

# HOW CAN THE EXISTING LEGAL FRAMEWORK WITH REGARD TO THE MAINTENANCE OF PARENTS AND PROTECTION FOR THE ELDERLY FROM NEGLECT AND ABUSE BE REFORMED?

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*“Whilst you may want to protect them, we need to do so without depriving older Singaporeans of their legal rights ... So there is a fine balance between protection and removing the autonomy and respect which older Singaporeans should enjoy. Nevertheless, it is an issue which we will study in greater detail.”<sup>1</sup>*

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Minister for Community Development, Youth and Sports (as he then was)

## I. Introduction

1 By 2030, one in five residents will be aged 65 or above.<sup>2</sup> At the domestic level, this raises concerns relating to the maintenance of parents.<sup>3</sup> At the societal level, there are concerns about ageism and the need to tolerate and protect the elderly. These concerns are characterized by the recent spate of public elder humiliation or mistreatment cases.<sup>4</sup>

2 In raising reforms against elder abuse, conflicting principles emerge. On one hand, the vulnerable elderly need to be protected from a wide range of abuse. On the other hand, we should avoid intruding into the elderly’s personal autonomy and categorizing them as ‘frail’.

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\*We are grateful to Ms. Penny Tham, Secretary for the Tribunal for Maintenance of Parents, for agreeing to be interviewed. Her insights into the problems faced by the Tribunal have been most helpful.

<sup>1</sup> *Singapore Parliamentary Debates, Official Report* (10 March 2005) vol 75 at col 2372 (Dr Vivian Balakrishnan, Acting Minister for Community Development, Youth and Sports).

<sup>2</sup> Committee on Ageing Issues, Ministry of Community Development, Youth and Sports, *Report on the Ageing Population* (3 February 2006) at para 1 (Co-chairs: Dr Balaji Sadasivan and Dr Mohamad Maliki Osman).

<sup>3</sup> *Ibid.*

<sup>4</sup> Royston Sim, “Police Question Man who Shoved Woman, 76, Off Bus” *The Straits Times* (8 June 2012) p B7.

3 In this paper, we seek to evaluate cross-jurisdictional approaches and to propose practical reforms for Singapore. The first part of this paper deals with proposals relating to the definition of “abandon”, “abuse” and “neglect”, and how these terms ought to be uniformly defined in Singapore statutes. The second part proposes reforms targeted at elder abuse and neglect. Finally, the last part of this paper addresses reforms relating to the maintenance of parents.

## II. Defining “abandon”, “abuse” and “neglect”

### A. *Current law and its limitations*

4 There is no universal definition of “elder abuse.” The Ministry of Community Development, Youth and Sports (“MCYS”)<sup>5</sup> has characterized elder abuse as a multi-dimensional phenomenon that includes: physical and psychological mistreatment,<sup>6</sup> neglect,<sup>7</sup> abandonment<sup>8</sup> and financial exploitation.<sup>9</sup> However, it is unclear whether the terms “abuse” and “neglect” are as comprehensively defined in Singapore legislation.

5 While Singapore’s legislation seeks to deal with elder abuse, the terms used are piecemeal at best. For example, the terms “abandon”, “abuse” and “neglect” which are found in section 5(3) of the Maintenance of Parents Act<sup>10</sup> (“MPA”) are not defined. In contrast, section 22(2)(c) of the Mental Health (Care and Treatment) Act 2008 (“MHCTA”) defines “neglect” to include inflicting physical, emotional and other injury to health in the context of a patient in psychiatric care.<sup>11</sup> It is unclear whether this definition applies to the MPA as well.

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<sup>5</sup> Ministry of Community Development, Youth and Sports website <[http://app1.mcys.gov.sg/portals/0/summary/publication/Resource\\_Materials\\_ElderAbuseBooklet.pdf](http://app1.mcys.gov.sg/portals/0/summary/publication/Resource_Materials_ElderAbuseBooklet.pdf)> (accessed 20 June 2012).

<sup>6</sup> Inflicting physical pain and injury or verbal aggression on the elderly person.

<sup>7</sup> Deliberate refusal to meet the elderly person’s basic needs.

<sup>8</sup> Deliberate attempt to desert the elderly person.

<sup>9</sup> Misuse of the elderly person’s funds or resources.

