



THE OFFICE OF THE COMMISSION
FOR THE
PROTECTION OF PERSONS IN CARE

1700-242 Hargrave Street
Winnipeg, MB R3C 0V1
Canada

Strengthening Protection for Persons in Care

**Summary of Research, Findings and Recommendations for
the Adult Abuse Registry Committee & the Adult Abuse Registry**

**The Honourable William J. Burnett, K.C.
Commissioner**



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Table of Contents

	<u>Page Nos.</u>
Summary of Research, Findings and Recommendations for the Adult Abuse Registry Committee & the Adult Abuse Registry	1 – 6
<u>Appendices</u>	
Appendix 1 The Adult Abuse Registry Committee	7 – 11
Appendix 2 The Adult Abuse Registry	12 – 14
Appendix 3 The AARC & The AAR – Jurisdictional Scan	15 – 23



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Overview of the AARC and the AAR

The Adult Abuse Registry Committee (the "AARC") and the Adult Abuse Registry (the "AAR") were established pursuant to *The Adult Abuse Registry Act*, CCSM c A4 (the "AAR Act").

The AARC is required to review reports of abuse or neglect of a specified adult that are received from the Protection of Persons in Care Office (the "PPCO") or the executive director appointed pursuant to *The Adults Living with an Intellectual Disability Act*, CCSM cA6.1 (the "ALIDA"). Under the AAR Act, a "specified adult" means a "specified adult" as defined in the ALIDA and a "patient" as defined in *The Protection for Persons in Care Act*, CCSM cP144 (the "PPCA"). In particular, the AARC is required to determine if abuse or neglect of a specified adult has occurred, and where it finds that such abuse has occurred, to decide whether the offender's name should be placed on the AAR.

In relation to the PPCO, where an investigator believes that a person in care has been abused and/or neglected, that the person who committed the abuse and/or neglect meets the criteria set out in the regulations, and that there are no extenuating circumstances as set out in the regulations, the PPCO must report the matter to AARC (s. 8.2(1)). The PPCO reports to the AARC by completing a template AARC form. The reporting to the AARC does not include a copy of the PPCO investigation report. Once this process is completed, the role of the PPCO is essentially at an end unless the PPCO receives a request from the AARC for further information about its report. The PPCO may investigate the matter and provide the AARC with further information that relates to the report (s.8.2(2)).

The AAR is a database which records the identity of individuals who have been found to have abused or neglected specified adults. Employers can use this tool to screen potential employees and volunteers who want to work directly with specified adults. The AAR is established and maintained by the registrar of the Adult Abuse Registry Unit, in accordance with the AAR Act.

Descriptions of the processes utilized by the AARC and AAR are set out in **Appendices 1 and 2**.

Legislative and Operational Approaches in Other Jurisdictions

The Commission completed a review of legislative and operational approaches with respect to the protection of persons in care and registries across Canada, in other common law jurisdictions (United Kingdom and Australia) and in the United States. See **Appendix 3** for a summary of the jurisdictional scan.

Stakeholder Submissions

With the assistance of Manitoba Health and the Department of Families, input on the proposed new office for the PPCO was solicited from a wide range of interested stakeholders, including health facilities, hospitals, personal care homes and institutions, regional health authorities, public interest and advocacy groups, healthcare unions, professional associations, private and government agencies and officials, representatives of seniors, visible minorities, persons with physical and intellectual disabilities, Indigenous peoples and others. In addition, the Commission obtained input from senior officials in the PPCO, the AARC and the AAR, and from Special Counsel appointed by the Province to review past files handled by the PPCO.

In this context, the Commission noted that five stakeholders made specific submissions concerning the AARC and the AAR. Their submissions are summarized below:

1. The Alzheimer's Society of Manitoba requested that the number of PPCO referrals to the AARC be reported annually.
2. The joint submission from the Association of Regulated Nurses of Manitoba and the Canadian Nurses Protective Society recommended changes to the AAR Act "to better delineate the obligations of the Committee when determining whether an individual should be placed on the Adult Abuse Registry." These stakeholders also recommended that the AAR Act be reviewed to consider whether it is necessary to expand upon the obligations of the AARC when acting upon a report from the PPCO. Specifically:

The language contained in [sections] 19-21 suggest[s] that the duty of the Committee is to undertake a summary review of the facts before coming to a conclusion as to whether the person who is the subject of the report engaged in abuse or neglect. We submit that the safeguards contemplated at [sections] 19-21 of the AARA are adequate only if the PPCO engages in a rigorous investigation process that incorporates all necessary elements of procedural fairness. Otherwise, the Committee's approach must be much more rigorous and enable all procedural fairness requirements, including

the complete disclosure of all the evidence that is available to the Committee.

3. The Vulnerable Persons Task Force requested greater use of the AAR and commented upon the limited number of cases that reach the AAR.
4. The Provincial Protection Investigations Unit suggested additional potential investigation outcomes or conclusions by the PPCO such as: substantiated with referral to the AARC; substantiated without referral to the AARC; inappropriate conduct; and unsubstantiated. The Unit also recommended additional training for the AARC.
5. The AARC agreed with the proposed enhanced evidence gathering powers for the new office and noted that they would be beneficial to the AARC's process. The AARC expressed concern regarding the timeliness of the referrals it receives, often a year or more post-incident. The AARC said that an inability to serve alleged offenders has often frustrated the AARC process, and it recommended a legislative amendment to provide for alternate forms of service.

Recommendations of the Commission

The Commission's recommendations in relation to the practices and procedures of the AARC are as follows:

- (a) upon receipt, a report of abuse or neglect must be dealt with on a timely basis, and a decision by the AARC as to whether the name of the person should be entered on the AAR must be rendered within 180 days;
- (b) except in limited circumstances, the PPCO investigation report provided to the AARC should be provided to the AARC in unredacted form;
- (c) any recommendations and/or directions to a health facility, along with any reply from the health facility, should be provided to the AARC;
- (d) upon receipt of a referral, the Notice of Opportunity to Provide Information (Form AAR-1) accompanied by a copy of the investigation report, any recommendations and/or directions to the health facility and the response from the health facility, must be sent to the alleged offender, and the alleged offender must be given an opportunity to provide information to the AARC;
- (e) alternate forms of service of Form AAR-1 upon the alleged offender must be established to move matters forward in a timely manner;
- (f) consideration should be given to permitting hearings of the AARC to be conducted by one person;
- (g) the proposed PPCO office should not have carriage of any proceedings before the AARC or any court proceedings;

