate or a community treatment order issued under the *Mental Health Care and Treatment Act*.

\* Replaced by the *Children and Youth Care and Protection Act*

## Policy

The Act applies to every adult regardless of living arrangement. It does not apply to anyone to whom the *Children and Youth Care and Protection Act* applies. Nor does it apply to anyone who is certified or under a community treatment order of the *Mental Health Care and Treatment Act*.

An adult who is being treated under the *Mental Health Care and Treatment Act* may reveal indicators of abuse, neglect and/or self neglect during his/her hospitalization. Communication can occur between professionals at the hospital and the social worker in the community prior to the end of the adult's treatment to evaluate the need for an adult protection investigation.

The Act applies to adults who live in private residences within their community. It also includes adults who live in public and private facilities that offer a variety of supportive services.

Regardless of the adult's place of residence, a standardized reporting process must be followed when it is believed that an adult may be in need of protective intervention. A referral received must be evaluated according to the referral and evaluation process outlined in the manual.

<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 1: Application and Service Principles</b>	<b>Subsection 1.2: Adult In Need of Protective Intervention</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

5. An adult in need of protective intervention means an adult who lacks capacity and who
- (a) is incapable of caring for himself or herself, or who refuses, delays or is unable to make provision for adequate care and attention for himself or herself; or
  - (b) is abused or neglected.

## **Policy**

In determining if an adult is in need of protective intervention, the adult must lack capacity and meet one of the following two criteria:

(1)The adult is incapable of caring for himself or herself and refuses, delays or is unable to make provision for adequate care and attention for himself or herself (self-neglect).

The Act refers to capacity.

“Capacity” is a term sometimes used interchangeably with “competency”.

Competency implies a global ability to understand and appreciate. It is a concept that has generally been used in the judicial system.

Capacity refers to the ability to understand and appreciate the risks that accompany making a *specific* decision at a *specific* time. For example, to be capable, an adult who is faced with making a decision about whether to accept home support services must be able to understand how the implementation of services will affect his or her life. He/she must have the ability to appreciate whether or not services will enhance functioning and eliminate risk.

In keeping with the service principles of the Act, every reasonable effort must be made to provide the adult, when necessary, with the support needed to determine whether he/she has the ability to understand and appreciate consequences. An adult might lack capacity in one area but not another. For

example, an adult might have capacity to make personal care decisions but not financial ones.

Self-neglect is the term used within the Act to describe whether the adult is incapable of caring for himself or herself. This is of concern when that failure causes, or is reasonably likely to cause, serious physical or psychological harm. This means that in the judgment of a professional an incident is likely to occur. The professional must evaluate the level of risk and determine whether a harmful situation may develop within a short period of time. The amount of time is dependent on the seriousness of the situation and level of risk involved. Risk will be evaluated on a continuum ranging from low to extremely high risk (see Appendix A). A situation may require immediate action within hours or, based on evaluation, within weeks or months.

The Act also defines “self-neglect” as substantial damage to, or substantial loss of, assets. It is recognized that adults who may be in need of protective intervention are sometimes in situations where assets are at risk. Again, reasonable response is dependent on the seriousness of the situation and the level of risk involved.

A comprehensive evaluation coordinated by a professional is necessary to determine self-neglect. Self-neglect can occur in a variety of ways. For example,

- An adult could be living in grossly unsanitary conditions. A professional evaluation with interdisciplinary input will decide whether these conditions are a risk to an adult’s health. A capable adult’s lifestyle choices based on his or her value system and/or culture are to be respected and are not assumed to be indicators of self-neglect.
- An adult could be suffering from malnutrition, or an untreated illness, disease or injury. Upon evaluation, the professional will initiate the medical assessment necessary to understand the adult’s current health status and any related risks.
- An adult could create a hazardous situation, such as a major fire risk, that could cause serious physical harm to the adult and/or others or substantial damage to or a substantial loss of assets. An evaluation of the adult’s environment will identify risks so a response can be prepared.

(2) The adult is abused or neglected.

An adult who lacks capacity to protect himself or herself from being deliberately mistreated is at risk of being abused or neglected.

Section 2(a) of the Act defines “abuse” as

*(T)he deliberate mistreatment of an adult who lacks the capacity to protect himself or herself that causes or is reasonably likely, within a short period of time, to cause the adult*

- (i) *serious physical, psychological or emotional harm, or*
- (ii) *substantial damage to or substantial loss of assets and includes intimidation, humiliation and sexual assault.*

While not included in the Act as a form of abuse, violence is abuse. The provincial *Violence Prevention Initiative* identifies nine types of violence including physical, psychological, emotional, verbal, sexual, financial, neglect, spiritual/religious and cultural (see Appendix B for the link to this initiative). The Act specifically identifies physical, psychological, emotional, and financial abuse as well as intimidation, humiliation and sexual assault.

*Physical Abuse* involves using a part of the body or an object to control an adult. An act of violence or rough treatment may cause injury or physical discomfort to the adult. Such behavior includes, but is not limited to:

- any kind of physical assault such as slapping, pushing, pulling, kicking, and punching;
- injury with any object or weapon;
- deliberate, inappropriate exposure to severe weather; and
- forcible confinement, chemical restraint or physical restraint.

*Psychological Abuse* involves using threats to cause fear and gain control while *Emotional Abuse* occurs when something is said or done to make the adult feel worthless. These acts may diminish the sense of identity, dignity or self-worth of the adult. Behaviors associated with these types of abuse do include, but are not limited to:

- confinement;
- physical and social isolation; and
- verbal assault, such as treating an adult like a child by trying to control his/her decisions.

*Humiliation* and *intimidation* are clearly stated in the Act to be forms of abuse. An adult may be humiliated when another adult makes fun of the way he/she speaks, looks or acts. An adult may be intimidated when an adult threatens his/her safety or well-being by controlling decisions. For example, threatening to change locks on doors or threatening to force the adult to live in another place. Both humiliation and intimidation can cause psychological and/or emotional harm.

*Financial Abuse* involves illegally or improperly using an adult's money, property or assets. In the Act, it is described as causing an adult substantial damage to or substantial loss of his/her assets. It is believed that unless some form of intervention is introduced the adult's assets are reasonably likely to be considerably compromised, deteriorated or depleted. Examples of financial abuse include, but are not limited to:

- withholding or spending another adult's money without legal authorization;
- and

- forcing an adult to sign a legal document without his/her full appreciation of the implications of signing.

*Sexual Assault* occurs in circumstances when the sexual integrity of the adult is violated. This occurs where an adult takes part in sexual activity to which he/she lacks the capacity to consent. It includes unwanted acts such as, but not limited to:

- kissing;
- grabbing;
- fondling; and
- forced sexual intercourse.

Neglect is a term used in the Act that describes the failure to meet the basic needs of an adult. In Section 2(k) of the Act, “neglect” means *the failure to provide care, assistance, guidance or attention to an adult who lacks capacity that causes, or is reasonably likely, within a short period of time, to cause to the adult serious physical, psychological or emotional harm or substantial damage to or substantial loss of assets.*

Neglect refers to situations in which basic needs such as food, water, shelter, heat, clothing, hygiene, and safety are not being met by others who may be responsible for the adult’s care. Neglect may also include situations when proper medical, dental or psychiatric treatment is not being provided.

When evaluating allegations of abuse or neglect the professional must use judgment to determine if the adult has been harmed or is reasonably likely to be harmed “within a short period of time”. Abuse and neglect include circumstances where an adult is reasonably likely to suffer serious harm within a brief duration of time. What constitutes “short period of time” may vary according to the nature of the abuse and/or neglect alleged.

Serious harm is evaluated using a risk continuum that defines low to extremely high risk (see Appendix A). Key factors considered include the adult’s immediate physical safety, medical status and supportive services and his or her capacity to understand and appreciate any identified risks.

A comprehensive evaluation of alleged abuse or neglect must also include an understanding of how an adult’s cultural and spiritual values, beliefs and practices influence their lifestyle. In this context, it is important to understand the adult’s perception of the level of risk.



<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 1: Application and Service Principles</b>	<b>Subsection 1.3: Presumption and Right to be Heard</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provisions**

6. (1) An adult is presumed to have the capacity to make decisions unless the contrary is proven.
- (2) An adult shall be considered to lack the capacity to make a decision where that adult
- (a) is unable to understand information relevant to the decision where that decision concerns his or her health care, physical, emotional, psychological, financial, legal, residential or social needs; or
- (b) is unable to appreciate the reasonably foreseeable consequences of a decision or the lack of a decision.
- (3) Where an adult is determined to lack the capacity for decision-making referred to in subsection (2) in one particular context, he or she shall not be presumed to lack the capacity for decision-making in those other contexts or all of them unless the contrary is proven.
- (4) An adult's method of communicating with others is not grounds for deciding that he or she is incapable of making decisions.
- (5) For the purpose of this section, capacity for decision-making may be assessed by those persons approved by the minister in the regulations.
7. In a matter or proceeding under this Act, whether before a court or a person having authority to make a decision that affects the adult who is or may be in need of protective intervention, that adult has the right to be heard either on his or her own behalf or through a spokesperson.

## **Policy**

An adult shall be presumed capable unless proven otherwise. The adult must be involved as fully as possible in any decision-making process. An adult's capacity must be considered throughout the reporting, evaluating and investigating stages of the Act.

An adult is presumed have the ability to understand the information relevant to his or her decisions or appreciate the consequences of these decisions. An adult has the right to make a decision even if it may be considered by some as unwise or not socially acceptable. When an adult's decision is likely to create a safety risk to himself/herself or others and reasonable attempts have been made to resolve the risk without success, it may be necessary to assess the adult's capacity to understand or appreciate the risk (see Appendix A for Risk Assessment Guidelines and Continuum).

There is a presumption that everyone has capacity and the right to make decisions about one's life. Everyone has the right to be heard either on their own or through a spokesperson. However, sometimes a person may or may not have the ability to make decisions at certain points in their lifetime.

A capacity assessment is decision specific. Usually a risk has been identified in a particular area that suggests an adult may be in need of protective intervention. Capacity may exist in one area but not another. For example, the adult may have the ability to make personal health care decisions; however, not financial decisions.

While diagnosis or disability does not define incapacity, features of an adult's diagnosis or disability may impact an adult's capacity. Temporary factors can affect a specific capacity assessment. This includes physical health problems such as a urinary tract infection or a mental health issue such as a drug related delirium. Temporary factors that can influence a person's capability must be resolved before capacity is assessed.

Capacity is a fluid concept. Once a capacity assessment is completed it may be necessary to re-evaluate an adult's capacity due to significant change(s).

The form of communication an adult uses must not determine an adult's capacity to make his or her own decisions. Communication methods vary, and every reasonable effort, within program guidelines, must be made to assist the adult with his/her communication. Assistance with communication may include: translation or interpretation; use of a spokesperson; and/or the use of a technical aid or device such as a pocket talker to enhance hearing.

The adult's known wishes (written or oral) when he/she was capable will be considered.

A comprehensive capacity assessment must be coordinated by a social worker whenever possible. The capacity assessment must include interviews with the adult who may be in need of protective intervention, collateral information, and professional judgment. The process of a capacity assessment is further described in Section two of this manual.

<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 1: Application and Service Principles</b>	<b>Subsection 1.4: Service Principles</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

8. The following principles apply to the delivery of programs and services under this Act:
- (a) an adult is entitled to live in the manner he or she wishes as long as that adult
    - (i) has the capacity to make decisions respecting his or her lifestyle, and
    - (ii) does not harm himself, herself or others;
  - (b) in relation to an intervention to assist or protect an adult who is or may be in need of protective intervention, the paramount consideration shall be the best interests of that adult;
  - (c) an adult who is or may be in need of protective intervention should be involved to the greatest possible extent in decisions relating to him or her;
  - (d) an adult who is or may be in need of protective intervention should receive the most effective but the least restrictive and intrusive form of support or protection when unable to care for himself or herself or his or her assets as program and service resources, including budgetary appropriations, permit;
  - (e) an intervention to assist or protect an adult should be designed for the specific needs of that adult and should be reviewed and revised as his or her needs and condition change;
  - (f) the delivery of services under this Act should provide for the preservation of family ties and contacts in all appropriate circumstances; and
  - (g) an adult who is or may be in need of protective intervention should, if desired, be encouraged to obtain support, assistance and advice from family and friends to help that adult understand choices, and to make and communicate decisions.

## Policy

In the Act the following underlying principles are fundamental to the development of services and supports for adults who are, or may be, in need of protective intervention.

An adult's *autonomy* is valued and respected. An adult is entitled to live in the manner he or she wishes as long as that adult has capacity to understand and appreciate decisions, and does not harm himself, herself or others.

All interventions should reflect an adult's *best interests*. Determining whether a service or program is in the adult's best interest involves a thorough professional evaluation of the adult's past and current living situation. This includes evaluating his/her safety, health and well-being, as well as physical, emotional and psychological needs. It also includes evaluating the adult's relationship with family or significant others, the adult's cultural and community connections and the adult's past and present wishes and feelings.

