



# CANADIAN CENTRE FOR ELDER LAW

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## Submission to the House of Commons Committee on the Status of Women on Abuse of Older Women

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### 1. Executive Summary

Abuse of older women is a complex phenomenon. There are many different forms of abuse and different kinds of victims, and no single legal framework or social program is likely to capture all circumstances that fall under the umbrella concept of abuse of older women. Addressing abuse of older women thus requires a multi-faceted national strategy. This submission identifies some areas where the federal government can take leadership in furthering policy and program development with respect to abuse of older women.

Over the years communities and governments have developed legislation, programs and policies that have been successful in assisting women to stop the violence in their lives; however, few programs recognize the unique needs of older women.

#### Recommendation 1

The needs of older women can be different from those of younger women survivors of abuse. Communities and organizations should be funded to create resource agencies and programs that provide support and assistance to older women who have experienced abuse, with particular emphasis on making those resources accessible to older women who are isolated.

Just as older women are different from their younger counterparts, older women are also diverse. There is very little Canadian research on elder abuse in marginalized communities, such as abuse experienced by First Nations women, immigrant women and low-income women. However, the limited research that does exist suggests that marginalization complicates abuse.

#### Recommendation 2

Older women are diverse and factors such as immigration status, First Nations heritage and poverty have implications for the kinds of abuse women experience as well as the types of assistance that will be helpful and welcome. Further research should be conducted to identify appropriate strategies and resources that target different communities of older women and also to increase general understanding of dynamics of abuse that are unique in different communities.

Legislation provides for a remedy in some circumstances of abuse, generally only after abuse has occurred.

### **Recommendation 3**

An effective national strategy for addressing abuse of older women includes strategies for prevention. This means providing women with alternatives to tolerating abuse, by addressing some of the underlying factors that contribute to dynamics of abuse, such as: economic insecurity; access to resources; awareness of rights; de-stigmatization of victimization, for example, through public awareness campaigns; assistance with caregiving responsibilities; and training and ongoing support for various professional and service-provider communities – including health care, banking and justice – in relation to abuse of older women.

Where legislation, and sometimes policy, identifies remedies in circumstances of risk and abuse the remedies are often protective measures that take control, independence and power away from a vulnerable older women.

### **Recommendation 4**

Abuse of women is generally understood, at least in the domestic violence context, to be an act of control that undermines the autonomy, power and confidence of the victim. Legal and social policy should not prioritize protectionist goals at the expense of undermining women's autonomy and personal power. Rather, legal and policy strategies should be developed through a lens that focuses on empowering older women survivors of abuse – by raising awareness of options, increasing access to services, allowing women to make choices about what steps to take, and providing access to the legal and financial assistance that is required in order to follow through on those decisions.

In recent years there has been tremendous success in raising awareness about, and increasing understanding of, both elder abuse and domestic violence. The challenge becomes how to raise awareness of abuse through the combined lenses of age and gender, and how to provide people with information on the concrete steps they can take to address abuse in their lives and their communities.

### **Recommendation 5**

There is a need to further raise awareness about abuse of older women with a focus on identifying available resources. People need to know how they can participate in supporting vulnerable older women in their communities to access timely support and assistance. Given the threat isolation poses in the area of elder abuse, older women need practical information that pertains to locally available accessible resources, and public awareness initiatives should target remote communities.

## **2. Introduction**

This submission is divided into a number of sections. Section 3 provides a brief overview of the concepts of elder abuse and abuse of older women. Section 4 sets out current provincial, territorial

and federal legislation that characterizes the existing Canadian legal response to abuse of older women. Section 5 identifies key social dynamics involved in cases of elder abuse. Section 6 puts forward recommendations for policy and program development aimed at preventing and responding to the problem of abuse of older women. Given our expertise as an agency focused on legal issues connected with aging, throughout this submission we refer largely to examples of abuse of older women that can be found in legal jurisprudence in order to provide a portrait of abuse of older women in Canada. The general thrust of our submission is to promote a legal and policy strategy that is victim rather than offender focused, grounded in the overarching goals of (1) preventing abuse of older women, and (2) empowering woman survivors of mistreatment, abuse and exploitation. Violence and mistreatment of women has long been understood as a phenomenon that undermines the power of victims; we must be conscious that our legal institutions do not unwittingly further undermine older women's independence and decision-making autonomy at a time of life when independence is particularly precious.

### 3. What is Abuse of Older Women?

The most commonly cited definition of elder abuse 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."<sup>1</sup> As elder abuse is such a broad concept, it is often understood in terms of types of abuse or harm: elder abuse includes actions that cause physical, emotional, financial or sexual harm to an older person.