- (h) if the alleged offender provides new information to the AARC, the AARC should have the discretion to decide that the allegations are “unsubstantiated” or “inconclusive”;
- (i) the AARC should have the discretion to set the length of time that a person’s name will remain on the AAR;
- (j) the report of the AARC should be given to: the registrar of the AAR; the alleged offender; if the abuse or neglect occurred during the course of the alleged offender’s employment, their employer at the time of the incident and their current employer (if different); the specified adult or their committee; and (where applicable) the police;
- (k) the annual report of the AARC should be provided to the Minister and the Legislative Assembly (the “Assembly”) and should include:
 - the performance of the AARC;
 - the number of referrals received in the preceding year from the PPCO and the number of referrals received in the preceding year from the executive director under the ALIDA;
 - the number of reports issued in the preceding year, including the number of persons entered on the AAR or referred to the police;
 - any referrals in which the specified timelines were not met and the reasons for the failure to meet the specified timelines;
 - the number of court proceedings in the preceding year;
 - training received by the AARC staff in the preceding year; and
 - any recommendations to improve the AARC.

The Commission’s recommendations in relation to the practices and procedures of the AAR are as follows:

- (a) alternate forms of service of the Notice of Intended Entry on the Registry (Form AAR-3) should be established to move matters forward in a timely manner;
- (b) there should be a requirement to obtain leave from a judge of the Court of King’s Bench for an appeal from the AARC where the alleged offender failed to provide information to the AARC;
- (c) the record in the appeal hearing before the Court should be restricted to the materials before the AARC, and new evidence should only be permitted with leave of the Court;
- (d) the standard of review at the appeal hearing should be consistent with administrative law principles and deference to the AARC report;
- (e) notification as to whether or not the alleged offender’s name has been placed on the AAR should be sent to the same persons who received the AARC report. Such notification should include the length of time the name will remain on the AAR; and

(f) the annual report of the AAR should be provided to the Minister and the Assembly and should include:

- the performance of the AAR;
- the number of reports received in the preceding year;
- the number of appeals filed and the number of appeals that proceeded before the Court, including those where leave to appeal was sought;
- the number of persons whose names were entered on the AAR, including the number of names that were directed by a court to be entered on the AAR;
- the number of inquiries for access to the AAR (ss. 41 and 42 of the AAR Act);
- the number of written objections the AAR received regarding an alleged error or omission and the outcome (s. 43);
- training received by the AAR staff in the preceding year; and
- any recommendations to improve the AAR.

Centralized Registries for Health Care Workers

As noted in Appendix 3, another approach that has been taken in several Canadian jurisdictions is a centralized registry for health care workers not regulated by a self-governing profession.

British Columbia maintains a Care Aide & Community Health Worker Registry. The Registry is not created by legislation and is based on contracts between publicly funded employers and the British Columbia Ministry of Health or a health authority. According to a recent report prepared by the Canadian Centre for Elder Law, these contracts require any employer receiving public funding in British Columbia to hire health care aides who are on the Registry and to report any allegation of abuse or neglect towards a client by a health care aide. Employers must report to the Registry if a health care aide has been suspended or fired because they have allegedly abused or neglected a client, patient or resident, which may be followed by investigation depending on the circumstances.

Alberta maintains a Health Care Aide Directory, which is administered by the College of Licensed Practical Nurses. All health care aides that work for publicly funded employers must maintain enrolment in the directory. Abuse complaints continue to be governed by the Alberta *Protection for Persons in Care Act*.

Ontario, following BC's example, launched a personal support registry in 2011 but it was discontinued in 2016. In 2021, Ontario introduced new legislation which could reintroduce a similar registry.

And in 2022, Nova Scotia implemented a mandatory registry for health care aides. Previously, Nova Scotia had a voluntary registration process.

There are strengths and weaknesses associated with each of these approaches.

The Commission's principal mandate focused on the creation of a new office to replace the PPCO, and consultations with stakeholders were generally restricted to that issue. In the July 2023 report

of the Auditor General delivered to the Government of Manitoba (the “Province”), it was noted that he did not audit the AARC or the AAR as both were outside the scope of his investigation. In reviewing the operations and processes of the AARC and the AAR, it became evident to the Commission that employers and organizations have come to rely on the AAR as a reference check point when seeking to hire employees or enlist volunteers who will have contact with vulnerable persons, including children. In this context, the Commission believes that further review and consultation is required before more substantive structural changes can be recommended in relation to the AARC and the AAR.

The Commission notes that while significant input on the new office (to replace the PPCO) was solicited from a wide range of interested stakeholders, input with respect to the AARC and the AAR was obtained primarily from senior officials in the PPCO, the AARC and the AAR, and from Special Counsel appointed by the Province to review past files handled by the PPCO.

The Commission has recommended that within five years after the legislation creating the new office comes into force, a committee of the Assembly should undertake a comprehensive review of the operation of the legislation and submit a report to the Assembly. This comprehensive review, coupled with the information to be submitted to the Assembly by the new office, the AARC and the AAR during that five-year period, will provide guidance on future improvements to, or the restructuring of, the AARC and the AAR.

The Commission believes that its recommendations in relation to the AARC and the AAR would improve their present operations and processes, and would enhance confidence in the adult abuse registry system.

THE ADULT ABUSE REGISTRY COMMITTEE

The AARC's process from receipt of a report to its decision that a name should or should not be placed on the AAR is set out below.

The AAR Act

The AARC is established by s. 3 of the AAR Act. According to s. 17, upon receiving a report from a designated officer (the executive director appointed under the ALIDA or the Minister responsible for the PPCA or their delegate), the AARC must review it.¹ The AARC may at any time request further information from the designated officer in relation to the report, including personal information and personal health information (s. 18).

If the AARC suspects that abuse or neglect has occurred, it must give the suspect an opportunity to provide information to the AARC (s. 19), in accordance with the *Adult Abuse Registry Regulation*, MR 164/2012 (the "Regulation"). According to s. 20 of the AAR Act, the AARC must review the report and any further information provided by the designated officer, as well as any information provided by the suspect. Thereafter, the AARC must form an opinion as to whether the suspect abused or neglected the specified adult (as reported) and form an opinion as to whether the name of that person (and the particulars of the abuse or neglect) should be entered into the AAR (s. 21). The required particulars are set out in s. 15 of the Regulation (s. 21(2) of the Act). The AARC reports its opinions to the suspect, their current or former employer and to their professional body (if any), as well as to the designated officer that referred the matter to the AARC (s. 21(1.1)).