The adult must be involved as fully as possible in any decision-making process. An adult has the right to make a decision even if it may be considered by some as unwise or not socially acceptable. When an adult's decision is likely to create a safety risk to himself/herself or others and reasonable attempts have been made to resolve the risk without success, it may be necessary to determine the adult's capacity to understand or appreciate the risk (see Appendix A for Risk Assessment Guidelines and Continuum).

When intervention is needed, the service principles highlight the importance of practicing the *least intrusive and restrictive form of support or protection*. In doing this, consideration must be given to the availability of program and service resources.

The type of intervention or support needed must be designed based on the *specific needs* of the individual. Considering the availability of program resources, every effort must be made to assist the adult with communicating his/her needs. For example, if an adult speaks a different language, his/her needs may be most clearly understood through the use of a translator or interpreter. Interventions should be reviewed and revised with the adult or, through a spokesperson, if necessary, when the adult's needs and conditions change.

Delivery of services to an adult who is in need of protective intervention must consider the *preservation of family ties and contacts* when appropriate. It is recognized that the preservation of family ties may not always be feasible or desired by the adult.

Lastly, an adult is encouraged to *obtain support, assistance and advice from family and friends* who may help the adult to understand choices as well as make, and communicate decisions.



<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 1: Application and Service Principles</b>	<b>Subsection 1.5: Regional Directors</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

9. (1) An authority shall appoint one or more directors who shall exercise the powers and perform the duties that are conferred or imposed upon them by this Act.
- (2) A director appointed under subsection (1) may designate a person who is a social worker as acting director to exercise the powers and perform the duties of that director where the director is absent or unable to act.
- (3) A director shall, every 6 months or more often if requested by the provincial director, make a report to the provincial director respecting the exercise of that director's duties under, and the report shall include the information that the provincial director may require.

## **Policy**

The regional director, or a social worker acting on behalf of a regional director, must perform a number of duties under the Act. When an adult is believed to be in need of protective intervention, these duties include receiving reports; completing an evaluation; referring to other services or programs; and if required, directing an investigation.

In some situations it may be appropriate for the regional director to report the matter to the police. This will occur if criminal activity is suspected. For example, an adult who is assessed and determined to lack capacity and presents with suspicious lacerations or bruises must be referred to the police for investigation.

The regional director, in consultation with the provincial director when possible, may make an application to the court for a warrant to remove an adult from a harmful situation. In extreme or urgent circumstances the regional director may remove an adult to a place of safety without a warrant. However, in consultation with the Department of Justice, an application to the court for a warrant or interim order must be made as soon as possible and no later than two clear days after the day the adult has been removed to safety.

The regional director, in consultation with the provincial director, when possible, may also be required during the course of an investigation to make an application

to the court for an order to release information; require a medical assessment; require a capacity assessment; enter premises; audit financial information; remove an adult from a place of residence; or any other actions.

However, under Section 21 of the Act it is the responsibility of the provincial director to apply to the court for an order to have the adult declared in need of protective intervention. In the absence of the provincial director a designate must be identified.

The regional director or designate must prepare a service plan for every adult declared in need of protective intervention. The content of the service plan is described in detail in Section 3.1 of this manual.

The regional director must provide information to the provincial director regarding the implementation of the legislation within each region. This will be used to assist the provincial director in evaluating and monitoring the legislation and provincial policies. A report is required every six months or more often as requested.



<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 1: Application and Service Principles</b>	<b>Subsection 1.6: Provincial Director</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## Statutory Provision

10. (1) There shall be a Provincial Director of Adults in Need of Protective Intervention who shall
- (a) establish province-wide policies, programs and standards respecting adults in need of protective intervention;
  - (b) evaluate and monitor adherence to the established policies, programs and standards; and
  - (c) where ordered by the court or otherwise under the authority of this Act, maintain custody of persons who are or may be adults in need of protective intervention.
- (2) The provincial director may require that a director exercise and perform duties assigned under this Act in the manner that the provincial director considers appropriate, and a director shall comply with those requirements.
- (3) Notwithstanding that a power is conferred or a duty is imposed upon a director under this Act, the provincial director may, in his or her discretion, exercise that power or perform that duty.

## Policy

The provincial director is responsible for developing, implementing, monitoring, and evaluating province-wide policies, programs and standards.

The provincial director, in consultation with the regional director/designate, makes or supervises decisions made on behalf of those adults declared as adults in need of protective intervention. A service plan, developed by a social worker or designate, is reviewed minimally every six months or whenever there is a change in the adult's circumstances.

The provincial director may receive a report; evaluate a situation; direct an investigation; and apply to court for a declaration that an adult is in need of protective intervention.

If a high risk situation is evaluated, the provincial director may move an adult who may be in need of protective intervention to a safe location.

The provincial director may also request the assistance of police when enforcing a warrant or completing an emergency intervention.

In consultation with the Department of Justice, an application to the court for a warrant or interim order must be made as soon as possible and no later than two clear days after the day the adult has been removed to safety.

The provincial director may apply to the court for an order to have the adult declared in need of protective intervention under Section 21 of the Act. In the absence of the provincial director a designate must be identified.

If a matter relates to finances, the provincial director may request that the Public Trustee Office intervene on an emergency basis to protect an adult's assets. The public trustee must apply to court within three clear days after the emergency intervention.

<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 1: Application and Service Principles</b>	<b>Subsection 1.7: Review</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

11. The minister shall, every 5 years, perform a review of this Act and the regulations made under it, the principles upon which it is based and consider the areas in which it may be improved and report his or her findings to the Lieutenant-Governor in Council.

## **Policy**

Responsibility for evaluation of the Act falls within the mandate of the Minister of the Department of Health and Community Services. A formal review of the Act, its regulations, and the principles upon which the Act is based must occur every five years from the date of proclamation of the Act. In addition, consideration must be given for recommendations to improve the Act. The evaluation process must include consultation with key stakeholders including regional health authorities and representatives from Aboriginal communities.

A provincial *Adult Protection Act* evaluation framework provides guidelines for the collection of information. Tracking mechanisms must be developed to gather and analyze relevant information in a timely manner.

It is noted that specific issues may be reviewed as they arise and necessary changes made. This may occur at any time throughout each five year period.



<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 1: Application and Service Principles</b>	<b>Subsection 2.1: Reporting Required</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

12. (1) A person who reasonably believes that an adult may be an adult in need of protective intervention shall immediately give that information, together with the name and address of the adult, if known, to the provincial director, a director, a social worker or a peace officer.
- (2) Where a person makes a report under subsection (1), the person shall report all the information of which he or she has knowledge.
- (3) Where a report is made to a peace officer under subsection (1), the peace officer shall, as soon as possible after receiving the report, inform the provincial director, a director or a social worker.
- (4) This section applies notwithstanding that the information is confidential or privileged, and an action does not lie against the person providing the information in good faith unless the information is given maliciously or without reasonable cause.
- (5) Subsection (4) applies to information which is solicitor-client privileged.
- (6) A person shall not interfere with or harass a person who gives information under this section.

## **Policy**

A legal obligation exists for all individuals in the province of Newfoundland and Labrador to immediately report situations of abuse or neglect where an adult may lack capacity and may be in need of protective intervention. This means the individual making the report feels it is likely the adult may be abused, neglected or self-neglected. The report must be screened to determine whether the description of the situation meets the definition of abuse, neglect or self-neglect pursuant to the Act.

This obligation applies to all individuals including those where information may have been obtained from a relationship which would usually be considered privileged, such as between a solicitor and client. The individual making the report in good faith will not be penalized for doing so.

Any person who reasonably believes that an adult may be in need of protective intervention must immediately report that information to a social worker or peace officer, regional director or the provincial director of adult protection. Failure to report that an adult is in need of protective intervention constitutes an offence under section 32 of the *Adult Protection Act*. A person who does not report may be found guilty of an offence and is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year in default of payment or to both a fine and imprisonment.

## **Procedure**

Information (such as calls, e-mails, letters) alleging abuse, neglect and/or self-neglect may be received by a variety of sources such as regional health authority staff, peace officers, community-based organizations, private businesses or private individuals.

If a report is received by a peace officer, the information must be recorded on the *Adult Protection Report Form* (see Appendix C) with guidance from the *User Guide* (see Appendix D). An initial risk assessment is completed in accordance with the Risk Assessment Guidelines and Continuum (see Appendix A). The report must be forwarded as soon as possible in accordance with the time frames outlined in the Risk Continuum to a social worker, regional director, or the provincial director of adult protection.

If a report is made directly to a social worker, manager, regional director or the provincial director of adult protection, the information must be recorded on the *Adult Protection Report Form* (see Appendix C) with guidance from the *User Guide* (see Appendix D). An assessment and evaluation must occur in accordance with the time frames outlined in the Risk Continuum (see Appendix A)

The following information is included in the *Adult Protection Report Form* (see Appendix C):

- Demographic information
- Issue(s)/Allegation(s)
- Summary of Report Information

Reports may be provided confidentially. If contact information is provided, all names of report sources are kept confidential unless the report source agrees to release his or her personal information, or the disclosure of the information is ordered by the court. The social worker, regional director or provincial director of adult protection who receives the report must assess and evaluate the situation.

<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 2: Adult in Need of Protective Intervention</b>	<b>Subsection 2.2: Evaluation</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

13. (1) A director shall complete an evaluation where he or she
- (a) receives a report under section 12 ;
  - (b) is referred a report from a person who received it under section 12; or
  - (c) reasonably believes that a person may be an adult in need of protective intervention.
- (2) An evaluation shall be completed as soon as practicable but no later than 5 clear days of a director receiving a report under section 12.

## **Policy**

The regional director of adult protection or designate must request an evaluation as soon as possible but no later than five clear days after a report is received to determine whether an adult protection investigation is required. The evaluation of the assessment by the regional director must be completed as soon as possible in accordance with the level of risk identified initially on the *Adult Protection Report Form* (see Appendix C).

As part of the evaluation, a social worker must assess the situation. This includes interviewing the report source if possible, interviewing or observing the adult who may be in need of protective intervention, evaluating the level of risk, and gathering collateral information.

A social worker must attempt to visit the adult. If consent is not given by the adult and the adult appears unable to appreciate or understand his/her level of risk, the social worker must consult with his/her manager. The manager must consult with the regional director and decide whether to proceed with an investigation.

It is important that the adult who may be in need of protective intervention is informed and consulted whenever possible. Information from collateral sources, including interdisciplinary team members, can only be obtained with the consent of the adult.

## **Procedure**

The social worker completes an assessment using the *Adult Protection Evaluation Form* (see Appendix E) with guidance from the *User Guide* (see Appendix F). Information from the following sources is used to determine whether an adult protection investigation is required:

### **Interview the report source (if possible)**

The social worker must:

- review referral information;
- interview the report source to clarify and expand on information initially received;
- evaluate the relationship between the report source and the adult who may be in need of protective intervention; and
- identify whether there has been any past involvement with adult protection.

### **Interview and/or observe the adult who may be in need of protective intervention**

The social worker must:

- interview and observe the adult who may be in need of protective intervention;
- identify and provide, as service provisions permit, assistance the adult may need to communicate during the interview;
- explain the purpose of the interview to the adult;
- evaluate the adult's understanding and appreciation of the alleged abuse and/or neglect; and
- record accurately the details of the interview.

### **Assess level of risk**

The social worker must:

- continue to assess the level of risk as extremely high, high, moderate or low. The criteria for each level of risk are explained in Appendix A. The level of risk an adult is experiencing is an indicator of whether to proceed with an adult protection investigation. The social worker or his/her manager must consult with the regional director before proceeding
- prioritize response time dependent upon the level of risk as follows:
  - Extremely high priority requires an immediate response;
  - High priority requires a response within 24 hours;
  - Moderate priority requires a response in 48 hours; and
  - Low priority requires a response within 5 clear days.
- If level of risk is deemed to be extremely high and an adult's life may be in imminent danger; steps must be taken to complete an emergency intervention (see Section 2.10 of the manual for details) and move the adult to a safe place. The social worker or his/her manager must consult with the regional director about the procedure to follow.



### **Gather collateral information**

If possible and with the adult's consent, the social worker must:

- consult with the interdisciplinary team to determine whether collateral information supports proceeding with an investigation. This may mean consultation with a family physician, geriatrician, home and community care nurse, occupational therapist or other professionals; and
- gather information available from supportive sources. For example neighbours and friends might have observed some recent behavioral changes. These changes may be inconsistent with the adult's behavioral history.

### **Summary**

The outcome of the evaluation can result in:

- no further intervention being required as there is insufficient or no evidence to suggest the adult is abused and/or neglected and lacks capacity to appreciate and/or understand risk; or
- professional/supportive services being offered and accepted to reduce risk; or
- making a recommendation to the regional director to proceed with an adult protection investigation as there is evidence to suggest the adult lacks capacity, is at risk due to abuse and/or neglect, and is refusing supportive services. The regional director consults, when possible, with the provincial director prior to ordering an investigation. If not possible, the regional director must inform the provincial director that an investigation is underway as soon as possible.



