



**Manitoba Law
Reform Commission**

The Manitoba Law Reform Commission's Project on Elder Abuse & Neglect in Manitoba

Tuesday, September 14, 2021

Speakers:

**Jacqueline Collins, Gange Collins Barristers and Solicitors
Commissioner, Manitoba Law Reform Commission**

Stefanie Goldberg, Legal Counsel, Manitoba Law Reform Commission

**Elizabeth McCandless, Director & Legal Counsel, Manitoba Law Reform
Commission**

Today's Presentation

1. Introduction to the Manitoba Law Reform Commission
2. Development and Scope of the Elder Abuse Project
3. Current Legal Landscape
4. Discussion & Questions

1. Manitoba Law Reform Commission

- Independent law reform agency created in 1970 by *The Law Reform Commission Act*
- Role: Make recommendations on areas of law reform to the provincial Minister of Justice and Attorney General
- Funded by Manitoba Justice and Manitoba Law Foundation

Who We Are

- 5 Commissioners
- 2 legal counsel + an administrator
- Contributions from law students, volunteer lawyers and academics

Process of Law Reform

1. Topic Selection

2. Research and Preparation of a Consultation Paper

3. Consultation Process

4. Publication of a Final Report

5. Report Released and Submitted to Minister of Justice

Criteria for Project Selection

- Resources
- Relevancy
- Law vs. Policy
- Necessity
- Likelihood of Implementation
- The Commission's Mandate:
 - making recommendations for the improvement, modernization and reform of the law

Other Current & Upcoming Law Reform Projects

- Presumed consent organ donation
- Law of Partition and Sale
- Administrative Law: Judicial Review
- Anti-SLAPP legislation
- Changes to the administration of justice brought about by the pandemic (e.g. electronic evidence)

2. Development and Scope of the Elder Abuse Project

- **Why look at these issues now?**

- In addition to the negative health impacts, the Covid-19 pandemic has exacerbated some of the vulnerabilities that exist for older adults

"On a usual day, one-in-five older Canadians are subject to elder abuse. We are seeing a tenfold increase in elder abuse across the community," said Laura Tamblyn-Watts in an interview with CTV News.

- Financial Abuse
- Emotional Abuse
- Neglect
- Etc.