¹ See s. 8.2 of *The Protection for Persons in Care Act*, CCSM c P144 and the *Protection for Persons in Care (Adult Abuse Registry) Regulation*, MR 21/2013, as amended by M.R. 158/2023. Section 3 of this recently amended regulation describes the criteria and extenuating circumstances when the use of physical force is not reportable. Section 3(5) states:

When the interaction involves a service provider, the interaction is not considered to be reportable if the minister is satisfied that a substantial contributing factor to the service provider's act or omission is the failure of the provider's employer to ensure that

- (a) the provider is appropriately trained and supervised to carry out their duties or
- (b) adequate levels of physical or human resources are available to maintain a reasonable level of safety for the patient.

In addition, the minister must be satisfied that the service provider's decision to commit or omit the act was reasonable at the time.

Section 3(6)(b) refers to situations where "the abuse or neglect did not occur because the high behavioural support needs of the patient were not adequately addressed by the service provider or the provider's employer." Section 4 prescribes the contents of the minister's report to the AARC.

If the AARC decides that the suspect has abused or neglected the specified adult and that the suspect's name should be entered in the AAR, it must produce a report (s. 22). As outlined in s. 22(2), the report is given to the registrar, the specified adult (unless circumstances as set out the Regulation exist) and their representative.² Notably, if the AARC does not find that the suspect abused or neglected the specified adult, the legislation does not require notification of that finding to the specified adult or their representative.

According to s. 23, "the proceedings of the committee are to be conducted in an informal manner and no opinion or report of the committee is invalid because of a lack of formality."

The Regulation

The Regulation requires that the AARC maintain records of its meetings, including a list of the reports received from designated officers and the decisions made with respect to each report (s. 3). Designated officers (or their delegates) are permitted to attend the portion of an AARC meeting pertaining to a report that they provided (s. 5).

Section 8 of the Regulation details the notice to be given to a suspect and the related service requirements. It prescribes Form AAR-1, "Notice of Opportunity to Provide Information" ("NOPI"), as well as Form AAR-2, "Affidavit of Service of Notice of Opportunity to Provide Information". The suspect must provide their response to the AARC within 30 days after being notified (s. 9).

Section 10 indicates that decisions of the AARC are to be made by a majority vote.

Section 13 sets out the information that the AARC must give to the registrar about a person whose name is to be entered in the AAR.

Information Gathered from the AARC

The information that follows is based on information and/or documentation provided to the Commission by the AARC staff.

Referrals of abuse or neglect come from the PPCO and the Department of Families. They are normally received electronically, in a specified form. They are typically accompanied by the investigation report and any other pertinent supporting information, such as a care plan from the facility or other background information. In some circumstances, information regarding witnesses or personal health information that is not relevant to the case is redacted.

There is an AARC policy manual which was approved by the Minister of Families in 2015. A draft AARC policy manual that was prepared in 2023 is currently being used, although it has not yet received official ministerial approval.

² See also s. 12 of the Regulation.

Upon receipt of a referral, a file is opened. If the police are involved, the AARC will ask the police for their report, if it has not been provided. The AARC tracks related court proceedings.

After a file is opened, the first AARC panel hearing is held. The time between receipt of a report and the first panel meeting can be two to three months or longer. There are approximately 15 panel members currently available. Of the three panel members, one is always a lawyer. In PPCO files, the AARC tries to include a member with a healthcare background. Generally, PPCO matters are grouped together and are not heard with referrals from the Department of Families.

The first panel hearing involves a threshold review. Minutes are kept. The panel's primary considerations are:

- Whether the victim made a disclosure stating that abuse or neglect occurred;
- Physical signs that may reveal whether abuse or neglect occurred;
- Behavioural indicators for the specified adult or the alleged offender that may reveal whether abuse or neglect occurred;
- Whether there were witnesses to the alleged abuse or neglect;
- Prior history of abuse or neglect by the alleged offender, provided however that prior history will not be used as evidence confirming the present allegation, but may be used to provide a context for understanding the current behavioral pattern of the alleged offender;
- Information provided by the alleged offender in response to the allegation; and
- The weight to be given to any hearsay evidence presented.

If no abuse or neglect is suspected, the matter comes to an end. If the panel decides that the threshold has been met, then the NOPI is sent to the suspect. The majority of referrals reach this stage.

Along with the NOPI, a cover letter, informational materials and a brief summary of the allegations and findings of the investigation are sent to the suspect. Supporting evidence is not included. The suspect has 30 days to respond once service is effected. There are many issues with service, especially in cases referred by the Department of Families. There can also be issues regarding the sharing of investigation reports, particularly with respect to redaction.

If the accused cannot be served, the matter comes to an end. If service is effected, the AARC has discretion to extend the 30 day period by an additional 30 days, at the request of the suspect.

Once service has been effected and 30 days pass, a second AARC panel hearing is held. Usually, the panel consists of the same three members, though there are occasions where the panel will involve different individuals. The hearings are held virtually. The hearings are conducted in private, with no members of the public in attendance and no verbal submissions. It is purely a paper review. Although suspects may make written submissions, they rarely do so. If the panel requires additional information, the matter is adjourned. The panel's decision is made and written reasons/minutes are prepared.

