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the PREVENTION of ELDER ABUSE

RÉSEAU CANADIEN *pour la* PRÉVENTION  
du MAUVAIS TRAITEMENT des AÎNÉS

# Exploring the Updated Practical Guide to Elder Abuse and Neglect Law in Canada

Krista James, National Director

June 18, 2020

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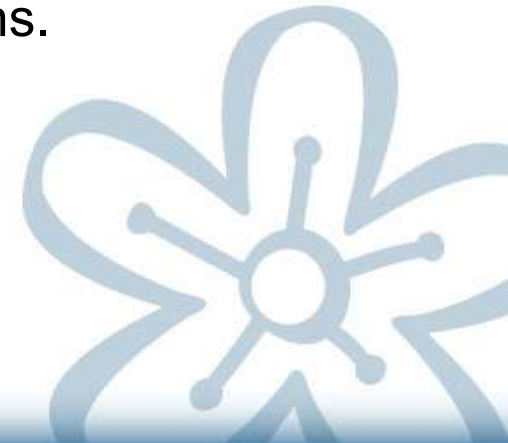
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- Can't stay until the end? This webinar will be recorded and will be posted on [cnpea.ca](http://cnpea.ca) later this week.

## ACKNOWLEDGEMENT

I would like to begin by acknowledging that the land on which I live and work is the unceded territory of the Coast Salish Peoples, including the territories of the x<sup>w</sup>məθkwəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and Səlílwətaʔ/Selilwítlh (Tseil-Waututh) Nations.



## YOUR PRESENTER



Krista James is a lawyer. She is the National Director of the Canadian Centre for Elder Law.

Her work addresses legal and policy issues linked to aging. She has a particular interest in how aging, gender, and other aspects of identity intersect.

Find her writing at [www.bcli.org/ccel](http://www.bcli.org/ccel) and on Twitter at [@KristaElan](https://twitter.com/KristaElan).



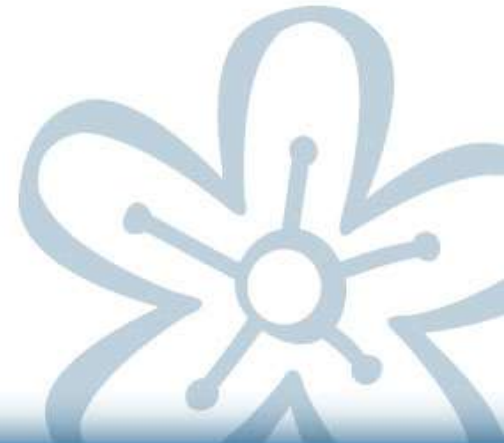
# Exploring the Updated Practical Guide to Elder Abuse and Neglect Law in Canada

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## Presentation outline

1. Comparative overview of the the law
2. Highlights of the new Practical Guide
3. Questions



# Disclaimer

This presentation is not legal advice





# Canadian Centre for Elder Law

1. Research
2. Law reform
3. Legal education
4. Outreach





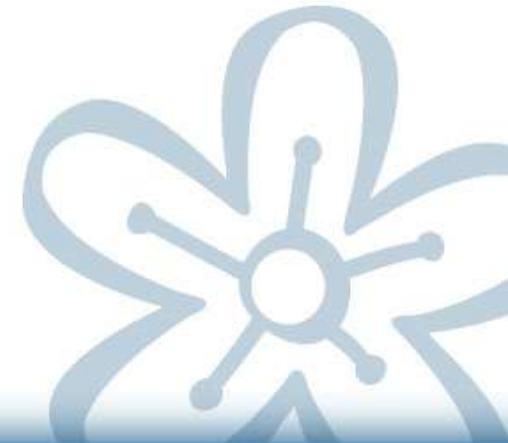
# Part 1

## Elder Abuse and Neglect Law



## Legal Framework

1. No single law applies
2. Provincial & territorial laws dominate
3. Different approaches exist
4. Criminal and civil law applies