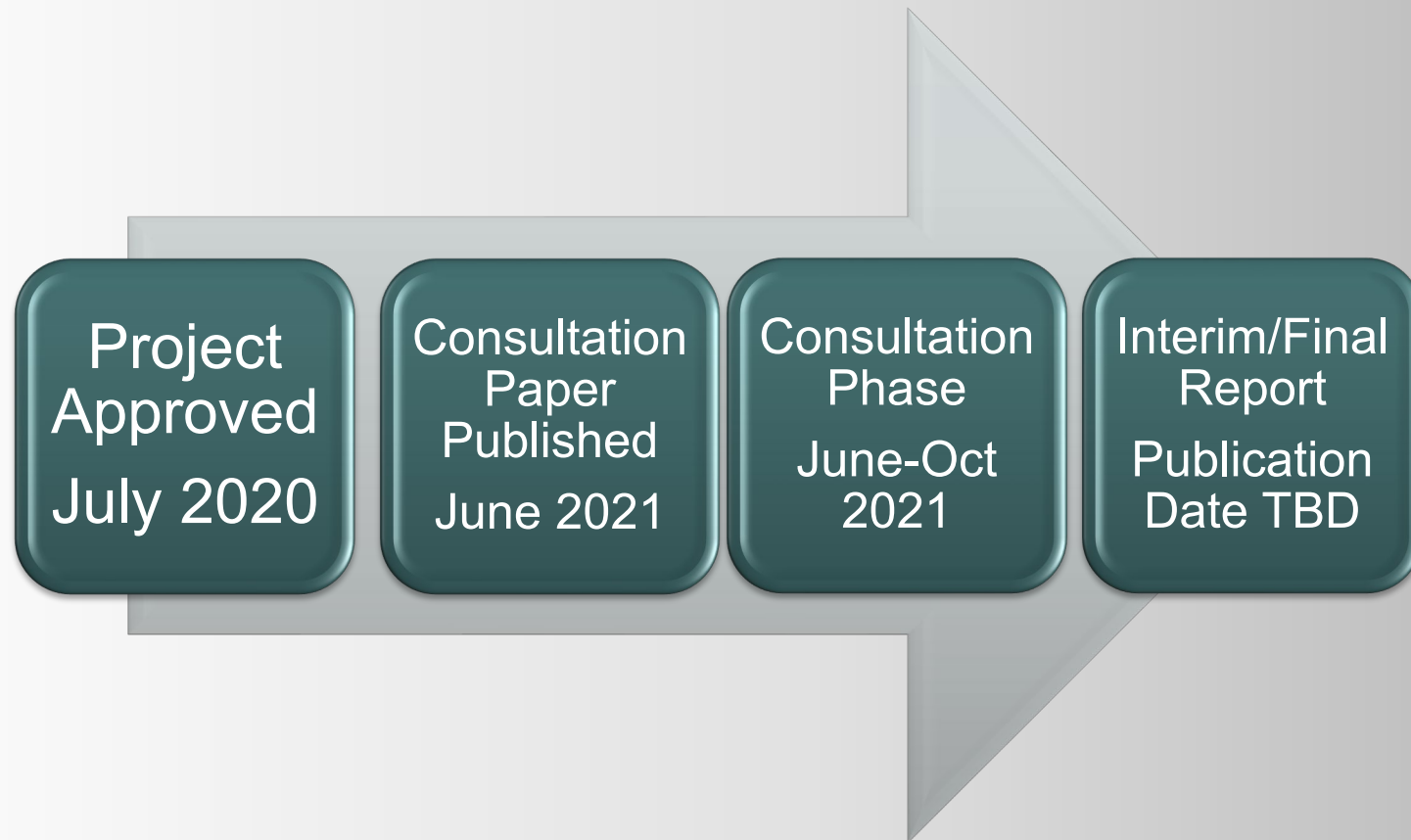
Elder Abuse and Neglect in Manitoba

- **Why look at these issues now?**
 - “Under Reporting of Abuse of Older Adults in the Prairie Provinces: A Summary Report of Findings”, Kerstin Roger, et al.
 - Tri-Provincial (Alberta, Saskatchewan, Manitoba) research study funded by the PrairieAction Foundation
 - Published on the website for the Canadian Network for Prevention of Elder Abuse
 - <https://cnpea.ca/en/resources/studies/1135-under-reporting-of-abuse-of-older-adults-in-the-prairie-provinces-a-summary-report-of-findings>

Project Scope

- ❑ Given the overwhelming impacts of COVID-19 on older adults residing in personal care homes and other institutionalized settings, the Commission has considered the possibility that the political, judicial or administrative processes might address the issues of abuse and neglect in institutionalized settings in the near future
- ❑ As such, the Commission decided to narrow the scope of this project to focus only on older adults living in the community, and to exclude older adults living in these institutionalized settings

Elder Abuse Project Timeline



Advisory Committee

In December 2020, the MLRC formed an Advisory Committee for the Elder Abuse and Neglect Project, comprised of the following individuals:

Sharon Tod, St. Mary's Law LLP

Dr. Mary Shariff, University of Manitoba, Faculty of Law

Michelle Porter, Centre on Aging, University of Manitoba

Kerstin Roger, University of Manitoba, Rady Faculty of Health Sciences

Stacey Miller, Age & Opportunity

Connie Newman, Manitoba Association of Seniors Centres

Shannon Bowman, Winnipeg Regional Health Authority Home Care Program

Alison Kokocinski, Victoria General Hospital

Roles of the Advisory Committee

To provide insight on the issues to be considered by the MLRC and contained in the Consultation Paper

To assist the MLRC in identifying those individuals, groups, and organizations whom should be consulted

To review, consider and provide insight on feedback received through the consultation process

To provide additional considerations for the Commission to contemplate when crafting recommendations for reform and preparing its Final Report

Advisory Committee Process

The Advisory Committee met over Zoom on three occasions:

1. February 2020:

- ☐ Committee member introductions
- ☐ Establishing elder abuse landscape
- ☐ Identifying concerns

2. May 2020:

- ☐ Learning about Manitoba elder abuse resources
- ☐ Brainstorming possible issues for discussion for Consultation Paper

3. April 2020:

- ☐ Providing notes and feedback on Draft Consultation Paper

Elder Abuse Consultation Paper

What are the laws, policies and systems that are currently in place in Manitoba to protect against the abuse and neglect of older adults?

Do these laws, policies and systems do enough to protect against the abuse and neglect of older adults?

How can Manitoba improve the laws, policies and systems that are currently in place to protect against the abuse and neglect of older adults?

