

EAO Webinar

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Access to Justice and Legal Rights of South Asian Older Adults In Ontario

February 13, 2019

**Shalini Konanur, Executive Director/Lawyer
South Asian Legal Clinic of Ontario (SALCO)**

**Facilitated by: Raeann Rideout,
Central East Regional Consultant, Elder Abuse Ontario**

Welcome to EAO's Webinar!

- All attendees will be muted during the webinar. This session is being recorded and will be posted on EAO website.
- If you are experiencing issues, please type into the **CHAT/QUESTION BOX** and send message to **Mary Mead/Raeann Rideout**
- There will be 15-20 minutes allocated at the end presentation for **QUESTIONS AND ANSWERS.**
- You will be prompted to fill out an **EVALUATION FORM** once the session has ended. Please fill out the form as your feedback will guide us for our future webinars. You will also receive an email link to the evaluation after the session.
- **Participants will be sent the slides electronically after the webinar**
- Speaker **CONTACT INFORMATION** will be provided at the end of the presentation to connect directly if you have further questions.



Elder Abuse Ontario (EAO)

Mission:

Create an Ontario where all seniors are free from abuse through awareness, education, training, collaboration, service co-ordination and advocacy.

- Not-for-profit charitable organization
- Implemented Strategy in 2002
- Funded by the Province of Ontario, under the Ministry of Seniors and Accessibility

**EAO administers the implementation of
Ontario's Strategy to Combat Elder Abuse**

Elder Abuse Strategy

Community
Coordination &
Response

Training

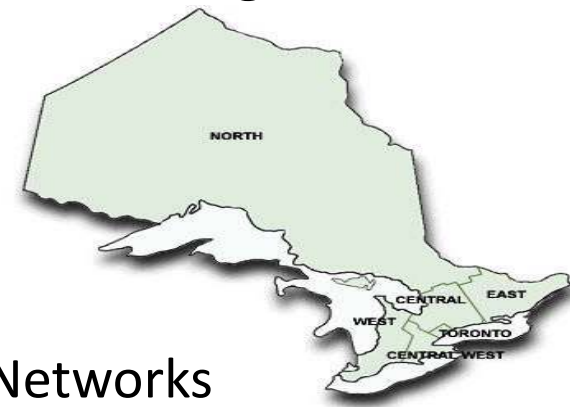
Public
Awareness

EAO's Role In
Responding to
Elder Abuse



Elder Abuse Ontario (EAO)

- ✓ **7 Regional Consultants in Ontario** (Peterborough, Thunder Bay, Woodstock, Sudbury, Ottawa,, Toronto, Mississauga)
- ✓ 2 Francophone Consultants
- ✓ Support over 40 local Elder Abuse Committees/Networks
- ✓ Offers organizations customized training and education for staff.
- ✓ Performs outreach/education activities for seniors' groups
- ✓ Participates in furthering the cause of abuse prevention at conferences and events



Presenters

Shalini Konanur



Executive Director and a lawyer at the South Asian Legal Clinic of Ontario (SALCO)

As a student at Osgoode Hall Law School, Shalini worked at both Parkdale Community Legal Services and C.L.A.S.P. in the worker's rights division.

Shalini has been actively involved in several areas of poverty law reform, including lobbying at the municipal, provincial, and federal level for social assistance, housing, immigration, employment, and family violence reform. Shalini has also spearheaded SALCO's test case work, challenging issues of racial, gender, and religious discrimination at the Supreme Court of Canada, the Ontario Court of Appeal, the and the Federal Court. Shalini's work focuses on the promotion of access to justice for racialized communities in Canada and on addressing poverty for SALCO's low-income constituency.