<sup>10</sup> Maintenance of Parents Act (Cap 167B, Rev Ed 1996).

<sup>11</sup> Mental Health (Care and Treatment) Act 2008 (No 25 of 2008) (“MHCTA”), s 22.

## **B. Comparative views**

### (1) *United Kingdom of Great Britain and Northern Ireland (“UK”)*

6 In the UK, the “No Secrets” Guidance document (issued by the Department of Health and the Home Office) comprehensively defines “abuse” as a violation of a person’s human and civil rights by another person. Abuse includes physical, psychological, sexual, financial and discriminatory mistreatment. Further, neglect is identified as a subset of abuse.<sup>12</sup>

7 Although the “No Secrets” Guidance does not have legal force, it creates a framework for the relevant agencies to work together. This has allowed the UK Government to take a multifaceted (but coherent) approach towards elder abuse.<sup>13</sup>

### (2) *United States of America (“US”)*

8 Many states in the US have express criteria for what amounts to “abandonment” and “neglect.” For example, the California Family Code considers a child to be abandoned if the abandonment:<sup>14</sup>

- (a) continued for at least two years;
- (b) occurred before the child was 18 years old; and
- (c) occurred while the parent was physically and mentally able to provide for the child.

Similarly, the 2010 Pennsylvania Code considers a parent to have abandoned a child if the abandonment persisted for ten years while the child was a minor.<sup>15</sup>

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<sup>12</sup> *No Secrets: Guidance on Developing and Implementing Multi-agency Policies and Procedures to Protect Vulnerable Adults from Abuse* (2002) at [2.5]-[2.7].

<sup>13</sup> *Ibid*, at [1.2].

<sup>14</sup> Cal Fam Code § 4411 (2004).

<sup>15</sup> Pa Stat Ann tit 62, § 1973 (West 1968).

(3) *Canada*

9 In Ontario and Quebec, a child is not liable for parental maintenance if he was abandoned as a minor. The abandonment must be complete before it can be a defence under the filial responsibility laws.<sup>16</sup>

**C. *Recommendations for Singapore***

10 In our view, “abandon”, “abuse” and “neglect” should be uniformly defined under Singapore’s elder abuse laws. Like in the UK, a uniform definition of these concepts will clarify the scope of elder protection laws in Singapore. This will allow agencies like MCYS and its Elder Protection Team (“EPT”) to take a coherent and multifaceted approach towards elder abuse.

11 In defining these terms, it is submitted that the MCYS definition of “abandon”, “abuse” and “neglect” should be adopted. Further, a quantifiable criterion should be included in the definition of “abandon”. Canada’s approach should be adopted so that there is only “abandonment” if it is complete. In the context of the MPA, this would mean that a child is not liable for his parent’s maintenance if he was *completely* abandoned by his parent.<sup>17</sup> Anything short of complete abandonment should only be a mitigating factor that reduces the amount of maintenance that the child may be liable for.

**III. Elder abuse and neglect**

**A. *Current law***

12 The elderly can seek recourse for abuse and neglect under limited circumstances in Singapore. For example, the Women’s Charter provides recourse if there is family violence.<sup>18</sup> Under the Act, the court may make protection or exclusion

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<sup>16</sup> *Skrzypacz v Skrzypacz* [1996] CarswellOnt 2657; and *GL c FL (Driot de la famille -2626)* [1997] RJQ 1117.

<sup>17</sup> MPA, s 5(3).

<sup>18</sup> Women’s Charter (Cap 353, Rev Ed 2009) (“WC”), s 64.

orders to protect abused victims.<sup>19</sup> The Penal Code (“PC”) may be relevant if an elderly person suffers serious injury or financial abuse.<sup>20</sup> Finally, the MHCTA protects elderly patients receiving psychiatric treatment from ill treatment or neglect.<sup>21</sup>

## **B. Limitations**

### *(1) Present laws are insufficient*

13 Elder abuse is a multi-faceted phenomenon. However, the existing laws do not cover all aspects of elder abuse. Firstly, the Women’s Charter only protects victims against violence in domestic situations. There is no similar protection for abuse in public. If the abuse committed is not severe enough to warrant criminal penalties, the elderly person may not have any recourse.<sup>22</sup> Secondly, the MHCTA only protects patients receiving psychiatric treatment from abuse.<sup>23</sup> Elderly patients, who are not receiving psychiatric treatments, are vulnerable to abuse in institutional care.

