



VOICES

Justice and Human Rights Committee - Elder Abuse

Submitted by: CanAge
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Summary of CanAge Recommendations:

Recommendation 1

That the House of Commons acknowledge the significant harms caused by elder abuse and neglect, recognize that these harms are not captured in criminal law at present, and further recognize that forms of elder abuse and neglect, such as physical and financial abuse, are often preceded by or connected with a pattern of coercive or controlling behaviour.

Recommendation 2

That the Minister of Justice engage with his provincial and territorial counterparts to initiate a taskforce of experts with a mandate to review existing federal criminal legislation using an age-inclusive analysis, plus other measures, and make recommendations concerning the drafting of government legislation regarding a specific elder abuse and neglect offence in the Criminal Code. Consideration of the language of Bill C-247 as possible language for such an offence, and related measures to meet the needs of victims, may be helpful.

Recommendation 3

That the House of Commons calls on the federal government, the provinces, and territories to implement measures to combat the challenges presented by the justice system for victims of elder abuse and neglect, including those facing cognitive impairment and other social vulnerabilities, and further calls on the federal government to fund measures to support all victims of elder abuse and neglect through court processes.

Recommendation 4

That the federal government support and fund implementation of a National Elder Abuse Response Strategy (*NEARS*) including the creation of a standing Committee on Elder Abuse and Neglect, to assist organizations working to support victims of elder abuse and neglect to deliver adequate levels of support services, such as counselling, housing, and other services aimed at helping victims in re-establishing their lives, and ensure that culturally appropriate services are available and accessible.

Recommendation 5

That the federal government engage with provincial and territorial governments and other relevant stakeholders to promote and fund a public awareness campaign on elder abuse and neglect, as well as training of judicial system actors, such as police, lawyers, and judges, about the dynamics of such behaviour and how to engage with older victims, some of whom may have cognitive impairment. Training must be trauma-informed, dementia-friendly, and integrate intersectional perspectives. This training should be accompanied by tools and policies to support action on elder abuse and neglect.

Dear Members of the Justice and Human Rights Committee:

CanAge is Canada's National Seniors' Advocacy Organization. As an independent, non-partisan, non-profit organization we educate and mobilize people on the issues that matter to older Canadians. We work to advance the rights and well-being of Canadians as we age and ensure that older Canadians live vibrant and connected lives. CanAge has identified critical areas that require urgent investment to improve seniors' lives in the VOICES of Canada's Seniors: A Roadmap to an Age-Inclusive Canada (www.CanAge.ca/voices).

CanAge will divide its comments into the following 3 substantive areas:

- A. Criminal Justice Reform to Respond to Elder Abuse and Neglect
- B. Prevention and Awareness
- C. Responses and Research

Background: Violence & Abuse Prevention

Since the pandemic, elder abuse and neglect has significantly increased due to financial constraints, isolation, and confinement with one's abuser. Many agencies focused on elder abuse and neglect response were anecdotally reporting a ten-fold increase of incidents in the first few months of the pandemic. Organizations such as Elder Abuse Prevention Ontario have reported a 250% increase in elder abuse cases in the past year since the pandemic.

Indeed prior to COVID19, approximately 1 in 5 older Canadians will experience some form of elder abuse and neglect: financial abuse including seniors' targeted frauds and scams; physical, emotional, sexual, and institutional neglect are the most common forms. Elder abuse is one of the most common forms of abuse in Canada, and it has the least visibility, awareness, or investment.

It is well understood that the pandemic has increased the conditions of abuse, with adult children moving back home, financial pressures on the rise, and isolation and loneliness reaching never before seen levels.

Additionally, the crisis brought on by COVID-19 has exacerbated long-standing issues in seniors' care. We have historically seen the chronic underfunding and understaffing in Long-Term Care (LTC) homes. Canadian seniors are living longer and, towards end of life, have greater frailty, vulnerability, cognitive impairment, and care needs. However, LTC home residents have been subject to situations of profound neglect, leading to dehydration, malnutrition, bedsores and death.

Vulnerable older adults receiving care deserve to be safe, and deserve not to be neglected.

While adoption of National Standards is a key step, they do not respond to clear behaviours of criminal neglect. Currently, however, there are few and inadequate criminal code resources available to respond to the institutional elder abuse and neglect that this pandemic has revealed in long-term care.