Elder Abuse Consultation Paper

Broad exploration of the topic of elder abuse in Manitoba

E.g. Local and federal elder abuse and neglect research
E.g. Current laws and elder abuse resources in Manitoba
E.g. Current laws and elder abuse resources outside of Manitoba

Intended to identify the major areas of concern in Manitoba with respect to the study, prevention, treatment, and rectification of the abuse and neglect of older adults

3. Legal Landscape of Elder Abuse and Neglect in Manitoba

There are a number of pieces of legislation in Manitoba that may incidentally help to guard against the abuse and neglect of older adults living in the community.

However, these Acts tend to aim more generally at protecting groups of vulnerable adults, which may, and often do, include older individuals.

They do not specifically address the issue of elder abuse.

Legal Landscape of Elder Abuse and Neglect in Manitoba

There are safeguards in place in existing legislation which extend to older Manitobans who, in their older age, become more prone to the ailments and conditions that make adults “vulnerable”

I.e. Physical disability requiring health care and medical treatment, mental disability, disordered thinking, perception or memory, impaired ability to meet the ordinary demands of life, etc.

Legal Landscape of Elder Abuse and Neglect in Manitoba

- ❑ *The Adult Abuse Registry Act*, C.C.S.M. c A4
- ❑ *The Vulnerable Persons Living with a Mental Disability Act*, C.C.S.M. c V90
- ❑ *The Mental Health Act*, C.C.S.M. c M110
- ❑ *The Powers of Attorney Act*, C.C.S.M. c P97
- ❑ *The Health Care Directives Act*, C.C.S.M. c H27
- ❑ *The Domestic Violence and Stalking Act*, C.C.S.M. c D93
- ❑ *The Human Rights Code*, C.C.S.M. c H175

The Adult Abuse Registry Act

- ❑ Aims to help protect vulnerable adults by allowing employers to screen potential employees and volunteers who want to work with vulnerable people

The Vulnerable Persons Living with a Mental Disability Act (“VPA”)

- ☐ Aims to promote and protect the rights of adults living with a mental disability that manifested prior to the age of 18, who need assistance to meet their basic needs
- ☐ Substitute decision making regarding personal care or property
- ☐ Protection and emergency interventions
 - ☐ Prohibition against abuse and neglect
 - ☐ Duty to protect
 - ☐ Duty to report
 - ☐ Duty to investigate

The Mental Health Act

- ❑ Aims to protect adults living with mental disorders of thinking, mood, perception, orientation or memory that grossly impairs their “judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life.”
- ❑ Substitute decision making regarding personal care or property
- ❑ Protection and emergency interventions
 - ❑ Appointment of PGT as Committee on emergency basis
 - ❑ Emergency intervention action by PGT

The Powers of Attorney Act

- ❑ Aims to ensure individuals that their financial affairs will be handled in accordance with their wishes if they become unable to manage their own affairs due to mental infirmity arising from age, disease, or otherwise
- ❑ Enduring Powers of Attorney
 - ❑ Annual accountings

The Health Care Directives Act

- ❑ Aims to provide individuals an opportunity to express their wishes regarding the amount and type of health care and treatment they receive should they become unable to communicate this for themselves
- ❑ Directives
 - ❑ Express own health care decisions
 - ❑ Appoint proxy to make health care decisions

The Domestic Violence and Stalking Act

- ❑ May protect older adults in Manitoba against abuse by enabling them to seek a prevention or protection order if they are experiencing domestic violence
 - ❑ Order may prohibit a perpetrator from communicating with individual
 - ❑ Order may prohibit attending any place the individual happens to be or attend regularly
 - ❑ Order may direct a peace officer to remove the abusive person from the individual's residence

The Human Rights Code

- ❑ May protect older adults from certain forms of abuse by prohibiting discrimination and harassment on the basis of age
 - ❑ E.g. Abusive and unwelcome conduct or comment
 - ❑ E.g. Objectionable and unwelcome sexual solicitations/advances

Comprehensive Adult Protection Schemes

- ❑ Perhaps the closest instruments in Canadian law to standalone elder abuse legislation.
- ❑ Defined by their “emphasis on protection against abuse and exploitation by means of agency intervention” as opposed to issues of competence and legal disability.”*
- ❑ Powers afforded to intervening agencies commonly include:
 - ❑ Power of forcible entry and investigation
 - ❑ Power to conduct on-site medical examination
 - ❑ Power to demand relevant information/records/documents
 - ❑ Power to remove an adult with or without consent

3 Major Canadian Models*: Comprehensive Adult Protection Schemes

1. The Atlantic Provinces Model

2. The Ontario Model

3. The British Columbia Model

*Of these three models, only the Atlantic Provinces technically have standalone, comprehensive adult protection legislation.