<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 2: Adult in Need of Protective Intervention</b>	<b>Subsection 2.3: Investigation</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provisions**

14. (1) Where an evaluation has been completed and a director believes, on reasonable grounds, that the adult is an adult in need of protective intervention, the director shall direct that an investigation be completed.
- (2) Notwithstanding that, following an evaluation, a director is satisfied that there are no reasonable grounds to believe that the adult is an adult in need of protective intervention and that an investigation is not required, the director may, where appropriate, refer that adult to health care, social, legal or other services which may assist the adult.
15. (1) A person who acts as an investigator shall be a social worker or another person or class of persons designated by the minister in the regulations.
- (2) An investigator may act for and in the name of a director or the provincial director and a social worker who is acting as an investigator may, on behalf of a director or the provincial director, appear in court.
16. (1) Where a director requires that an investigation be completed under section 14, a person shall cooperate with that investigation.
- (2) An investigator shall make all reasonable efforts to interview the adult who is the subject of the investigation.
- (3) An investigator may
- (a) communicate with and assess the adult who may be an adult in need of protective intervention;
  - (b) request that the adult participate in a capacity assessment;
  - (c) require a person to provide information or produce records, documents or other things in that person's possession or control which, in the opinion of the person completing the investigation, may be relevant to it;
  - (d) solicit, accept and review reports and information from health care providers, persons who or agencies that have provided services to

the adult who is the subject of the investigation, or a person who manages the adult's financial affairs, business or other assets;

- (e) interview anyone who may have information which would be relevant to the investigation; and
  - (f) require the production of medical or other records respecting the adult who is the subject of the investigation.
- (4) For the purpose of subsection (3), the right to information overrides
- (a) a claim of confidentiality or privilege, except solicitor-client privilege; and
  - (b) a restriction in an enactment or the common law about the disclosure or confidentiality of information.
- (5) Notwithstanding paragraph (4)(a), an investigator may, in the course of an investigation, require and access information that is solicitor-client privileged where it relates to the report of a solicitor under section 12.

## **Policy**

An adult protection investigation must be completed at the request of the regional director if there is reason to believe an adult lacks capacity; is abused and/or neglected; and has not accepted any supportive services to reduce risk. This investigation must be completed by a social worker, or in the absence of a social worker, a professional as identified through regulations. A regional director must consult with the provincial director if a professional other than a social worker is to be an investigator, as defined in the regulations.

If a report is received indicating risk, probable incapacity and alleged abuse, neglect and/or self-neglect, section 16 of the Act provides authority for a social worker or designate to act as an investigator. At any time during the investigation, the level of risk can escalate to become extremely high. In this instance, emergency intervention, as outlined in section 2.10 of the manual, must occur to move the adult to a place of safety until the investigation can be completed.

Consent from the adult who may be in need of protective intervention is not required during the investigation. However, in keeping with the service principles of the Act, every effort must be made to involve the adult to the greatest extent possible throughout an investigation. This includes attempting to seek consent to gather information from relevant sources where appropriate.

Information obtained during the investigation must be recorded clearly and accurately in accordance with regional health authority guidelines. Written records from an investigation may be needed in court proceedings.

Services such as home care, legal and health care, in keeping with available resources, policies and programs, may be offered at any point in the investigation to avoid and/or prevent risk or enable the adult to communicate a decision. These services may prevent an adult from needing protective intervention.

## **Procedure**

A social worker must complete an adult protection investigation by proceeding as follows:

### **Review records and gather information**

The social worker must:

- request and review all relevant records and reports necessary to inform the investigation. Examples include referral report; evaluation report; present and past financial records; and medical information;
- conduct interviews with family, friends and/or neighbours to gather more information to support the records review. These interviews might also reveal any recent changes in the adult's decision-making abilities that are inconsistent with past behavior;
- consult with other professionals such as physicians, psychologists, neuropsychologists, nurses, physiotherapists, social workers, occupational therapists and police officers to obtain information relevant to the investigation; and
- refer to police, following consultation with a manager, if criminal activity is suspected.

### **Interview the adult who may be in need of protective intervention**

The social worker must:

- explain to the adult why an investigation has been ordered and how the investigation must proceed;
- make every reasonable effort within program guidelines to assist the adult with communicating his or her understanding and appreciation of the situation. For example, a trusted friend might act as a spokesperson and help interpret an adult's method of communication; and
- involve and inform the adult who may be in need of protective intervention to the greatest extent possible throughout the investigation.

### **Coordinate a capacity assessment (Guidelines)**

- A capacity assessment is completed when an adult who may be in need of protective intervention appears to be unable to understand or appreciate

his or her level of risk as previously determined through a risk assessment.

- It is preferable that a capacity assessment be completed in the adult's home environment.
- It may be necessary for an adult to be assessed medically in an acute care facility. The information from this assessment may inform a capacity assessment.
- Each capacity assessment is decision specific. This means that the assessment is based on understanding and appreciating a specific situation that is perceived as possibly risky. Risk may be identified with a particular function such as not being able to manage personal care, prepare meals and /or shop for basic necessities. The assessment may also explore financial risks such as the inability to pay bills, deposit cheques and pay rent.
- Whenever possible, a social worker must coordinate the completion of a capacity assessment. The best capacity assessment is a thorough one involving a team of professionals. Each professional must complete and sign the report representing his/her discipline. These reports must form part of the capacity assessment.
- Before an adult is interviewed during a capacity assessment, every effort must be made within program guidelines to assist the adult to communicate effectively and/or access the meeting space. Discussion about the adult's unique needs may occur with the adult's family and/or friends.
- The adult's cultural values, beliefs and practices must be considered throughout the capacity assessment.
- The services of an interpreter or translator may be needed.
- Professional judgment based on knowledge and skills is an integral part of the capacity assessment process.
- The results of the capacity assessment contribute to whether a person may be considered at low, moderate, high or very high level of risk.

### **Coordinate a capacity assessment (Process)**

#### **Interview Preparation**

The social worker must:

- make every reasonable effort within program guidelines to provide the support an adult will need to communicate. If a spokesperson is present during the interview, he or she must not speak *for* the adult. Rather, the spokesperson must try to help make sure the assessor's questions are understood by the adult and the adult's answers are understood by the assessor;
- review information as provided in the Report and Evaluation Forms (see Appendices C and E). This includes details about the alleged abuse or neglect and whether an adult appears to appreciate the risks involved;
- review any relevant medical information including the results of any cognitive testing; and

- review any records relevant to the specific area being assessed (i.e., financial).
- review any functional assessments that may have been completed (i.e., occupational therapy report, physiotherapy report).

### Capacity Interview

The social worker must:

- explain to the adult the purpose of the capacity assessment and outline the process to be followed. Be sure to try to use a form of communication the adult understands such as a tool to enhance hearing or a spokesperson to provide communication support.
- Determine, using a set of structured questions, whether the adult understands and appreciates the risk he or she is experiencing and the consequences of his or her decision; and
- document the information from the interview(s) including the names of the participants, questions asked and the exact responses to the questions. Clear and accurate record keeping is necessary as it may be used in a court proceeding.

Some indicators of an adult understanding the situation include:

- the adult can describe, through words or another form of communication, the issue and level of risk;
- the adult is able to ask questions, independently or with support, relevant to the topic to clarify his or her understanding; and
- the adult demonstrates a consistent train of thought throughout the interview through conversation or another form of communication.

It is preferable for the adult who may be in need of protective intervention to participate directly in the capacity interview. However, if the adult refuses to do so, information can be obtained from collateral sources such as family, friends, neighbors and service providers. As well, observation of the adult's appearance, living conditions, and behavior can occur.

### Collateral Information

- Following the social worker's interview(s), additional information may be needed to help determine an adult's ability to make a decision in certain area(s).
- An occupational therapist, neuropsychologist, physician or other health care professional may be consulted to assess whether the adult is capable of making decisions which may be placing him/her at risk. Each assessment is completed through the lens of the discipline. For example, an occupational therapist may assess safety from a functional perspective. A physician may explore medical conditions that may impact an adult's ability to make safe decisions. Each assessment must be summarized in writing and signed by the professional. Collectively, these assessments contribute to a comprehensive capacity assessment.

- Each discipline or profession will ask questions and seek answers from different perspectives. For example, a physician's assessment may address the following questions:
  - Does the adult have a diagnosis/disability (physical or mental) affecting capacity? Provide relevant details.
  - Is there a recommended treatment? If yes, please describe.
  - Following treatment, is there a reasonable expectation for improvement that could result in the adult being capable to make decisions? If there is no reasonable expectation for improvement, does the adult lack capacity to make decisions?
- A professional might choose to use a standardized tool to assist with the assessment of capacity. There are numerous tools available and others under development. It is important to note that the choice of tool used is dependent on professional preference and area of capacity being explored.
- Tool(s) results may provide indicator(s) of difficulty understanding and/or appreciating risk. The results of tools may signal the need for further assessment. Results of tools are not meant to be used as the sole indicator of an adult's capacity for decision-making. Results of previously administered tools may be sufficient to assist in the evaluation process, or may be used as a baseline.
- Functional assessments may also be needed. It may be necessary to assess the adult's ability to safely manage his/her daily routine. A community health nurse may complete an assessment of activities of daily living. An occupational therapist may assess the adult's ability to manage personal care, prepare meals and administer medications.
- Historical information can be gathered from interviews with neighbors, family and friends. This information can highlight any changes with the adult that are inconsistent with his or her lifelong patterns of behavior.
- Information from staff at institutions such as banks can identify recent high risk changes inconsistent with the adult's previous way of conducting business.

## **Summary**

The outcome of the investigation may result in:

- no further involvement;
- professional/supportive services being offered and accepted to reduce risk; or
- following consultation with the regional director, an application is made to the court by the provincial director of adult protection for an order to declare an adult in need of protective intervention.



<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 2: Adult in Need of Protective Intervention</b>	<b>Subsection 2.4: Warrant: Entry</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

17. (1) A judge may issue a warrant authorizing a director or an investigator named in the warrant to enter on lands or premises and exercise a power referred to in section 16 where the judge is satisfied on evidence under oath that there are reasonable grounds to believe that entry on the lands or premises is necessary to assess the person who is the subject of the investigation or access, copy or remove documents necessary for the investigation and
- (a) that the director or investigator has been denied entry to the lands or premises or has been obstructed in exercising a power under section 16 with respect to the lands or premises; or
  - (b) there are reasonable grounds to believe the director or investigator will be denied entry to the lands or premises or obstructed in exercising a power with respect to the lands or premises.
- (2) A warrant issued under subsection (1) shall
- (a) specify the times, which may be during the day or night, during which the warrant may be carried out; and
  - (b) state when the warrant expires.
- (3) A judge may extend the date on which a warrant expires for those additional periods as the judge considers necessary.
- (4) A judge may receive and consider an application for a warrant or extension of a warrant under this section without notice to the owner or occupant of the land or premises to which it applies.
- (5) A director or an investigator authorized under a warrant issued under subsection (1) to enter land or premises may call on peace officers as necessary and may use force as necessary to make the entry and take the action authorized in the warrant.
- (6) A director or an investigator named in a warrant issued under subsection (1) may call on other persons he or she considers advisable to assist in the execution of the warrant.

## Policy

If the social worker is unable to complete an investigation it may be necessary to obtain a warrant to enter a home, other lands or premises. The social worker prepares a report in consultation with his/her manager and forwards the result to the regional director of adult protection. This report should state the reasons why a warrant is needed. The report is forwarded to legal counsel at the Department of Justice. The report is reviewed and becomes part of an application to the court known as *Information to Obtain a Warrant to Enter* which is presented to the judge. The judge may issue a warrant which specifically states that authority is given to a social worker to enter an adult's home, other lands or premises, by force if necessary, to complete an adult protection investigation. A peace officer must accompany the social worker who executes the warrant.

This investigation includes assessing the adult who is the subject of the investigation and/or accessing, copying or removing documents necessary for an investigation. The warrant must specify the times when entry can occur.

## Procedure

The process to obtain a warrant to enter the adult's home, other lands or premises is as follows:

- The social worker must consult with his/her manager /regional director of adult protection, and if possible, the provincial director of adult protection to decide whether to proceed with an application for a warrant.
- The social worker must prepare a written report which will be included in an application (*Information to Obtain a Warrant to Enter*) to the court. Included in the report are:
  - The reasons why the warrant is needed For example, a list of the unsuccessful attempts made to enter the home;
  - The reasons why the director believes the adult is in need of adult protection such as the adult might lack capacity and/or might be abused or neglected; and
  - Details about the perceived level of risk to the adult.
- Careful consideration must be given to how much time will be required to execute the warrant, as there is an expiry date for the warrant.
- Legal counsel with the Department of Justice must review the accuracy of the social worker's prepared report.
- Legal counsel must document the information from the report on the *Information to Obtain a Warrant to Enter* form and file the application with the court (see Appendix G for a link to this form).
- Arrangements must be made by legal counsel to submit the application to Provincial Court or the Supreme Court of Newfoundland and Labrador, Trial Division. The social worker must be present in court when the application is heard.

