



The Abuse of Older Adults

and the Criminal Justice
System

Disclaimer

The information, commentary, and opinions expressed in this power point presentation and during this discuss are mine and do not reflect those of any law enforcement agency.

Defining: Abuse of older Persons (Adults)

World Health Organization (WHO)



is 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.



Note: United Nations defines an older person as one who is 60 years or older.

WHO: Categories of Abuse:

1. Physical assault.
2. Sexual assault.
3. Psychological abuse.
4. Financial abuse.
5. Neglect.



Defining: **Mistreatment of Older Persons**



is a single or repeated event that involves a person, a group, a community, or an organization and occurs within a relationship where there is an expectation of trust, when an act, word, attitude, or lack of appropriate action causes or risks causing the consequences for an older person.



Note: Canada considers an older person as one who is 65 years or older.

Source: Marie Beaulieu, PH.D. and Kevin St-Martin, M.S. S/M.SW, October 2023, *Mistreatment of Older Persons: Federal Police Definition – Explanatory Document*, His Majesty the King in the Right of Canada, 2023

Canada: Categories of Abuse:

1. Injury of physical harm.
2. Psychological/ emotional abuse.
3. Diminished sense of identity, dignity and self-worth.
4. Sexual abuse. Sexual behaviour directed at an older adult without their knowledge or consent.



Criminal Code of Canada

* Federal law that includes most of the criminal offences that the Parliament of Canada has enacted.



* It is based on the principal that justice is blind

Criminal Code of Canada:

Specific categories of charge



1. Physical assault.



2. Sexual assault.

3. Psychological / emotional abuse.



4. Financial exploitation / abuse.

5. Neglect, including self and at the *hands of a third party*.



Criminal Code of Canada:

Aggravating Circumstances

3. Psychological / emotional abuse. Considered upon conviction when sentencing:

CC 718.2

- (i)** evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
- (iii)** evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
- (iii.1)** evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
- (iii.2)** evidence that the offence was committed against a person who, in the performance of their duties and functions, was providing health services, including personal care services,
- (vii)** evidence that the commission of the offence had the effect of impeding another person from obtaining health services, including personal care services,



Statutes and Legislations

1. Substitute Decisions Act, 1992, S.O. 1992, c.30
2. Powers of Attorney Act, R.S.O. 1990, c. P.20
3. Residential Tenancies Act, 2006, S.O. 20026, c.17
4. Commercial Tenancies Act, R.S.O. 1990, c. L.7
5. Occupier Liabilities Act, R.S.O. 1990, c.).2
6. Trespass to Property Act, R.S.O. c, T.21
7. Retirement Homes Act, 2010 S.O. 2011, c.11 including all O. Reg's
8. Fixing Long-Term Care Act, 2021, S.O. 2021, c. 39 Sched. 1, including all O. Reg's
9. Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M56
10. Health Care Consent Act, 1996, S.O. 1996, c. 2, Sched. A
11. Personal Health Information Act (PHIPA), 2004, S.O. 2004, c.3, Sched. A
12. Amongst others



Issues Abuse of Older Adults: The role of law enforcement



Community Safety and Policing Act, 2019, S.O. 2019, c. Sched.

82 (1) The duties of a police officer include,

- (a) preserving the peace;
- (b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;
- (c) assisting victims of crime;
- (d) apprehending criminals and other offenders and others who may lawfully be taken into custody;
- (e) laying charges and participating in prosecutions;
- (f) executing warrants that are to be executed by police officers and performing related duties;
- (g) performing the lawful duties that the chief of police assigns;
- (h) completing training required by this Act or the regulations;
- (i) complying with the prescribed code of conduct; and
- (j) performing such other duties as are assigned to him or her by or under this or any other Act, including any prescribed duties.

Impact of victimization

1. Financial

2. Psychological

- * Decline in overall health and well-being.
- * Decline in cognitive state.
- * Loss of freedom of choice.
- * Loss of home.
- * Decrease in economic standing
- * Death within 5-years of victimization

Abuse of Older Adults: Emerging Trends

1. Fraud.
2. Financial Crimes.
3. Neglect- 3rd party.
4. Assault- Sexual and Physical.



Abuse of Older Adults: **FRAUD**

1. A fraud involves one or more lies.
2. Aim: To steal your money or other tangible asset(s).
3. Commonly perpetrated by a stranger, but not always.

*Top 5:

1. Emergency or Grandparent scheme.
2. Financial Services scheme i.e., Home loan, HVAC equipment installations and equipment rental (NoSI), Home improvements, Investments, Crypto Currency i.e., Bit Coin
3. Romance scheme.
4. Impersonations i.e., Bank security, government agency, identity theft, etc.
5. Tech support i.e., Microsoft scheme – leading to --> Computer take over

*Note: The list will vary depending on the source.

