

## Publisher's Note

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### **VULNERABLE PERSONS: PROTECTION AND REMEDIES IN CANADA**

Lynn Kirwin

Release No. 2, November 2021

#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in November 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the Release 2, November 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This reference work guides the practitioner through all aspects of law and practice related to vulnerable persons in Canada. This book is the first Canadian legal text on this subject, and is conveniently organized so the user can quickly access the legal remedies available for the protection of persons in vulnerable circumstances in the common law provinces of Canada. The four types of vulnerable persons are discussed in this book and organized by chapter: youths who fall outside the scope of child protection laws and adults who suffered child abuse, spouses, the elderly, and medical patients and persons with disabilities.

### **What's New in this Update:**

This release features updates to the case law in Chapter 2, *Youth Protection and Childhood Remedies*; Chapter 3, *Spousal Protection and Remedies*; Chapter 4, *Protection of the Elderly and Remedies*; and Chapter 5, *Protection of the Disabled/ Patients and Remedies*. New section topics include Adult Child Support and Parental Support.

### **Highlights:**

**Youth Protection and Childhood Remedies — NEW — Adult Child Support** — The father had been incarcerated and later applied to court to reduce his monthly support obligations. The two oldest children were no longer considered children of the marriage as defined in the *Divorce Act*. Both children stopped attending university full time in 2020, and both were over the age of 19 when they stopped attending university. As such, the father's child support obligation was reduced for the youngest child, and this variation was retroactive to May 1, 2020. While the Court accepted that the father was not able to earn an income while incarcerated, that was not the end of the question. The recipients were entitled to receive support payments properly owing while the payor was incarcerated, even if their receipt of such payments was delayed into the future. From December 2017 to May 23, 2019, the father was not incarcerated, was able to work, and failed to obtain any kind of reasonable employment which would allow him to meet his support obligations. His arrears exceeded \$90,000. There was no basis to vary imputation of income made in the 2018 order, and there was also no basis to cancel outstanding arrears with exception of the two oldest children who were no longer children of marriage as of May 1, 2020: *Stark v. Tweedale*, 2021 BCSC 1133, 2021 CarswellBC 1855.

**Protection of the Elderly and Remedies — NEW — Parental Support**— The 80-year-old Applicant was the Respondent's biological mother. The Respondent's father had custody and the mother rarely exercised her access rights. The Applicant never supported the Respondent when he was a child. The wording of section 114 of the *Family Services Act* clearly sets out the conditions under which a child's obligation to support a parent arises. First, the parent must have cared for and provided support for the child from whom that parent seeks support. Second, the parent must show need on the basis of which the amount of support can then be determined. Third, an obligation to support can only arise to the extent that the child is capable of providing support. The duration and type of care and support, the circumstances relevant thereto and the

relationship between parent and child are all factors that the court must consider in determining whether a parent has fulfilled his or her care and support obligations under section 114 in order to possibly entitle him or her to support. It is also important to know why the parent finds him or herself in a situation of financial need and whether there is a real financial need in the circumstances. Finally, the court must consider the financial obligations of the adult child (i.e., financial obligations with respect to his or her own children and spouse, mortgage/debts etc.). The Court granted summary judgment to the Respondent and dismissed the Applicant's application for support. The Applicant was absent from the Respondent's life from a very young age. There is no doubt that the Applicant never fulfilled her obligations of care and support for the Respondent: *Z.R. c. R.A.V.*, 2020 NBBR 156, 2020 NBQB 156, 2020 CarswellNB 450.

### **ProView Developments**

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