
Report on the Examination of the Implementation and Impact of *The Vulnerable Persons Living with a Mental Disability Act (VPA)*



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Recommendations

In this section, we list recommendations regarding the implementation and impact of the *VPA*. First are two recommendations that cut across all of the four areas of inquiry. We then list recommendations that arise from each of the four areas of inquiry. In the section on the impact of the *VPA*, we discuss recommendations about substantive issues that emerged through our analysis. In the administrative section, we present recommendations related to the process of implementing aspects of the *VPA*. These are followed by recommendations that have to do with individual planning and protection. Recommendations are numbered sequentially across the areas of inquiry.

General Recommendations

There are two broad recommendations that are relevant to all four areas of inquiry. These are first, education and training, and second, accessible and functional information.

For many members of the stakeholder groups, clear, complete and accessible information about the *VPA*, its provisions and implications, are not easily available. Many stakeholders reported feeling intimidated and confused as they tried to learn about the *VPA* and related regulations, policies and practices. A few of the stakeholders (including Family Services and Housing staff) possess inaccurate information about the *VPA*.

On the other hand, ongoing efforts to inform, orient and educate all relevant stakeholders in the provisions of the *VPA* that have to do with protection issues has resulted in greater clarity on what actions constitute abuse and/or neglect, and how individuals must report and respond to such allegations.

R1. Orientation and Ongoing Education and Training

We recommend that the Office of the Vulnerable Persons' Commissioner has a duty to provide ongoing, proactive outreach, including orientation and ongoing education and training, to all stakeholders in the province about the principles, provisions, and processes used to administer the *VPA*. This outreach must include:

R1a. Orientation and ongoing education and training opportunities for all stakeholders, including individuals with intellectual disabilities, family members, substitute decision makers, community services workers and other Family Services and Housing staff, the Executive director of the Disability Issues Office, relevant service providing organizations, Manitoba Education, Citizenship and Youth, and other relevant collaterals.

R1b. The above orientation, education and training opportunities must be available on a continuing basis, in order to accommodate staff turnover, the entry of new families and individuals into the service system, and to ensure that long term staff stay current. The information must be available in a variety of formats, including workshops, written and web-based materials.

R2. Accessible Information

We recommend that the Office of the Vulnerable Persons' Commissioner has a duty to ensure that all stakeholders, as well as members of the general public, have access to information about the VPA, related policies and practices that is clear and understandable. This includes information about the VPA, as well as all forms to be used, and correspondence from the Vulnerable Persons' Commissioner's Office. Specifically,

R2a. Information about the VPA, must be available in print and online formats, and prepared in plain language for all stakeholders. Appropriate web links to other sites should be sought and established. Written materials should be developed for adults with intellectual disabilities. Update and rename the video and other materials (the VPA is no longer a 'new' law).

R2b. All forms used by, and correspondence from, the Office of the Vulnerable Persons' Commissioner (e.g., application to become a substitute decision maker, appointment of a substitute decision maker, delegation of authorities document), must be written in plain language, understandable by the average layperson.

Further, the application to become a substitute decision maker should ask applicants to identify the decisions that must be made now, rather than ask applicants to identify the powers they are seeking. This allows hearing panels and the Vulnerable Persons' Commissioner to determine appropriate powers, if any, and means that applicants do not have to guess at what the specific powers actually mean. The Vulnerable Persons' Commissioner must clearly explain, in plain language understandable by the average layperson, what powers have been approved, what these powers entail, and the obligations of the substitute decision maker. We also recommend that in the delegation of authority document, the specific powers that are delegated must be clearly listed and explained. Powers retained by the Public Trustee must also be listed and explained.

I. Impact of the VPA

Generally, stakeholders agreed that the VPA has had an overall positive impact on the lives of individuals with intellectual disabilities, especially in comparison to the more draconian *Mental Health Act, Part II*. Awareness of the provisions of the VPA ranged from a very cursory awareness to a deep and thoughtful understanding of the principles themselves, and the implications of following these principles. Stakeholders held a range of perspectives about the principles of the VPA.