Elder abuse is also conceptually linked to neglect, which includes situations where a person (or organization) fails to provide necessary services or care or fails to meet the basic needs of an older person who is dependant on the other for assistance. In particular, financial abuse and neglect sometimes appear hand-in-hand, and the appearance of signs of neglect (dehydration, malnourishment, lack of appropriate medical care) in a person who usually has sufficient funds to purchase basic necessities such as food, transportation, housing and medical assistance devices can be a warning sign of financial abuse. Consider the following story:

Avril Dannett, a 63-year old immigrant from Guyana, had retired from nursing after suffering a stroke that resulted in amputation of her right leg.<sup>2</sup> She allowed her youngest son to move in with her, ostensibly so he could provide assistance and support.<sup>3</sup> The son acquired access to the woman's pension income, such that the older woman became unable to purchase basic

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<sup>1</sup> World Health Organization, "Elder Abuse", online:

[http://www.who.int/ageing/projects/elder\\_abuse/en/](http://www.who.int/ageing/projects/elder_abuse/en/)>. This definition was jointly developed by the World Health Organization, the University of Toronto and the International Network for the Prevention of Elder Abuse in the *Toronto Declaration on the Global Prevention of Elder Abuse* (2002), based on earlier work of Action on Elder Abuse, an organization based out of the United Kingdom.

<sup>2</sup> *Dannet v. Canada (Minister of Citizenship and Immigration)* [2006] F.C.J. No. 1701 at para. 4.

<sup>3</sup> *Ibid.*

necessities like food.<sup>4</sup> The son also prevented his mother from using the telephone.<sup>5</sup> He hid her medication, threatened to kill her, and verbally abused his mother in other ways.<sup>6</sup>

In addition to showing a connection between financial abuse and neglect, this case also identifies a common feature of elder abuse: isolation. Although there is significant controversy surrounding the causes of elder abuse, social isolation is the one theme that appears in almost all social science literature on factors that contribute to elder abuse or indicate risk. Similar to domestic violence in other contexts, isolation frequently appears in the cases as a strategy an abuser employs to conceal abuse and render the victim more vulnerable to exploitation. Isolation manifests in different ways but can be particularly significant in the context of immigrant families. Here we sometimes see stories involving older woman who may have difficulty accessing assistance due to language issues, women who have may have less awareness of rights in Canada, and victims who may harbour intense fears about re-victimization by the justice system.

The Dannett case above also references another type of physical or emotional abuse that is more unique to abuse of older people: chemical or medications abuse. Older women are controlled and harmed through a denial of medication, over-medication, and other inappropriate decisions regarding treatment. Here is another summary that illustrates dynamics involving medications abuse:

Hilda Penner was being treated for dementia.<sup>7</sup> As her condition progressed, her family became unable to provide adequate care and she was moved to a care facility. Mrs. Penner's daughter instructed the care facilities not to prescribe anti-psychotic drugs.<sup>8</sup> However, after complaints from the nursing staff about Mrs. Penner's "difficult behaviour", a doctor prescribed the anti-psychotic drug, Loxapine.<sup>9</sup> This treatment decision was made without consent and despite her daughter's instructions.<sup>10</sup> In 2005, Health Canada issued a warning that anti-psychotic drugs have been linked to a higher death rate among seniors with dementia. Loxapine is normally prescribed for patients with schizophrenia and has not been approved for treatment of dementia in B.C.<sup>11</sup> The drug caused Mrs. Penner to become excessively dozy, unable to move freely or communicate with family members, and eventually contributed to suffering a major seizure.<sup>12</sup> She died in 2010 at age 83.<sup>13</sup>

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<sup>4</sup> *Ibid* at 4(c).

<sup>5</sup> *Ibid* at 4(d).

<sup>6</sup> *Ibid* at 4(f-h).

<sup>7</sup> Kathy Tomlinson, "B.C. senior drugged against family's wishes" *CBC News* (February 8, 2011), online: <<http://www.cbc.ca/news/canada/british-columbia/story/2011/02/07/bc-druggedseniors.html>>. Unlike other stories of abuse discussed in this submission, the experience of Hilda Penner is not recorded in jurisprudence. However, the College of Physicians and Surgeons and the BC Ombudsperson are investigating the case.

<sup>8</sup> *Ibid* at 3.

<sup>9</sup> *Ibid.* at 13 and 14.

<sup>10</sup> *Ibid.* at 15.

<sup>11</sup> *Ibid.* at 5.

<sup>12</sup> *Ibid.* at 8.

Abuse of older women can be gendered and affected by dynamics of sexual power and control, or physical violence, as is characteristic of violence against younger women.