Elder Abuse Ontario
Stop Abuse - Restore Respect



Access to Justice and Legal Rights of South Asian Older Adults In Ontario

Shalini Konanur – February 2019



**45 Sheppard
Avenue East,
Suite 106 A,
Toronto**

**Tel: (416) 487
6371**

www.salco.on.ca

- **The South Asian Legal Clinic of Ontario is a community legal clinic funded by Legal Aid Ontario (LAO).**
- **We provide poverty law legal advice, representation, public legal education, community development and law reform work for the low-income South Asian community in the Greater Toronto Area.**

Legal Aid in Ontario



Ontario's Legal Aid System is split up into two streams:

1. Certificate side – gives clients a “certificate” which they can take to a private bar lawyer (who takes certificates). LAO offers certificates in a variety of areas including:
 - Family Law (custody, access), usually not divorce, usually not property issues
 - Refugee Claims / Immigration (humanitarian and compassion applications, deportation / removal, etc...)
 - Criminal Law (usually only where there is jail time or a significant consequence that can result)

<http://legalaid.on.ca/en/getting/eligibility.asp>

<http://legalaid.on.ca/en/getting/default.asp>

2. Clinic side – there are a variety of geographic clinics (that cover a certain area), and specialty clinics (that cover certain communities, or certain areas of law) – clinics practice in income maintenance, tenant's rights, employment, immigration, consumer debt – each clinic provides difference services based on the needs of its community

<https://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

Elder Abuse



World Health Organization Definition:

Elder abuse can be defined as "a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person".

Elder abuse can take various forms such as financial, physical, psychological and sexual. It can also be the result of intentional or unintentional neglect.

Elder Abuse: Cultural Barrier



- Elder abuse in ethno-cultural minority communities, i.e., the South Asian community, is highly stigmatized and considered a matter that should not be discussed outside the confines of the family. (Research out of B.C. confirms that this is very much a silenced issue in the South Asian and Chinese community).
- This stigma presents a barrier to accessing services for many South Asian older adults.
- The other compounding factor is language barrier.

Elder Abuse: Case Example



Shanti came to my office recently. She came to Canada 6 years ago and was sponsored by her son. She is a widow and was told that she had to come and live with him in Canada.

Shanti described many things that we would view as elder abuse but when we spoke she was shocked but the use of the word “abuse”. She did not want to accept that her son’s treatment was abusive.

She just wanted to know if we could convince him to give her some money to take the bus to the local mall.

Elder Abuse: Sometimes Language Matters



- We often find that our clients have a different understanding of abuse than what we do;
- Older adults from the South Asian community may not understand the concept of abuse or the terms and language that we use (ex: psychological abuse);
- Many of the behaviours that I would consider abuse are not considered an issue by my clients: Example: constant yelling and putting someone down, isolation, etc...
- Having conversations with older adults can be hard and may take more time; and
- Where language is an issue it is critical to have good, neutral interpretation.

Elder Abuse: Is it gendered in the South Asian Community?



- No comprehensive data but a recent study in the GTA on older adults found that of those who reported abuse the profile tended to be women, widowed, with limited access to resources, with children, who had been in Canada for less than 10 years, had language barriers, and had health impairments

<https://www.omicsonline.org/open-access/elderly-abuse-an-exploratory-study-of-elderly-members-of-the-southasian-community-in-the-greater-toronto-area-2151-6200-1000150.pdf>

Elder Abuse: Multiple Generations Living Together



- It is common for many South Asian communities to have multiple generations living together in the same household.
- While the benefits can be great, this can also lead to complex situations of abuse for older adults in those homes.
- Many of the stories that we hear at SALCO are about family violence and/or intimate partner violence in a joint home.

