

EAPO Webinar Series: Rights of Older Adults





Welcome

All attendees will be muted during the webinar.

Recording: Webinar will be recorded and posted on EAPO's and/or partner organization's website.

ASL Interpreter: Video of Interpreter will be visible during the webinar today and name of ASL Interpreter is under picture.

ASL Interpreting provided by



Adjusting Video Size: Drag the line between the video frame and slides to the left (adjust at beginning of the webinar).



Welcome to our Webinar!

Speaker: Will be visible while presenting. Once the presentation is completed, all speakers will be visible for the Question/Answer period.

Questions or Issues: Participants can type their questions in Question/Answer box. A response will be posted during the webinar *or* asked to speaker after the presentation.

The Chat box can also be used to post comments during the session.

Evaluation: After the session, you will see pop-up screen asking you to provide your feedback and suggestions for future webinars.

Contact information will be provide at the end of presentation.







Elder Abuse Prevention (ON)

Stop Abuse - Restore Respect
Maltraitance des personnes âgées Ontario

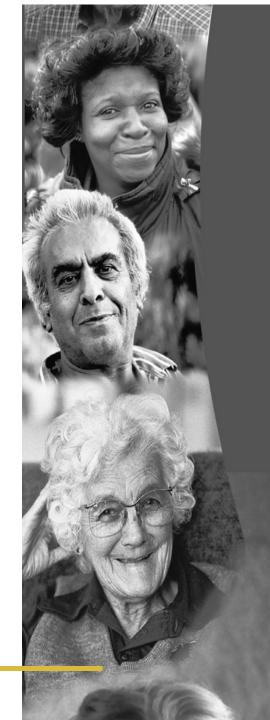
Maltraitance des personnes âgées Ontario

MISSION

EAPO envisions an Ontario where ALL seniors are free from abuse, have a strong voice, feel safe and respected.

ACTION

Raising awareness, delivering education and training, working collaboratively with like-minded organizations and assisting with service coordination and advocacy.



STOP ABUSE – RESTORE RESPECT

SIMPLY PUT, WE ALL HAVE A ROLE TO PLAY

EAPO is mandated to support the implementation of

Ontario's Strategy to Combat Elder Abuse.

Funded by the ON Government, under the Ministry for Seniors and Accessibility (MSAA)









COMMUNITY COORDINATION & RESPONSE

Collaboration with community agencies, elder abuse networks and provincial/national organizations.



TRAINING

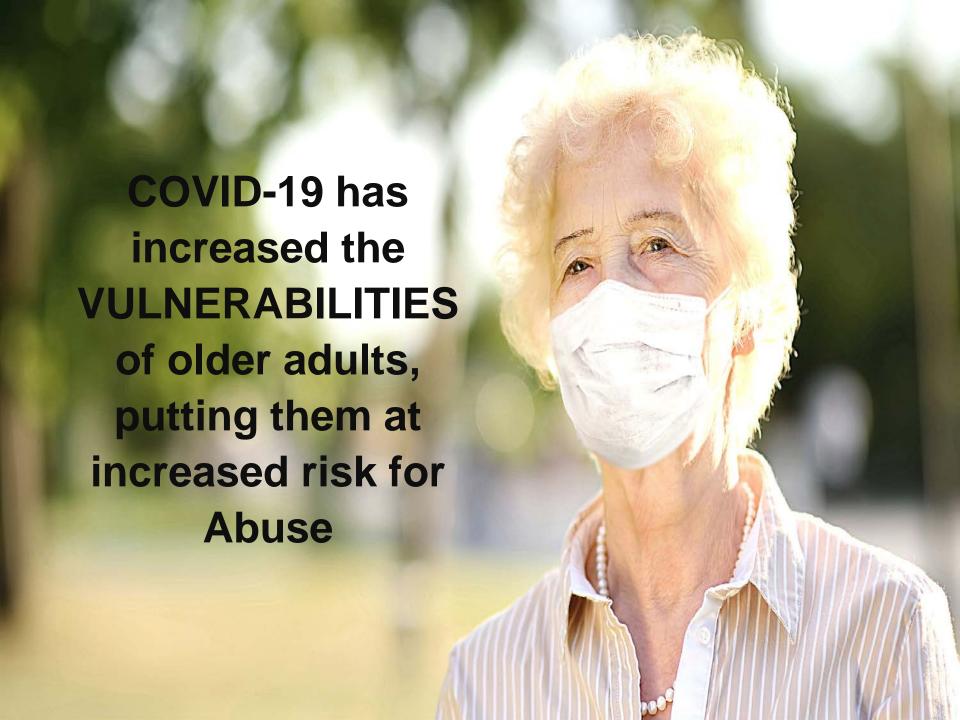
Cross-sector training to front-line staff providing services and supports to older adults.