*Robert M. Gordon, “Adult Protection Legislation in Canada: Models, Issues and Problems” (2001) 24 International Journal of Law and Psychiatry 117-134 at 119-120.

Atlantic Provinces Model: ***Adult Protection Act of Newfoundland and Labrador***

- ❑ Protects every adult living in Newfoundland and Labrador who is considered an “adult in need of protective intervention”
 - ❑ Preparation and review of service plans for adults deemed to be in need of protective intervention
 - ❑ Mandatory reporting regime for abuse and neglect

Atlantic Provinces Model: ***Adult Protection Act of Nova Scotia***

- ❑ Protects adults who are 16 years of age or older and who lack the ability to care and fend adequately for themselves against abuse and neglect.
 - ❑ Mandatory reporting regime for abuse and neglect
 - ❑ Provides adults in need of protection with access to services which will enhance their ability to care and fend for themselves or which will protect them from abuse or neglect

Atlantic Provinces Model: ***Adult Protection Act of Prince Edward Island***

- ❑ Protects adults who are in need of assistance or in need of protection
 - ❑ Non-mandatory reporting regime for ordinary individuals
 - ❑ Mandatory reporting regime for those who, in their employment, owe a duty of care to vulnerable adults (i.e. health care, social services, education, law enforcement, counselling, residential services, etc.)
 - ❑ Discretionary power of Minister to investigate

Atlantic Provinces Model:
**Part III, *Family Services Act* of
New Brunswick**

- ❑ Protects physically or mentally disabled adults or older adults who are 65 years of age or over who are neglected or abused
 - ❑ Non-mandatory reporting regime for “professional persons”
 - ❑ Provision of social services and protective interventions

British Columbia Model: ***The Adult Guardianship Act of British Columbia***

- ☐ Protects adults who are abused or neglected and who are unable to seek support or assistance for a number of reasons, including:
 - ☐ physical restraint;
 - ☐ physical handicap that limits their ability to seek help; or
 - ☐ illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect.
- ☐ Establishes a non-mandatory reporting regime and an investigation procedure for the abuse and neglect of adults.

Seniors Advocate

❑ **British Columbia**

- ❑ *Seniors Advocate Act*, SBC 2013, c 15

❑ **New Brunswick**

- ❑ *Child, Youth and Senior Advocate Act*, SNB 2007, c C-2.7

❑ **Newfoundland and Labrador**

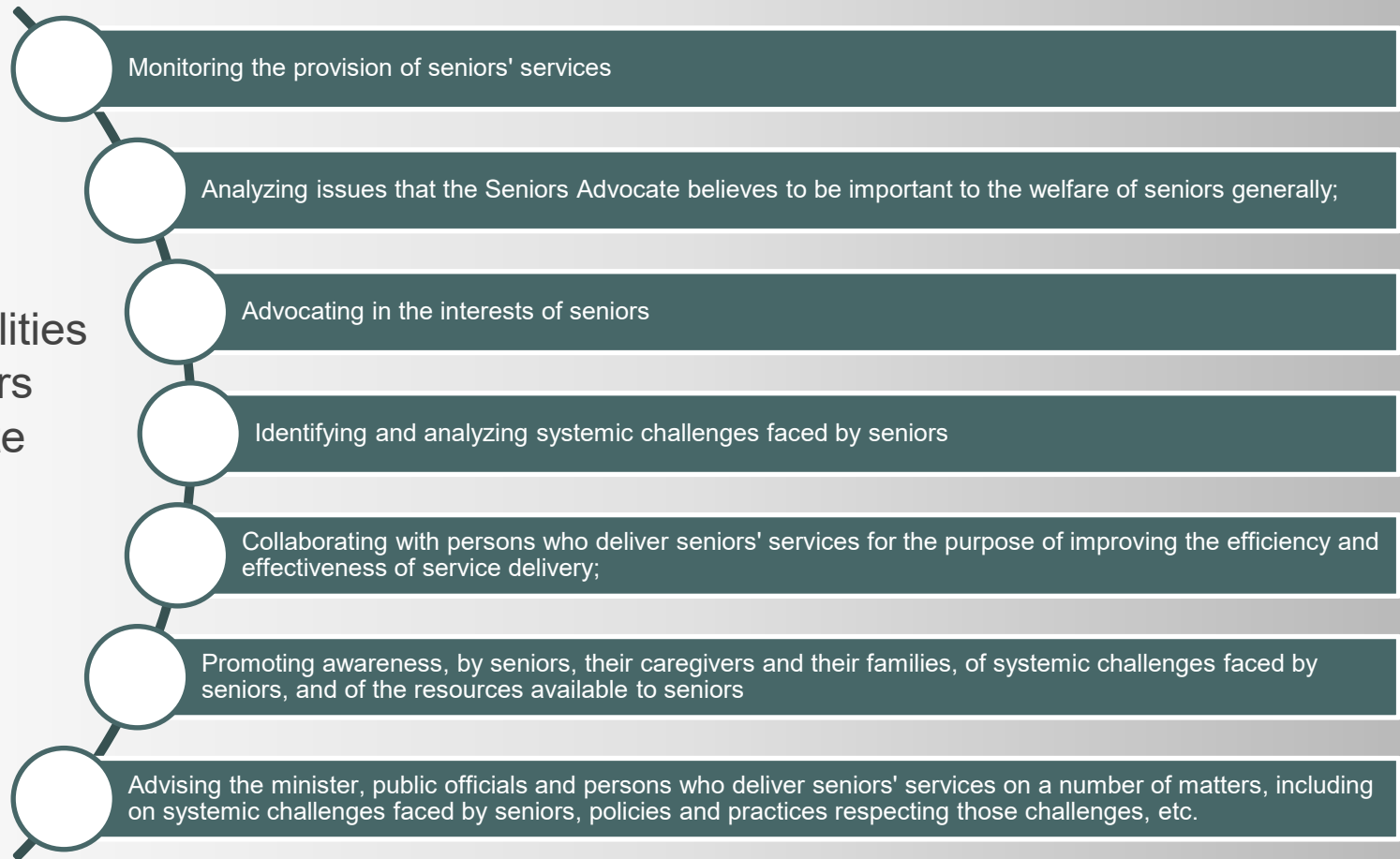
- ❑ *The Seniors Advocate Act*, SNL 2016 c S-13.002