Development of a National Elder Abuse and Neglect Response Strategy

Organizations like CanAge have been working tirelessly, and on an unfunded basis, to create the framework for a *National Elder Abuse and Neglect Response Strategy*. This strategy process deserves investment, support, and amplification by the federal government.

Comparative Federal Investments Between Domestic Violence and Elder Abuse

Federal investments, or dedicated work in by the federal government in elder abuse and neglect, have been nearly non-existent since 2015.

Importantly, this government has invested significantly to address the issue of Domestic Violence throughout their tenure. Prior to COVID19, the Federal government, via Women and Gender Equality Canada, announced the first-ever federal Strategy to Prevent and Address Gender-Based Violence and initially invested over \$200 million to prevent gender-based violence, support survivors and their families, and create a more responsive legal and justice system. Since COVID19, the Federal government provided a similar amount of funding to respond to domestic violence in this past year. Total funding for the gender-based violence and domestic violence sector in the past 4 years has been nearly \$500 million.

By contrast the Federal government has not provided a single specific dollar for elder abuse and neglect, excepting through some local programming via its New Horizons for Seniors' programs, which are very modest and "one-off" 1-year community-based grants of no more than \$25,000. While seniors' local community programming is useful, this is not a strategic investment, nor part of a comprehensive strategy to address elder abuse and neglect. CanAge was pleased to see elder abuse mentioned in the Budget along with other forms of abuse for some financial investment over the next 5 years.

A. Criminal Justice Reform To Respond to Elder Abuse and Neglect

Recommendation A.1: Create an Elder Abuse and Neglect Specific Criminal Code Charge.

CanAge team members have been working for more than 20 years on elder abuse and neglect issues and bring deep expertise to this area. Historically there was reticence to bring criminal justice responses or charges to elder abuse and neglect in Canada. The common theme was

that older adults who are mentally capable have the choice to live at risk and they would not wish to have charges laid against family members, caregivers, or others because of family relationships and/or shame. There was also some concern that police officers and the criminal justice system would invade the lives of older adults and overstep their authority. However, that thinking has evolved.

Police involvement, charging, and the criminal justice system have been minimally involved in elder abuse and neglect. There has, by contrast, been frustration from the public and from officers that they do not have the needed tools to adequately respond to the increasing spread and impact of elder abuse and neglect.

In 2006, Laura Tamblyn Watts and Leah Sandhu wrote “The 51st State – The “State of Denial” A Comparative Exploration of Penal Statutory Responses to “Criminal” Elder Abuse in Canada and the US”¹ and found that Canada’s criminal justice system significantly under-responds to elder abuse and neglect. In 2009, Krista James and Laura Tamblyn Watts wrote “Legal Definitions of Elder Abuse and Neglect”² In 2011, Krista James and Laura Tamblyn Watts wrote: “The Practice Guide to Elder Abuse and Neglect”³. In all three publications, the common themes of lack of sufficient serious response by the criminal justice system in Canada were highlighted.

It is important to create a criminal code provision for ease of charging for types of abusive or neglectful behaviour which do not squarely fall within the existing commonly highlighted provisions of underlying offences. Additionally, having a charge for criminal elder abuse and neglect is important for the goal of deterrence. Specific charges provide a clear message that abuse of vulnerable older adults is not just a “civil matter”, and also provides scope for multiple charges to be laid.

The oft-cited *s.215: Failure to Provide the Necessaries of Life*, is in fact a charge very rarely ever laid, and derives from child neglect. In the elder abuse and neglect context this charge is typically only laid in the most profound circumstances – such as leaving an older person in unheated garage to die of starvation and sepsis due to untreated wounds.

Much abusive behaviour of older adults deals with the “blocking” or “restraining” of liberty, the invasion of privacy, predatory types of tracking, grooming, and coercion.

¹ http://www.bcli.org/sites/default/files/The_51st_State_-_A_State_of_Denial.pdf. Elder Law Journal, University of Illinois, 2006.