PUBLIC AWARENESS

Presentations and communication tools for older adults, caregivers, family and public at large.





Abuse of older adults is not a New Issue



Older adults were suffering from abuse before the pandemic... dealing with the emotional heart ache, physical pain and neglect caused by someone they trusted.



The COVID-19 pandemic has however, brought to the forefront many issues we have been addressing for years.

Keynote Speaker

Jane Meadus is a staff lawyer and the Institutional Advocate at ACE. She represents clients in long-term care homes, hospitals, psychiatric facilities and care homes (retirement homes) with respect to related legal issues.

Jane has a B.A. Anthropology from McMaster University, an LL.B. from the University of Ottawa and was called to the bar in Ontario in 1993. Jane practiced in the private bar until joining the Advocacy Centre for the Elderly in 1995.

Jane is the author of Chapter 9: Medical Issues, Housing Costs and Special Care Arrangements: Practical Considerations in the loose-leaf service Financial & Estate Planning for the Mature Client. She is a contributing author to Long-Term Care Facilities in Ontario: The Advocate's Manual published by the ACE.

Jane is a regular speaker at educational seminars and before various groups. Jane is a Distinguished Fellow of the Canadian Centre for Elder Law Studies.



Jane E. Meadus



RIGHTS OF OLDER ADULTS IN LONG-TERM CARE HOMES DURING COVID-19

By Jane E. Meadus
Staff Lawyer & Institutional Advocate
Advocacy Centre for the Elderly

ELDER ABUSE PREVENTION (ON)
December 1, 2020



Disclaimer

- This presentation and any material provided for this presentation is not legal advice but is only legal information for educational purposes
- Legal issues are FACT SPECIFIC and require factual information in order to provide legal advice to resolve an issue/problem/determine your rights
- If you require legal advice, please consult your own lawyer or legal advisor



Types of Congregate Living

Long-Term Care Homes:

- publicly funded healthcare facilities
- may be municipal, non-profit, for profit, charitable
- Admission through the LHIN
- Licensed and inspected by Ministry of Long-Term Care
- governed by Long-Term Care Homes Act

Retirement Homes:

- tenancy, NOT a health facility,
- private pay, agreement through lease and contract, leases and contracts, make own determination of who lives there
- licensed and inspected by Retirement Home Regulatory Authority,
- governed by Residential Tenancies Act and Retirement Homes Act



Other Congregate Living

Assisted Living:

- tenancy, not a health facility
- care available, often sponsored by government or non-profit
- Residential Tenancies Act

Group Homes:

- tenancy, not a health facility,
- care available, may be non-profit, for profit
- may be licensed by Ministry of Children, Community and Social Services or Ministry of Health
- Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, Homes for Special Care Act, Residential Tenancies Act

Domiciliary Hostels:

- Tenancy, not a health facility
- Care available, may be non-profit, for-profit
- Licensed by municipality/city/county who also set policy
- Residential Tenancies Act



Important Provincial Legislation During COVID

- Long-Term Care Homes Act (LTCHA)
- Health Care Consent Act, 1996 (HCCA)
- Substitute Decisions Act, 1992 (SDA)
- Personal Health Information Protection Act, 2004 (PHIPA)
- Health Protection and Promotion Act (HPPA)
- Emergency Management and Civil Protection Act (EMCPA)
- Retirement Homes Act (RHA)



Regulations

- Many regulations passed related to COVID
- Regulations may be related to the various specific pieces of legislation