❑ **Ontario**

- ❑ Bill 196, *An Act to establish the Seniors' Advocate*, 1st Sess, 42nd Leg, Ontario, 2020

Seniors Advocate: **British Columbia**

Responsibilities of Seniors Advocate

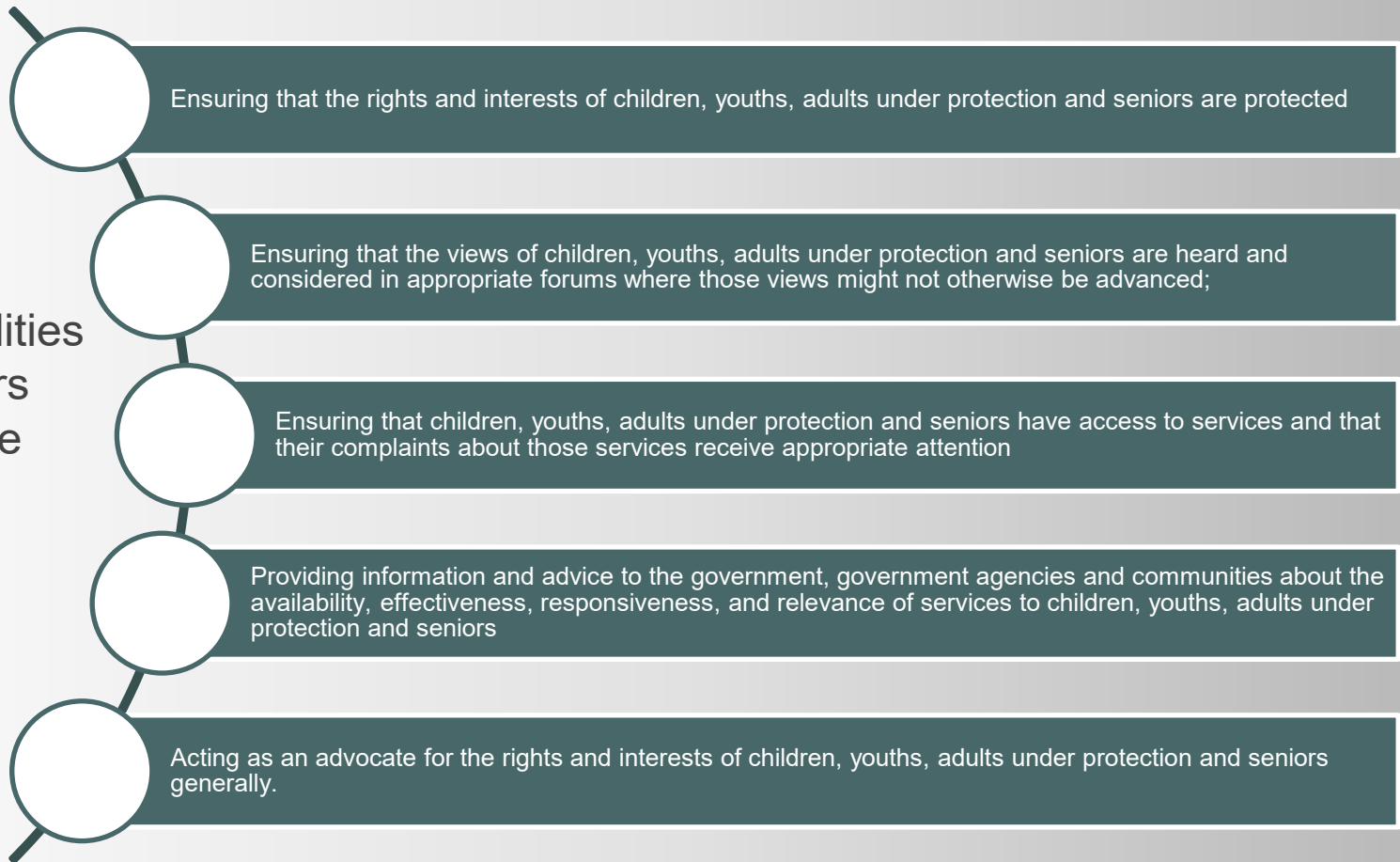


Seniors Advocate: **New Brunswick**

- ❑ New Brunswick's advocate focuses not only on seniors, but on children, youth, and “adults under protection”
- ❑ Under the *Child, Youth and Senior Advocate Act...*
 - ❑ Adult under protection is defined as a person who is at least 19 years of age but under the age of 65, and who has a physical or mental disability