### *(2) Practical difficulties*

14 Elder abuse is highly unreported because it usually occurs in the family and victims are reluctant to report their family members.<sup>24</sup>

15 Abused victims who are not forthcoming are likely to suffer in silence. Presently, the EPT does not have the power to investigate without the victim’s

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<sup>19</sup> WC, ss 65(1) and (2).

<sup>20</sup> Penal Code (Cap 224, Rev Ed 2008) (“PC”), ss 304A, 323, 324, 330, 336, 339, 340, 415, 416, 420 and 423.

<sup>21</sup> MHCTA, s 11.

<sup>22</sup> For example, an elderly person who is verbally assaulted in the train does not have recourse under the Penal Code. See Straits Times, “‘Polite Ah Lian’ Stand Up to ‘Priority Seat Aunty’”, *The Straits Times* (25 June 2012)

<[http://www.straitstimes.com/BreakingNews/Singapore/Story/STISStory\\_814863.html](http://www.straitstimes.com/BreakingNews/Singapore/Story/STISStory_814863.html)> (accessed 25 June 2012).

<sup>23</sup> MHCTA, s 22.

<sup>24</sup> Arizona Elder Abuse Coalition, Arizona Attorney General, *Financial Exploitation of the Elderly: How Financial Institutions Can Help* at p 3.

consent. Furthermore, the EPT may be helpless if family members restrict the EPT's access to the abused victim.<sup>25</sup>

### *C. Comparative views*

#### *(1) UK*

##### *(a) Current law*

16 UK laws protect adults in social care.<sup>26</sup> However, there is no protection for elder abuse in general. Adults beyond social care have some non-legislative protections under the “*No Secrets*” and “*In Safe Hands*” guidelines.<sup>27</sup> These guidelines provide a framework for agencies to protect vulnerable adults, but they can be disregarded by the local agencies because they are non-legislative.

17 Furthermore, UK laws that apply to the elderly are difficult to enforce. The UK authorities cannot take further action if abused adults refuse to co-operate with them. If family members do not co-operate, the local authorities may also not have access to the victim.<sup>28</sup> Unless the situation is severe enough to warrant an arrest under section 17 of the Police and Criminal Evidence Act 1984, the abused adult would continue to suffer in isolation.<sup>29</sup>

##### *(b) Calls for reform*

18 The UK Law Commission has proposed an adult social care statute to increase protections for the elderly. The proposed law will *inter alia*:

- (a)* place a duty on local authorities to make enquiries and to take action within their powers if they suspect that an adult is at risk;<sup>30</sup>

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<sup>25</sup> Elder Protection Team website <<http://www.transfamilyservices.org.sg/safe.html>> (accessed 25 June 2012).

<sup>26</sup> National Care Standards Act 2000 (c 14) (UK); and The Safeguarding Vulnerable Groups Act 2006 (c 47) (UK).

<sup>27</sup> Published under s 7 of the Local Authority Social Services Act 1970 (c 42) (UK).

<sup>28</sup> United Kingdom, Law Commission, *Adult Social Care Consultation Analysis* (Consultation Paper No 192, 2004) (Chairman: The Right Honourable Lord Justice Munby) at [12.140]–[12.141].

<sup>29</sup> *Id.*, at [12.127].

<sup>30</sup> *Id.*, at proposal 12-1.

- (b) introduce new compulsory or emergency powers to safeguard adults at risk;<sup>31</sup> and
- (c) establish a statutory board to review the procedures and practices of public bodies that safeguard adults at risk.<sup>32</sup>

19 There are merits to this proposal. Most pertinently, a statutory duty for local authorities to investigate adult at risk will give the authorities legitimacy to make enquiries. Furthermore, the proposal will protect adults at risk, and raise their profile in society. Finally, this proposal will promote the safety of adults at risk without being overly protective.<sup>33</sup>

(2) *Queensland, Australia*

20 Queensland's approach is non-interventionist in nature. It rejected proposals for more elder protection laws for the following reasons:

- (a) there are sufficient reporting systems and legislations in place;<sup>34</sup>
- (b) the establishment of an adult protection service to investigate reports of elder abuse would channel away valuable resources;<sup>35</sup>
- (c) mandatory reporting denies the elderly the right to make independent decisions;<sup>36</sup>

21 Queensland's non-interventionist approach is appropriate in its context because its existing legislation is more extensive than Singapore's. For example, although Queensland's Criminal Code Act 1899 provides criminal penalties for assault and other property offences that are similar to those in Singapore's PC, the Act of 1899 also covers "neglect". This is lacking in Singapore's PC.<sup>37</sup>

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<sup>31</sup> *Id.*, at 12-4.