Regulatory Amendment: LTCHA

- Admission
- Discharge
- Readmission
- Staffing
- Waiting lists
- Direct access beds
- Accommodation fees



Regulatory Amendments: *RHA*

 RHs being subject to the same policies and directives as LTCHs



Regulatory Amendments: *EMCPA*

- Work redeployment
- Agreements between health services providers and RHs
- Limiting employee's work to a single home



Orders: Federal

- Under the
 - Quarantine Act
 - Aeronautics Act
- Relate to international travel



Orders: Provincial

- Minister of Health
 - two orders related to supply of PPE; June 8, 2020 replaced version of March 27, 2020
- Chief Medical Officer of Health & Local Medical Officers of Health
 - Pursuant to s. 22 of the HPPA
 - Class orders against a group of individuals
 - Individual orders against one specific person or entity
 - Allow forced isolation, detention, where person exposed to, has, infectious disease



Directives

- Chief Medical Officer of Health has authority to issue directives to health professionals and organizations under EMCPA s. 77.7
- The Minister of Long-Term Care has authority to issue operational or policy directives to long-term care homes where she believes it is in the public interest under *LTCHA* s. 174.1



Chief Medical Officer of Health Directives

Directive	For Whom	Version Dates
1	Health Care Providers and Health Care Entities	March 12, 2020 March 30, 2020
	Health Care Providers (Regulated Health Professionals or Persons who operate a Group Practice of Regulated Health Professionals)	March 19, 2020 May 26, 2020
	Long-Term Care Homes under the Long-Term Care Homes Act, 2007 Retirement Homes under the Retirement Homes Act, 2010 (by regulation)	March 22, 2020 March 30, 2020 April 8, 2020 April 15, 2020 May 21, 2020 May 23, 2020 June 10, 2020 August 28, 2020 September 9, 2020 September 14, 2020 October 14, 2020
	Ambulance Services and Paramedics under the Ambulance Act	March 24, 2020 March 30, 2020
	Hospitals within the meaning of the <i>Public Hospitals Act</i> and Long-Term Care Homes* within the meaning of the <i>Long-Term Care Homes Act, 2007</i> *only included long term care homes since April 10; prior to that was only public hospitals	March 30, 2020 March 31, 2020 April 10, 2020 October 5, 2020 October 8, 2020



Minister's Directive

- COVID-19: Supporting Long-Term Care Homes – Effective April 24, 2020
- COVID-19: Long-Term Care Home Surveillance Testing and Access to Homes – Effective November 23, 2020



Sample of Guidance Documents and Resources for LTCHs/RHs

Document Title	Date
Guidance for LTCHs	April 15, 2020
Screening Tool for LTCHs & RHs	May 6, 2020
Outbreak Guidance for LTCHs	April 15, 2020
Guidance for mask use in LTCHS & RHs	April 15, 2020
RH COVID-19 Visiting Policy	October 13, 2020
COVID-19 Test Requisition	June 12, 2020
COVID-19 Surveillance Testing – Guidance regarding RH Staff and Resident Testing	June 12, 2020
COVID-19: Visiting LTCHs	November 23, 2020



Long-Term Care Homes Act



Home: The Fundamental Principle

 The fundamental principle to be applied in the interpretation of this Act and anything required or permitted under this Act is that a long-term care home is primarily the home of its residents and is to be operated so that it is a place where they may live with dignity and in security, safety and comfort and have their physical, psychological, social, spiritual and cultural needs adequately met.



Resident's Bill of Rights

- Twenty-seven (27) rights
- Specifically states that it is enforceable as a contract
- Guides interpretation of:
 - The Act and regulations
 - Agreements between the licensee and Crown/agent
 - Agreements between the licensee and resident/SDM



Enforcement of Rights

- Resident's Rights can be enforced as a contract against the home
- The government can set out regulations as to how the Residents Rights are to be respected and promoted by the home



Complaints



Complaint Process

- Homes have complaint process provided to resident/SDM
- Can use that process but it is NOT mandatory
- Home must investigate and report on complaints
- Complaints in writing must be provided to the Ministry