- A judge must review the application and determine whether to grant a *Warrant to Enter*.
- If the warrant is issued, the social worker, who may request assistance from a peace officer, must serve the warrant on the adult to whom the warrant applies.
- The original *Information to Obtain a Warrant to Enter* is retained by the court as well as a copy of the *Warrant to Enter*.
- The social worker must place copies of the entire court application including a copy of the *Warrant to Enter* on the adult's regional health authority file with notation of when the warrant was served and by whom.
- A copy of the *Warrant to Enter* is served on the person against whom the warrant is executed.



<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 2: Adult in Need of Protective Intervention</b>	<b>Subsection 2.5: Telewarrant</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

18. (1) Where, in the opinion of a director or investigator it would not be practical to appear in person before a judge to apply for a warrant, the director or investigator may make the application by telephone or other means of telecommunication.
- (2) Where a director or investigator enters on land or premises under the authority of a warrant obtained under this section, the director or investigator shall provide the person who is the owner or occupier of that land or premises with a facsimile of the warrant.
- (3) In subsection (2), "facsimile" includes a record produced by electronic means or a written record of a telephone conversation made by both parties to the conversation while it is in progress and which the parties have confirmed as to its accuracy by reading their record of the conversation to one another at the end of the conversation.

## **Policy**

If the social worker is unable to complete an investigation and unable to appear before a judge in person, it may be necessary to obtain a telewarrant to enter a home, other lands or premises. The social worker may make an application for a warrant by telephone or other means of telecommunication such as facsimile.

## **Procedure**

The process for a social worker to obtain a telewarrant to enter the adult's home, other lands or premises is as follows:

- Consult with the manager/regional director of adult protection and, if possible, the provincial director of adult protection prior to proceeding.
- Document information needed including:
  - the reasons why the telewarrant is needed. For example, a list of the unsuccessful attempts made to enter the home, other lands or premises;

- the reasons why the director believes that adult is in need of adult protection such as the adult might lack capacity and/or might be abused or neglected; and
  - the reasons why the application cannot be made in person.
- Careful consideration must be given as to how much time will be required to execute the telewarrant, as there is an expiry date for the telewarrant.
- Legal counsel with the Department of Justice must review the social worker's prepared report.
- The social worker must read the information recorded on the *Information to Obtain a Telewarrant to Enter* form to the judge (see Appendix G for a link to this form). The social worker/designate shall give that information under oath or affirmation, which may be administered by telephone.
- If the judge in a specific area is not available to issue a telewarrant, any Provincial Court judge named on the on-call list, supplied by the Chief Judge, may be contacted.
- If the judge issues the telewarrant, the judge must fill in a *Telewarrant to Enter* form, and submit it by electronic means to the social worker/designate; or state over the phone the words to be inserted by the social worker/designate on the *Telewarrant to Enter* form.
- Before concluding the conversation, the judge and the social worker/designate should review notes from the telephone conversation for accuracy.
- The social worker, who may request assistance from a peace officer must provide a copy of the telewarrant on the adult to whom the telewarrant applies.
- The original *Information to Obtain a Telewarrant to Enter* is retained by the court as well as a copy of the issued *Telewarrant to Enter*.
- The social worker must place copies of the entire court application including the *Telewarrant to Enter* on the adult's regional health authority file with notation of when the telewarrant was served and by whom.
- A copy of the *Telewarrant to Enter* is provided to the person against whom the telewarrant is executed.

<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 2: Adult in Need of Protective Intervention</b>	<b>Subsection 2.6: Application and Orders re: Investigation</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

19. (1) Where it may be necessary during the course of an investigation, a director may apply to a court for an order under subsection (2).
- (2) A judge may make an order
- (a) requiring the release of information referred to in section 16;
  - (b) requiring a medical assessment by a health care professional;
  - (c) requiring a capacity assessment by a person approved to perform it under subsection 6(5);
  - (d) allowing a person performing an assessment under paragraph (b) or (c) to enter into a premises to perform that assessment;
  - (e) requiring auditing or other financial evaluation of assets;
  - (f) requiring that the adult who may be an adult in need of protective intervention be removed from the place of residence; or
  - (g) that the judge considers necessary

where the judge is satisfied on evidence under oath that there are reasonable grounds to believe those actions are required to assess the adult who is the subject of the investigation, or his or her assets.

## **Policy**

If the social worker is unable to complete components of an investigation it may be necessary to obtain an *Order to Conduct an Investigation*. A report is completed by a social worker/designate in consultation with Department of Justice legal counsel. This report must describe the efforts made by the social worker, without a court order, to obtain information and/or seek cooperation from others, including the adult who may be in need of protective intervention. This report informs an *Application to Conduct an Investigation* which is made to the court. A judge reviews evidence and issues an *Order to Conduct an Investigation*. The Order may require the release of information; completion of assessments including medical, capacity and financial; access to a premises

and/or removal of the adult in need of protective intervention from his/her current residence. The judge may issue any order that he/she considers necessary where the order is required to assess the adult who is the subject of the investigation, or his/her assets.

## Procedure

The social worker, in consultation with his/her manager, regional director, and legal counsel, must complete a report to be used in an *Application to Conduct an Investigation*. This report must be presented as an affidavit which is a recorded statement of facts made under oath or affirmation where the social worker must

- outline the level of risk the adult is experiencing, including indicators of abuse, neglect and/or self neglect;
- outline the indicators that question the adult's ability to understand and /or appreciate the level of risk;
- outline specific efforts made without a court order to obtain the information necessary to complete an adult protection investigation; and
- state why actions are required to assess the adult who is the subject of the investigation, or his/her assets.

Components of an *Order to Conduct an Investigation* may include:

- Release of information: An adult protection investigation includes interviews by the social worker with the adult who may be in need of protective intervention, interviews with family and friends and reviews of relevant records (i.e., financial) and reports (i.e., medical). A court order must state that all relevant information needed for the investigation is to be released.
- Completion of a medical assessment: An understanding of an adult's diagnosis and/or disability must inform the investigation as well any temporary health issues, such as a urinary tract infection or a delirium which can be diagnosed and treated. An adult may be brought to a hospital emergency department for a medical assessment.
- Completion of a capacity assessment: If an adult is unable to demonstrate he/she understands and appreciates his/her current level of risk, a social worker may receive a court order to coordinate the completion of a capacity assessment. This must include involvement from a team of professionals as outlined in Subsection 2.3 of this manual.
- Completion of a financial evaluation of assets (including auditing): The social worker must protect the adult's financial assets from harm and/or financial abuse. Involvement is required from the Office of the Public Trustee.
- Access to complete an assessment: A professional completing any part of the assessment must have access to the adult who may be in need of protective intervention on/in any lands or premises. If necessary, a court order must grant this access. Risk to the professional must be assessed



- and, if necessary, a peace officer should accompany the professional to the premises.
- Removal of the adult to a place of safety: The social worker must assess the adult's level of risk to determine whether a court order is needed to remove the adult from his/her current residence. If required, an *Information to Obtain a Warrant to Remove* (or an *Information to Obtain a Telewarrant to Remove*) must be completed and a peace officer must accompany the social worker. The *Warrant to Remove* (or *Telewarrant to Remove*) must state that the peace officer can physically remove the adult to a place of safety. The warrant must identify where the adult is to be taken. If the adult is moved to a residence (i.e., long term care home, hospital) while the investigation is ongoing, a copy of the court order authorizing the move must be placed on the adult's medical chart.

A court order might need to be altered, renewed or cancelled. The social worker must consult with his/her manager, regional director, and provincial director, where possible, as well as legal counsel to prepare a new court application to submit to the court to make any changes.



<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 2: Adult in Need of Protective Intervention</b>	<b>Subsection 2.7: Action Following Investigation</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

20. (1) Where, following an investigation, a director believes that an adult is an adult in need of protective intervention, the director
- (a) may
    - (i) report the matter to the police,
    - (ii) make an application for a warrant to remove the adult to a place of safety under section 23,
    - (iii) remove the adult to a place of safety without a warrant under the authority of subsection 23(3), or
    - (iv) provide or arrange for support services consistent with the service plan prepared under paragraph (b); and
  - (b) shall
    - (i) prepare a service plan for that adult based on criteria set by the minister, and
    - (ii) report that belief to the provincial director.
- (2) Where the provincial director receives a report under subparagraph (1)(b)(ii), the provincial director may
- (a) report the matter to the police; or
  - (b) apply to the court for an order, as appropriate.

## **Policy**

A regional director must consult with the provincial director of adult protection, when an investigation indicates an adult may be in need of protective intervention. A report to police must be made if criminal activity is suspected. Where an extremely high level of risk has been evaluated and the provision of service will not eliminate the risk, the adult who lacks capacity must be removed

to a place of safety. Whenever possible, a *Warrant to Remove* must be obtained prior to moving the adult. Emergency intervention (see subsection 2.10 of the manual for details) can allow for immediate removal of the adult to a place of safety. However, an application for a *Declaration of an Adult in Need of Protective Intervention* must be made within two clear days of when an adult is removed under emergency intervention. An *Application for an Order to Complete an Investigation* may also be required.

The regional director must designate a social worker to write a plan stating details of the services required to meet the care needs of the adult (see subsection 3.1 of the manual for an outline of the content of the service plan).

The provincial director may apply to the court for an order to have the adult declared in need of protective intervention under section 21 of the Act.

## Procedure

- The social worker must prepare a report for his/her manager, and the regional director that will outline the findings of his/her adult protection investigation. This report must:
  - explain the reasons supporting the belief the adult will need to be declared in need of protective intervention;
  - describe the risk factors and the adult's lack of capacity to understand or appreciate the current level of risk;
  - describe specific indicators that are causing the adult to experience abuse and/or neglect; and
  - include collateral information to support findings (such as medical reports, occupational therapy reports and historical information from neighbours and friends).
- The regional director must report to the police when criminal activity is suspected.
- If a *Warrant to Remove* is required, the social worker provides a written report which informs an affidavit (sworn testimony) for the Department of Justice legal counsel to obtain the *Warrant to Remove* to move an adult to a place of safety. The process to obtain a *Warrant to Remove* (or *Telewarrant to Remove*) is as follows:
  - The social worker must consult with his/her manager/regional director of adult protection, and if possible the provincial director of adult protection to decide whether to proceed with an application.
  - The social worker must prepare a written report to inform an application to the court known as an *Information to Obtain a Warrant (Telewarrant) to Remove*. Included in the report are:
    - the reasons why the warrant/telewarrant is needed;
    - the reasons why the adult might lack capacity and/or might be abused or neglected; and
    - details about the perceived level of risk.

- Careful consideration must be given to how much time will be required to execute the warrant/telewarrant, as there is an expiry date for the warrant/telewarrant.
  - Legal counsel with the Department of Justice must review the social worker's prepared report.
  - Legal counsel must document the information from the report on the *Information to Obtain a Warrant to Remove (or telewarrant to Remove)* form and file the application with the court (see Appendix G for a link to this form).
  - Arrangements must be made by legal counsel to submit the application to Provincial Court or the Supreme Court of Newfoundland and Labrador Trial Division. The social worker must be present in court.
  - A judge must review the application and determine whether to grant a *Warrant to Remove (or telewarrant to Remove)*.
  - Once the *Warrant to Remove (or telewarrant to Remove)* is received, the social worker, with assistance from a peace officer, must serve the warrant/telewarrant on the adult to whom the warrant/telewarrant applies and immediately move the adult to a place of safety.
  - The original *Information to Obtain a Warrant to Remove (or telewarrant to Remove)* is retained by the court as well as a copy of the *Warrant to Remove (or telewarrant to Remove)*.
  - The social worker must place copies of the entire court application including a copy of the *Warrant to Remove (or telewarrant to Remove)* on the adult's regional health authority file with notation of when the warrant was served and by whom.
- If the adult's life or health is in imminent danger, an emergency intervention can occur (see subsection 2.10 of the manual for details).
  - The social worker must prepare a service plan outlining the care needs required to reduce the adult's level of risk if he/she is declared in need of protective intervention (see subsection 3.1 of the manual for details about the content of a service plan).



<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 2: Adult in Need of Protective Intervention</b>	<b>Subsection 2.8: Application for Declaration</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

21. (1) Where the provincial director receives a report under section 20 indicating that an adult is believed by a director to be an adult in need of protective intervention, the provincial director may apply to the court for a declaration that the adult is an adult in need of protective intervention.
- (2) A hearing under this section shall be held within 30 clear days of the filing of the application under subsection (1).
- (3) A capacity assessment shall accompany an application under this section.
- (4) Notice of the time and place of a hearing under this section shall be served not later than 10 clear days after the date for holding the hearing is obtained from the court
- (a) on the adult who is the subject of the application; and
- (b) where the adult who is the subject of the application resides
- (i) in a personal care home, on the licensee of the personal care home,
- (ii) in a community care facility, on the owner of the community care facility, or
- (iii) in a long term care facility, on the administrator of the long term care facility.
- (5) The provincial director shall notify the following persons of the date of a hearing under this section:
- (a) a person with whom the adult who is the subject of the application resides, if appropriate; or
- (b) the next of kin of the adult who is the subject of the application, and where the next of kin are determined to be the children of the adult, efforts shall be made to notify all of those children.