<sup>32</sup> *Id.*, at proposal 12-7.

<sup>33</sup> *Id.*, at [12.44].

<sup>34</sup> Elder Abuse Prevention Unit, *Position Statement on Mandatory Reporting of Elder Abuse* (1 March 2006) at pp 5 and 6.

<sup>35</sup> *Id.*, at p 7.

<sup>36</sup> *Id.*, at pp 8 and 9.

<sup>37</sup> Criminal Code Act 1899 (Queensland), s 285.

22 Furthermore, Queensland has legislation in the form of the Health Quality and Complaints Commission Act 2006 and the Aged Care Act 1997 to safeguard abuse in institutional care. If there is misconduct by a medical practitioner, a patient or representative may make a health service complaint under the Health Practitioners (Professional Standards) Act 1999.<sup>38</sup> Unlike Singapore's MHCTA, these provisions protect any patient who receives a health service.<sup>39</sup>

23 Finally, Queensland's Domestic and Family Violence Protection Act 1989 protects people from violence in intimate relationships.<sup>40</sup> While this is comparable to Singapore's Women's Charter, the 1989 Act also protects violence in intimate "personal relationships"<sup>41</sup> and "informal care relationships".<sup>42</sup> This allows abused elders to apply for protection orders outside family and spousal relationships.

(3) *Canada*

(a) *Nova Scotia*

24 Under the law of Nova Scotia, a person has a duty to report to the Minister of Community Services if an adult is in need of protection under the Adult Protection Act ("APA").<sup>43</sup> An "adult in need of protection" is defined as an adult who is "incapable of protecting himself [from abuse]" or "incapable of caring adequately for himself" because of a "physical disability or mental infirmity".<sup>44</sup> Failure to report is an offence, which carries a fine of up to \$1000 or imprisonment for up to one year.<sup>45</sup>

(b) *Newfoundland*

25 Under the Neglected Adults Welfare Act ("NAWA"), a person has a duty to report if he believes that an adult is neglected.<sup>46</sup> A "neglected adult" is defined in a

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<sup>38</sup> Health Practitioners (Professional Standards) Act 1999 (Queensland).

<sup>39</sup> MHCTA, s 2.

<sup>40</sup> Domestic and Family Violence Act 1989.

<sup>41</sup> *Id.*, at s 12A.

<sup>42</sup> *Id.*, at s 12C.

<sup>43</sup> Adult Protection Act, RSNS 19890, (c 2).

<sup>44</sup> *Id.*, at s 3.

<sup>45</sup> *Id.*, at ss 16(1) and 17.

<sup>46</sup> Neglected Adults Welfare Act, RSNL 1990 (c N-3), s 4(1).

manner similar to the definition of an “adult in need of protection” under the APA. The only difference is that the NAWA expressly excludes people who fall under the Mental Health Care and Treatment Act.

26 The informant has an obligation to make a report even if it involves information that is confidential or privileged.<sup>47</sup> There are express protections for informants under the Act. Any contravention of these protections is an offence, which carries a fine of up to \$200.<sup>48</sup>

#### ***D. Recommendations for Singapore***

##### *(1) Neglect and abuse in institutional care*

27 We would recommend extending section 22 of the MHCTA to include patients who are not receiving treatment in psychiatric institutions.

28 Elder abuse in institutional facilities is a live issue in Singapore.<sup>49</sup> From June 2011 to January 2012 alone, there have been nine reported complaints of elder abuse in nursing homes.<sup>50</sup> These figures do not include abuse against patients receiving treatment in hospitals.