Overall, it appears that the 'best interests of the vulnerable person' is the guiding premise for interpreting the principles and provisions of the VPA, and the basis for current practice. However, the determination of what these 'best interests' are, is not always informed by the vulnerable person's wishes, values and beliefs, as required in the VPA. Rather, the determination of best interests is largely based on the wishes, values and beliefs of the person(s) making various decisions for a vulnerable person. Assumptions about the individual's capacity can lead to encouraging decision making based on the notion that it is in the person's best interests to experience and learn from the consequences of the decision or to discourage decision making if it is assumed that the individual will not learn from the decision and therefore, it is in his/her best interests to have someone else make the decision. Differing understandings of supported decision making can encourage support network members to provide assistance to enhance the vulnerable person's independence and self-determination or to act as de facto substitute decision makers depending on what is considered to be in the individual's best interests. Applications for a substitute decision maker are discouraged when past experiences with how the VPA is implemented creates the belief that this form of support is not in the best interests of the vulnerable person even though it may be needed. Feelings of protection also affect the determination of best interests. Finally, the need for accountability of service programs may be considered to be in the vulnerable person's best interests but can produce restrictive practices that discourage independence and self-determination. Provisions of the VPA are interpreted through the various interpretations of the vulnerable person's best interests on the part of stakeholders. The end result is conflicting practices that are often contrary to the principles of the VPA.

R3. Clarify Core Concepts

The Vulnerable Persons' Commissioner must promote an ongoing examination and discussion, among all stakeholders, about the definition of 'best interests' and the VPA's emphasis on attending to the "wishes, values and beliefs" of the vulnerable person. The Vulnerable Persons' Commissioner must take the lead in clarifying the meaning of several core concepts found in the VPA, including, but not limited to, the following: presumed capacity, being treated with respect in a way that enhances the person's privacy and dignity, supported decision making, and using substitute decision making as a last resort intervention. This clarification, which form part of the content of the orientation, and ongoing

education and training and that should be disseminated broadly as discussed earlier, must also be manifested in how the provisions of the *VPA* are carried out.

II. Administration of the *VPA*

As this section is extensive, we have broken it into sub-sections, with recommendations following each sub-section.

Information Dissemination and Training

Stakeholders report that information dissemination and training about the Act was more intensive when the *VPA* was first enacted, but less available 10-12 years later. The training that has been offered has targeted community services workers and agency staff, with some small scale efforts for Employment and Income Assistance staff. In recent years, there has been a renewed emphasis on training regarding protection issues. A limited training budget combined with a high staff turnover rate among Family Services and Housing and agency personnel means that many relevant individuals do not receive timely training about the *VPA*. Families, individuals with intellectual disabilities and those involved with collateral agencies and organizations have even fewer training opportunities. The Office of the Vulnerable Persons' Commissioner provides information on the *VPA* to those who request it, but does not provide active outreach of accessible information to all stakeholders and collaterals. Readers are referred to the overall recommendations regarding accessible information and orientation, and ongoing training and education opportunities.

Systemic Barriers to the *VPA*

Many stakeholders talked about the discrepancy between the principles and intent of the *VPA* and other governmental policies and regulations that were perceived as contradictory to these principles. There is a tension between systemic regulations, policies, procedures and practices (as found in licensing, income assistance programs and certain service delivery models) and the implementation of the *VPA*, especially regarding decision making. These potential restrictions include (but are not limited to) control over one's bank account, a cap on savings, place of residence, who one might live with, the meals one will eat and infringement of one's privacy and personal information.

R4. Monitor Systemic Barriers

In accordance with recommendations in Parts I and III, the Vulnerable Persons' Commissioner should track examples of situations where systemic requirements, policies and practices interfere with opportunities for individuals with intellectual disabilities to exercise appropriate decision making. This information should be given to the Minister of Family Services and Housing annually, and summarized in the Vulnerable Persons' Commissioner's public annual report.

Supported and Substitute Decision Making

The *VPA* provides a framework for the administration of the Act, and the Vulnerable Persons' Commissioner has discretion in developing the policies and procedures that will be used to administer the Act. Although the Vulnerable Persons Commissioner acknowledged that substitute decision making should only be used as a last resort, he did not explain the criteria or process used to determine this. It appears that supported decision making is not explored as an alternative when the person does not have an easily identifiable support network. When a person does not have a support network, the current practice is to refer the application for a substitute decision maker to a Hearing Panel rather than requesting the Executive Director to take steps to involve a support network with the vulnerable person. The efforts made by the Vulnerable Persons Commissioner to avoid having a substitute decision maker appointed are focused solely on avoiding having an application submitted in the first place.