Complaints to Ministry of Long-Term Care

- Allegations of abuse/neglect mandatory reporting to the Ministry of Long-Term Care by anyone except resident
- Anyone can make complaint to the Ministry Action Line (866-434-0144)
- MLTC to inspect homes and prepare report – all reports publicly available at publicreporting.ltchomes.net



Patient Ombudsman

- Complaints about long-term care homes, hospitals, and home-care can be made to Patient Ombudsman
- They look at situation, see if they can help resolve – do not take "sides"
- Complaints must be in writing
- Patientombudsman.ca



Regulated Health Professionals

- Complaints can be made about regulated health professionals such as doctors and nurses
- Complaints are made to their colleges, such as the College of Physicians and Surgeons of Ontario; College of Nurses of Ontario
- Personal support workers are unregulated, no body to complain to



Ontario Ombudsman

- Investigates complaints about government
- Can investigate complaints about issues such as inspections by the Ministry of Long-Term Care
- If you believe that the complaint was not investigated properly/fairly
- You must have sought review through Ministry of Long-Term Care first



Information and Privacy Commission of Ontario

- Information and Privacy Commission of Ontario (IPC) provides oversight over Ontario's access and privacy laws
- Includes complaints oversight over personal health information held by a health information custodian
- If there are issues relating to access, or there is a breach, they have authority to review, investigate, assist in resolving, make orders



Issues

- Consent to Treatment
- Resident Absences/Detention
- Visitors
- PPE
- Compliance/Inspection
- Trespass Orders



Whose Rights?

- In most cases, we are talking about the rights of the resident
- "Families" generally do not have rights
- Where the resident is not mentally capable, the substitute decision-maker (SDM) who has authority will execute those rights on behalf of the resident
- The SDM will also have rights in some circumstances



Consent to Treatment



Health Care Consent Act (HCCA)

- Covers three areas
 - Consent to treatment
 - Consent to admission to a long-term care home
 - Consent to personal assistance services in a long-term care home or retirement home



HCCA - Consent

- Defines capacity
- Requires informed consent
- Sets rules for substitute decision-making on behalf of an incapable person
- Applications to the Consent and Capacity Board



Consent during COVID

- No different rules during COVID
- In order to treat, health practitioner offering the treatment must obtain informed consent from the capable resident or their substitute decision-maker (SDM)
- Must determine capacity of resident before going to SDM



Obtaining Consent from SDM

- If resident not capable, the health practitioner (HP) must obtain informed consent to treatment from the SDM
- Consent can be obtained via telephone, other electronic means
- Is NOT a signature on a piece of paper
- Only exception is in an emergency if a delay would prolong suffering or put the person at risk of sustaining serious bodily harm.



Substitute Decision-Makers

- Substitute decision-makers are defined under the HCCA
- Highest person on the hierarchy makes the decision
- Obligation of the HP to contact them for the decision



Hierarchy (simplified)

- Guardian of the person appointed by court
- Attorney for personal care
- Board appointed representative
- Spouse/partner
- Child/parent
- Parent with right of access
- Brother/sister
- Any other relative
- Public Guardian and Trustee



Capacity Assessment

- It is up to the HP offering the treatment to evaluate the person's capacity to consent to the treatment being proposed
- NOT a capacity assessor
- Even if a person was incapable to consent to admission; is incapable to manage property; is incapable to consent to another treatment DOES NOT mean they are incapable to consent to the specific treatment being proposed



Capacity Assessors

- Capacity assessors only have legal authority with respect to personal care issues
 - Where it is a non-HCCA personal care issue and the Power of Attorney for Personal Care requires confirmation of incapacity and who is to assess either identifies a capacity assessor or is undefined
- Any other assessment is an opinion only



Decisions on Behalf of an Incapable Person

- If a person is incapable, then a SDM must make the decision on their behalf
- Must either comply with a known wish that is applicable to the situation, or if not, in accordance with the best interest test set out in the HCCA



Access to Documents

- Access to health information governed by the Personal Health Information Protection Act (PHIPA)
- Individual has a right of access, and can grant access to their personal health information
- If the person is incapable of consenting to the release of the information, or if they are incapable with respect to a decision under the HCCA and a SDM has made a decision on their behalf, then the SDM has authority to access the personal health information