Types of Elder Abuse Reported by SALCO clients



- Physical Abuse (by partner, by children and grandchildren) – hitting, spitting, throwing items, shoving, threatening assault, etc...)
- Psychological Abuse (yelling, screaming, demeaning, threatening deportation, name calling, etc...)
- Isolation (refusal to take older adult out, no connection to others)
- Financial Abuse (no access to money, money taken from them)
- Forced caregiving for grandchildren
- Taking away immigration documents
- Lack of food
- Substandard accommodations (cold basement, converted garage)
- Withholding medication
- Neglect
- Lack of support to practice one's faith (won't take them to temple, mosque, church, or gurdwara)

Immigration: Sponsorship

- Many of the clients that we work with have been sponsored to Canada by their children
- They come knowing that their children signed a 20 year undertaking. This means that if they were to collect social assistance (Ontario Works or Ontario Disability Support Program benefits) their child (the sponsor) would incur a debt for what is collected in that 20 years and would have to pay it back to government,
- This undertaking creates an additional vulnerability for older adults.
- Undertakings will not be waived in cases where there is abuse. They only end of the sponsored person passes away or if the 20 years has elapsed.

Immigration: Case Scenerio



Raj came to see me recently. He was sponsored here by his son. They are not getting along. His son is always yelling at him and gives him very little money to go out. His son and daughter-in-law tell him that he is a burden and that he is lucky that they are willing to take care of him. He wants to leave but has no money and no place to go.

We spoke about the option of applying for ODSP as he is over 65 years old. He refused to apply because he knows that if he collects it his son will have to pay it back. He does not want to make his son angry and also he does not want to place that debt on his son.

He is stuck in terms of his ability to live on his own because of the immigration undertaking issue and his refusal to access available income sources. In these cases, we understand the complexity of the family dynamic that pushes the parent to not want to create debt for their children.

Immigration – Precarious Immigration Status



- Some of the older adults that we work with come to Canada as visitors and simply overstay and end up without status in Canada, or are here as failed refugee claimants.
- Having precarious immigration status can increase your vulnerability in cases of abuse as you are not eligible for many of the supports that can be accessed by permanent residents / citizens of Canada.
- Older adults with precarious immigration status may not want to access any supports or resources to deal with issues of elder abuse for fear of removal from Canada. We need to create a safe space for these vulnerable populations to disclose abuse and work together to figure out what services can be accessed safely.

Example: Last year I worked with Joythi. Joythi came to visit her children in Canada but then never returned to India. She had lived in Canada for almost 7 years when she came to see me. Joythi was living with her daughter and son-in-law, who was physically abusive to her daughter and to her. Joythi and her daughter refused to call the police because they were scared that Joythi would be reported to immigration authorities and would be removed from Canada.

Immigration



- Threats of Deportation as a form of Abuse
- We continue to see sponsors threaten their parents / partners with deportation if they do not “behave”
- The truth is that sponsors do not have the power to deport whoever they sponsor. Only IRCC (Immigration, Refugees, and Citizenship Canada) can decide if they want to remove someone from Canada.
- The problem is that most of the clients we meet believe this to be true and will not access outside assistance (ex: police) because of this fear of deportation.
- In addition, immigrating to Canada at a later age can be very stressful for an older adult – we have seen increased partner violence that results from that stress.

Immigration - Resources



- Legal Aid: provides certificate coverage for refugee claims and for people without immigration status who want to make a humanitarian and compassionate application for permanent residence
- SALCO: we work with clients who have lost temporary status (ex visitor status) to see if we can gain it back, or to see what options are available for permanent residence in Canada (like the humanitarian and compassionate application). We also work with clients who are facing removal from Canada because of a lack of status, or who are being investigated by IRCC for misrepresentation.
- Local Legal Clinics: Some legal clinics across the province provide immigration services while others do not. Each clinic has different levels of coverage.

Family Law

Navigating family law within the context of elder abuse can be complicated.

Case 1: Older adult is abandoned by family and wants access to the grandchildren. We have seen cases where the access to the grandchildren is blocked (as part of the abuse)

- Family law allows for grandparent to apply to the family court to gain access to seeing grandchildren under the *Children's Law Reform Act*. The process can be long and complicated – there are no legal aid resources for this type of application and so people have to do this through private bar lawyers or self-represented
- Deprivation of contact with grandchildren can be devastating for some older adults and is sometimes used as a threat to continue elder abuse (ex: forced caregiving)

Family Law



Navigating family law within the context of elder abuse can be complicated.