29 The legislative intent behind penalizing offences against patients receiving mental treatment was to recognize the vulnerability of such patients and to deter potential abuse.<sup>51</sup> It is submitted that there should also be protections for elderly patients that do not fall under section 22 of the MHCTA.

30 Firstly, there are compelling reasons to penalize a health service provider if he abuses the elder. A health service provider acts in a professional capacity and should

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<sup>47</sup> *Id.*, at s 4(2).

<sup>48</sup> *Id.*, at ss 4(2) 4(3) and 15(2).

<sup>49</sup> Tham Yuen-C, “Nursing Home to Face Legal Action Over Abuse” *The Straits Times* (18 February 2012) at p A20.

<sup>50</sup> *Singapore Parliamentary Debates, Official Report* (12 February 2012) vol 88 (Dr Amy Khor Lean Suan, Minister of State for Health).

<sup>51</sup> *Singapore Parliamentary Debates, Official Report* (15 August 2008) vol 85 at col 57 (Mr Khaw Boon Wan, The Minister for Health).

be held to higher standards of conduct. Secondly, elderly patients in institutional care are often weak from the conditions they carry, justifying a need for protection. Thirdly, this proposal is in line with foreign jurisdictions such as Queensland, which specifically deals with patient abuse.

(2) *Establishing an adult protection service for physical and psychological abuse*

31 We would propose the establishment of an Adult Protection Service (“APS”). Like the UK Law Commission’s proposal, the APS should have statutory functions and powers of investigation and intervention to give it legitimacy.

32 The existing protection against elder abuse in Singapore relies heavily on social agencies. The effectiveness of the EPT depends on whether the abuse is reported. Further, the EPT cannot take action if family members do not give them access to the abused victim.

33 Legislating the functions and powers of the APS will give it legitimacy and the necessary powers to deal with elder abuse. For example, legislation can give the APS discretion to apply to court for powers of investigation when it suspects or receives reports of elder abuse. This means that the APS will not be dependent on reports of abuse before action is taken, unlike the EPT.

34 Furthermore, legislation can give the APS legitimacy to ensure inter-agency co-operation. Elder abuse has been described as “woefully under-investigated”, and this will allow the APS to gather information on elder abuse.<sup>52</sup>

35 Finally, as identified by the UK Law Commission, a mandated APS will have additional functions compared to the EPT. They include:<sup>53</sup>

- (a) reviewing the procedures and practices of public bodies that safeguard the elderly;
- (b) giving any public body information or advice on the exercise of functions relating to adult protection; and

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<sup>52</sup> Tang Hang Wu, “The Prevention of Financial Elder Abuse” *Law Gazette* (May 2010) at p 1.

<sup>53</sup> *Supra* n 28 at [12.193].

- (c) improving the skills and knowledge of professionals who protect the elderly.

(3) *Reforming criminal penalties*

36 In our view, offences against the elderly should be a consideration for the purposes of sentencing under the PC. This proposal differs significantly from enhancing the penalties for offences against the elderly because it leaves the discretion to do so with the judge.

37 Locally, enhanced penalties for offences against the elderly have been raised in Parliament.<sup>54</sup> In particular, reference was made to section 73(2) of the PC, which provides enhanced penalties for offences against domestic maids. However, this proposal was rejected because it would “unnecessarily tie the hands of the judiciary”.<sup>55</sup>

38 Section 73(2) of the PC was enacted to protect domestic maids because they are exceptionally vulnerable. We consider the elderly to be as vulnerable as domestic maids. Like domestic maids, the elderly tend to be isolated because they are less mobile. Furthermore, the elderly are vulnerable because they are dependent on the assistance of their caregivers.<sup>56</sup> Finally, the elderly may not be aware of the existing laws on elder abuse, or they might be too embarrassed to report the incident. This makes it difficult to detect elder abuse in Singapore.

39 Nevertheless, it is submitted that we should depart from the protection provided for domestic maids in the present case. Unlike enhanced penalties, it is more appropriate to make offences against the elderly a consideration for purposes of sentencing.

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<sup>54</sup> *Singapore Parliamentary Debates, Official Report* (10 March 2005) vol 75 at col 2372 (Mr. Davinder Singh, Bishan-Toa Payoh).

<sup>55</sup> *Id.*, at col 2372 (Dr Vivian Balakrishnan, Acting Minister for Community Development, Youth and Sports).