Many stakeholders thought that the idea of a support network represents a unique and positive feature of the Act. However, nobody is sure how to operationalize support networks. There is no clear, consistent definition of what supported decision making or support networks are. The Act stipulates an active role for the Vulnerable Persons' Commissioner regarding the identification, establishment and support of support networks before moving to the appointment of a substitute decision maker. The Vulnerable Persons' Commissioner has consciously ignored and/or avoided this provision in the *VPA*. Inadvertently, some community services workers (who sincerely believe their interpretation of the *VPA* and support networks is accurate) have passed on misinformation about the *VPA* and the role of support networks. In addition, there is a widespread belief that family interests are always congruent with a vulnerable person's interests, and that families are the *de facto* support network unless they are unwilling or unavailable to be so involved. In some cases, the practice is to try and involve family members in making decisions for a vulnerable person, regardless of any actual, valid and ongoing connection to that person.

Most applications for a substitute decision maker are prepared by, or with the assistance and guidance of, a community services worker. After the application is submitted, the community services worker is asked to conduct a preliminary investigation into the situation and the suitability of the applicants. Many stakeholders found this to be a redundant practice, especially when the community services worker also has the opportunity to comment on the application at the hearing.

In some regions, community services workers rely on emergency substitute decision maker appointments as short term measures in order to respond to a medical crisis, to satisfy the requirements of certain professionals, or as an initial step towards a permanent appointment of a substitute decision maker. The appointment of a substitute decision maker 'just in case' something might happen seems to be a common practice in some regions of the province.

Some Family Services and Housing staff reported that there is a prevalent assumption that every child with an intellectual disability who is in care will continue to need a substitute decision maker as an adult. As applications for

substitute decision makers can be considered when the person is 17, some individuals already have a substitute decision makers in place when they 'become known' to Adult Services at the age of 18.

Family members and community services workers expressed confusion about determining when a substitute decision maker is required. Further, at least some family members are not clear if they are the substitute decision maker for their relative. Several family members assumed that they were, but a review of the list of appointed substitute decision makers indicates that they are not. Not all substitute decision makers are clear about the nature of the powers they have been granted or refused as the substitute decision maker, nor are they clear about the general responsibilities of this role. Residential support agencies report that they are not informed that a substitute decision maker has been applied for, approved, nor what powers that individual has been granted, even though they are required to then communicate with the substitute decision maker. In some cases, staff of service providing agencies know the vulnerable person better than others, such as community services workers, who may be involved in the process of applying for a substitute decision maker. Finally, when the Public Trustee is the substitute decision maker, the Delegation of Authority document is not clear about the powers that the Public Trustee was granted and those that are subsequently delegated. Ultimately, current practice in the areas of supported and substitute decision making decreases the use of supported decision making and increases the use of substitute decision making, so much so that in some regions, substitute decision making becomes the only resort as opposed to the last resort.

While the Vulnerable Persons' Commissioner stated that all substitute decision makers must complete an annual report, many substitute decision makers interviewed maintained that they did not complete and submit these reports. The Vulnerable Persons' Commissioner also outlined the steps followed during a re-appointment review of a substitute decision maker. Stakeholders reported differing practices of this process. It is not clear how the Vulnerable Persons' Commissioner conducts a re-appointment review when he does not refer the situation to a Hearing Panel.

Although the vulnerable person has the right to be represented by a third party at a hearing, this very rarely occurs. Currently, anyone applying to become a substitute decision maker must submit a report from a police records/abuse registry check. This is an irksome requirement for families, especially when the vulnerable person has been living with the family for their entire life.

R5. Clarify Administrative Practices

The Vulnerable Persons' Commissioner must clarify and/or change a number of current practices when administering the VPA. These are:

R5a. Provide leadership about the clarifying the definition and parameters of support networks. Take an active role in the identification, establishment and support of support networks across the province, as required in the VPA.

R5b. In accordance with earlier recommendations regarding the use of plain and accessible language, the Vulnerable Persons' Commissioner must inform all

relevant parties, in accessible language, his/her decisions about applications for substitute decision makers, outlining a list of powers and responsibilities that were granted, what these mean, the process for re-appointment, re-appointment decisions and so on.