## What I will talk about

1. Provincial laws comparison
2. Criminal Code provisions



## Legal terminology

- Legislation
- Statutes, Acts, Codes
- Regulations



## Elder abuse laws across the country

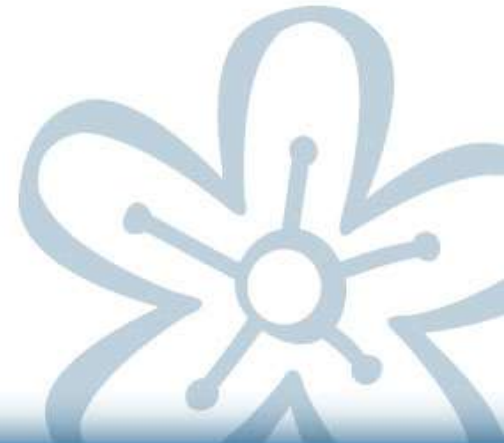
Each province and territory has taken a unique approach to developing:

- *Laws* to address abuse of vulnerable adults
- *Public agencies* with a mandate to support adults who experience abuse  
= Policy choice



## Elder abuse laws across the country

- Adult guardianship/protection legislation
- Family violence legislation
- Care facility legislation
- Public guardian and trustee laws
- Unique approaches



## Adult protection / guardianship legislation

- Applies broadly to vulnerable adults
- Designates an agency for responding to reports of abuse or neglect
- Defines abuse
- Create powers to respond





## Adult protection / guardianship legislation

- BC—*Adult Guardianship Act*
- NS—*Adult Protection Act*
- Yukon—*Adult Protection and Decision Making Act*
- PEI—*Adult Protection Act*
- Nfld & Labrador—*Adult Protection Act*



## Very broad powers

- Conduct investigations
- Access private information
- Enter premises & examine adult (court order)
- Make report to police or PGT
- Get no a contact order
- Develop a support and assistance plan
- Impose a support and assistance plan (court order)
- Remove the adult without a court order (in an emergency)

## Sample definition of abuse 1

"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

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

[Adult Protection Act, SNL 2011, c A-4.01, s 2](#)

## Sample definition of abuse 2

"adult in need of protection" means an adult who, in the premises where he resides,

(i) is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting himself therefrom by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom, or...

[Adult Protection Act, RSNS 1989, c 2, s 3](#)

## Sample definition of neglect

“neglect” means a lack of or failure to provide necessary care, aid, guidance or attention which causes or is reasonably likely to cause the victim severe physical or psychological harm or significant material loss to his estate

[Adult Protection Act, RSPEI 1988, c A-5, s 1](#)

## Sample definition of neglect 2

“any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage or loss in respect of the adult's financial affairs, and **includes self neglect**”

[Adult Guardianship Act, RSBC 1996, c 6, s 1](#)

## Sample definition of self-neglect

"self-neglect" means any failure of an adult to take care of himself or herself that causes, or is reasonably likely to cause within a short period of time, serious physical or mental harm or substantial damage or loss in respect of the adult's financial affairs, and includes



## Family violence legislation

- Defines family violence
- Defines family member
- Applies if family violence or risk
- Allows court to intervene by making a order





AB: *Protection Against Family Violence Act*

MB: *Domestic Violence and Stalking Act*

NL: *Family Violence Protection Act*

NS: *Domestic Violence Intervention Act*

NU: *Family Abuse Intervention Act*

NWT: *Protection Against Family Violence Act*

PEI: *Victims of Family Violence Act*

SK: *The Victims of Domestic Violence Act*

YT: *Family Violence Protection Act*

## Family violence legislation

Possible protection order terms:

- No contact or communication with a person
- Stay away from locations
- No possession of firearm or other object
- Police must remove person from scene
- Police accompaniment to remove belongings

## Sample definition of family violence

“family violence” includes

- (i) any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a family member,
- (ii) any act or threatened act that intimidates a family member by creating a reasonable fear of property damage or injury to a family member,
- (iii) forced confinement,
- (iv) sexual abuse, and
- (v) stalking

[AB Protection Against Family Violence Act](#)

## Protection for persons in care legislation

- Creates a requirement for care facilities to respond to abuse occurring in the facility
- Grounded in an understanding that people living in care facilities are particularly vulnerable to abuse