<sup>56</sup> Erin Leigh Sylvester, “Identity Theft: Are the Elderly Targeted?” (2004) 3 CTPILJ 317 at 380.

40 Firstly, this proposal takes into account Parliament's reluctance to tie the hands of the judiciary. Secondly, the deterrent effect is still achieved. Thirdly, such an approach is consistent with the US proposal to include the age of the victim as one of the sentencing principles under section 3A1.1(a) of the Federal sentencing guidelines.<sup>57</sup>

(4) *Financial elder abuse*

41 In our view, Singapore should not follow the US approach in imposing interventionist legislation to regulate the elderly's voluntary financial transactions. Instead, reliance should be placed on the existing criminal penalties for financial abuse in general. Emphasis should also be placed on non-legal protections such as educating and providing advice to the elderly.

(a) Difficulties

42 Elder financial abuse generally occurs when the elderly's assets are exploited or misappropriated. However, it is difficult to regulate elder financial abuse. Unlike physical and psychological abuse, defining financial abuse is a complex matter. This problem is exacerbated where family relationships are involved.

43 There is a wide range of elder financial abuse scenarios. Severe forms of financial abuse are criminalized under the PC. They include: theft, fraud and cheating. However, the law may not be able to intervene in elder-willing financial transactions that might amount to abuse in other jurisdictions. Common situations include:<sup>58</sup>

- (a) elders giving money or property to a person they are dependent upon for their daily necessities;<sup>59</sup>
- (b) elders transferring property to a relative to ensure that they obtain accommodation instead of institutional care; and care in their retirement; and

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<sup>57</sup> Justice Enhancement and Domestic Security Act of 2003, SB 22, 108<sup>th</sup> Cong (2003) at § 2211.

<sup>58</sup> F Burns, "The Elderly and Undue Influence Inter Vivos" (2003) 23 LS 251 at pp 254–255.

<sup>59</sup> See *Tan Teck Khong v Tan Pian Meng* [2002] 2 SLR(R) 490.

(c) elders transferring property to a relative working in the family business.

(b) Recommendations

44 There should not be penalties for elder-willing financial transactions that result in abuse.

45 Firstly, such penalties would intrude into the elderly's autonomy. It is Parliament's intention not to deprive the legal rights that elders should enjoy.<sup>60</sup> Further, elder-willing financial transactions tend to occur in the family, when the abuser expects financial benefits from the victim, as an entitlement.<sup>61</sup> For example, if the abuser is a child or heir, the abuser may believe that he is entitled to the elder's assets. Conversely, the elder may have granted his assets to the abuser gratuitously.

46 Secondly, only a few jurisdictions, such as Illinois and California, have specifically legislated against elder financial abuse. Other jurisdictions either adopt laws of general application to deal with financial abuse, or take into account the age of the elderly victim as an aggravating factor during sentencing.<sup>62</sup> Commonwealth countries, including Singapore, only adopt laws of general application to deal with financial abuse. It is submitted that Singapore's laws of general application provide sufficient protection for elder-willing financial transactions. Presently, there are criminal liabilities for acts such as cheating, and civil remedies for undue influence.<sup>63</sup>

47 Thirdly, legislating mandatory reporting by individuals in their professional capacity to prevent financial abuse is onerous on institutions and their employees. In Illinois, there is a mandatory reporting duty under the Illinois Compiled Statutes.<sup>64</sup> However, this practice would divert resources away from the bank's primary function of providing financial services, and it has been rejected by Parliament.<sup>65</sup>

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<sup>60</sup> *Supra* n 55.

<sup>61</sup> C Dessin, "Financial Abuse of the Elderly" (2000) 36 IDLR 203 at pp 5–6.

<sup>62</sup> Illinois Compiled Statutes 730 ILCS 5 Unified Code of Corrections at § 5-5.32.

<sup>63</sup> PC, s 415; and *OCBC v Tan Teck Khong* [2005] 2 SLR(R) 694.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Supra* n 55.