- (6) The provincial director may make an application to dispense with the requirement for notice under subsection (5), and the court may make the order considered appropriate in the circumstances.
- (7) Where an application is made under subsection (1), a judge may make an order under section 22.
- (8) Not later than 5 clear days before a hearing under this section, the provincial director shall file a service plan for the adult who is the subject of the application with the court and shall provide a copy to those persons to whom notice of the hearing has been served or given.
- (9) Not later than 2 clear days before the hearing under this section, the persons to whom a copy of a plan has been given under subsection (8) may respond to the plan and file an alternate written plan with the court and provide a copy to the provincial director.
- (10) An adult who is the subject of an application under this section has a right to be heard, directly or indirectly, in all proceedings relating to the application, and that adult may be consulted in private if he or she so desires.
- (11) Notwithstanding another provision of this section, where an application is made further to an emergency intervention under section 23, notice required under this section may be given as soon as practicable, and the lack of notice does not impair an application under this section.
- (12) The onus of proving the adult is an adult in need of protective intervention is on the provincial director.

## **Policy**

The provincial director of adult protection may make an application to the court for a declaration that an adult is in need of protective intervention. A capacity assessment must accompany the application. A time frame for scheduling the hearing and notifying those involved shall be as outlined in section 21 of the Act.

The provincial director and staff involved with the adult protection investigation must have legal counsel. The adult who may be in need of protective intervention must have independent legal counsel and has a right to be heard in the court proceedings to the greatest extent possible.

It is the responsibility of the provincial director to prove that an adult is in need of protective intervention.



## Procedure

Having reviewed the report received from the regional director, the provincial director may apply to the court for a declaration that the adult is an adult in need of protective intervention. The application must include information about the results of the adult protection investigation, including a capacity assessment and service plan.

A court hearing must be held within 30 clear days of filing the application. The 30 days do not include the day the application was filed or the day the hearing is scheduled.

The provincial director and all staff involved with the adult protection investigation must be represented by legal counsel through the Family Litigation Division of the Department of Justice. The adult who may be in need of protective intervention must have independent legal counsel. If the adult is unable to hire a lawyer privately, his/her eligibility for legal counsel through the Legal Aid division of the Department of Justice must be assessed.

At an adult protection court hearing, the investigating social worker:

- may be called as a witness by legal counsel representing the provincial director or the adult;
- must be familiar with the information contained in his/her affidavit;
- must be present to answer questions about the investigation; and
- must be present to answer questions about the service plan, which includes a recommendation about where the adult should reside.

The adult who may be in need of protective intervention must be notified about the time and place of the hearing no later than 10 clear days after the day the hearing is scheduled. If the adult resides in a personal care home, the licensee of the personal care home must be notified. If the adult lives in a community care facility, the owner of the community care facility must be notified. If the adult lives in a long term care facility, the administrator of the long term care facility must be notified.

The provincial director must notify the person with whom the adult resides of the date of the hearing. The provincial director must also notify the next of kin of the adult of the date of the hearing. If the children of the adult are involved, efforts must be made to contact all children. If considerable risk exists, the provincial director may make a court application to proceed without contacting the person with whom the adult resides and the adult's next of kin.

A service plan outlining the intervention needed to reduce risk for the adult in need of protective intervention must be filed with the court no later than 5 clear days before the hearing. The adult who is the subject of the plan must receive a

copy at the same time. The adult may respond to the plan by submitting his/her comments to the court no later than 2 clear days before the hearing.

All people who have received notice of the court hearing must receive the service plan.

The adult has the right to file his/her own service plan if he/she wishes to do so. If the adult files a service plan, the social worker must review, understand and evaluate the plan. The social worker must share the adult's service plan with legal counsel prior to the court hearing.

In the event of emergency intervention (see Section 2.10 of the manual) notice must be provided as soon as practical.

Following the court hearing, the social worker must implement any orders that accompany the declaration of an adult in need of protective intervention.

<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 2: Adult in Need of Protective Intervention</b>	<b>Subsection 2.9: Order of Court</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## Statutory Provisions

22. (1) Upon hearing an application under section 21, where a judge finds that the adult is an adult in need of protective intervention, the judge may so declare and may, where it appears to him or her in the best interests of that adult, make an order
- (a) that the adult
    - (i) continue to live independently subject to supervision by a director,
    - (ii) remain where the adult is living in the care and custody of the person in whose care he or she may be, subject to supervision by a director,
    - (iii) be removed to the home of some suitable person and committed to the care and custody of that person, subject to supervision by a director, or
    - (iv) be committed to the care and custody of the provincial director, who in his or her discretion may make decisions on behalf of the adult, including health care decisions; and
  - (b) requiring the payment of support by a spouse or co-habiting partner of a person declared to be an adult in need of protective intervention.
- (2) An order made under subparagraphs (1)(a)(ii) or (iii) may contain conditions which apply to the person with whom the adult is placed, but shall not contain conditions which apply to the provincial director, a director, a social worker, an authority or the department.
- (3) An order made under subparagraph (1)(a)(iv) shall not contain conditions.
- (4) Where there is a pension or other income payable to
- (a) an adult who has been declared to be an adult in need of

protective intervention; or

- (c) a person responsible for the support of an adult who has been declared to be an adult in need of protective intervention,  
  
and the pension or other income is capable of being attached, a judge may, after giving a person referred to in paragraph (a) or (b) an opportunity of being heard, order that the part of the pension or other income that the judge considers appropriate be attached and be paid to a person that the judge may direct.
  - (5) The order under subsection (4) is authority to the person by whom the pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a sufficient discharge to the person by whom the pension or other income is payable.
  - (6) For the purpose of subsections (4) and (5), "income" includes pension income, savings and other assets.
  - (7) A judge may order that a person who is found to be a source of neglect or abuse to the adult in need of protective intervention
    - (a) stop living in and stay away from the premises where the adult in need of protective intervention lives, where the person is not the owner or lessee of the premises;
    - (b) not visit, communicate with, harass or interfere with the adult in need of protective intervention; or
    - (c) cease all contact or association with the adult in need of protective intervention and have no further involvement in his or her affairs, business dealings or estate.
  - (8) Where there is a material change in the circumstances of the adult in need of protective intervention, a person may make an application to vary or terminate the order or to make a new order, and unless the application relates to the termination of an order, an updated service plan shall be filed with the court.
  - (9) Where an adult has been declared an adult in need of protective intervention, the provincial director shall send a notice to the public trustee in accordance with section 22.1 of the *Mentally Disabled Persons Estates Act*.
38. The *Mentally Disabled Persons' Estates Act* is amended by adding immediately after section 22 the following:

## Notice to be sent to public trustee

- 22.1 (1) A director appointed under the *Adult Protection Act* shall, in accordance with subsection 22(9) of that Act, notify the public trustee where a person has been declared to be an adult in need of protective intervention under that Act, and the notification shall contain
- (a) the name, address and, where known, the age of that person;
  - (b) the date the person was declared to be an adult in need of protective intervention;
  - (c) the names, known to the director, of members of the immediate family and other close relatives of that person; and
  - (d) information which the director may possess that could assist the public trustee in locating property owned or held by that person.
- (2) A notice which is sent under subsection (1) shall be sent within 14 days after the date the person was declared to be an adult in need of protective intervention.
- (3) The public trustee is the guardian of the estate of a person referred to in subsection (1) from the date on which he or she receives the notice sent to him or her under that subsection as if he or she had been appointed guardian under subsection 3(1), and the public trustee is the guardian of that estate until
- (a) the court or a judge makes an order appointing another person to be the guardian or confirming the appointment of a person who had been appointed guardian before the public trustee received the notice; or
  - (b) he or she is discharged by the court or a judge under section 19.

## Policy

Following the hearing, a judge may declare an adult to be in need of protective intervention. The judge may further order that the adult continue to live independently subject to supervision by a director; remain where the adult is living in the care and custody of the person in whose care he or she may be,

subject to supervision by a director; be removed to the home of some suitable person and committed to the care and custody of that person subject to supervision by a director; or be committed to the care and custody of the provincial director. The judge may also order where the adult shall live, how the adult's income and expenses are to be managed, and/or conditions regarding communication between the adult declared in need of protective intervention and the person who is a source of abuse/neglect.

Once the adult is declared in need of protective intervention, the provincial director of adult protection must notify the public trustee who must manage the estate of the adult. This remains in effect until a court or judge appoints another manager of the adult's estate, or the public trustee is discharged by the Court.

## **Procedure**

When the judge declares an adult to be in need of protective intervention, he/she must issue an order stating where the adult will live. The adult will contribute to this decision to the greatest extent possible. The options include:

- The adult will continue to live independently under supervision of the regional director or designate. A service plan must be developed stating the services needed to reduce the risk that has contributed to the need for protective intervention.
- The adult will remain in the care and custody of the person with whom he/she currently lives subject to supervision of the regional director or designate. The service plan must clearly outline what is needed to reduce risk; define the responsibilities of the caregiver in relation to the needs of the adult; and identify any other conditions as outlined in the court order.
- The adult is to be removed from his/her current residence and placed in the home of a caregiver subject to supervision of the regional director or designate. The service plan must clearly outline what is needed to reduce risk; define the responsibilities of the caregiver in relation to the needs of the adult; and identify any other conditions as outlined in the court order.
- The adult is placed in the care and custody of the provincial director of adult protection. The provincial director will make decisions including health care decisions on behalf of the adult.

A service plan must clearly outline what is needed to reduce risk. The most supportive and least restrictive living environment must be pursued with the adult. This could range from independent living to a long term care placement. If the adult becomes a resident of a facility, the service plan must be reviewed with the staff to ensure the adult's care needs are met. The provincial director must be informed if there is a significant change in the adult's life that could impact his/her service plan. A copy of the plan must be placed on the adult's regional health authority file/chart.

When the judge declares an adult to be in need of protective intervention, he/she may issue an order about how the adult's income (including pension income, savings and other assets) and expenses are to be managed. This information must be included in the service plan.

- If the adult is living independently or under the care and custody of a designated person, the judge may order that any pension or other income be paid to either the adult or caregiver. The order provides authority so that the issuer (for example Old Age Security, Income Support) of the income must comply.
- If the provincial director is awarded the care and custody of the adult, the provincial director must send a notice to the public trustee within fourteen days. Notification must include information as outlined in Section 22.1 of the *Mentally Disabled Persons' Estates Act* (see Appendix B for a link to the Act). The public trustee must manage the adult's estate. The public trustee must advise the provincial director of adult protection of any changes to the adult's financial status that could require a revision to the service plan.

When the judge declares an adult to be in need of protective intervention, he/she may issue an order about conditions regarding communication between the person who is the source of abuse/neglect and the adult.

The source of abuse/neglect may be ordered to stay away from the adult. This may include the source of abuse/neglect no longer living in the same residence if he/she does not own or lease it.

The source of abuse/neglect may be ordered to not visit, communicate with, harass or interfere with the adult in need of protective intervention.

The source of abuse/neglect may be ordered to have no further involvement with the adult's affairs, business dealings or estate.

This information must be included in the adult's service plan.





<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 2: Adult in Need of Protective Intervention</b>	<b>Subsection 2.10: Emergency Intervention</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provisions**

23. (1) Where a director or social worker believes

- (a) that an adult is in need of protective intervention; and
- (b) a less intrusive course of action that would adequately protect the adult is not available,

the director or social worker shall file an application with the court for a warrant to remove that adult.

(2) Where satisfied on the basis of the director's or social worker's sworn information that there are reasonable grounds to believe that

- (a) an adult is in need of protective intervention; and
- (b) a less intrusive course of action that would adequately protect the adult is not available,

a judge may issue a warrant authorizing the director or social worker to enter a premises or vehicle or board a vessel or aircraft, by force if necessary, to remove the adult.

(3) Notwithstanding subsection (1), where a director or social worker has reasonable grounds to believe there would be an immediate risk to the adult's health and safety if no action were taken during the time required to obtain a warrant, the director or social worker may enter a premises or vehicle or board a vessel or aircraft, by force if necessary, to remove the adult without a warrant.

(4) At the request of a director or social worker, a peace officer shall assist in enforcing a warrant issued under subsection (2), or if a warrant is not obtained, the peace officer shall assist a director or social worker under subsection (3).

(5) A warrant issued under subsection (2) need not describe the adult by name or specify a particular premises.