 - ❑ Senior is defined as a person who is at least 65 years of age

Seniors Advocate: **New Brunswick**

Responsibilities of Seniors Advocate



Seniors Advocate: **New Brunswick**

The Advocate
may fulfill
his or her
responsibilities
by...



Seniors Advocate: Newfoundland and Labrador

Responsibilities of Seniors Advocate



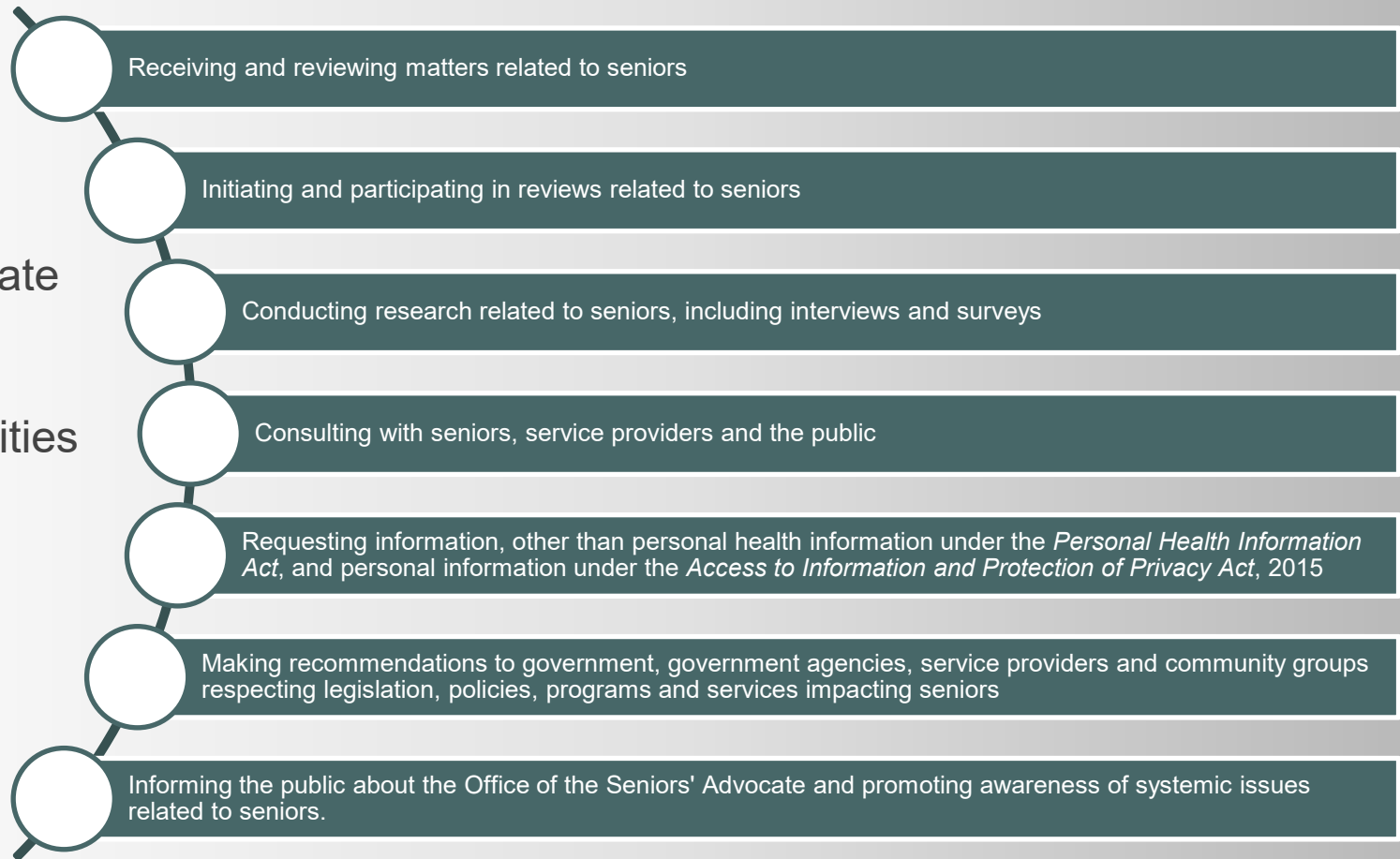
Identifying, reviewing and analyzing systemic issues related to seniors