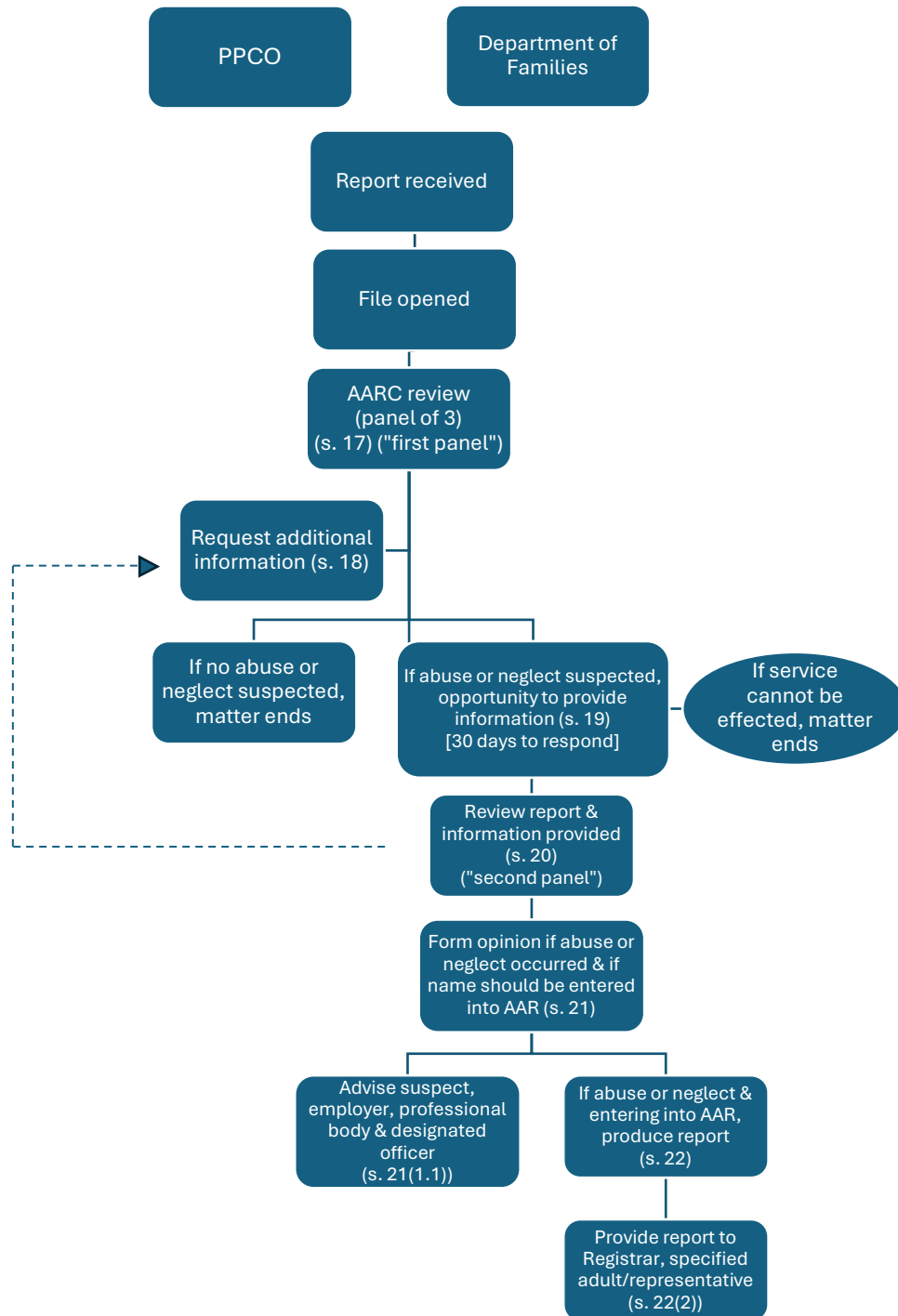
The factors that guide the panel's decision-making process include:

- Whether the abuse or neglect was intentional;
- Whether the offender has or may in the future have access, through work, volunteer activities or otherwise, to specified adults;
- Amount and type of treatment and/or rehabilitation undertaken by the offender, involving expert counsellors/professionals. Did it involve monitoring to ensure patterns of behaviour and ways of thinking change?
- Previous abuse or neglect incidents;
- Severity, frequency and timeframe of abuse or neglect;
- Transience (evidence of offender moving from relationship to relationship or workplace to workplace);
- Degree of responsibility for abuse or neglect accepted by the offender, including a pledge not to reoffend; and
- Offender's demonstrated remorse and understanding of the impact of their actions on the victim.

If the panel forms the opinion that the person has abused or neglected the specified adult, and the person's name should be entered in the AAR, the AARC must, in accordance with the Regulation, report its opinion and the prescribed particulars of the abuse or neglect to the AAR.

A flowchart depicting the AARC process is attached.

THE EXISTING AARC PROCESS



THE ADULT ABUSE REGISTRY

The AAR process from receipt of an AARC decision until an individual's name is or is not added to the AAR is set out below.

The AAR Act

The AAR is established by s. 24 the AAR Act. The registrar is appointed pursuant to *The Public Service Act*, CCSM c P271 (s. 25(1)), as well as any additional employees (s. 25(4)). The registrar may delegate their duties and powers to employees in the responsible minister's department (s. 25(3)).

There are two ways a person's name may be listed on the AAR:

- If a person is found or pleaded guilty to an offence involving the abuse or neglect of a specified adult, the person's name must be placed on the AAR. As long as the person is likely to be in Manitoba, it does not matter where the offence took place. Currently, the reporting to AAR in this instance is through the Manitoba Prosecution Service.
- If AARC determines, using its own process, that a person has abused or neglected a specified adult and that the person's name should be placed on the AAR, the name must be placed on the AAR. Of note, in addition to delivering a report to AAR (s. 22(2)(a)), the AARC must also provide the registrar with any additional information that it has in order to allow the registrar to correctly identify the person whose name is to be entered in the AAR (s. 22(3)).

Upon receipt of an AARC report that a person's name should be entered in the AAR, the registrar must give notice to the person, in accordance with the Regulation (s. 26). If service of the notice cannot be effected, the person's name is not entered in the AAR. The person may file an objection within 60 days after receiving notice (s. 27).

If no objection is filed, the registrar must enter the person's name and the prescribed particulars of the abuse or neglect in the AAR (s. 29).

If an objection is filed, the matter is heard by the Court of King's Bench (s. 30). The parties are the person who objected and the designated officer who reported the matter to the AARC (s. 28). The court must determine if the applicant abused or neglected the specified adult, as reported by the AARC. The court's decision is final (s. 31(2)). If the applicant is found to have abused or neglected the specified adult, the court makes a report to the registrar (s. 32). Thereafter, the registrar enters the applicant's name and the prescribed particulars of the abuse or neglect into the AAR (s. 33).

The Regulation

The information to be provided by the AARC to the registrar pursuant to s. 22(3) is specified in s. 13 of the Regulation. Section 14 of the Regulation addresses the Notice of Intended Entry on the AAR. It prescribes Form AAR-3 and sets out the service requirements.