Case 2: Older adult who faces intimate partner violence from their spouse / partner. We speak with many older adults (mainly women) who report on-going and historical abuse from their spouse / partner (including historical forced marriage)

- In these cases, they can legally seek divorce here that is much easier than the process would have been in their home country (many don't know or understand this);
- SALCO can provide advice about the divorce process and any ancillary family law issues (ex: property, jurisdiction, etc...)
- SALCO has also spoken to clients about issues that arise from seeking a religious divorce.
- *** The problem remains that separation and divorce for older adults has a level of stigma that is prohibitive

Family Law – Financial Support for Older Adults/ Undertaking Enforcement



As mentioned, older adults who are sponsored come to Canada with the understanding that their sponsor will have to financially support them for a number of years (immigration undertaking). In many cases, we are asked if the sponsored older adult has any mechanism to force the sponsor to provide financial support pursuant to the undertaking.

- The simple answer is no – there is no mechanism through the family courts to enforce an immigration undertaking. The only option is for the older adult to seek social assistance, who will collect the debt (whatever the older adult gets) from the sponsor.

Family Law – Resources



- Legal Aid Ontario – can give family law advice, and can issue a certificate in cases of family law, especially where abuse is an issue
- SALCO – works with older adults to give advice on divorce, and to understand how family law works in Canada
- Family Law Information Centres – located at several family courthouses can provide good information and forms for family court
- FLEW – has translated family law materials:
<https://onefamilylaw.ca/>

Criminal Law

We find that accessing police support in cases of elder abuse is rare within the South Asian communities that we work with. Why?

- Stigma
- Fear of police
- Language Barrier
- Not wanting to get the abuser in trouble
- Precarious immigration status

Criminal Law



Case Example: Last year, I met a client named Sudha. Sudha was 72 and had been suffering abuse from her husband in Canada for many years (physical, sexual, and psychological). Recently, her son had moved back home after getting a divorce and the day before she came to see me he had hit her after an argument.

Sudha was visibly hurt. We spoke at length about her safety and about calling 911 or contacting the police together. She was adamant that she would not call the police. She did not want to bring shame to her family in their community, she did not want to get her husband and son in trouble, and she said that the police are untrustworthy. She recalled a time in India when her neighbour called the police after an assault and the police came and raped the neighbour.

Sudha never ended up accessing police services. While she has gone to supportive counselling, she is still at home and is still enduring abuse from both her husband and her son. We continue to work with Sudha to support her to make the best decision for herself.

Criminal Law



The Criminal Code sets out a number of sections that can be applied in family violence cases, including assault, threats, etc... People have the option to call police when they are facing violence at home. Some of the issues / questions that arise at SALCO:

- Can I get the charges dropped – No
- Can I speak to my partner if there is a Recognizance of Bail (with conditions not to communicate) – No
- Will CAS get involved if I call the police – Maybe
- Can I be charged – some police forces subscribe to mandatory double charging (meaning that if your partner says that you also injured her/him then you could be charged as well)
- Can criminal convictions impact immigration status – It depends (it can if you are a permanent resident but it depends on the seriousness of the charge / the sentence given)

Criminal Injuries Compensation



Many older adults in South Asian communities do not know about Criminal Injuries Compensation:

Who is Eligible for Compensation: Anyone injured as a result of violent crime in Ontario can apply for compensation, including people who were hurt while trying to prevent a crime. Violent crimes include (but are not limited to):

- ❖ Assault, sexual assault
- ❖ domestic assault (abuse by a spouse/partner), elder abuse
- ❖ Witness to a crime leading to psychological damage

The injuries may either be physical or psychological. However, the injuries must be more than transient or trifling in order to qualify for compensation.

