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Backgrounder

Definitions of Elder Abuse and Neglect

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Federal Elder Abuse Initiative

In May 2007, the Government of Canada created a National Seniors Council to give advice to the Government on matters of national importance to seniors. One of the first areas identified by this group was combating elder abuse. On October 16, 2007 in the Speech from the Throne the Government announced its intention to address elder abuse.

In the spring of 2008, the three-year Federal Elder Abuse Initiative (FEA) was launched. The federal Department of Justice, several partner departments, and other agencies are involved in this initiative including Human Resources Development Canada (HRSDC – which leads the Initiative), Public Health Agency of Canada (PHAC) and the Royal Canadian Mounted Police (RCMP). This multi-departmental initiative was developed with the overarching goal of helping seniors and others recognize the signs and symptoms of elder abuse, and providing information on available support for those affected. The objectives of this initiative are to:

- Raise public awareness of elder abuse through a national campaign – especially amongst seniors, their families and professional groups working with seniors; and
- Ensure availability of appropriate elder abuse related information, resources and tools for frontline workers.

Constitutional jurisdiction in the area of elder abuse is shared between the provincial and territorial legislatures and the federal Parliament, with programs and services primarily within provincial and territorial jurisdiction. The federal role is providing leadership in terms of awareness, public information and research. As a partner in this federal initiative, the Department of Justice has committed to undertaking several research-related activities concerning elder abuse over the next three years.

What is Elder Abuse?

Although there is not a universally accepted definition of elder abuse, most definitions arise from health-related fields and take into account the existence of a relationship between the

abuser and the abused (to differentiate from other forms of violence and exploitation). One of the most commonly used definitions, which is also referred to in the FEA Initiative materials, is one developed by the World Health Organization in 2002 that describes elder abuse as "...a single or repeated act, or lack of appropriate action, occurring within a relationship where there is an expectation of trust [that] causes harm or distress to an older person."¹ Although most people can agree with the concepts underlying this general definition, different definitions and concepts are used by various professions and groups working in this area (i.e., who is effected, who are the abusers, what impact it has on the abused person). As noted above, the constitutional jurisdiction in the area of elder abuse is shared between the provincial and territorial legislatures and the federal Parliament. The manner in which each government defines elder abuse and neglect is located within their respective legislation, justice systems policies and case law. This aspect must be considered when coming to a decision on how Canada will define elder abuse.

To begin we must first understand how elder abuse and neglect are currently defined in legislation and case law across Canada and abroad. We will do this by exploring all legal definitions and descriptions of elder abuse and neglect that appear in Canadian federal, provincial, and territorial legislation, justice system policies and case law. We will also determine what definitions and descriptions of elder abuse and neglect appear in other countries with a justice system similar to that of Canada (including the UK, Australia and the United States). To move forward with understanding and reducing the occurrence of elder abuse, policy-makers must also have a clear perspective on how and / or whether these crimes against seniors are defined in existing legislation, justice system policies, and case law.

Recently HRSDC, with the assistance from the Research and Statistics Division at Justice, hosted a roundtable with experts in the field of elder abuse. This roundtable was designed to summarize existing knowledge, identify knowledge gaps, and suggest directions for future research. Some of the issues that emerged involved methodological and conceptual inconsistencies, as well as potential ways of addressing these concerns.

One of the main recommendations that came out of the roundtable was for further research on the Canadian legislative framework to be commenced. An area of particular importance was the analysis of the status and the effects of current legislation, and the impact of privacy legislation. Some of this work has already been started, and one such example was a paper prepared for the roundtable. In order to fully respond to this recommendation, however, more background work is needed to determine how elder abuse and neglect are currently defined within the Canadian legislative framework.

¹ "Prevention of elder abuse," online: World Health Organization
<http://www.who.int/ageing/projects/elder_abuse/en/>.

Objectives

The purpose of this contract is to prepare a report that will outline the legal definitions of elder abuse and neglect both nationally and internationally. Particularly, the report will answer the following two key questions:

1. What definitions of elder abuse and neglect appear in Canadian federal/provincial/territorial legislation, justice system policies and case law?
2. What definitions of elder abuse and neglect appear in other countries with a justice system similar to that of Canada (including the UK, Australia and the United States)?

Methodology

This methodological and conceptual paper will use two approaches to answer the two key questions noted in the *Objectives*:

1. Review legislation, case law and other relevant legal and justice system documentation from both Canadian and international jurisdictions; and
2. Undertake interviews with Canadian and international experts, if needed, to supplement available information.

The CCEL has already completed some research in this area. This preliminary work provides a brief description of key elements of the legislation applying to elder abuse (elements or types of abuse defined and scope of application), within four legislative categories of legislation (domestic violence legislation, adult protection legislation, human rights legislation, and institutional abuse legislation), in each province and territory across Canada. Within this work is an overview of elder abuse legislation in Canada, together with three comparative tables, illustrating the extent to which the different types of elder abuse occurring in different settings are dealt with in existing provincial and territorial legislation.