## Protection for persons in care legislation

AB: *Protection for Persons in Care Act, SA*  
2009, c P-29.1

MB: *The Protection for Persons in Care Act,*  
CCSM 2000, c P 144

NS: *Protection for Persons in Care Act,*  
SNS 2004, c 33

## Public guardian & trustee legislation

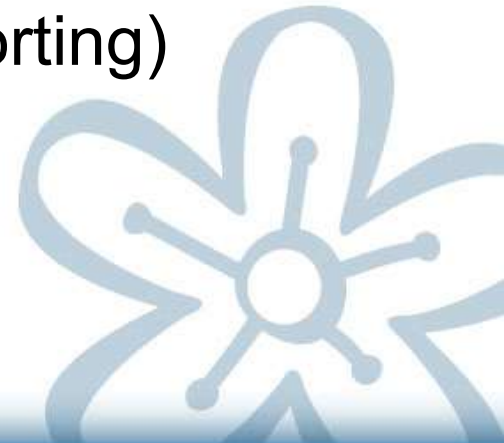
- Powers to intervene in circumstances of financial abuse or abuse by a power of attorney, trustee or guardian
- Examples:
  - to freeze assets
  - become guardian without court application
- Powers vary significantly across the country

## Public guardian & trustee legislation

- YK—Public Guardian and Trustee Act
- BC—Public Guardian and Trustee Act
- AB—The Adult Guardianship and Trusteeship Act
- SK—The Public Guardian and Trustee Act
- PQ—Public Curator Act
- ON—Substitute Decisions Act

## Unique approaches

- Quebec: Human rights law permits human rights agency to respond to exploitation of older adults
- Manitoba: *Vulnerable Persons Living with a Mental Disability Act* (mandatory reporting)





## Mandatory duty to report

- Care facilities (Alberta, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario)—if you work in a care facility you must report abuse to supervisor
- Reporting abuse is mandatory in Nova Scotia if occurring anywhere in community
- Also consider employer or institutional policies and Professional codes of ethics and regulation

## Federal law: *Criminal Code of Canada,*

Is elder abuse or neglect a crime?

- Some actions can be a crime
- Almost all crimes are age neutral
- Police will sometimes respond to elder abuse

## ***Criminal Code: physical abuse***

- Murder (s 229)
- Assault (s 265)
  - With a weapon or causing bodily harm (s 267)
- Aggravated assault (s 268)
- Forcible confinement or imprisonment (s 279)

## *Criminal code: sexual abuse*

- Incest (s 155)
- Sexual assault (s 271)
  - With a weapon, threats to a third party or causing bodily harm (s 272)
- Aggravated sexual assault (s 273)
- Voyeurism



## ***Criminal code: psychological/ emotional abuse***

- Uttering threats (s 264.1)
- Intimidation (s 423)

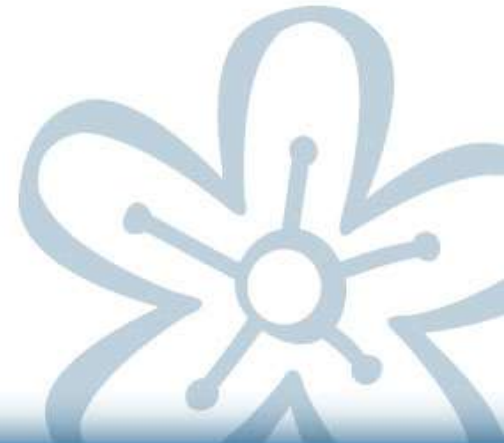


## ***Criminal code: financial abuse***

- Theft (s 322)
- Theft by a person holding a POA (s 331)
- Misappropriation of money held under direction (s 332)
- Criminal breach of trust (s 336)
- Theft, forgery, etc. of a credit card (s 342)
- Robbery (s 343; 344)

## *Criminal code: neglect*

- Failure to provide necessities of life (s 215)
- Criminal negligence (s 219)
- Manslaughter (abuse or neglect causes unintentional death) (s 234)



## Failure to provide necessities of life

215 (1) Every one is under a legal duty...

- (c) to provide necessities of life to a person under his charge if that person
  - (i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and
  - (ii) is unable to provide himself with necessities of life.



## Is elder abuse a crime?

### Non-criminal

- isolation
- ignoring the older adult
- mental cruelty
- neglect (non-criminal)
- humiliation
- ridicule and insult
- damage to relationships
- frightening the older adult
- infantilizing the older adult

### Criminal

- assault
- sexual assault
- failure to provide the necessities of life
- stalking, harassing
- uttering threats
- murder or manslaughter
- forcible confinement
- theft, fraud, forgery, extortion
- theft by power of attorney

## *Protecting Canada's Seniors Act*

- 2012 amendment to the Criminal Code
- aggravating or mitigating circumstances
- s. 718.2(1a)(iii.1)