Granting Access

- If access to the information is necessary to make a decision under the HCCA, the information should be provided
- If a request for information is made for another purpose, then the health information custodian has 30 days to provide the information
- If access is denied or only partial access is granted, the health information custodian must advise the reason under PHIPA
- There is a cost to copies of records \$30 for first 20 pages, 25¢ per page after that



Advance Care Directives/ Level of Care Forms

- These are NOT CONSENTS
- "Speak" to the SDM
- Up to the SDM to determine how to interpret them, whether what is in the document is applicable to the decision to be made
- These documents CANNOT be signed by a SDM



Misuse of Documents

- Very often there is no context, discussion, when documents signed
- There are more than 4/5 "choices"
- Where people indicated they did not want to be sent to hospital – what did they mean?
- Unlikely it could relate to COVID given that it didn't exist when people signed them
- HPs are looking to document instead of getting informed consent
- Cannot have blanket consents they are not informed consents



DNR-C Forms

- Are not wishes, advance directives
- Emergency personnel are not health practitioners, therefore required by law to provide all life-saving treatment, including CPR
- DNR-C document directs that the emergency personnel do not have to provide CPR
- Do not have apply in any other context



System Failures

- Blanket decisions not to send any COVID positive residents to hospital
- Reliance on document regarding treatment instead of speaking to resident/SDM
- Failing to offer treatment



Visits



Types of Visits in LTCHs

- Two types of visits
 - Indoors
 - Outdoors
- Two types of visitors
 - General visitors
 - Essential visitors



General Visitors: When Can you Visit?

- Home must be in green or yellow level
- No general visitors if:
 - In orange, red or lockdown level
 - Home is in outbreak
 - Resident is self-isolating or symptomatic



General Visitors: Rules

- Under age 14 must be accompanied by adult
- 2 at a time
- Proof of negative test within 2 weeks; attest to not being positive
- Home to provide surgical/procedure masks
- One indoor/outdoor per week at least 30 minutes in length
- Home not required to supervise



General Visitors: PPE

- Outdoor visits
 - Visitor provides own cloth mask or face covering
- Indoor visits
 - Home responsible for providing surgical/ procedural masks



Essential Caregivers: Types

- Person performing essential services –
 i.e.. Food delivery, inspector, health care
 services, person visiting a very ill or
 palliative resident
- Government inspectors (exempt from policy)
- Support worker who is not staff
- Caregiver



Essential Caregivers: General Rules

- Must be 18 y.o. or older
- Designated by resident or their substitute decision-maker in writing to the home
- Maximum 2 designated at any time
- May change designation at any time



Essential Visitors:Other Rules

- May not visit a resident for 14 days if
 - Visited another resident who is self-isolating or symptomatic
 - Visited a home in outbreak
- PPE to be provided by home including masks, gowns and goggles



Essential Caregivers: Testing

- Green or yellow level
 - Provide proof of negative test in past 2 weeks
 - Verbally attest to not subsequently having tested positive
- Orange, red or lockdown level
 - Provide proof of negative test weekly
 - Verbally attest to not subsequently having tested positive



Essential Visitors: Number of Caregivers

- No limit to number of caregivers in home at one time
- Maximum two per resident if green or yellow level;
- Only one per resident if
 - Orange, red or lockdown level
 - Home is on outbreak
 - Resident is self-isolating or symptomatic



Essential Visitors: Caregiver Training

- Prior to visiting they must comply with the home's visitor policy, including:
 - Reviewing Guidance Document entitled Recommended Steps: Putting on Personal Protective Equipment (PPE)
 - Reviewing Videos
 - Putting on Full Personal Protective Equipment
 - Taking off Full Personal Protective Equipment
 - How to Hand Wash



LTCH Visitor Policies

- Homes must have visitor policies that align with these policies
- Many homes have made their own, more strict, policies
- ? Will ministry enforce their policies
- Conflict with local public health



Legality

- LTCHA Resident Right #14 Every resident has the right to communicate in confidence, receive visitors of his or her choice and consult in private with any person without interference
- Can these directives, policies, override?
- Can homes have their own policies?