- (6) An application under this section may be made by telephone or other means of telecommunication, and section 18 applies with the necessary changes to the manner of obtaining that telewarrant.
- (7) A copy of the warrant or telewarrant shall be given to
  - (a) the adult who is the subject of the warrant;
  - (b) the person from whose premises the adult is removed, if applicable; and
  - (c) the provincial director.
- (8) Where an adult is removed from the premises in which he or she is living to another place and it appears to a director or social worker that there is danger of loss of, or damage to, property of the adult because of the adult's temporary or permanent inability to deal with his or her property, and that no other suitable arrangements have been or are being made for the purpose, it is the duty of the director or social worker to take reasonable steps to prevent or mitigate the loss or damage.
- (9) A director or social worker has power at reasonable times to enter premises which immediately before the adult's removal were the adult's place of residence or usual place of residence, and to deal with property of the adult in a way which is reasonably necessary to prevent or mitigate loss or damage.
- (10) A director or social worker may recover from the adult, or from a person liable to maintain him or her, reasonable expenses incurred by the director or social worker under subsection (9).
- (11) The provincial director shall, within 2 clear days of an adult being removed
  - (a) under the authority of a warrant issued under subsection (2); or
  - (b) under the authority of subsection (3)

make an application to a court under section 21 and a court shall hear that application within 2 clear days of the making of the application.

24. (1) Where the provincial director reasonably believes that an urgent situation exists in which a person who is evidently an adult in need of protective intervention but has not yet been declared as such
  - (a) is unable to manage his or her affairs or assets; and

- (b) there is immediate danger of substantial damage to or substantial loss of those assets,

the public trustee may, at the request of the provincial director, intervene in a manner and to the degree that may be demonstrably necessary to temporarily prevent or contain that loss or damage.

- (2) Where the public trustee takes the action referred to in subsection (1), he or she shall, within 3 clear days of taking that action, apply to a court and the court shall hear that application within 5 clear days of the making of the application.

## **Policy**

Emergency intervention may be necessary to remove an adult to a place of safety if an adult's life or health is in imminent danger. Following an initial evaluation, the regional director must believe there are indicators of abuse, neglect and/or self-neglect; the adult does not appear to understand or appreciate the level of risk he/she is experiencing; and there is no less intrusive option available than to remove the adult to a place of safety. Temporary emergency placement may be necessary in a long term care facility or an alternate community residence. Emergency medical treatment may be needed at a hospital.

If no action was taken during the time required to obtain a *Warrant to Remove (Telewarrant to Remove)* and the risk to the adult's health and safety is extremely high, the adult can be removed to a place of safety immediately.

The provincial director must apply to the court for a protective intervention hearing within 2 clear days after the day the adult has been removed. The court must hear the application within 2 clear days after the day the application was filed.

An application for a court order for the public trustee must be made within 3 clear days following the day the emergency financial intervention started. Within 5 clear days after the day the application is made, a court hearing must take place.

## **Procedure**

The social worker, in consultation with his/her manager and regional director must:

- review the results of the initial evaluation as outlined on the Adult Protection Evaluation Form (see Appendix E). This must include information obtained from interviewing the report source, interviewing and/or observing the adult who may be in need of protective intervention and evaluating the level of risk. Information from collateral sources might

- also be available, including medical reports and commentary from neighbours and/or friends;
- make a decision to immediately remove an adult who may be in need of protective intervention to a place of safety. The decision must be determined by the level of risk present that indicates there is an immediate risk to the adult's health and safety and any least intrusive form of support (e.g., home support services) will not alleviate that danger.
  - accompany a peace officer to the adult's home to remove the adult, to a place of safety. The peace officer will use force if necessary. The method of transportation used to take an adult to a place of safety will vary dependent upon the situation.
  - accompany the adult who appears to need emergency medical attention, to a hospital emergency department. The attending physician must be advised the adult has been removed from his/her residence under the authority of the *Adult Protection Act* and a medical assessment must be initiated. At this time, it must be decided whether the adult may be certified for treatment under the *Mental Health Care and Treatment Act*. If the adult is treated under the *Mental Health Care and Treatment Act*, a decision to proceed with an investigation under the *Adult Protection Act* must be evaluated when treatment ends.
  - arrange a temporary placement such as a long term care facility, personal care home, or alternate family care home if necessary; and
  - secure property/assets located at the residence where the adult resided prior to being removed to a place of safety. This includes removing valuables such as cash, cheques, and jewelry. The social worker, accompanied by a witness, must record all removed items and place in a sealed envelope. The signature of the investigating social worker and the witness must be placed across the sealed portion of the envelope. The contents must be clearly marked on the outside of the envelope and all objects must be stored in a safe location within the regional health authority. In addition, the social worker must secure doors and windows.
  - Once the adult is removed to a place of safety the provincial director or designate must notify the Office of the Public Trustee. The public trustee must be responsible for the adult's income, assets and expenses. This may include contacting financial institutions, creditors, utilities and others as required. Whenever possible, a staff member from the Office of the Public Trustee must carry out the responsibilities at the adult's residence. However this will not always be geographically feasible so the public trustee, in consultation with the provincial director, may coordinate the effort with the investigating social worker.

Following the removal of an adult who may be in need of protective intervention to a place of safety, an investigation under the Act must proceed as outlined in subsection 2.3 of the manual.

<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 2: Adult in Need of Protective Intervention</b>	<b>Subsection 2.11: Appeal</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

25. (1) A person aggrieved by an order of a judge under this Act, or by the refusal of a judge to make an order, may appeal from the decision granting or refusing the order, where the judge is a judge of the
- (a) Provincial Court, to the Trial Division; and
  - (b) Trial Division, to the Court of Appeal,

and the provisions of the Judicature Act and the Rules of the Supreme Court, 1986 shall govern the proceedings on the appeal.

- (2) The Trial Division or Court of Appeal to which an appeal is made may set aside or confirm the order referred to in subsection (1) or may make an order that a judge under this Act can make or may, by order directed to the judge from whom the appeal is taken, require that judge to make an order as the circumstances of the case may require.

## **Policy**

An adult, who is the subject of an order, who disagrees with the order of a judge or the judge's refusal to make an order, may appeal the decision. The appeal must be heard by a judge of the Trial Division or the Court of Appeal, depending on the court where the initial order was made.

The appeal proceedings are governed by the *Judicature Act* and the *Rules of the Supreme Court, 1986*.

When the appeal is heard, a decision can be made to confirm an existing order, set aside an existing order; or make a new order.



<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 2: Adult in Need of Protective Intervention</b>	<b>Subsection 2.12: Proceedings</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

26. (1) A proceeding under this Act
- (a) is civil in nature;
  - (b) may be as informal as a judge may allow; and
  - (c) shall be held in private, unless otherwise ordered by the judge.
- (2) In a proceeding under this Act, a judge may admit and act upon
- (a) the evidence, including hearsay, that the judge considers relevant and reliable in the circumstances;
  - (b) an oral statement which has been video-taped;
  - (c) a written statement;
  - (d) a report the judge considers relevant, including a transcript, exhibit or finding in an earlier civil or criminal proceeding; and
  - (e) evidence taken and a declaration made at a prior proceeding under this Act or under a similar statute.
- (3) A proceeding under this Act may be conducted by means of teleconference, videoconference or other means of telecommunication.
- (4) A judge may
- (a) shorten the time period to serve a notice under this Act; or
  - (b) dispense with a requirement to serve notice of a proceeding under this Act.

## **Policy**

A hearing under the *Adult Protection Act* is a civil proceeding. The judge decides the level of formality for the hearing. The judge will admit and act upon evidence which can include hearsay, videotaped oral statements, written statements,

reports including those from an earlier civil or criminal proceeding, and/or evidence from a prior proceeding under the Act or another statute.

The judge may decide whether to shorten the time to serve a notice or to dispense with the requirement to serve a notice under the Act.



<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 3: General</b>	<b>Subsection 3.1: Service Plan and Review Committee</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provisions**

### Service plan

27. (1) A director or his or her designate shall prepare a service plan for every adult who is declared to be an adult in need of protective intervention.
  - (2) A schedule of review shall be incorporated into every service plan, and every service plan shall be reviewed at least every 6 months.
  - (3) Notwithstanding subsection (2), where there is a material change in the circumstances or condition of the adult in need of protective intervention, that adult's service plan shall be reviewed and modified as necessary
  - (4) An adult who is or may be in need of protective intervention has the right to participate in the development of his or her service plan, including amendments to it.
  - (5) Where a person was declared to be a neglected adult under the *Neglected Adults Welfare Act*, a service plan for that person shall be prepared or updated within 6 months of the coming into force of this Act.

### Review committee

28. (1) There shall be a review committee which shall review, at least once every year, the service plans of every adult who has been declared to be an adult in need of protective intervention, and that review shall be in addition to another review required under this Act.
  - (2) The review committee shall be comprised of the provincial director and all directors appointed by the regional health authorities with duties under this Act.

## **Policy**

A written service plan shall be completed containing details of the services and programs required to reduce risk and meet the care needs of an adult who may be in need of protective intervention (see Appendix H for template). This service plan is developed following an evaluation and investigation. This service plan is presented to the judge during court proceedings. Specific orders issued by the judge following a declaration of need for protective intervention are incorporated in the service plan.

An adult who has been declared neglected under the *Neglected Adults Welfare Act* (see Appendix B for a link to the Act) must have a service plan prepared by a social worker within six months following proclamation of the *Adult Protection Act*. The provincial director of adult protection will make this request.

To ensure the adult's level of risk is reduced the service plan must be evaluated and revised by the social worker minimally every six months. Whenever possible, the service plan must be completed and reviewed in consultation with the adult and/or his/her support person(s). A review of the service plan may occur more frequently if the adult's status changes.

All service plans must be reviewed annually by a review committee consisting of the provincial director of adult protection and the regional directors of adult protection. Consultation will occur with the public trustee who must provide an annual report about the management of each adult's financial affairs.

## **Procedure**

The social worker must use an inter-disciplinary approach to write a service plan for an adult who may be declared in need of protection. The service plan must be prepared initially following an evaluation and investigation. If the investigation results in a declaration by a judge that an adult is in need of protective intervention, information about the court order(s) must be incorporated into the service plan.

A review committee comprised of the regional directors of adult protection and the provincial director of adult protection must review annually the service plan of every adult declared in need of protection. This will provide consistency across regions with the required components of each plan; a regular six month review of each plan; and the inclusion of the adult in the review of his/her plan to determine whether the services are adequately meeting the adult's care needs.

Whether the adult declared in need of protective intervention is supervised by the regional director, or is in the care and custody of the provincial director, the

review committee provides the provincial director with a formal mechanism to determine whether each adult's care needs are being met.

The service plan must include:

- **Date of Service Plan**
- **Basic demographic information**
  - Name
  - Date of birth
  - Current address
  - Phone number
  - MCP #
  - Contact person/Spokesperson
  - Next of kin (if known)
  - Date of Declaration of Adult in Need of Protective Intervention (if applicable)
- **Service Needs**
  - Describe adult's current level of risk and need for service;
  - Describe the type of assistance provided, if necessary, to support the adult's method of communication;
  - Describe relevant medical/health information;
  - Describe professional services needed (medical, nursing, occupational therapy, physiotherapy, recreation, social work, speech language, etc.);
  - Describe supportive services needed (assistance with activities of daily living, foot care, home support, Meals on Wheels, transportation, socialization, etc.);
  - Outline caregiver responsibilities (assistance with activities of daily living, supervision of adult, implementation of court orders which may include the type of contact the adult may have with his/her abuser, etc.);
  - Identify cultural and spiritual sensitivities (awareness is needed so they can be incorporated in the plan);
  - Recommend type of living arrangement; and/or
  - Other relevant information.
- **Date of Court Hearing** (to declare an adult in need of protective intervention, if applicable)
- **Court Orders:**
  - Live independently under supervision of regional director;
  - Remain living under the care and custody of the person with whom the adult was living, with supervision from the regional director;
  - Live under the care and custody of a suitable person in another residence and under the supervision of the regional director; or

- Live under the care and custody of the provincial director of adult protection.
- Describe any additional court orders (e.g., the role of the public trustee to manage the adult's income and expenses).
- **Date of Service Plan Review**
- **Evaluation of Service Plan:**
  - Complete as needed but minimally every six months;
  - Coordinate the process through the social worker;
  - Evaluate the effectiveness of the professional and supportive services and caregiving responsibilities in reducing the adult's level of risk;
  - Evaluate the effectiveness of the adult's current living arrangement;
  - Identify changes necessary in the delivery of services to meet the care needs of the adult; and
  - Include the adult and/or his/her decision-making support person in the evaluation process with reasonable accommodations, if necessary.
- **Recommendations:**
  - Revise services following the review to adequately meet the adult's care needs;
  - Incorporate any recommendations, from the annual review of the provincial review committee and
  - Provide support, when necessary and within program guidelines, to the adult so he/she can understand and appreciate the proposed changes to the service plan.