Access to the AAR

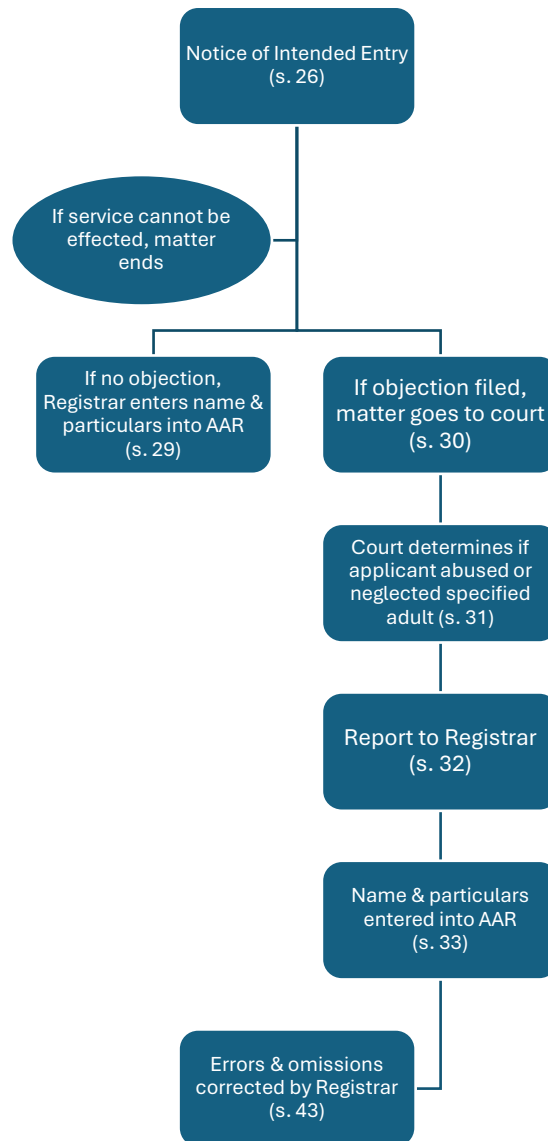
All names and information on the AAR are confidential (s. 41(1)). The general public does not have access to the AAR. Access to the AAR is available to the following:

- (a) Designated officers under the PPCA and the ALIDA may have access to the AAR if the registrar is satisfied that the access is reasonably required to assist in undertaking an investigation under their designated Acts (s. 41(2));
- (b) Peace officers may have access to the AAR if the registrar is satisfied that the access is reasonably required to assist them in carrying out their duties (s. 41(3));
- (c) Employers or other persons may have access to the AAR if the registrar is satisfied that the access is reasonably required to assist the applicant in assessing the suitability of the person whose work, whether paid or unpaid, involves access, care or the provision of support or other assistance to a specified adult (s. 41(4)); and
- (d) Individuals wanting to know if they have been added to the AAR. Their name will be checked on the system and a printout will be provided stating if their name is or is not on the AAR (s. 42).

A person who has access to the AAR is entitled to submit to the registrar a written objection respecting any error or omission of fact which the person alleges is contained in the information, and any objection becomes part of the AAR (s. 43(1) and (2)). Where the registrar is satisfied that the information in the AAR contains an error or omission of fact, the registrar must correct same (s. 43(3)).

A flowchart depicting the AAR process is attached.

THE EXISTING AAR PROCESS



The AARC & The AAR – JURISDICTIONAL SCAN**EXISTING LEGISLATION****The AAR Act**

The AAR Act came into force on January 15, 2013. It contains 49 sections, divided into five parts. The first part is the definition section. The second part relates to the AARC. The third part addresses the AAR. The fourth part pertains to confidentiality and access to the AAR. The last part contains some general provisions. There is one regulation under the AAR Act, the *Adult Abuse Registry Regulation*, MR 164/2012 (the “Regulation”).

Section 1 contains definitions of “abuse” and “neglect”.

The AARC is established pursuant to s. 3. Its members are appointed by the Lieutenant-Governor in Council (s. 4). The criteria for appointment are set out in s. 4(2). Members serve for three-year terms and can be reappointed (s. 5). The AARC has a chair and vice chair (s. 8).

The AARC’s responsibilities are identified in s. 11. Their primary responsibility is to review reports of abuse or neglect (s. 11(a)). They sit in panels of three (s. 13). The chair assigns members of the AARC to the panels (s. 14). The AARC may request further information in connection with reports of abuse (s. 18). The suspected abuser has an opportunity to provide information to the committee (s. 19). The AARC’s scope of action is addressed in s. 21, which also sets out their reporting requirements. Section 22(2) indicates who receives a copy of their reports.

The Minister of Families is responsible for maintaining the AAR (s. 24).

The process for entering names in the AAR is outlined in s. 26. Notice is given. There is an opportunity to object (s. 27). If an objection is filed, a court hearing is held (s. 30). The court’s decision is final and not subject to appeal (s. 31(2)).

Courts must report information regarding relevant convictions to the registry (s. 34). Peace officers have additional reporting requirements regarding offences committed outside Manitoba or prior to the implementation of the registry (s. 35). The registrar then enters these names in the AAR (s. 37).

Names are removed from the AAR after 10 years (s. 38).

Part 4 of the AAR Act addresses confidentiality and the Act’s interplay with *The Freedom of Information and Protection of Privacy Act*, CCSM c F175.

Access to the AAR is addressed in ss. 41-42. Objections are addressed in s. 43. Correction of factual errors is covered by s. 43(3).

Section 44 provides liability protection regarding the AAR.

The AARC’s and the registrar’s reporting requirements are laid out in s. 45. These mandatory annual

reports are required to be included in the department's annual reports.¹

Regulation-making powers pursuant to the Act are set out in s. 46.

The Regulation

The Regulation contains 17 sections. The current version has been in force since October 1, 2017. It still refers to “vulnerable persons”, so it is anticipated that amendments to it are forthcoming.² The first version of this Regulation was in effect from 2013 to 2017.

Section 2 indicates that the AARC can include a maximum of 30 members. Section 2(2) states that committee members must be law enforcement officers, lawyers, health professionals, persons with experience in providing care or services to specified adults or other persons whom the Lieutenant-Governor in Council considers appropriate.

Section 3 addresses record-keeping requirements.

Section 6 indicates that panels are to consist of three individuals, representative of the member groups (s. 6(2)). The committee chair appoints the panel chair (s. 6(3)). Under an earlier version of the Regulation, panels were groups of five.

The Notice of Opportunity to Provide Information Form is addressed in s. 8, along with the pertinent service requirements.³ There is a 30-day response period (s. 9).

Section 12 addresses situations where providing the report to the abused or neglected individual would cause them undue stress; in such circumstances, the report is to be provided to someone else.

Section 13 outlines the information that the AARC must provide to the registrar.

Notice of intent to register is addressed in s. 14. The particulars of abuse or neglect are set out in s. 15 (name; nature of the misconduct; time frame; relationship between the parties).