Fraud- Stats

Year 2022: \$530 million with 26% attributed to older adults (\$ 137.8 million)

Year 2024: \$578 million (40,000 victims older adults)

Note: Research suggests only 5% of victims ever report

Source: Canadian Anti-Fraud Centre (CAFC)



Abuse of Older Adults: **FINANCIAL CRIME**

1. May involve a fraud
2. Often is facilitated through the use of valid and legal documentation and/or process(es).
3. Aim: Steal your money or other tangible asset(s) i.e., your home

Such as:

1. Powers of Attorney document(s)
(General Power of Attorney, Continuing Power of Attorney for Property)
2. Last Will and Testament.
3. Joint ownership- bank account and/or property.
4. Unauthorized use of credit/debit card.
(It is your money, but it's not your card)



Commonly perpetrated by family member/ someone close to you

Abuse of Older Adults:

Abuse - Neglect

1. Neglect- Self:

- a. Technically not an issue for law enforcement
- b. May lead to “Check on Well-Being”, but our limited in response.

2. Neglect- 3rd party

- a. Private residence -> may lead “Check on Well-Being’
- b. Retirement or Long-Term Care Home -> Mandatory reporting under legislation.
- c. May lead to investigation



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Abuse of Older Adults:

Assault- Sexual & Physical

1. Sexual Assault

2. Physical:

- a. Statistically 60% perpetrated by loved one/family member
- b. Institutional
- c. In home:
 - (1) Caregiver.
 - (2) Other
 - (3) Intimate Partner Violence (IPV)

Institutional- Mandatory Reporting

1. Retirement Homes Act, 2010 S.O. 2011, c.11 including all O. Reg's
2. Fixing Long-Term Care Act, 2021, S.O. 2021, c. 39 Sched. 1, including all O. Reg's

Does not apply to law enforcement but does impact law enforcement



Abuse of Older Adults: **Assault- In home**

1. Caregiver.
2. Other
3. Intimate Partner Violence (IPV).

Cognitive impair is no excuse for bad behaviour

Criminal Code base premises

1. Law enforcement:

To lay a charge requires

“Reasonable expectation of successful prosecution”

2. Criminal Court

Conviction requires

“Beyond a reasonable doubt”



Law enforcement is empowered to use discretion, except in issue of IPV

Law enforcement does not have the authority to disregard evidence of a criminal offence based upon perceived cognitive impairment of the perpetrator.

Abuse of Older Adults: Assault- IPV

If there evidence of an offence law enforcement in the Province of Ontario must charge:

Creates a number of issues, especially in situations of cognitive impairment:

- a. Perpetrator understanding of circumstances and process.
- b. Imposed conditions of release-> forced separation.
- c. Now what:
 - (1) Housing -> no shelters
 - (2) Medical and Care support

Abuse of Older Adults:

Mental Health Act

Legislation: Mental Health Act, R.S.O. 1990, c. M.7

* A cognitive impairment i.e., a form of dementia, ABI, etc. is not a mental health issue

Form 2- Issued by Justice of the Peace or a medical doctor

-> May lead to apprehension by law enforcement

Form 1- Issued by medical partitioner at time of admission- mental health facility

-> Key: Attending ER physician must find their grounds to admit

Abuse of Older Adults:

Mental Health Act

- Admission remains decision of responding physician

“... after examining the patient, he or she is of the opinion both,

(a) that the patient is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the patient,

(ii) serious bodily harm to another person, or

(iii) serious physical impairment of the patient,

unless the patient remains in the custody of a psychiatric facility; and

(b) that the patient is not suitable for admission or continuation as an informal or voluntary patient.”

- Cannot be used to circumvent the “system”

i.e., as an attempt to have an individual admitted to LTC

- Living with a form of dementia does not mean a ‘mental health’ concern under MHA.

Options: Wellness Check

(a.k.a. Check on the well-being)



- * When there is a concern for the health and/or well-being of an individual.
- * Must be in-person contact.
- * Minimum two officer will respond.
- * Must personally interact with the individual who is the focus of the concern.

That means responding officers must make contact with the individual.

Options:

Referral to the Ontario Office of the Public Guardian and Trustee (PGT)

- * No adult protection laws in Canada
- * No adult protection laws in the Province of Ontario
- * PGT is the “Last Resort”
- * Referral:
 - Suggestion or evidence of cognitive Impairment
 - Risk

Options:

Superior Court of Justice

- * Guardianship
 - a. Personal Care; and/or
 - b. Management of Property
- * Requires documented evidence of cognitive impairment by a duly authorized source
i.e., Report of a Certified Capacity Assessor
Not a note/letter from a medical doctor (MD)
- * Concerns:
 - a. Challenging to navigate.
 - b. Expensive.
 - c. May become a 'battle'.
 - d. Comes with fiduciary responsibilities -> civil and criminal.

As the age demographics of Canada, in particular Province of Ontario changes

So too must law enforcement.

- * Adjust to respond appropriately i.e., specialized training, specialized units
- * Understanding many 'civil' issues often have a (complex and complicated) criminal element to them.

So too must society

It takes a collaborative effort

Law Enforcement + Community Partners + You

Collaboration:

Law Enforcement = Community Partners

We all have our defined lane of responsibility.

Alone, we are just that -> ALONE

Together we can assist and protect vulnerable persons

No one group can operating without the other



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