Detention/Absences



Detention/Absences

- March 22, 2020 residents of LTCHs and RHs detained by Chief Medical Officer of Health in Directive #3
- Detention of approximately 72,000 LTCH residents; 60,000 RH tenants
- Unknown number of other residents in congregate living
- RH Residents allowed short absences as of June 18
- LTCH Residents allowed short absences as of September 9
- There have been no Orders made for detention under s. 22 of the HPPA which is what gives authority to detain



Short Absences

- Resident/SDM must submit request to home for absence other than medical – home to approve
- If go on absence, no swab or isolation required on return
- Must mask if can tolerate
- No absences other than medical where home in orange, red or lockdown
- No absences where home is on outbreak unless essential



Temporary Absences

- Overnight up to 14 days
- LTCH residents must submit request to home for approval
- No temporary absences when home in Stage 2 (LTCHs) or Alert/High Alert (RHs)
- Must isolate for 14 days upon return



Legality of Detention

- Detention being done by Directive
- ACE does not believe that this is legal
- HPPA s. 22 allows medical officers of health to detain
- Requires reasons, scrutiny, has an appeal process
- What happening now, contrary to rule of law, Charter



Trespass to Property Act



Trespass to Property "Orders"

- Homes may try to use Trespass to Property Act (TPA) to prevent visitors
- TPA can only be used if the person does not have a right to visit
- LTCHA Residents' Right #14 gives right of visitor
- Residents also an occupier under the TPA and therefore have a right to invite onto property



Banning from Property

- Homes will give person notice stating that they are not to come on property – if they do – police will be called
- If they "breach" then the police are called
 - and may arrest, issue ticket
- Up to the person banned to challenge in Court



Inspections



Types of Inspections

- RQI
 - Risk Focused
 - Intensive Risk Focused
- Critical Incident Inspections
- Complaint Inspections
- Follow Up Inspections
- Other/Special Inspections



Inspections

- Under the LTCHA, all homes must have an inspection at least once per year
- Used to do a Resident Quality Inspection annually – full inspection, proactive
- Then split into two types of RQI had to do one of them
- Now are only being required to one inspection no matter what type



Issues

- Inspections are not being done proactively (RQIs) – only reactively (complaint, critical incident)
- Complaint rely on a resident or some other person to make the complaint – many reasons they would not do so – what happens for incapable persons with no one to speak for them
- Critical Incident relies on home to report incidents



Problems

- Inspectors were not going into homes for long period of time at beginning of pandemic
- Inspectors were redeployed to assist homes
- No RQIs appear to be conducted at present, even on homes that have problems
- Length of time to inspection
- Reports are unsatisfactory even the homes where Canadian Armed Forces came in – do not appear in the reports to have serious problems



Advocacy Centre for the Elderly

2 Carlton Street, Suite 701 Toronto, ON M5B 1J3

Phone: 416-598-2656

Toll Free: 1-855-598-2656

Fax: 416-598-7924

Website: www.acelaw.ca

Twitter: @acelawyers



Provincial Supports POLICE

Call local Police Service

LEAPS/Seniors Support Officers

Ontario Provincial Police

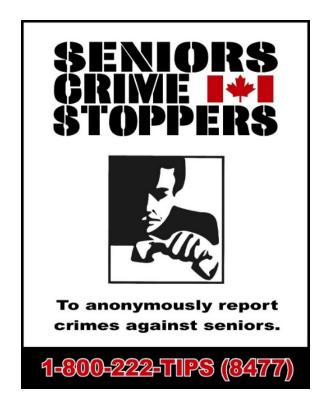
www.opp.ca

Senior Crime Stoppers

www.canadiancrimestoppers.org 1-800-222-TIPS (8477)

Toronto Police Service

Vulnerable Persons Coordinator, Community Partnerships and Engagement Unit



Reporting

MINISTRY MANDATED REPORTING HOW DO I REPORT ABUSE?



Long-Term Care Homes Act s.24(1)

Any person who has reasonable grounds to suspect that abuse has occurred, or may occur, shall immediately report the suspicion and the information upon which it was based to the Director under the LTCHA.