R5c. Consider the circumstances under which a vulnerable person might avail her/himself of a third party representative for a hearing panel, and communicate this in all information and training materials on the *VPA*.

R5d. Consider eliminating the requirement for a community services worker to conduct a preliminary investigation unless there are clear reasons to do so.

R5e. Clarify the purpose of 'emergency' and 'short term' substitute decision maker appointments, as well as the practice of making 'just in case' substitute decision making applications with all stakeholders.

R5f. Inform all relevant stakeholders, including relevant service providing agencies, when an appointment of a substitute decision maker is appointed, along with a clear statement of what powers were assigned.

R5g. Consider waiving the police and abuse registry check of parents applying to become a substitute decision maker, unless there are specific concerns or issues raised.

Hearing Panels

Some hearing panel members were not clear if they were still a hearing panel member as they had not been called upon on a regular basis. They reported that they did not know how or why certain hearing panel members were asked to take part in what hearings, nor did they know how the chair was selected. All hearing panel members interviewed were aware of the principles and basic provisions of the *VPA*, although there was some confusion between the ideas of having the capacity to make decisions for oneself and the physical ability to care for oneself. Hearing panel members reported that while they make recommendations to the Vulnerable Persons' Commissioner, these were not always followed. All had received an initial orientation, and some opportunities for ongoing training, though some felt that the content of these sessions did not adequately cover necessary elements of the Act. Several hearing panel members expressed concern that the hearing panel process was becoming routine with respect to developing and writing recommendations. The hearing panel coordinator prepares the actual report, which hearing panel members no longer see, although it is read aloud to them. Several hearing panel members noted that they would like to receive information about the outcome of their recommendations to the Vulnerable Persons' Commissioner. They also noted that virtually all meetings take place in a Family Services and Housing office, and that at times, another location might be more considerate of the vulnerable person.

R6. Elucidate Hearing Panel Policies and Procedures

The Vulnerable Persons' Commissioner must clarify who is eligible to serve on a hearing panel. S/he must clarify the process used to identify and select individuals to serve on a hearing panel. Related to this, the Vulnerable Persons' Commissioner must also:

R6a. Endeavour to identify and recruit adequate numbers of hearing panel members from all regions in Manitoba.

R6b. Provide an orientation and ongoing training opportunities to all those eligible to serve on hearing panels, as described in the first general recommendation.

R6c. Adopt some flexibility as to the location of hearing panel meetings in order to be more sensitive to the vulnerable people who attend.

R6d. Provide a written report to hearing panel members about the status of decisions made by the VPC (appointments of substitute decision makers, their powers, and the review process).

Public Trustee

Those seeking to become a substitute decision maker must develop and put forth an application in order to be appointed in this role. However, when a Family Services and Housing staff person determines that a vulnerable person may need a substitute decision maker and also determines that no one is available to fill that role, a community services worker makes the application, conducts the preliminary investigation, and if successful, the Public Trustee is appointed as the substitute decision maker. The Public Trustee then typically delegates at least some powers back to a community services worker. Some community services workers are also involved with the development and licensing of service providing settings for these same vulnerable persons. While this set of practices is not a conflict of interest in law, it is nevertheless perceived as a conflict of interest by many stakeholders, some of whom noted that the *VPA* prevents paid staff from becoming a substitute decision maker.

The Delegation of Authority document notes that the Public Trustee can only delegate authority in areas where it is appointed the substitute decision maker, these specific areas and authorities delegated are not clearly listed. Due to a lack of resources, the Public Trustee relies on the delegated community services worker to provide needed information regarding the status of the vulnerable person. For their part, community services workers note that they do not have the time nor the knowledge of every vulnerable person on their caseloads. Some community services workers also reported their frustration with the decisions that the Public Trustee has made which were contrary to the wishes of the vulnerable person and recommendations of the community services worker. Several stakeholders noted that the Public Trustee consistently considered the wishes of family members over that of the vulnerable person. Several stakeholders interviewed commented that the Public Trustee seemed more concerned with conserving any trust fund monies that were available rather than allowing their

use to enhance the life of the vulnerable person. Finally, many stakeholders noted that few staff from the Public Trustee's office ventured away from their office to actually meet the people for whom they made decisions.