Criminal Law – Resources



- Criminal Injuries Compensation Applications: Many legal clinics can provide assistance with criminal injuries compensation, including SALCO
- Legal Aid Ontario will only provide certificates for criminal matters where a person is charged and may face jail time or significant consequences (ex: corollary immigration consequences)
- SALCO provides advice and guidance to clients on interacting with the criminal justice system either if they are charged or if they are a victim / witness in a criminal matter
- Victim Witness Program can also support an older adult

Financial Abuse

Financial abuse is one of the most common forms of elder abuse that we hear about at SALCO:

- Taking pension money (money goes into a joint bank account that the client has no access to);
- Making an older adult sign over property (sometimes internationally)
- Forcing an older adult to jointly buy property (forced to co-own a home for child), or take a loan
- Misusing a Power of Attorney (signed an open POA which allows family member to access all of the financial property, bank accounts, etc...)
- Health Care and Insurance Fraud

Financial Abuse

- Forcing an older adult to change / sign a will or POA that they don't understand
- Forcing an older adult to claim E.I. for fake work (client's child made her claim E.I. with a ROE issued for fake work – client was caught and assessed with a large penalty)
- Not providing any financial support (very common in our work)
- Scams: tax scam, furnace scam (financial exploitation)
- Identity Theft

Financial Abuse – Resources



SALCO can assist low-income older adults in cases where:

- Their income sources is being stolen, withheld, taken away;
- Where a POA is being misused (if the client has mental capacity then the POA can be canceled easily); and
- With consumer debt issues (example: scams)

Advocacy Centre for the Elderly (ACE) is another legal clinic that works in the area of elder abuse:

- http://www.advocacycentreelderly.org/elder_abuse_introduction.php

Legal Aid Ontario has no services specifically related to financial abuse.

Capacity



- Many South Asian communities continue to have a stigma around mental health;
- At SALCO, we see a growing population of older adults with undiagnosed mental health issues;
- In these cases, it is difficult to determine how to support clients who don't appear to have the capacity to make decisions;
- We sometimes get calls from family members wanting advice on consent and capacity. In those cases, we consider whether that decision could also be related to elder abuse;
- You have the option on contacting the Office of the Public Guardian and Trustee's Investigation Branch in cases where there is a capacity issue and you suspect elder abuse.

Capacity



Case Example: This week I was contacted by the family of Vikram. Vikram is in his 80's. They told me that Vikram has “mental problems” and can no longer make decisions for himself. I tried to speak to Vikram but his conversation was nonsensical. It was clear that Vikram had mental health issues but his family had never taken him to the doctor so there was nothing diagnosed.

His son then started asking me questions about their options to gain control of his finances and his property in Canada. They wanted to get a POA done, which they cannot as Vikram does not have the capacity to sign a POA. They then wanted to seek control through the Consent and Capacity Board.

I was concerned that they had not taken Vikram for medical treatment and that they seemed most concerned about getting at his finances. In this case, Vikram's abuse is compounded by his mental health issues.

Collaborative Approaches



There are a variety of organizations that support older adults and who also work in the area of family violence, including Elder Abuse. We often refer clients to their partners for non-legal support including supportive counseling, friendship circles, food support, and other social supports.

These organizations have staff who can support clients in multiple South Asian languages:

- Social Service Network (Markham)
- Indus Community Services (Mississauga, Brampton)
- Punjabi Community Health Services (Mississauga, Brampton, Scarborough)
- Settlement and Family Support Services (Scarborough)
- South Asian Women's Rights Organization (Scarborough)
- South Asian Women's Centre (GTA-wide, located downtown)

Collaborative Approaches



We have seen good progress when older adults are supported to move out of isolation.

Case Example:

Mohan came to see us in Mississauga. He had come to Canada 2 years back and was essentially stuck in the home. He did not understand the transit system and got no support from his family to leave the house, except with them. He had lost all of his independence that he had back home. We linked him to a group for Gujarati seniors that was run out of a local temple. Within one year Mohan has become active in the community and is now the vice-president of that seniors group. He was also able to stand up to his son and get back his immigration documents and. With the help of the group he opened his own bank account and gets his pension from back home directly into that account.