Section 16 addresses the payment of fees. Checking the AAR costs \$20.⁴ There are a number of exemptions. The registry is searchable online.⁵

Manitoba's AAR was the first of its kind in Canada.⁶ However, similar registries previously existed in the United States.⁷

¹ Which are available online: https://www.gov.mb.ca/fs/about/annual_reports.html.

² In keeping with *The Vulnerable Persons Living with a Mental Disability Amendment Act*, SM 2023, c 19, which changed references to “vulnerable person” to “an adult living with an intellectual disability”.

³ Copies of the forms are available online at <https://web2.gov.mb.ca/laws/regs/current/164-2012.php?lang=en>.

⁴ Previously, the charge was \$15.

⁵ <https://www.gov.mb.ca/fs/abuseregistries.html>. Additional information regarding the registry is available on the government's website at https://www.gov.mb.ca/fs/adult_abuse_registry.html.

⁶ See, e.g., <https://www.cbc.ca/news/canada/manitoba/manitoba-s-new-adult-abuse-registry-first-in-canada-1.1363655>.

⁷ See, e.g., <https://www.slaw.ca/2011/05/19/manitoba-introduces-canada%E2%80%99s-first-adult-abuse-registry/>.

Relevant Jurisprudence

In terms of cases involving the AAR, there is really only one of relevance: *LDF v Director, Corporate*, 2016 MBQB 231. *R v Heppner*, 2019 MBPC 73 includes some discussion of the history of the legislation.

The *LDF* case involved a health care aide who worked at a personal care home. One of his co-workers complained that he mistreated a 77-year-old patient who suffered from dementia. The matter was referred to the AARC. They determined that the conduct constituted abuse and that his name should be placed on the AAR. He filed an objection, which led to this hearing. After reviewing the evidence, which involved LDF's response after the patient kned him in the groin, Justice Martin determined that LDF should not be placed on the AAR (see para. 30).

OTHER REGISTRIES

Child Abuse Registry

The closest comparator in Manitoba is the Child Abuse Registry created by s. 19.1 of *The Child and Family Services Act*, CCSM c C80. Under that regime, suspected abuse is referred to a committee (s. 19(3)). A notice of intent to register is produced (s. 19(3.2)). Objections are contemplated by s. 19(3.3). Rules for hearings are outlined in s. 19(3.6). Reporting of abuse to the director is addressed in s. 19(4). Court reporting of abuse is addressed in s. 19(6). Peace officer reporting is dealt with in s. 19(7). The registry is confidential (s. 19.3(1)). There are a variety of provisions regarding access to the registry. Names are removed from the registry 10 years after the abuse or whenever the child turns 18, whichever is later (s. 19.4(2)). Division 3 of Part VI.1 relates to Indigenous service providers accessing and reporting names for entry in the registry. The registry was first implemented by *An Act to amend The Child and Family Services Act* (2), SM 1987-88, c 68, which was proclaimed into force on September 1, 1987 (though, of course, it has been amended from time to time since then).⁸

Healthcare Worker Registries

Another approach that has been taken in several Canadian jurisdictions is a centralized registry for healthcare workers not regulated by a self-governing profession.

British Columbia

BC maintains a Care Aide & Community Health Worker Registry.⁹ It was launched in 2010. It underwent a review in 2013.¹⁰ According to a recent report prepared by the Canadian Centre for Elder Law:

The BC Registry was not created by legislation. Contract law and health policy form the legal basis for the BC Registry. Publicly funded employers have a contract with the Ministry of Health or a health authority to provide care. These contracts require any employer receiving public funding in BC to hire HCAs who are on the BC

⁸ For a recent Manitoba Court of Appeal case discussing the Child Abuse Registry, see *DL v ANCR*, 2024 MBCA 17.

⁹ <https://www.cachwr.bc.ca>.

¹⁰ <https://www.health.gov.bc.ca/library/publications/year/2013/bc-care-aide-registry-report.pdf>.

Registry and to report any allegation of abuse or neglect towards a client by an HCA. This requirement includes employers who have a contract with a health authority.¹¹

Employers must report to the registry if a health care assistant has been suspended or fired because they have allegedly abused or neglected a client, patient or resident.¹² The report must be made in writing within seven days of suspending or firing the employee. Upon receipt of such a report, the registry will suspend the person without pay for up to 21 days. If the matter remains undetermined after 21 days, the employee must be suspended with pay. Other aspects of the process depend on whether the employee is unionized.¹³

In some cases, the employee may request that the registry appoint an investigator. The request must be made within 30 days of termination. The investigator prepares a written report. The report can recommend reinstatement or suspension, including the length of suspension and any conditions that should be placed upon reinstatement. If the employee's union files a grievance that is not resolved, and the employee is terminated, the union can request the appointment of an investigator. Again, the investigator provides a written report. It can recommend termination, reinstatement (with or without conditions), suspension or removal from the registry. If the parties do not accept the recommendations, they can proceed to arbitration as determined by the governing collective agreement.

There is an Assisted Living Registry in BC,¹⁴ but it does not function in the same way as Manitoba's AAR. BC's registrar maintains a registry of assisted living residences and monitors their compliance with health and safety requirements.¹⁵

Note that British Columbia has also passed the *Health Professions and Occupations Act*, SBC 2022, c 43, but much of it is not currently in force. While it does not expressly refer to health care aides, it could be used to govern them in the future.¹⁶

Alberta

Alberta maintains a Health Care Aide Directory.¹⁷ All health care aides that work for publicly funded employers must maintain enrollment in the directory. It was launched in May 2017.¹⁸ The Directory is funded by Alberta Health and is administered by the College of Licensed Practical Nurses of Alberta.¹⁹ Enrollment in the directory demonstrates that aides have successfully attained the core

¹¹ <https://www.bcli.org/wp-content/uploads/Strengthening-BCs-Health-Care-Backbone-Oversight-of-the-Work-of-Health-Care-Assistants.pdf>, p. 36.

¹² The applicable definitions of "abuse" and "neglect" are found in the *Residential Care Regulation*, BC Reg 96/2009, Sch. D.

¹³ <https://www.bcli.org/wp-content/uploads/Strengthening-BCs-Health-Care-Backbone-Oversight-of-the-Work-of-Health-Care-Assistants.pdf>, p. 40. For additional details regarding the process, see pp. 42-43.

¹⁴ <https://www2.gov.bc.ca/gov/content/health/assisted-living-in-bc/assisted-living-registry>.

¹⁵ For an outline of their investigation process, see <https://www2.gov.bc.ca/assets/gov/health/accessing-health-care/assisted-living-registry/role-of-investigators.pdf>.