“evidence that the offence had a significant impact on the victim, considering their **age** and other personal circumstances, including their health and financial situation”



# Part 2

## What's in the New Guide?



## Revision process

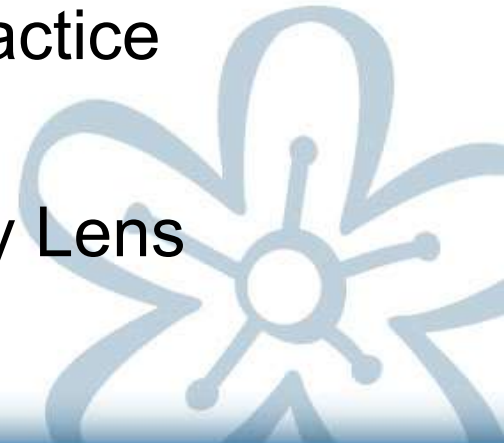
- Draft partial Guide
- Survey stakeholders
- Complete Guide in English
- Consult on snapshots
- Revise
- Translate into French
- Design



## New elements

Lenses section:

- Trauma-Informed Practice
- Cultural Competence, Humility, and Safety
- Age/Disability/Dementia-Friendly Practice
- Gender Lens
- Sexual Orientation & Gender Identity Lens



## Jurisdictional snapshot

- Adult protection law
- Family law and family violence legislation
- Legislation applying to long-term care
- The role of the Public Guardian and Trustee



## Jurisdictional snapshot

- Laws related to personal planning documents and substitute and supportive decision-making
- Human rights law
- Privacy law
- Some criminal law matters, such as guidelines for charging and supports for victims and witnesses.

## 12 Guiding Principles

- Are these the right ones?
- Any key omissions?
- Should anything be removed?