<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 3: General</b>	<b>Subsection 3.2: Confidentiality</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

## **Statutory Provision**

29. (1) A person employed in the administration of this Act shall maintain confidentiality with respect to all matters that come to his or her knowledge in the course of that person's employment and shall not communicate the matters to another person, including a person employed by the government, except
- (a) with the consent of the person to whom the information relates;
  - (b) where the disclosure is required by another Act of the province;
  - (c) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information;
  - (d) where, in the opinion of a director, the disclosure is in the best interests of the person to whom the information relates;
  - (e) where the disclosure is necessary to the performance of duties or the exercise of powers under this Act;
  - (f) where the disclosure is to the next of kin of the adult in need of protective intervention, where that disclosure is, in the opinion of a director, in the best interests of the person to whom the information relates;
  - (g) where the disclosure is for research approved by a research ethics body; or
  - (h) for another purpose authorized by the regulations and the information released under this section shall only be used for the purpose for which it was released.
- (2) The department or an authority is not liable for damages caused to a person as a result of the release of information under subsection (1).
- (3) A person shall be denied access to information where

- (a) there are reasonable grounds to believe that the disclosure might result in physical, emotional or financial harm to that person or another person;
  - (b) where the disclosure would identify a person who made a report under section 12; or
  - (c) the disclosure could reasonably be expected to jeopardize an investigation under this Act or a criminal investigation.
- (4) Where information excepted from disclosure under this section can reasonably be severed, a person who is otherwise permitted to receive information under this section shall be given the remainder of the information.
- (5) A person has a right of access to information or records created or maintained respecting that person in the course of the administration of this Act except where
- (a) that information would identify a person making a referral under section 12; or
  - (b) there are reasonable grounds to believe that the disclosure might result in physical, emotional or financial harm to that person or another person.

## **Policy**

The collection, use and disclosure of information under the *Adult Protection Act* may be subject to the *Personal Health Information Act* (PHIA) and the *Access to Information and Protection of Privacy Act* (ATIPPA). Exceptions are explained in section 29 of the *Adult Protection Act*. See Appendix B for a link to *PHIA*, *ATIPPA* and the *Adult Protection Act*.

Confidentiality is to be maintained by employees at all times except when information is to be shared in accordance with section 29 of the *Adult Protection Act*. Under these circumstances, the employee and department will not be liable for damages caused as the result of sharing the information.

A person may be denied access to information if the release of the information could result in physical, emotional or financial harm for that person or another person; could identify a reporting source; and could jeopardize an investigation under the Act or a criminal investigation.

A person has the right to access his/her information and records maintained under the Act except when release of the information would identify the report

source or could result in physical, emotional and financial harm to that person or another person.

## **Procedure**

All employees involved with the administration of the Act must be familiar with and comply with the relevant sections of the *Personal Health Information Act* and the *Access to Information and Protection of Privacy Act* (see Appendix B for a link to these Acts).

It is the adult's right to have his/her personal health information kept confidential. Whenever possible, consent for the gathering and release of information must be obtained from the adult who is the subject of the information. Consent by the adult can be oral or written. The investigating social worker must record the adult's consent to release information in accordance with the procedures outlined within the regional health authority where the adult protection investigation is occurring.

Obtaining consent may not always be possible. A social worker evaluating an allegation of abuse or neglect does not have the power to collect, use or disclose information without the adult's consent. However, investigators under the Act may collect, use and disclose certain personal information or personal health information without the individual's consent.

Exceptions to maintaining confidentiality are outlined in section 29 of the Act. For example, disclosure of information could be required by another Act in the province for law enforcement purposes.

Accurate and up to date files must be maintained by the investigating social worker. The information about the adult who may be in need of protective intervention must be stored in a secure working environment. This includes handwritten and electronic records.

A person must be denied access to information if there is:

- a level of risk that could result in harm for the adult or another person;
- identification of the report source; or
- potential jeopardy to an adult protection investigation or criminal investigation.

The social worker, in consultation with his/her manager, must inform the adult of the process to obtain access to his/her personal information and records. The adult may be required to make the request for information in writing unless the individual is unable to write or has a condition that impairs his/her ability to write.





<b>ADULT PROTECTION ACT Provincial Policy Manual</b>	
<b>Section 3: General</b>	<b>Subsection 3.3: Other</b>
<b>Effective Date: June 30, 2014</b>	<b>Revised:</b>

**Good Faith Protection (Section 30)** means an action for damages does not lie against a trustee, an officer or an employee of an authority, an employee of the department or the minister personally for anything done or omitted in good faith in the performance or intended performance of a duty or the exercise or intended exercise of a power under the Act, or for a neglect or default in the performance, or intended performance, of a duty, or the exercise or intended exercise, of a power, in good faith, under the Act.

**Protection of Employee from Reprisal (Section 31)** means one or more of the following measures cannot be taken against an employee because the employee has, in good faith, made a report or participated in an investigation as required under the Act: (1) a disciplinary measure; (2) a demotion; (3) termination of employment; (4) a measure that adversely affects his or her employment or working conditions; or (5) a threat to take a measure related to the above.

**Labrador Inuit Rights (Section 3)** The Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of the Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of the Act.



## APPENDIX A

### RISK ASSESSMENT GUIDELINES AND CONTINUUM

#### Guidelines:

- Response to an adult's level of risk is assessed on a range from low to extremely high, as determined by the criteria outlined in the risk continuum.
- Evaluation of an adult's level of risk is an ongoing process. For example, an adult initially assessed as experiencing a moderate level of risk can escalate to a high or extremely high level of risk if the issues causing the moderate risk are not addressed.
- When determining whether an adult meets the criteria of an adult in need of protective intervention, a social worker must use established criteria as outlined in the risk continuum as well as professional judgment.
- A risk assessment helps determine whether a capacity assessment is needed.
- The capacity of the adult to understand and appreciate his or her level of risk is a contributing factor to the decision to proceed with an investigation under the *Adult Protection Act*
- All types of violence (as referenced within the *Adult Protection Act* and the Violence Prevention Initiative (<http://www.gov.nl.ca/vpi/index.html>) are reflected in the risk continuum.
- An adult's level of risk can be influenced, but not determined by:
  - Alleged abuse and/or neglect;
  - Diagnosis or disability;
  - Inability to communicate effectively;
  - Ability to function with daily routines such as medication compliance, personal care and meal preparation; and/or
  - Type of involvement from family and/or friends.

#### Continuum:

##### Extremely High Risk:

- Response time is immediate;
- The adult's life or health is in imminent danger; and
- The adult appears to lack the capacity to understand or appreciate the risks associated with his or her situation.
- Examples of extremely high risk include:
  - Physical injury that requires immediate medical attention (e.g., fractures, internal injuries, head trauma, burns);
  - Threats to harm the adult;
  - Threats to harm oneself;
  - Danger to others;
  - Deprivation of food, shelter and heat;
  - Deprivation of life saving medication;
  - Forced sexual acts;

- Physical injury resulting from an 'honour' crime;
- Abandonment/homelessness; and/or
- Negative or no involvement from family/friends.

#### High Risk:

- Response time is within 24 hours;
- The adult's life or health is threatened with potential harm; and
- The adult appears to lack the capacity to understand or appreciate the risks associated with his or her situation.
- Examples of high risk include:
  - Physical injury that results in pain, discomfort or injury (i.e., beating kicking, biting, force feeding);
  - Social isolation;
  - Unwarranted use of medication;
  - Threats to abandon;
  - Threats to withhold food and money;
  - Withdrawal of essential care (e.g., assistance with incontinent care and meal preparation); and/or
  - Negative or no involvement from family/friends.

#### Moderate Risk:

- Response time is within 48 hours;
- The adult is living with risk that threatens his or her independence, self-worth and quality of life; and
- The adult appears to have the capacity to understand and appreciate the risks associated with his or her situation.
- Examples of moderate risk include:
  - Threats of non-life threatening physical injury (e.g., slapping, bruising);
  - Verbal aggression;
  - Name calling;
  - Unwelcome sexual comments or jokes;
  - Not allowing access to bank accounts;
  - Not allowing religious or cultural practices;
  - Not reporting or taking action on a medical condition that is not immediately life threatening;
  - Inadequate home support services (e.g., no assistance with bathing or meal preparation; and/or
  - Limited involvement from family/friends.

#### Low Risk:

- Response time is within 5 clear days;
- The adult is living with some risk factors that might impact his or her independence, self-worth and quality of life; and
- The adult appears to have the capacity to understand and appreciate the risks associated with his or her situation.

- Examples of low risk include:
  - Lack of cleanliness;
  - Inadequate nutrition;
  - Inadequate bathing;
  - Forgetfulness taking medication; and/or
  - Limited involvement from family/friends.

## RISK ASSESSMENT GUIDELINES AND CONTINUUM

<b>Extremely High</b>	<b>High</b>	<b>Moderate</b>	<b>Low</b>
Immediate Response	Respond within 24 hours	Respond within 48 hours	Respond within 5 clear days
<ul style="list-style-type: none"> <li>○ Physical injury that requires immediate medical attention (e.g., fractures, internal injuries, head trauma, burns)</li> <li>○ Threats to harm the adult</li> <li>○ Threats to harm oneself</li> <li>○ Danger to others</li> <li>○ Deprivation of food ,shelter and heat</li> <li>○ Deprivation of life saving medication</li> <li>○ Forced sexual acts</li> <li>○ Physical injury resulting from an “honour” crime</li> <li>○ Abandonment/homelessness</li> <li>○ Negative or no involvement from family/friends</li> <li>○ Appears to lack capacity</li> </ul>	<ul style="list-style-type: none"> <li>○ Physical injury that results in pain, discomfort (e.g., beating, kicking, biting, force feeding)</li> <li>○ Social isolation</li> <li>○ Unwarranted use of medication</li> <li>○ Threats to abandon</li> <li>○ Threats to withhold food and money</li> <li>○ Withdrawal of essential care (e.g., assistance with incontinent care and meal preparation)</li> <li>○ Negative or no involvement from family/friends</li> <li>○ Appears to lack capacity</li> </ul>	<ul style="list-style-type: none"> <li>○ Threats of non-life threatening physical injury (e.g., bruising, slapping)</li> <li>○ Verbal aggression</li> <li>○ Name calling</li> <li>○ Unwelcome sexual comments or jokes</li> <li>○ Not allowing access to bank accounts</li> <li>○ Not allowing religious or cultural practices</li> <li>○ Not reporting or taking action on a medical condition that is not immediately life threatening</li> <li>○ Inadequate home support services (e.g., no assistance with bathing or meal preparation</li> <li>○ Limited involvement from family/friends</li> <li>○ Appears to have capacity</li> </ul>	<ul style="list-style-type: none"> <li>○ Lack of cleanliness</li> <li>○ Inadequate nutrition</li> <li>○ Inadequate bathing</li> <li>○ Forgetfulness taking medication</li> <li>○ Limited involvement from family/friends</li> <li>○ Appears to have capacity</li> </ul>

## APPENDIX B

### ELECTRONIC LINKS

1. *Adult Protection Act*  
(<http://www.assembly.nl.ca/legislation/sr/statutes/a04-01.htm>)
2. *Adult Protection Regulations*
3. *Personal Health Information Act*  
(<http://www.assembly.nl.ca/legislation/sr/statutes/p07-01.ht>)
4. *Violence Prevention Initiative* (<http://www.gov.nl.ca/vpi/index.html>)
5. *Mental Health Care and Treatment Act*  
(<http://www.assembly.nl.ca/legislation/sr/statutes/m09-1.htm>)
6. *The Public Trustee Act, 2009*  
(<http://www.assembly.nl.ca/legislation/sr/statutes/p46-1.htm>)
7. *The Neglected Adults Welfare Act*  
(<http://www.assembly.nl.ca/legislation/sr/statutes/n03.htm>)
8. *The Advance Health Care Directives Act*  
(<http://www.assembly.nl.ca/legislation/sr/statutes/n03.htm>)
9. *Mentally Disabled Persons' Estates Act*  
(<http://www.assembly.nl.ca/legislation/sr/statutes/m10.htm>)
10. *Access to Information and Protection of Privacy Act*  
(<http://assembly.nl.ca/Legislation/sr/statutes/a01-1.htm>)





**APPENDIX C**

**ADULT PROTECTION REPORT FORM**

**File Number:**

**Date Report Received:**

**Demographic Information**

Report Source:			
Name:	E Mail Address:		
Address:	Phone #:		
Relationship to Adult:	Confidential: Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Adult who may be in need of protective intervention:			
Name:	Date of Birth/Age:		
Permanent Address:	MCP Number:		
Phone #:	Emergency Contact:		
Current Location of Adult:	Substitute Decision Maker:		
Source of alleged abuse/neglect:			
Name:			
Permanent Address:			
Phone #:			
Relationship to Adult:			
Comments:			
Other witnesses/Sources of information:			
Name:	Address:	Phone #:	Relationship to Adult:

Name:	Address:	Phone #:	Relationship to Adult:
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**Issue(s)/Allegation(s)**

Type(s) of issues/allegations:					
Neglect	<input type="checkbox"/>	Financial Abuse	<input type="checkbox"/>	Spiritual Abuse	<input type="checkbox"/>
Self-Neglect	<input type="checkbox"/>	Emotional Abuse	<input type="checkbox"/>	Cultural Abuse	<input type="checkbox"/>
Physical Abuse	<input type="checkbox"/>	Psychological Abuse	<input type="checkbox"/>	Sexual Abuse	<input type="checkbox"/>
Verbal Abuse	<input type="checkbox"/>	Other: _____			
Description:					

**Summary of Report Information**

Is adult aware of report?    Yes <input type="checkbox"/> No <input type="checkbox"/>
Is assistance needed with communication?    Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please describe:
Level or Risk: <input type="checkbox"/> Extremely High (respond immediately) <input type="checkbox"/> High (respond within 24 hours) <input type="checkbox"/> Moderate(respond within 48 hours) <input type="checkbox"/> Low (respond within 5 clear days)

	<i>Name</i>	<i>Position</i>	<i>Telephone #</i>	<i>Date</i>
<b>Completed by</b>				
<b>Assigned to</b>				



## **APPENDIX D ADULT PROTECTION REPORT FORM USER GUIDE**

This user guide will provide you with direction for completion of the Adult Protection Report form.