¹⁶ For further discussion of this point, see <https://www.bcli.org/wp-content/uploads/Strengthening-BCs-Health-Care-Backbone-Oversight-of-the-Work-of-Health-Care-Assistants.pdf>, pp. 8, 100 & 135.

¹⁷ <https://albertahcadirectory.com>.

¹⁸ https://www.hhr-rhs.ca/images/Intro_to_the_Health_Workforce_in_Canada_Chapters/05_CHWs_PSWs.pdf, p. 10.

¹⁹ <https://albertahcadirectory.com/about-hca-directory/>.

competencies set out by the Continuing Care Health Service Standards, 2018.²⁰ Alberta has passed legislation that would cause health care aides to be governed by the College of Licensed Practical Nurses of Alberta.²¹

The *Continuing Care Regulation*, AR 21/2024 came into force on April 1, 2024 (aside from the administrative penalties, which will come into force on April 1, 2025).²² It was made pursuant to the *Continuing Care Act*, SA 2022, c C-26.7, which also came into force on April 1, 2024. It too refers to the Continuing Care Health Service Standards. Abuse complaints will continue to be governed by the *Protection for Persons in Care Act* (s. 30(4)(b)).

Ontario

Ontario, following BC's example, launched a personal support worker registry in 2011.²³ However, it was discontinued in 2016.²⁴ In 2021, Ontario introduced the *Health and Supportive Care Providers Oversight Authority Act, 2021*, SO 2021, c 27, Sch 2, which could reintroduce a similar registry. Proposed regulations pertaining to the Act were posted in Ontario's regulatory registry in December 2023.²⁵ They would provide a framework for personal support workers similar to those used by self-governing professions, with a public registry, as well as discipline and appeals committees. If a complaint was filed against a registrant, the CEO could investigate the complaint, appoint an investigator and request further information. The CEO must provide the registrant with information regarding the complaint within 14 days. The registrant may submit a response within 30 days of receiving such notice. This period may be abridged if there are reasonable grounds to believe that the registrant's conduct may pose a risk of harm to the public. The CEO may withdraw complaints, if it is in the public interest. The CEO can take urgent interim action to suspend or impose conditions on a registrant if the member's conduct poses a risk to the public. The CEO can attempt to mediate or resolve complaints. The Discipline Committee involves a panel of three to five individuals, who hold hearings to determine if the registrant violated their Code of Ethics. A registrant has the ability to appeal the decision of the Discipline Committee to the Appeals Committee. A panel of three to five individuals would hold a hearing to adjudicate the appeal.

Amendments to Ontario Regulation 246/22 under the *Fixing Long Term Care Act, 2021*, SO 2021, c 39, sch 1, have also been proposed.²⁶ These amendments would align s. 52 of the current regulation (which outlines the minimum qualifications for personal support workers that work in long-term care homes) with the *Health and Supportive Care Providers Oversight Authority Act* regulation discussed above.

Nova Scotia

In 2022, Nova Scotia implemented a mandatory registry for health care aides, pursuant to the

²⁰ <https://open.alberta.ca/publications/9781460138441>.

²¹ *Health Statutes Amendment Act, 2020 (No. 2)*, SA 2020, c 35, s. 105.

²² <https://canlii.ca/t/566qg>.

²³ <https://news.ontario.ca/en/release/18031/ontario-creating-registry-for-personal-support-workers>.

²⁴ <https://www.bcli.org/wp-content/uploads/Strengthening-BCs-Health-Care-Backbone-Oversight-of-the-Work-of-Health-Care-Assistants.pdf>, p. 102.

²⁵ <https://www.ontariocanada.com/registry/view.do?postingId=45993>.

²⁶ <https://www.ontariocanada.com/registry/view.do?postingId=46053&language=en>.

Continuing Care Assistants Registry Act, SNS 2021, c 4.²⁷ Previously, Nova Scotia had a voluntary registration process, which began in 2010.²⁸

Vulnerable Sector Checks

A “vulnerable sector check” is a specific type of police information check, which investigates whether a person has a record suspension (pardon) for sexual offences. They were created in 2000.²⁹

Vulnerable Persons Registries

Some Canadian police forces maintain voluntary vulnerable persons registries, to assist them when interacting with vulnerable persons.³⁰ The registry provides the police with emergency contact information, detailed physical descriptions, known routines and special needs of vulnerable individuals, to assist officers in communicating with, attending a residence of, or dealing with an emergency involving such individuals.

Similarly, some parts of Ontario maintain a Central Registry for high-risk adults and seniors who require assistance due to changes in their physical and cognitive abilities.³¹ It links individuals and their families with respite, home care, food support programs and day programs.

UNITED STATES

Adult Protective Services and Long-term Care Ombudsmen are standard in every American state, though their definitions of who is an elder and what constitutes abuse vary.³² In March 2018, the National Adult Protective Services Association prepared a national report regarding adult abuse registries in the United States.³³ It provides a helpful overview of the diverse approaches taken to adult abuse registries across that country. According to the report, 26 states have adult abuse registries.

For instance, some states differentiate between levels or severity of misconduct. Those that are found to have committed abuse, neglect or exploitation are placed on the registry, while those guilty of minor conduct are only placed on the registry if they have two or more lower-level

²⁷ <https://www.novascotiacca.ca/cca-registry-information/>.

²⁸ <https://www.bcli.org/wp-content/uploads/Strengthening-BCs-Health-Care-Backbone-Oversight-of-the-Work-of-Health-Care-Assistants.pdf>, p. 112.

²⁹ <https://www.rcmp-grc.gc.ca/en/types-criminal-background-checks>. See s. 6.3(3) of the *Criminal Records Act*, RSC 1985, c C-47.

³⁰ See, e.g., <https://www.vulnerablepersonsregistry.ca> (Ontario); <https://www.tps.ca/services/vulnerable-persons-registry/> (Toronto); <https://www.halifax.ca/fire-police/fire-emergency-management/emergency-management/emergency-preparedness/voluntary> (Halifax); <https://www.jasper-alberta.com/p/vpr> (Jasper). Toronto’s service is currently under review (<https://www.ombudsmantoronto.ca/news/ombudsman-to-investigate-the-toronto-polices-vulnerable-persons-registry/>).

³¹ <https://www.centralregistry.ca>.

³² <https://www.justice.gov/elderjustice/elder-justice-statutes-0#EAIS>. See also https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-elder-abuse-reporting-chart.pdf; <https://acl.gov/programs/Protecting-Rights-and-Preventing-Abuse/Long-term-Care-Ombudsman-Program>; and <https://www.nursinghomeabusecenter.com/legal/state-laws/>.