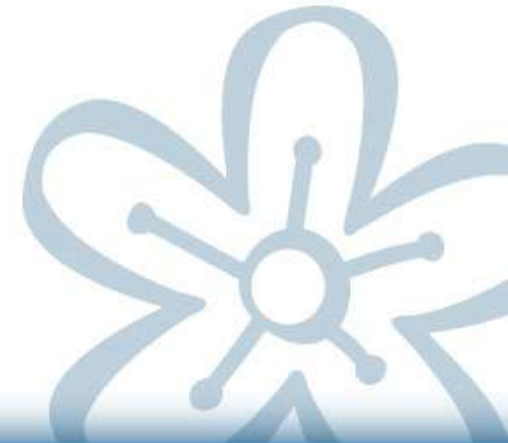
# Guiding Principles

## 1. Speak with the older adult



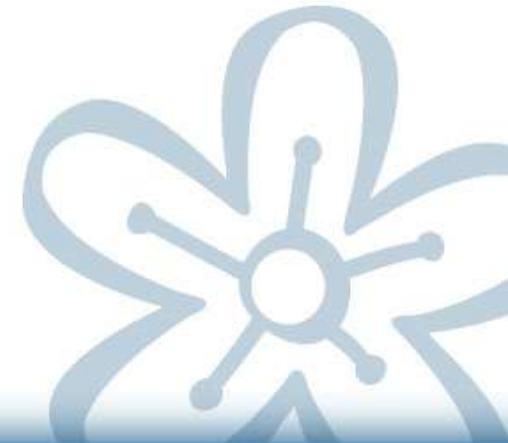
# Guiding Principles

## 2. Respect personal values



## Guiding Principles

### **3. Respect and support decision-making autonomy**



## Guiding Principles

### 4. Seek consent or permission



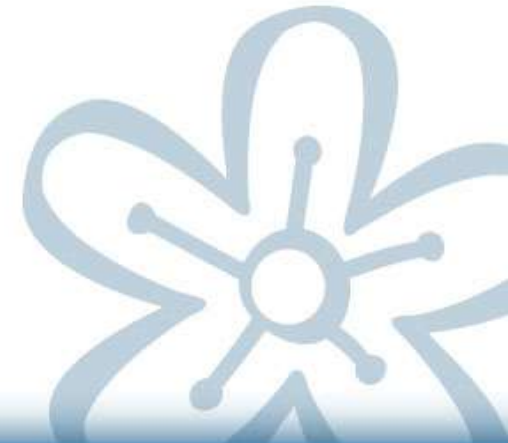
## Guiding Principles

### **5. Respect confidentiality and privacy rights**



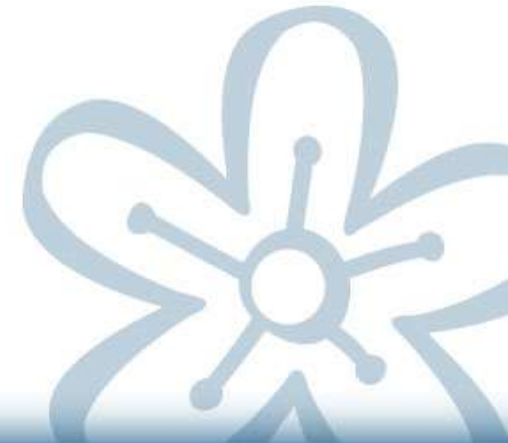
## Guiding Principles

**6. Avoid ageism and ableist thinking; assume capacity**



## Guiding Principles

- 7. Recognize the value of independence and autonomy**



# Guiding Principles

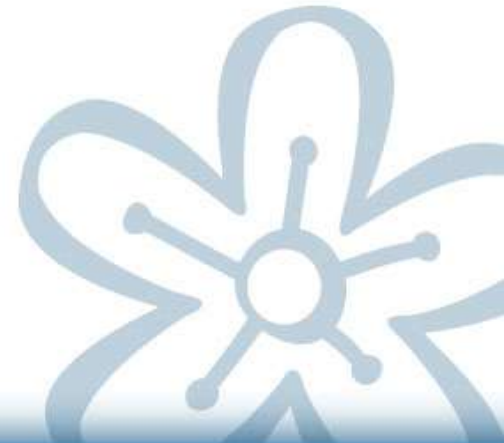
## 8. Develop trauma-informed practice





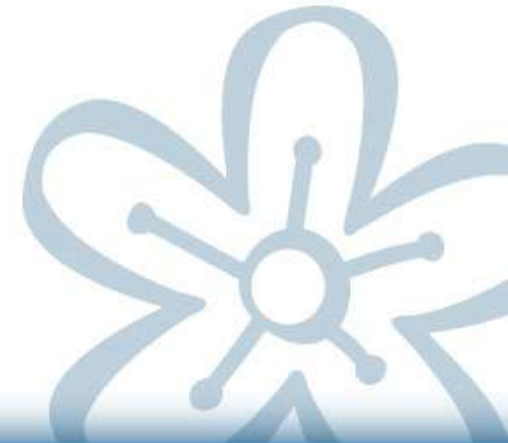
# Guiding Principles

## 9. Apply a holistic lens



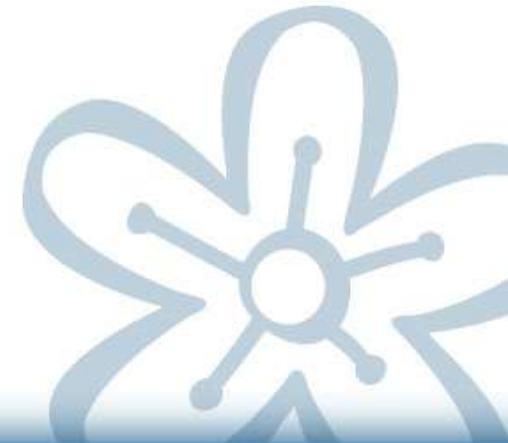
# Guiding Principles

## 10. Respect cultural values



# Guiding Principles

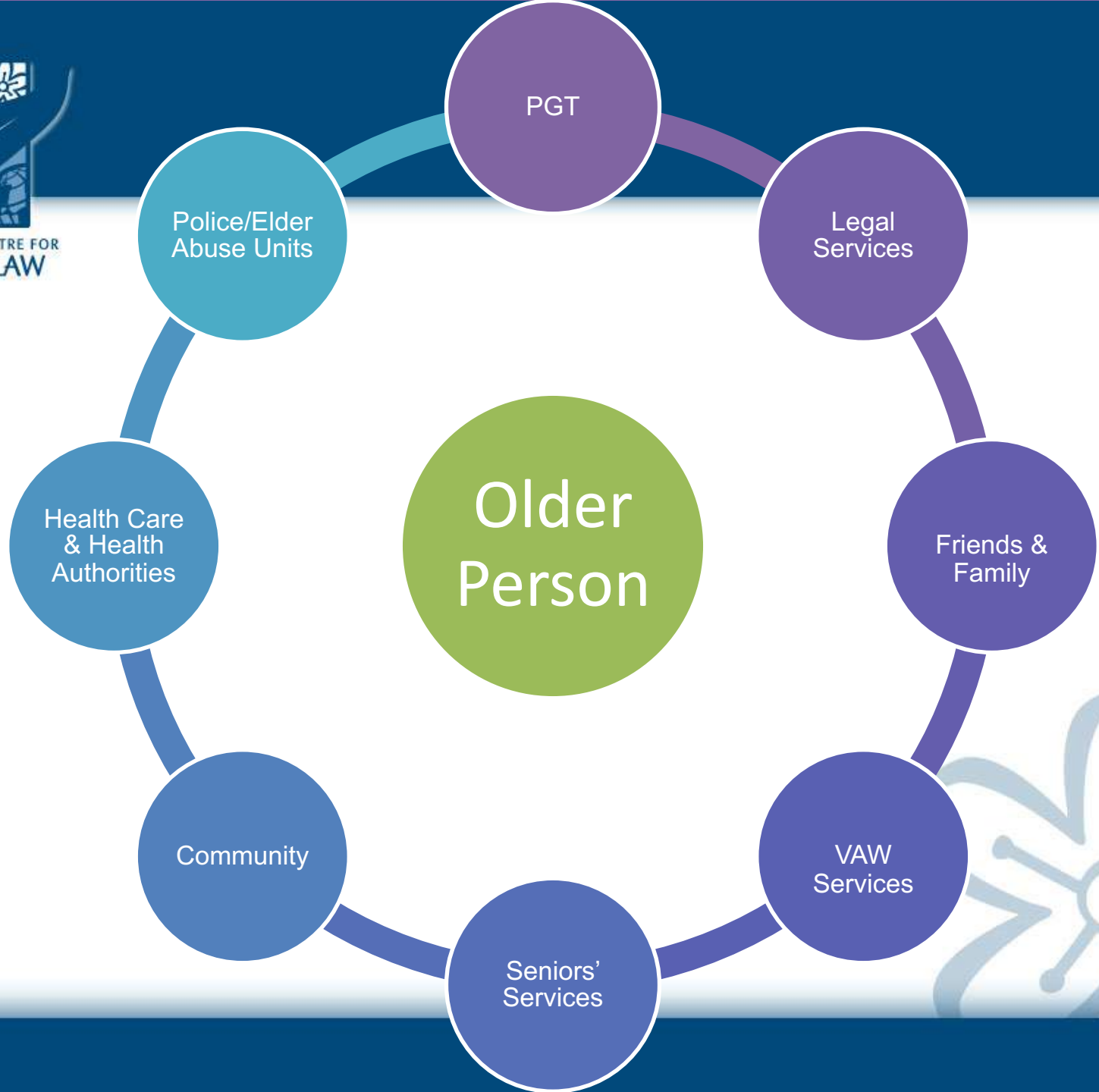
## 11. Respect relationships that matter



# Guiding Principles

## 12. Consider Indigenous experiences





## Reporting versus responding

- Crisis counselling
- Urgent medical care
- Safe housing
- Financial assistance
- Help developing a safety plan
- Help contacting family or friends
- Support for people they care for



## Inter-disciplinary practice

- BC Adult Abuse and Neglect Prevention Collaborative
- Alberta Elder Abuse Awareness Council
- Prevent Elder Abuse Manitoba
- Newfoundland and Labrador Network for the Prevention of Elder Abuse

[Cnpea.ca](http://Cnpea.ca)



## Help CCEEL improve the Practical Guide

If you wish to help CCEEL improve its updated Practical Guide, send an email to [bschoepflin@bcli.org](mailto:bschoepflin@bcli.org) CCEEL will email you a copy of the updated draft for review, along with a short feedback survey.





## Join us in October!

In October 2020, CNPEA will host a second webinar about the CCEL's Practical Guide,  
**in French.**

Krista James will also introduce the French version of the Guide.

Join our mailing lists and follow us on social media for further announcements!

## Thank you! Let's stay in touch!

- Twitter: [@cnpea](#), [@CCElderLaw](#)
- Facebook: [@cnpea](#), [@CanCentreforElderLaw](#)
- Questions & Comments:  
[benedictes.cnpea@gmail.com](mailto:benedictes.cnpea@gmail.com)

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# Canadian Centre for Elder Law

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