Working collaboratively with seniors' organizations, service providers and others to identify and address systemic issues related to seniors

Making recommendations to government and government agencies respecting changes to improve seniors' services

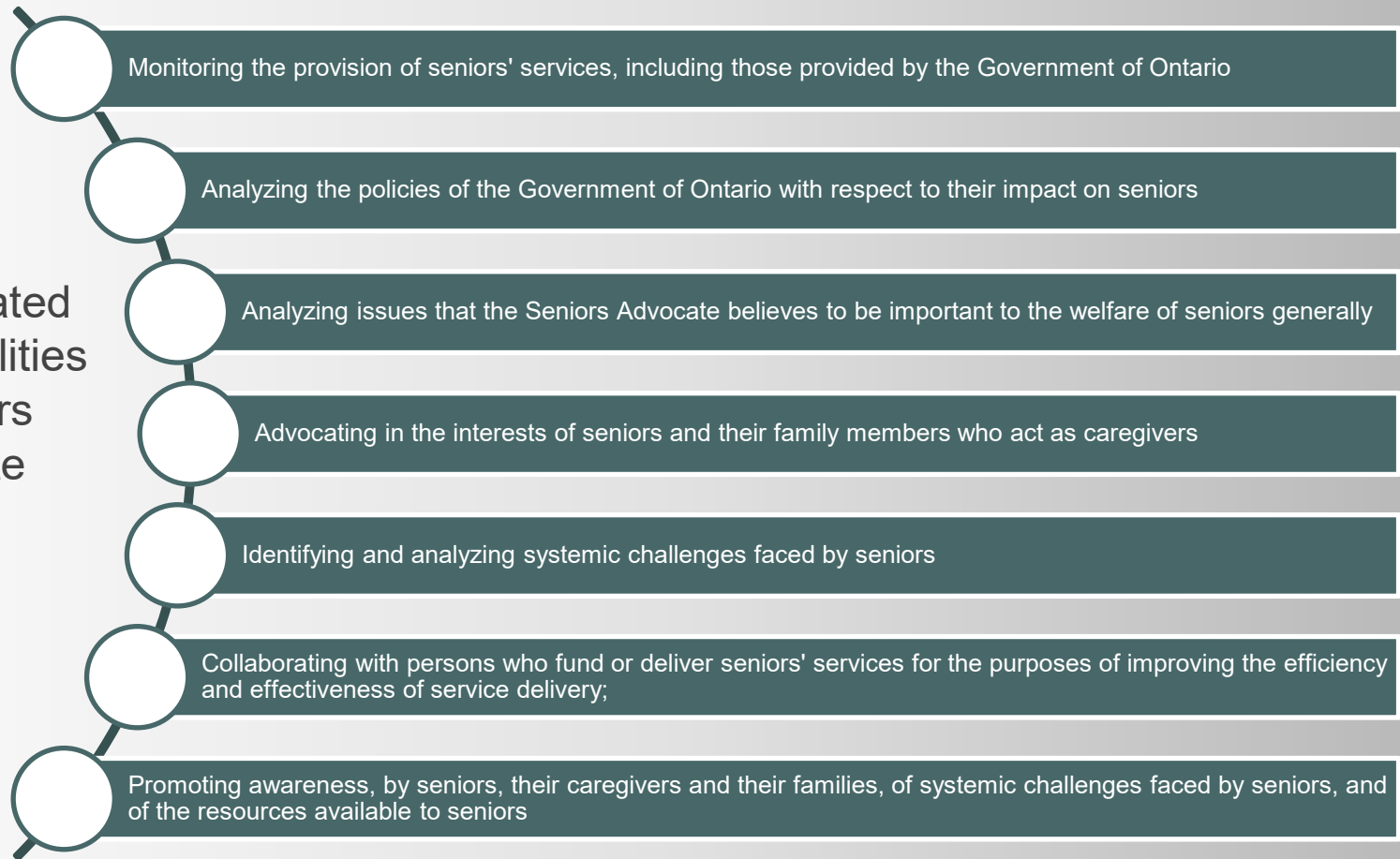
Seniors Advocate: Newfoundland and Labrador