Shalini Konanur
Executive Director/Lawyer

45 Sheppard Ave. East
Suite 106A,
Toronto, ON M2N 5W9

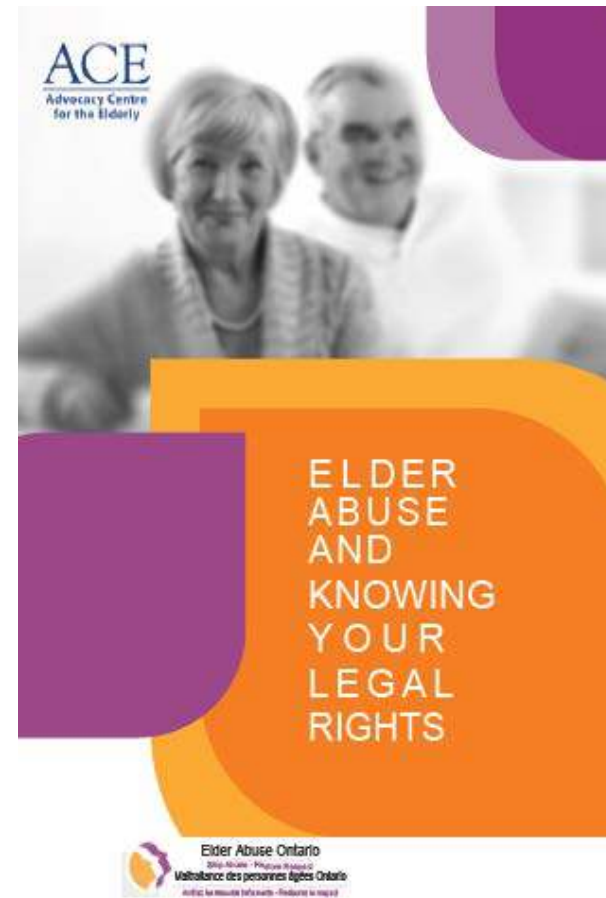
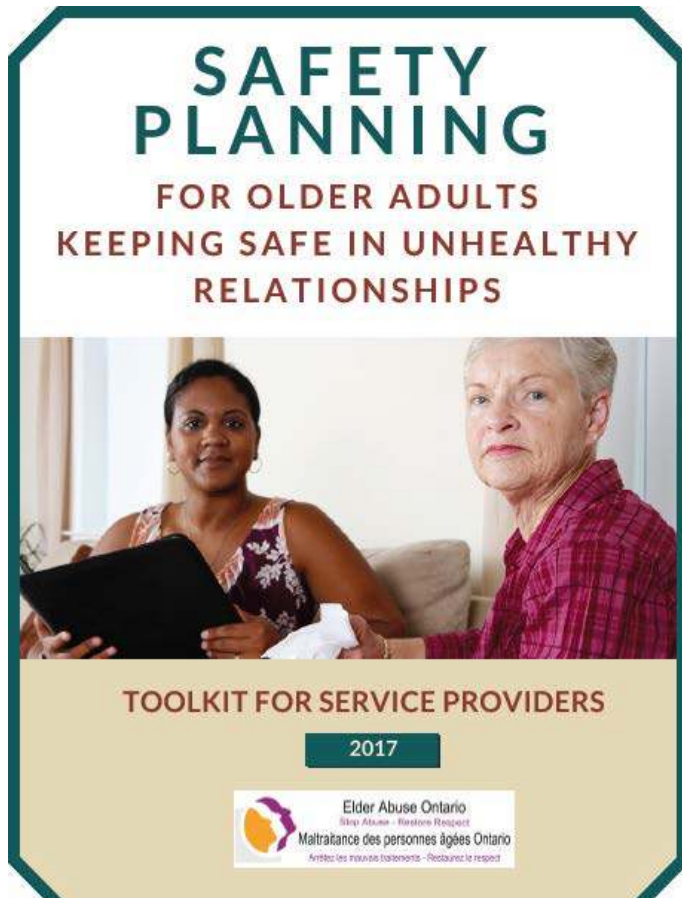
T 416-487-6371 ext.40