### File Number:

- If the report is received by the RNC/RCMP, the file number will reflect their internal filing system.
- Once the report is received by the RHA, an internal file number will be assigned.

### Date Report Received:

- Record the date the report is actually received. In rare circumstances, this may be different from the date the report is signed.

### Demographic Information:

- Ask the report source to provide you with contact information. The social worker who must evaluate the report may then contact the report source in order to gather additional information, if needed. Ask the report source if he/she wishes for the contact information to remain confidential.
- Record contact information for the adult who may be in need of protective intervention. There might be more than one adult. For example, within a relationship, one partner might be neglecting the other as well as self-neglecting. Complete a separate form for each adult, if more than one adult may be in need of protective intervention
- Obtain and record the MCP number.
- Record an emergency contact, if known. This could be helpful if an evaluator tries to determine whether there is support from family/friends.
- Record the current location of the adult, if different from the adult's address. For example, the adult may be in hospital.
- Record the name of a substitute decision maker, if known.
- Record demographic information about the source of alleged abuse/neglect including the name, address, phone number, and relationship to adult.
- If known, include in the comments section, any other relevant information such as knowledge of a criminal investigation or charges pending.

- Record demographic information about any other witnesses or sources of information such as another person living in the adult's home.

Issues/Allegations:

- Identify and provide a detailed description of the indicators of the issues/allegations of neglect, self-neglect or abuse.

**Neglect** means the failure to provide care, assistance, guidance or attention to an adult who lacks capacity that causes, or is reasonably likely, within a short period of time, to cause to the adult serious physical, psychological or emotional harm or substantial damage to, or substantial loss of assets. It may be intentional or unintentional. This refers to situations in which basic needs such as food, water, shelter, heat, clothing, hygiene, and safety are not being met by others who may be responsible for the adult's care. Neglect may also include situations when proper medical, dental or psychiatric treatment is not being provided.

- **Self-neglect** means the failure of an adult who lacks capacity to take adequate care of himself or herself where that failure causes, or is reasonably likely, within a short period of time, to cause serious physical or psychological harm or substantial damage to or substantial loss of assets. Self-neglect includes (1) living in grossly unsanitary conditions; (2) suffering from an untreated illness, disease or injury that, within a short period of time is likely to cause physical or psychological harm; (3) suffering from malnutrition to the extent that, without intervention, the adult's physical or mental health is likely to be severely impaired; and (4) creating a hazardous situation that will likely cause serious physical harm to the adult or others or cause substantial damage to or substantial loss of the adult's assets.
- **Abuse** means the deliberate mistreatment of an adult who lacks the capacity to protect himself or herself that causes or is reasonably likely, within a short period of time, to cause the adult (1) serious physical, psychological or emotional harm, or (2) substantial damage to or substantial loss of assets. Abuse includes intimidation, humiliation and sexual assault. The following types of abuse are described through the *Provincial Violence Prevention Initiative* (see Appendix B). In summary:
  - *Physical Abuse* involves using a part of the body or an object to control an adult. An act of violence or rough treatment may cause injury or physical discomfort to the adult. Such behavior includes any kind of physical

- assault such as slapping, pushing, pulling, kicking, and punching. It includes injury with any object or weapon; or deliberate, inappropriate exposure to severe weather. It also includes inappropriate and/or forcible confinement or restraint such as tying an adult to a bed or chair.
- *Sexual Abuse* occurs when the adult takes part in sexual activity to which he/she is incapable of consenting. The sexual integrity of the adult is violated. It includes unwanted acts such as kissing, grabbing, fondling and forced sexual intercourse.
  - *Financial Abuse* is illegally or improperly using an adult's money, property or assets. The adult is incapable of giving consent to allow someone to control the adult's finances. This can cause substantial damage to or substantial loss of the adult's assets. Examples of financial abuse may include withholding or spending another adult's money without legal authorization, or forcing an adult to sign a legal document without his/her full appreciation of the implications of signing.
  - *Emotional Abuse* occurs when something is said or done to make an adult feel worthless or stupid. Some examples are humiliating or making fun of the adult, using silent treatment or calling the adult hurtful names.
  - *Psychological Abuse* occurs when someone uses threats to cause fear or gain control. Some examples include threatening to harm, threatening to abandon or using undue pressure to sign legal documents.
  - *Verbal Abuse* occurs when someone uses language, spoken or written, to cause the adult harm. Some examples include yelling, lying or telling an adult he/she is worthless or nothing but trouble.
  - *Spiritual Abuse* occurs when someone uses an adult's spiritual or religious beliefs to control the adult. Some examples include making fun of the adult's beliefs and practices or preventing the adult from participating in religious services.
  - *Cultural Abuse* occurs when an adult is harmed because of his/her cultural, religious or traditional practices. For example, "honour" crimes may be committed resulting in physical harm to or abandonment of the adult.

### Summary of Report Information:

- Indicate whether the adult is aware the report has been made. This information will be provided by the report source. The adult's knowledge of the report must be verified directly with the adult when initial contact is made during the evaluation.
- Record any type of communication assistance which may be required and is available within program guidelines. For example a spokesperson, an interpreter or a technical aid may provide support.
- Use the *Risk Assessment Guidelines and Continuum* (see Appendix A) to complete an initial assessment of the adult's level of risk. This is a preliminary assessment based on information provided by the report source. It must be assessed further during the evaluation completed by a social worker.
- If a social worker completes the report form it must be signed, and dated.
- If a peace officer completes the report form it must be signed, dated and forwarded immediately to the social worker designated to receive the report. It is recommended that the peace officer contact the designated social worker, manager or regional director to confirm receipt and request immediate review.



**APPENDIX E**

**ADULT PROTECTION EVALUATION FORM**

**File Number:**

**Demographic Information (Adult who may be in need of protective intervention):**

Name:	Date of Birth/Age:
Permanent Address:	MCP Number:
Phone #:	Emergency Contact:
Current Location of Adult:	Substitute Decision Maker:

**Report Source Information**

Relationship to Adult:
Details about Abuse/Neglect Allegations:
Past Involvement with Adult Protection:

**Adult Who May be in Need of Protective intervention**

Does adult consent to evaluation? Yes <input type="checkbox"/> No <input type="checkbox"/>
Is assistance needed with communication? Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please describe:

Summary of Interview(s)/Observation(s):

Current Services (formal and informal):

**Risk Evaluation**

Description of Risk Factors:

Level of Risk: Extremely High  High  Moderate  Low

**Collateral Information**

Interdisciplinary Input:

Other Sources:

**Intervention Plan**

Further Action Required    Yes     No

---

Referral to other Services/Resources Yes     No   
If yes, please describe:

Investigation warranted (*must consult with regional director*):

- Immediate (same day)
- Within 24 Hours
- Within 48 Hours
- Within 5 clear days

\_\_\_\_\_  
Social Worker

\_\_\_\_\_  
Date

\_\_\_\_\_  
Manager

\_\_\_\_\_  
Date



## APPENDIX F

### ADULT PROTECTION EVALUATION FORM USER GUIDE

This user guide will provide you with direction for completion of the Adult Protection Evaluation form.

#### File number:

- Transfer to the evaluation form, the RHA file number assigned when the report was received.

#### Demographic Information:

- Record contact information (see report form) for the adult who may be in need of protective intervention.
- Add any additional information that may be missing.

#### Report Source Information:

- If possible, contact the report source, identify the relationship with the adult and record any additional information about the alleged abuse and/or neglect. Assess the relationship between the report source and the adult who may be in need of protective intervention. This will assist you in determining whether the information is valid and reliable. For example, how long has the report source known the adult? What is the relationship between the report source and the adult?
- If relevant, include information about the adult's past involvement with adult protection, such as the type of allegation/issue made and the intervention that occurred.

#### Adult who may be in Need of Protective Intervention:

- Explain to the adult the reason why a report has been made.
- Try to obtain consent from the adult to proceed with the evaluation. If the adult does not consent, you cannot proceed with the interview or with gathering collateral information unless an investigation is launched.
- Identify what, if any, assistance with communication, is needed to proceed with the evaluation.
- Determine whether the adult understands and appreciates the level of risk associated with his/her current living situation.
- Record a summary of the communication using clear and accurate language according to program guidelines.

- It is preferable to interview the adult. If this is not possible, the adult's surroundings can be observed and information recorded.
- Record information about any services/supports the adult is receiving, formally and/or informally. For example, a family member might provide transportation to medical appointments. A home care agency worker might assist with personal care.

### Risk Evaluation

- Using the *Risk Assessment Guidelines and Continuum*, continue to assess the adult's current level of risk.
- Describe the risk factors and indicate the level of risk.
- Consult with your supervisor immediately if the adult is assessed to be at an extremely high or high level of risk.

### Collateral Information

- Remember that consent from the adult is required to gather collateral information.
- Record results of consultation with the interdisciplinary team. This may mean consultation with a family physician, geriatrician, home and community care nurse, occupational therapist or other professional.
- Record information provided by supportive sources. For example neighbours and friends might have observed some recent behavioral changes. These changes may be inconsistent with the adult's behavioral history.

### Intervention Plan

- Determine whether further action is required.
- If no further action is required; sign and date the form and forward to the manager for review and signature.
- If yes and further action is required you have two choices:
  - 1) Refer the adult to other services/supports/resources.
    - Describe the type, frequency and source of the service.
    - Identify formal service providers such as a community support social worker.
  - 2) Recommend that an investigation proceed if the adult refuses services/supports/ resources, and appears to lack understanding and appreciation of his/her level of risk.
    - Based on the identified level of risk determine the response time (immediate, within 24 hours, within 48 hours or within five clear days).
    - Response time should be determined in consultation with the regional director (or designate).

- The social worker will sign and date the evaluation form.
- The manager will sign and date the evaluation form.





**APPENDIX G**  
**COURT FORMS**

*Information to Obtain a Warrant to Enter*

*Warrant to Enter*

*Information to Obtain a Telewarrant to Enter*

*Tele-warrant to Enter*

*Information to Obtain a Warrant to Remove*

*Warrant to Remove*

*Information to Obtain a Telewarrant to Remove*

*Telewarrant to Remove*



## APPENDIX H

### ADULT PROTECTION SERVICE PLAN

*(See Section 3.1, Policy Manual for Instructions)*

**Date:**

**Basic Demographic Information:**

- Name
- Address
- Phone#
- MCP#
- Contact Person/Spokesperson
- Next of Kin(if known)
- Date of Declaration of Adult in Need of Protective Intervention (if applicable)

**Service Needs** (Provide details):

**Date of Court Hearing** (to declare an adult in need of protective intervention, if applicable):

**Court Orders (including Court file number):**

**Date of Service Plan Review** (Minimally every six months):

**Evaluation of Service Plan** (Provide details):

**Recommendations** (Provide details):

Completed by:

\_\_\_\_\_  
Social Worker

\_\_\_\_\_  
Date

Reviewed by:

\_\_\_\_\_  
Manager

\_\_\_\_\_  
Date

# APPENDIX I

## ADULT PROTECTION DECISION TREE

### REPORT

- Some indication of neglect, self-neglect and/or abuse.
- Some lack of understanding or appreciation of level of risk.
- Social worker (long term care, acute care or community social worker), peace officer or manager records information on Adult Protection Report Form.

### EVALUATION

- Social worker, who receives the report, completes assessment within designated time-frame based on level of risk.
- Social worker completes Adult Protection Evaluation Form and submits to Manager/Director.

No further intervention required.

Professional/supportive services are offered and accepted.

An adult protection investigation is initiated following consultation with the Regional Director. The Provincial Director is informed.

### INVESTIGATION

Community social worker completes an investigation including a thorough risk assessment; coordination of a capacity assessment and development of a service plan. Consultation continues with the Regional Director. The Provincial Director is informed.

No further intervention required.

Professional/supportive services are offered and accepted.

The Provincial Director makes an application to Court to declare an adult to be in need of protective intervention.

### REVIEW

The status of each adult declared in need of protective intervention is reviewed annually, or as required, by a Review Committee consisting of the Provincial Director of Adult Protection and the Regional Directors of Adult Protection.

Declaration repealed.

Declaration remains.

Declaration remains with revisions to service plan.