R7. Clarify Role of the Public Trustee

The Vulnerable Persons' Commissioner and the Public Trustee should work together to address the perception of a conflict of interest among stakeholders about the process by which the Public Trustee is appointed the substitute decision maker. This could include (but not be limited to) ensuring that the vulnerable person has independent, third party representation during the hearing process. The Vulnerable Persons' Commissioner and the Public Trustee should, along with other stakeholders, examine and clarify the role of the Public Trustee, especially when appointed as substitute decision maker for property. That is, is the role of the Public Trustee to simply conserve a person's estate, or to use the estate to help enhance the life of the vulnerable person?

In addition, the Vulnerable Persons' Commissioner should ensure the following:

R7a. That the Delegation of Authority document clearly states the powers that the Public Trustee received as substitute decision maker, and those powers that it is, and is not delegating. That this document is written in plain and accessible language, and is distributed to all relevant stakeholders, including the vulnerable person, the community services worker, family members, and the residential service providing agency.

III. Individual Planning

For all of the stakeholder groups, the key issue regarding individual planning is the lack of actual implementation of plans that are developed. It is not clear who is responsible for initiating, conducting and carrying out the planning process, nor the implementation of the actual plans. Additionally, plans which were developed in good faith with all relevant parties may not come to fruition as the substitute decision maker may not approve certain expenditures (e.g., for a winter vacation). Stakeholders reported that this scenario is most likely when the Public Trustee is the substitute decision maker. The restrictions on savings accounts forestalls the opportunity for some to save up for certain activities/possessions. The lack of available support options is another systemic barrier that all of the stakeholders identified as problematic regarding the implementation of effective individual plans. All of this has resulted in a high level of skepticism and cynicism about the individual planning process and individual plans, especially on the part of individuals with intellectual disabilities.

R8. Clarify Individual Planning Policies and Procedures

We recommend that Family Services and Housing clarify the purpose of individual planning, and establish clear lines of authority, responsibility and accountability regarding the planning process and actual implementation of the plans. If the individual plan is actually meant to help identify and describe the

direction for a person's everyday life, then Family Services and Housing must address the systemic barriers that currently prohibit this from happening. This may include re-allocating existing funds or allocating additional funds.

To this end, we recommend that Family Services and Housing:

R8a. Clarify responsibility for the development and implementation of individual plans.

R8b. Ensure that service support options are available for the implementation of these plans (e.g., via continued and expanded funding connected to a person to purchase services versus tied to a program bed/seat).

R8c. Address the role of all substitute decision makers (including the Public Trustee) regarding the use of supplemental trust funds when these are available. For instance, one question raised by many stakeholders was whether these funds should be primarily conserved in an estate or used to assist a person with an intellectual disability to enjoy certain benefits and opportunities not otherwise affordable.

IV. Protection

R9. Maintain Current Protection Initiatives

We recommend that Family Services and Housing, via the Office of the Vulnerable Persons' Commissioner, continue its ongoing efforts to inform, orient, and train all relevant stakeholders in the provisions of the VPA regarding protection issues. We further recommend that Family Services and Housing maintain its efforts regarding the prompt review and disposition of all allegations of abuse or neglect. Continuing current efforts will serve as an important safeguard for Manitobans with intellectual disabilities.

Specifically, efforts should include:

R9a. The continuation of orientation and training for all stakeholders

R9b. The development and dissemination of appropriate, plain language written materials for individuals with intellectual disabilities to accompany *The New Law* video, and continued dissemination of currently available materials.

R9c. The continuation of training and assistance to service providers to review and update agency policy and procedure documents, as well as existing practices, regarding allegations of abuse and/or neglect.

R9d. The continuation of the practice of identifying key service providing agency staff and community services workers to gain particular expertise in the provisions of the VPA, and issues of protection.

R10. Enhance Protection Initiatives

We recommend that Family Services and Housing, via the Office of the Vulnerable Persons' Commissioner, inform all relevant stakeholders about the outcome of all investigations into alleged abuse or neglect. Service providing agencies need to know the outcome of investigations in order to resolve the employment status of staff members who have had allegations made about them.

R11. Establish a Vulnerable Persons Abuse Registry

Finally, we recommend that Family Services and Housing, via the Office of the Vulnerable Persons' Commissioner, look into the possibility of establishing a vulnerable person's abuse registry, along the lines of the child abuse registry.

In order to implement the above recommendations, Family Services and Housing may be required to allocate additional resources as necessary.