The Advocate
may fulfill
his or her
responsibilities
by...

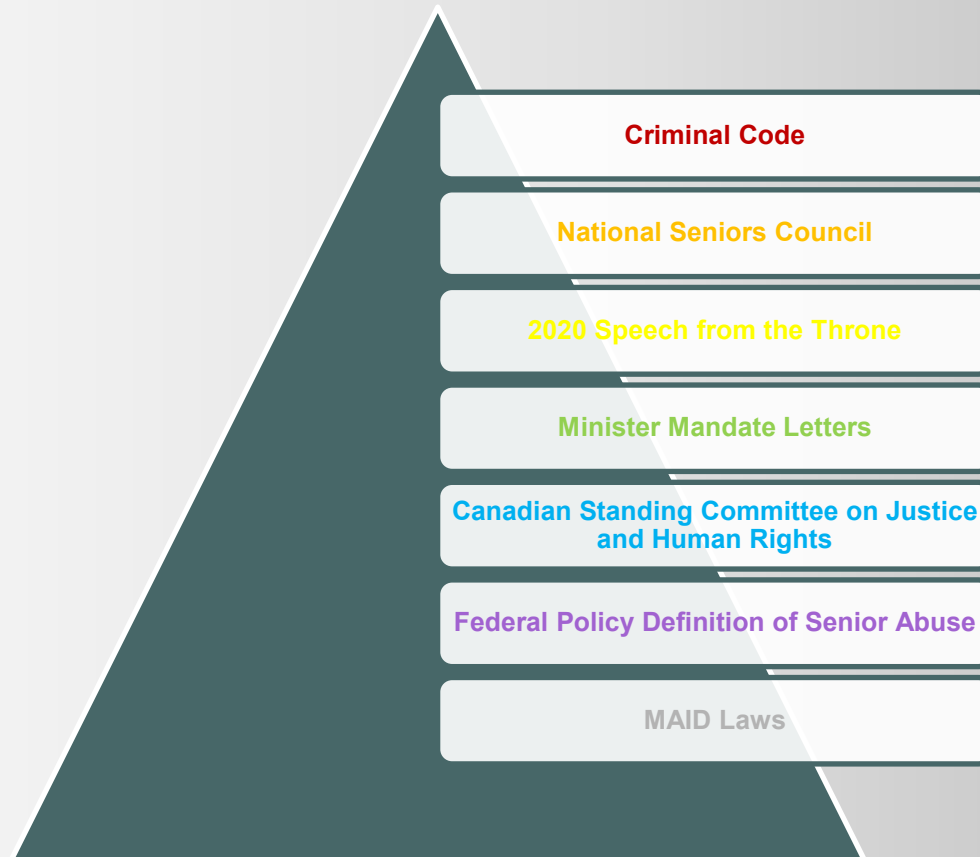


Seniors Advocate: Ontario

Contemplated Responsibilities of Seniors Advocate



Federal Government



Discussion

Q1. What do you see as the most pressing issues when it comes to abuse and neglect of older adults in Manitoba?

Discussion

Q2. Do you think our laws reflect current understandings of the abuse and neglect of older adults living in the community?

If not, what needs to change?

Discussion

If you have additional thoughts, please take the time to send us a response to the questions in our handout.

mail@manitobalawreform.ca

Thank you!

Thank you!

The Manitoba Law Reform Commission is funded by:



Manitoba Law
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