² <https://www.bcli.org/wordpress/wp-content/uploads/2021/04/4.-Legal-Definitions-of-Elder-Abuse.pdf>

³ https://www.bcli.org/sites/default/files/Practical_Guide_English_Rev_JULY_2011_0.pdf

CanAge has had the benefit of reviewing the materials from the Advocacy Centre for the Elderly and is supportive of their suggestions for new charges excerpted here:

“The Criminal Code of Canada needs to be amended by adding a new charging section that is separate and distinct from failure to provide the necessities of life and from criminal negligence, both of which offences speak to duties tending to the preservation of life, but do not sufficiently respond to elder abuse and neglect in long-term care homes, retirement homes and other congregate living facilities...(we recommend) a new offence (of) “criminal endangerment”, which could include the following essential elements:

- i. an individual or an organization has entered into a contract to provide care and/or supervision to a person;*
- ii. the individual or organization has failed to provide adequate care and/or supervision to the person; and,*
- iii. the failure to provide adequate care and or supervision has endangered the health and/or safety of the person.*

In keeping with a similar crime against the person of failure to provide the necessities of life under section 215 of the Criminal Code, a punishment of imprisonment of up to five years, upon conviction by indictment, or of up to two years less a day upon conviction by summary conviction procedure could be an appropriate range of sentence.

As is the case with criminal negligence under sections 219-21 of the Criminal Code, discrete offences of criminal endangerment causing bodily harm and criminal endangerment causing death could be created, with similar penalties of imprisonment of up to 10 years for criminal endangerment causing bodily harm, and of life imprisonment for criminal endangerment causing death.

These proposals represent serious offences with serious consequences that reflect the severe vulnerability of the victims, the position of trust held by care providers, and the profound power imbalances that exist between those who provide care and those who receive it.”⁴

Additionally, CanAge draws attention to the recently considered Bill 218 on “Controlling or Coercive Conduct within Intimate Relationships”

[Report 9](#): The Shadow Pandemic: Stopping Coercive and Controlling Behaviour in Intimate Relationships.

The recommendation was to include the following new offence:

264.01 (1) Everyone commits an offence who repeatedly or continuously engages in controlling

⁴ Testimony to the Committee of Justice and Human Rights, of Graham Webb, Executive Director, [Advocacy Centre for the Elderly](#), May 2021.

or coercive conduct towards a person with whom they are connected that they know or ought to know could, in all the circumstances, reasonably be expected to have a significant impact on that person and that has such an impact on that person.

The offence would be a hybrid offence with a maximum of five years imprisonment.

It was of note that most consistent recommendation by witnesses regarding the text of Bill C-247 was to expand the application of the bill to include ex-partners, and possibly other family members, who may not be members of the same household as their abuser. It is respectfully submitted that a modification of that criminal code provision to expand it to include elder abuse and neglect may be of assistance.

Recommendation A.2: Police Training and Resources

Dedicated training exists sporadically across Canada. Laura Tamblyn Watts has provided training for the Ontario Provincial Police, the Durham and Peel Police, the City of Toronto Police Services, Ottawa Police, Hamilton Police, as well as police training throughout BC and in other jurisdictions. Police training on elder abuse and neglect is not standardized with key norms, is inadequately offered, and not well-connected to how to charge. While some jurisdictions, like Ontario, has a requirement to develop and maintain procedures on and processes about elder abuse and neglect, the reality of these processes is that they are missing or inconsistent not just across Canada, but also interpreted very differently from region to region. This creates either a vacuum or inconsistencies on police services related to elder abuse and neglect.

Example: Ontario

ONTARIO REGULATION 3/99
ADEQUACY AND EFFECTIVENESS OF POLICE SERVICES⁵
Law Enforcement

- 12. (1) Every chief of police shall develop and maintain procedures on and processes for undertaking and managing general criminal investigations and investigations into:
(f) elder abuse and vulnerable adult abuse;

One of the key reasons is that officers have been routinely pointing out how difficult it is to charge and pursue a case in elder abuse and neglect is because so few resources are available in this area. Elder Abuse and Neglect police training needs to be created, incorporated, and on par with training on Domestic Violence and Mental Health. Specialized units should be pursued, such as the pilot programs in Ottawa ON, Vancouver BC, and Delta BC which pair a police officer with a social worker to respond to elder abuse and neglect cases.

Recommendation A.3: Judicial Training

Judicial training has been very rare on elder abuse and neglect issues. Laura Tamblyn Watts

⁵ http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_990003_e.htm

was involved in the creation of the first training of BC judges on Elder Abuse and Neglect, led by Justice Marion Allen in 2006/7. Later, Laura Tamblyn Watts was involved in the creation of the first National Judicial Institute training in 2010/11. We are not aware of other robust judicial training on this issue. Judicial training on elder abuse and neglect should be regularized, and analogous to training on Domestic Violence and Mental Health.