#### **IV. Maintenance of parents**

##### **A. Current law**

48 Parents who are unable to maintain themselves can seek maintenance under the MPA.<sup>66</sup> Any person who is above 60 years old, and who is domiciled and resident in Singapore is eligible to apply for maintenance.<sup>67</sup>

49 The Act imposes liability on illegitimate, adopted or stepchildren of the applicant.<sup>68</sup> However, children can avoid or reduce their liability if they had been “abandoned, abused or neglected” by the applicant in the past.<sup>69</sup>

##### **B. Comparative Views**

###### *(1) India*

50 In India, parents and senior citizens who are above 60 years old can seek maintenance orders under the Maintenance and Welfare of Parents and Senior Citizens Act (“MWPSCA”).<sup>70</sup> Parents can seek maintenance from their children, while childless senior citizens can seek maintenance from their relatives.<sup>71</sup>

51 Under the MWPSCA, a “child” is defined as any biological, adoptive, or step “son, daughter, grandson and grand-daughter”.<sup>72</sup> However, it is unclear whether the Act extends to customary adoptions, nieces, nephews and sons and daughters-in-laws.

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<sup>66</sup> MPA, s 3.

<sup>67</sup> MPA, s 3(1).

<sup>68</sup> MPA, s 2.

<sup>69</sup> MPA, s 5(3).

<sup>70</sup> Maintenance and Welfare of Parents and Senior Citizens Act (Indian Act No 56 of 2007).

<sup>71</sup> *Id.*, at s 4(1).

<sup>72</sup> *Id.*, at s 2.

(2) *Canada*

(a) *Ontario*

52 In Ontario, a parent can seek maintenance under the Family Law Act (“FLA”)<sup>73</sup> from a child he has cared or provided for. There is no minimum age requirement for applicants under the Act.<sup>74</sup>

53 The FLA functionally defines a “child” to include “a person whom a parent has demonstrated a settled intention to treat as a child of his or her family”.<sup>75</sup> Based on *H (DW) v R (DJ)*,<sup>76</sup> a person is a parent to a child if he has a relationship of interdependence with the child. Whether such a relationship exists will depend on the facts of the case.

54 Currently, it is clear that biological and adoptive children fall under the definition of “child” in the FLA. However, it is unclear whether the FLA also applies to nieces and nephews, and sons and daughters-in-laws.<sup>77</sup>

(b) *Nova Scotia*

55 In Nova Scotia, a parent who is unable to maintain himself by reason of age can seek maintenance under the Maintenance and Custody Act (“MCA”).<sup>78</sup> Children who have attained the age of majority are liable to pay for the dependent parent’s maintenance.<sup>79</sup>

56 There is no definition of “child” in the MCA. Nevertheless, in *Barrington (Municipality) v Shand*,<sup>80</sup> it was held that the Act applies to a son-in-law. The court

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<sup>73</sup> Family Law Act, RSO 1990, c F.3 (Ontario), s 32.

<sup>74</sup> Christa Bracci, “Ties that Bind: Ontario’s Filial Responsibility Law” (2000) 17 CANJFL 455 at p 459.

<sup>75</sup> *Supra* n 73, at s 1.

<sup>76</sup> *H (DW) v R (DJ)* [2007] CarswellAlta 201 at [18].

<sup>77</sup> Seymour Moskowitz, “Adult Children and Indigent Parents: Intergenerational Responsibilities in International Perspective” (2002) 86 MARQLR 401 at p 432.

<sup>78</sup> Maintenance and Custody Act, RS 2000, c 160 (Nova Scotia), ss 2(d) and 15.

<sup>79</sup> *Id.*, at s 15.

<sup>80</sup> *Barrington (Municipality) v Shand* [1984] CarswellNS 48.

arrived at this conclusion because the son-in-law had actively cared for the dependent parent in the past. Hence, the son in law took on the obligation to provide future assistance.

(3) *US*

(a) *California*

57 In California, an adult child has a duty under the California Family Code to support a parent who is unable to maintain himself by work.<sup>81</sup> There is no minimum age requirement for applicants. However, the age of the applicant is one factor that will determine the amount of maintenance the applicant receives.<sup>82</sup>

58 A “child” is not defined under the Code. However, a child can avoid paying for the parent’s maintenance if the parent had abandoned him in the past.<sup>83</sup>

(b) *New Jersey*

59 In New Jersey, a poor person can seek maintenance from his children under the New Jersey Statutes. There is no minimum age requirement for applicants and the word “child” is not defined. Finally, there are no express defences for children to avoid paying for their parent’s maintenance.<sup>84</sup>

### ***C. Recommendations for Singapore***

(1) *Definition of “child”*

60 This paper proposes that the word “child” should be defined functionally, rather than categorically, under the MPA. In particular, a person should fall within the scope of the Act if the applicant voluntarily cared for him while he was a minor. The extent of care the applicant provided will determine the extent of the child’s liability

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<sup>81</sup> Cal Fam Code § 4400 (2004) (“CFC”).