F 416-487-6456

E konanurs2@lao.on.ca

www.salc.on.ca

EAO Resources



<http://www.elderabuseontario.com/training-education/training/intervention-tools/>

**Get Help
Now**

Call the Seniors Safety Line

1-866-299-1011

Free to call
Confidential
24 hours a day
7 days a week



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Legal Information & Supports

Law Society Referral Service

www.lsuc.on.ca/lsrcs/ 1-855-947-5255

Advocacy Centre for the Elderly

www.advocacycentreelderly.org 1 855-598-2656

Legal Aid Ontario, Family Violence Authorization Program

www.legalaid.on.ca [1-800-668-8258](tel:1-800-668-8258) (free)

Barbra Schlifer Commemorative Legal Clinic (Toronto)

www.schliferclinic.com [416-323-9149](tel:416-323-9149) (ext. 278)

Ontario Women's Justice Network (OWJN) www.owjn.org

Legal information when families break down

Family Law Education for Women (FLEW) www.onefamilylaw.ca

Femmes ontariennes et droit de la famille (FODF) www.undroitdefamille.ca

Provincial Information & Supports

Elder Abuse Ontario

www.elderabuseontario.com/

(416) 916-6728

Assaulted Women's Helpline

www.awhl.org/

1-866-863-0511

Seniors Safety Line

1-866-299-1011

Victim Support Line

www.attorneygeneral.jus.gov.on.ca/english/about/vw/vsl.asp

1-888-579-2888

**Call your local Police Force
by Dialing 911**

Ontario Provincial Police

www.opp.ca/

1-800-310-1122

*Various local/ municipal contact
information
depending on location*

Senior Crime Stoppers

<http://ontariocrimestoppers.ca>

1-800-222-TIPS (8477)

Provincial Information & Supports

Ontario Coalition of Rape Crisis Centres

www.sexualassaultsupport.ca/

TALK4HEALING

www.talk4healing.com/

1-855-554-HEAL (4325)

Rainbow Health Ontario

www.rainbowhealthontario.ca/

(416) 324-4262

Fem'aide

www.femaide.ca

1-877-336-2433

Support Services for Male Survivors of Sexual Abuse

www.attorneygeneral.jus.gov.on.ca/english/ovss/male_support_services

1-866-887-0015

Ontario Network of Sexual Assault/ Domestic Violence Treatment Centres

www.satontario.com/en/home.php

(416) 323-7518

Provincial Information & Supports

Retirement Homes Regulatory Authority

www.rhra.ca

1-855-275-7472

Ministry of Health and LTC-Action Line

www.ontario.ca/page/long-term-care-home-complaint-process

1866-434-0144

Office of the Public Guardian and Trustee

<https://www.attorneygeneral.jus.gov.on.ca>

1-800-366-0335

LHIN Home and Community Care

<http://healthcareathome.ca/>

Alzheimer Society of Ontario

<http://www.alzheimer.ca/en/on>

1-800-879-4226

Consent and Capacity Board

www.ccboard.on.ca

1-866-777-7391

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EVALUATION



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CONTACT ELDER ABUSE ONTARIO

EAO Head Office

2 Billingham Rd, Suite #306
Toronto, ON
M9B 6E1

Tel: 416-916-6728

Email: admin@elderabuseontario.com

www.elderabuseontario.com

Regional Consultant Office

Raeann Rideout

Central East Consultant,
Tel: 705-876-1122 Ext 327

centraleast@elderabuseontario.com



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