Recommendation A.4: Charging and Crown Processes

Charging processes are a challenge for police: elder abuse and neglect charging guidance, to the degree it exists across Canada, is often vague, and where it exists, is permissive. Clarity needs to be given on charging processes for elder abuse and neglect, including training for police and Crown Counsel on how to appropriately charge, and that these are not only “civil matters”. In our review of the landscape, we found that there are very few opportunities for Crown Counsel to be trained in elder abuse and neglect, or how to work with older victims (or offenders) including those who may have cognitive impairment or accessibility needs. CanAge has heard on many occasions from police officers who have managed to have charges laid in cases of elder abuse and neglect that are simply dropped by Crown Counsel. Consideration should be given to charging guidance including the appropriateness of mandatory charging and no-drop policies in cases of abuse and neglect.

Recommendation A.5: Victims’ Supports

Victim’s support services for elder abuse and neglect are both rare and inconsistent. Older adults are not well-served by domestic violence services, and the more “generalized” victim’s services are not adapted or necessarily suitable for older adult victims. Focused supports for older adult victims of abuse and neglect should be provided across Canada.

B. Prevention and Awareness of Elder Abuse and Neglect

Recommendation B.6: Funding

Provide sustained and appropriate funding for elder abuse and neglect response on par with domestic violence funding. Particularly provide dedicated support and funding to the Canadian Network for the Prevention of Elder Abuse (CNEPA) and other elder abuse and neglect response and educational agencies or organizations.

Recommendation 7.B: Awareness

Support and implement a National Elder Abuse Response Strategy. As part of the *NEARS*, integrate the new Criminal Code provisions, including training and awareness campaigns.

Recommendation 8.B: Data Reporting

Require federal, federally-funded, or federally-regulated agencies to collect desegregated data on elder abuse and neglect and the experiences of older adults in segments more defined by narrower age groups. 65+ is too large a group, and disaggregated data should also include other self-identified characteristics to better understand marginalization and intersectional impacts on older adults.

C. Responses and Research

Recommendation 9.C: PIPEDA

Amend PIPEDA to better allow financial institutions to report abuse. Amend s. 7(3)(d.3) to, a) define “financial elder abuse” and “mental capacity”, b) update the list to whom disclosure can be made, and c) link to provincial / territorial responses.

Recommendation 10.C: Research

Release the groundbreaking Elder Mistreatment Study research “Into the Light” by Dr. Lynn McDonald submitted to government in 2015/16. This landmark report was funded by the government of Canada, with additional funding from the provinces and territories. It was the largest study in Canada on elder abuse and neglect and one of the largest and leading studies globally. However, for unknown reasons this study has never been formally released by government. A small portion of the *INTO THE LIGHT: NATIONAL SURVEY ON THE MISTREATMENT OF OLDER CANADIANS 2015* larger study can be found here: <https://cnpea.ca/images/canada-report-june-7-2016-pre-study-lynnmcdonald.pdf>

Additionally, the government of Canada must invest in research to better understand and respond to elder abuse and neglect, including funding the NICE network.

Recommendation 11.C: Information Hotline

Create or support a national 1-800 toll-free line hotline for people to phone for local referrals on elder abuse and neglect. Track and report elder abuse and neglect enquiries and use that data to support evidence-based policy, planning and funding.

Recommendation 12.C: Mandatory Seniors Banking Code

Change the Seniors Voluntary Banking Code to binding regulation under the Financial

Consumer Agency of Canada (FCAC). Amend the Code to include the requirement to request a Trusted Contact Person from clients.

Recommendation 13.C: Establish the Federal Office of the Seniors' Advocate

The Seniors' Advocate should provide systemic oversight and leadership on issues related to the current needs of Canadian seniors, as well as provide insight, analysis, and direction to the government on the future needs of our aging population. Elder abuse and neglect awareness and response should be a key and ongoing mandate of the Federal Office of the Seniors' Advocate.

Conclusion

We respectfully ask the Committee to carefully consider our recommendations and review the VOICES of Canada's Seniors: A Roadmap to an Age-Inclusive Canada (www.CanAge.ca/voices) for detailed recommendations. We welcome the opportunity to present to the Committee on May 25th, 2021.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Laura Watts".

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President and CEO
CanAge
Canada's National Seniors' Advocacy Organization