<sup>82</sup> CFC, § 4404(c).

<sup>83</sup> CFC, § 4411.

<sup>84</sup> NJ Rev State § 344:4-100 thru 44-103.

under the Act.

61 A functional definition of the word “child” is in line with the principle of reciprocity under the Act.<sup>85</sup> A person should be considered a “child” if he or she shares a parent-child relationship with the applicant. The criteria to identify a parent-child relationship should be left to the Tribunal’s discretion. Reference can be made to New Jersey’s approach, which has accepted that a parent-child relationship can exist between two biologically unrelated parties where a guardian has performed the role of a parent.<sup>86</sup>

(2) *Minimum age requirement*

62 In our view, the MPA’s minimum age requirement for the making of an application should be pegged to the minimum retirement age in Singapore.

63 Firstly, the MPA was enacted when the minimum retirement age in Singapore was set at 60 years. Singapore’s minimum retirement age has since been raised to 62<sup>87</sup> and there are plans to further raise it to 65, and eventually to 67.<sup>88</sup> The minimum age requirement under the MPA should be changed accordingly.

64 Secondly, with the minimum age pegged at 60, some elderly persons may decide to stop working and claim maintenance under the Act instead.<sup>89</sup>

65 Thirdly, concerns that it is prejudicial to increase in the minimum age are misplaced. Applicants below the minimum age can already apply under section 3(5) of the Act with “special reasons”.<sup>90</sup>

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<sup>85</sup> MPA, s 5(3).

<sup>86</sup> *VC v MJB* 63 NJ 200, 748 A2d 539 at p 232.

<sup>87</sup> Retirement and Re-employment Act (Cap 274A, Rev Ed 2000), s 4(1).

<sup>88</sup> Reuters, “Singapore to Raise Retirement Age to 65 by 2012”, *Reuters* (19 August 2007) <<http://business.inquirer.net/money/breakingnews/view/20070819-83520/Singapore-to-raise-retirement-age-to-65-by-2012>> (accessed 25 June 2012).

<sup>89</sup> Information provided by Ms. Penny Tham, Secretary of the Tribunal for the Maintenance of Parents.

<sup>90</sup> MPA, s 3(5).

(3) *Requirement for the applicant to be domiciled and resident in Singapore*

66 In our view, the requirement in section 3(1) of the MPA for the applicant to be “domiciled” and resident in Singapore should be removed. In addition, a definition of “resident” should be included in the Act.

67 To be eligible under the MPA, an applicant must be domiciled and resident in Singapore.<sup>91</sup> However, this assumes that an applicant who resides abroad can afford to maintain themselves through independent means.

68 It is submitted that there is little basis for this assumption. Firstly, a parent may be domiciled overseas because he cannot sustain himself in Singapore. Secondly, the Tribunal has a wide discretion under section 5(1) of the Act. This allows the Tribunal to consider the applicant’s financial capability in light of his residence overseas.

69 It is further submitted that the term “resident” should be defined in the MPA. Under the Income Tax Act,<sup>92</sup> a “resident” includes “a person who is physically present in Singapore for 183 days or more”. However, it is unclear whether this definition applies for purposes other than taxation.

## **V. Conclusion**

70 In balancing the practical needs of the elderly, the government can afford to take a radical approach towards protecting the elderly from abuse and neglect. The success of the *MPA* in providing for the indigent elderly is an indicator of the differences reforms can make in the area of elder abuse and neglect. However, it is important to note that legislation, on its own, is no panacea capable of complete eradication of elder abuse. Legislation further requires the co-operation of social and enforcement agencies, coupled with the public education of society, to be effective.

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<sup>91</sup> MPA, s 3(1).

<sup>92</sup> Income Tax Act, (Cap 134, 2008 Rev Ed), s 2(1).