Long-Term Care ACTION Line 1-866-434-0144



Retirement Homes Acts.67

Anyone who sees or suspects a situation that harms or puts a resident at risk of harm must report it to the RHRA.

Retirement Homes Regulatory Authority (RHRA) 1-855-275-7472



1-866-299-1011



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awhl.org/seniors





Provincial **LEGAL** Supports and Services

Advocacy Centre for the Elderly

1-855-598-2656

www.advocacycentreelderly.org

Law Society Referral Service

www.lsuc.on.ca/lsrs/

South Asian Legal Clinic

416-487-6371

https://salc.on.ca

Human Rights Tribunal of Ontario

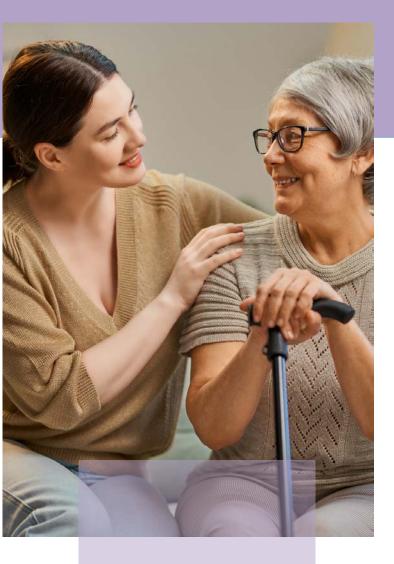
1 866 598 0322

www.hrto.ca

Office of the Public Guardian and Trustee

1-800-366-0335

www.attorneygeneral.jus.gov.on.ca



Supports and Services

LHIN Home and Community Care

http://healthcareathome.ca/

Alzheimer Society of Ontario

www.alzheimer.ca/en/on 1-800-879-4226

Ontario Caregiver Association

416-362-CARE (2273)

Helpline: 1-833-416-2273 https://ontariocaregiver.ca

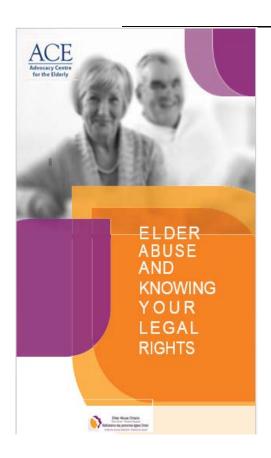
Family Services Toronto

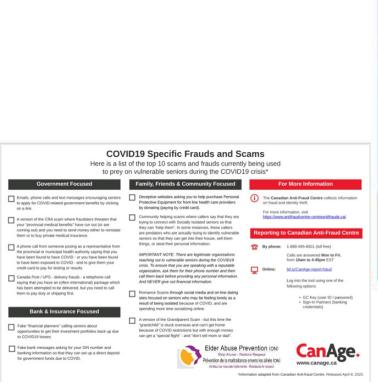
416-595-9618

https://familyservicetoronto.org/



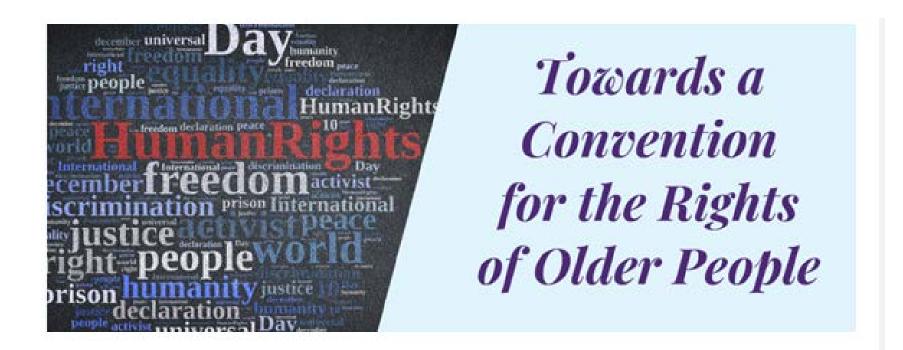
Tools and Resources







Upcoming Webinars



WEBINAR

December 2, 2020

11:00 am - 12:30 pm EST

Questions





Stay in Contact with Us







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