³³ National Adult Protective Services Association, “Adult Protective Services Abuse Registry National Report” (2018), <https://www.napsa-now.org/wp-content/uploads/2022/04/APS-Abuse-Registry-Report-2.pdf>.

substantiations within a nine-month period.

Some states use different evidentiary thresholds for substantiating misconduct findings (such as ‘substantiated’ versus ‘verified’; ‘reasonable belief’ versus ‘suspected’; ‘court-substantiated’ versus ‘agency-substantiated’; or ‘supported’, ‘inconclusive’ and ‘without merit’).³⁴ Given the Supreme Court of Canada’s decision in *FH v McDougall*, 2008 SCC 53, the use of different standards of proof would be inappropriate. However, Manitoba could consider having another category of findings, such as “suspected” or “inconclusive”.

Another aspect of the process to consider is how long a person remains on the registry. In the majority of American states, names stay on the registry indefinitely, though several provide an appeal process. If there are varying levels of misconduct, the length of time on the registry may also vary (as low as six months for minor offences, up to lifetime listings for fatalities or other very serious incidents). The length of time on the registry may be extended if there is a pattern of adult abuse by a particular individual. Some states provide for a petition process, whereby an individual can request removal from the registry after a specified period of time.

Based on this national report, some of the questions to consider include:

- Does the registry constitute a ‘do not hire’ list, like the Disclosure and Barring Service in the UK or banning orders in Australia? Is there an express legal bar to hiring someone whose name is on the registry to work with vulnerable people?
- How will the government know if the registry is working? What kind of statistics or metrics should be collected? For example, Florida discontinued their registry because they said it was ineffective and only created the illusion of a safeguard. The government must identify a way to measure the effectiveness and efficiency of having a registry.
- Is there a way to note that an investigation into an individual is ongoing (or an appeal is underway), before their name is formally placed on the registry?
- Is the technology utilized for the registry up-to-date?³⁵

The national report indicates that it is useful to separate the registry from other protection for persons in care services, so they can be more victim-focused while the registry focuses on gathering evidence against the alleged perpetrator. Clearly, the purpose of such registries is to prevent future instances of abuse or neglect; they may also have a deterrent effect.

UNITED KINGDOM

The Disclosure and Barring Service (“DBS”) helps employers make safer recruiting decisions and prevents unsuitable individuals from working with at-risk groups. The DBS carries out criminal record checks on individuals employed in regulated activities.³⁶ This includes the provision of health and social care. An employer may have a legal duty to refer staff to the DBS if there are abuse or neglect concerns relating to a regulated activity. The DBS has the power to bar people from working

³⁴ See, generally, John Sherman, “Procedural Fairness for State Abuse Registries: The Case for the Clear and Convincing Evidence Standard” (2011)14:3 J Gender Race & Just 867.

³⁵ See, e.g., <https://www.cbc.ca/news/canada/british-columbia/cyberattack-bc-health-employer-websites-personal-information-1.6924496>.

³⁶ See the *Safeguarding Vulnerable Groups Act 2006*, c 47 (UK).

with adults at risk and children. Some criminal convictions carry an automatic bar, whereas others leave it to the discretion of the DBS as to whether a person should be barred from such work.³⁷

Section 14.118 of the statutory guidance states:

If someone is removed from their role providing regulated activity following a safeguarding incident the regulated activity provider (or if the person has been provided by an agency or personnel supplier, the legal duty sits with them) has a legal duty to refer to the Disclosure and Barring Service. The legal duty to refer to the Disclosure and Barring Service also applies where a person leaves their role to avoid a disciplinary hearing following a safeguarding incident and the employer/volunteer organisation feels they would have dismissed the person based on the information they hold.

As in Canada, the ‘beyond a reasonable doubt’ standard of proof applies in criminal prosecutions, whereas the civil standard of the ‘balance of probabilities’ applies to the DBS.

AUSTRALIA

Australia’s current legislation includes the registration of “banning orders”.³⁸ A ban can be permanent or for a specific period. It can be general or only apply to specific activities. It can also have conditions applied. Banning orders are published on the [Aged Care Banning Orders Register](#),³⁹ which is a publicly accessible website. The register is regularly reviewed to ensure that the information it contains is accurate.

ADDITIONAL RESOURCES

- British Columbia Ombudsperson, *The Best of Care: Getting it Right for Seniors in British Columbia (Part 1)* (December 2009), https://bcombudsperson.ca/investigative_report/the-best-of-care-getting-it-right-for-seniors-in-bc-part-1/
- British Columbia Ombudsperson, *The Best of Care: Getting it Right for Seniors in British Columbia (Part 2)* (2012), https://bcombudsperson.ca/investigative_report/the-best-of-care-getting-it-right-for-seniors-in-bc-part-2/
- Canadian Centre for Elder Law, *Strengthening BC’s Health Care Backbone: Oversight of the Work of Health Care Assistants* (October 2022), <https://www.bcli.org/wp-content/uploads/Strengthening-BCs-Health-Care-Backbone-Oversight-of-the-Work-of-Health-Care-Assistants.pdf>
- Erica CR Costello, “Examining ‘Shirley’s Law’ and Adult Abuse Registries” (July 2022), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-43/vol43issue6/shirleys-law/
- Federal/Provincial/Territorial Ministers Responsible for Seniors Forum, *Preventing and Responding to the Mistreatment of Older Adults: Gaps and Challenges Exposed During the Pandemic* (December 2023), <https://www.canada.ca/en/employment-social-development/corporate/seniors/forum/reports/covid19-mistreatment-seniors.html>

³⁷ For additional information, see Age UK’s Factsheet 78, “Safeguarding older people from abuse and neglect” (December 2023), https://www.ageuk.org.uk/globalassets/age-uk/documents/factsheets/fs78_safeguarding_older_people_from_abuse_fcs.pdf.

³⁸ <https://www.agedcarequality.gov.au/providers/non-compliance/banning-orders>.

- Audrey Laporte & David Rudoler, “Assessing Ontario’s Personal Support Worker Registry” (2013) 1:1 Health Reform Observer, <https://mulpress.mcmaster.ca/hro-ors/article/view/1181>
- Manitoba Law Reform Commission, *Adult Protection and Elder Abuse* (December 1999), http://www.manitobalawreform.ca/pubs/pdf/archives/103-full_report.pdf