J.C. was charged with assault of his 76-year old mother, Shereen C.<sup>14</sup> The son was on income assistance, had a severe form of epilepsy, and lived with his mother and his sister.<sup>15</sup> The family had immigrated to Canada from Pakistan.<sup>16</sup> A neighbour witnessed the son shove his mother and contacted the police.<sup>17</sup> In her report to the police, the witness said that there had been a number of frightening incidents going on and she was afraid for the safety of the mother.<sup>18</sup> Mrs. C. had a number of physical injuries including deep bruises and cuts to her face.<sup>19</sup>

Older women also experience similar forms of abuse as their male counterparts. For example, abuse by a family member holding a power of attorney is quite common:

Mrs. Hamel was a 78-year old widow with no children.<sup>20</sup> She had a number of health problems, including mental confusion, and had suffered a number of falls.<sup>21</sup> Her nephew, the sole beneficiary under her will at the time of the case, managed her financial affairs, eventually becoming substitute decision-maker for finance and personal care.<sup>22</sup> Over time the nephew encouraged his aunt to make renovations to the home he was to inherit and give him large sums of money, and Mrs. Hamel was eventually surprised to learn that her personal account contained \$100 instead of \$20,600. The nephew was charged criminally<sup>23</sup> and also ordered to pay damages for breach of article 48 of the Québec *Charter of Human Rights and Freedoms*.<sup>24</sup>

Although older women are mistreated and exploited by strangers and con artists, as many of the above stories illustrate, elder abuse and neglect most often occurs in the context of a relationship. Relationship abuse includes but is not limited to domestic violence. Older women can be abused and neglected by family, friends, spouses, volunteer caregivers, legal guardians, care facility staff and professionals such as doctors, nurses and lawyers.

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<sup>13</sup> *Ibid.* at 7.

<sup>14</sup> *R. v. J.C.*, 2006 ABQB 440 at para. 1. The reported decision on this case does not provide a name for the older woman victim. The name Shereen has been inserted into the description of the case for ease of storytelling.

<sup>15</sup> *Ibid.* at 14 and 2.

<sup>16</sup> *Ibid.* at 8.

<sup>17</sup> *Ibid.* at 3.

<sup>18</sup> *Ibid.* at 6.

<sup>19</sup> *Ibid.* at 5 and 7.

<sup>20</sup> *Québec (Commission des droits de la personne et de la jeunesse) c. Fiset*, 19988, Canlii 31 (QC TDP) at para. 3.

<sup>21</sup> *Ibid.* at 24 and 25.

<sup>22</sup> *Ibid.* at 4, 7 and 9.

<sup>23</sup> *Ibid.* at 15.

<sup>24</sup> *Charter of Human Rights and Freedoms*, RSQ, c.-12, art 48.

Elder abuse and neglect can occur anywhere: in the community, at home, in hospital, in a clinic, at an office or in a care facility. Abuse and neglect can involve one incident of mistreatment or can be part of a pattern of abuse or neglect.

Many of the cases of elder abuse of women betray dynamics of interdependency, involving women being harmed by family members who are in some manner emotionally or financially dependent on the older women. Although some stories reveal older people who are vulnerable and dependent as a function of aging, this is not the norm.

## **4. Legal Frameworks for Responding to Abuse of Older Women in Canada**

### **(a) Criminal Legislation and Criminal Prosecution for Abuse of Older Women**

In Canada there is no crime of elder abuse and the *Criminal Code*<sup>25</sup> applies to adult victims regardless of age. Some but not all forms of abuse of older women constitute criminal acts. Elder abuse may be a crime if captured by any of the following provisions of the Code:

- physical assault (s. 265)
- sexual assault (s. 271)
- uttering threats (s. 264.1.)
- confinement without lawful authority (s. 279)
- failing to provide the necessities of life (s. 215)
- theft (s. 334)
- fraud (s. 380)
- theft by a person holding a power of attorney (s. 331)

In 2009 Clifford Leo Morin was found guilty of confinement without lawful authority and uttering a death threat in relation to his 75-year old mother, Elizabeth Lussin.<sup>26</sup> Morin and Lussin lived together in an apartment and Morin helped care for his mother.<sup>27</sup> In order to manage Lussin's compulsive scratching, Morin often bound his mother's hands in mittens and restrained her in her bed or tied her to a chair.<sup>28</sup> Morin was prone to yelling at his mother and on one occasion he threatened to throw his mother off the balcony.<sup>29</sup>

In Canada, in recent years there have been a number of high profile criminal neglect cases resulting in a conviction under section 215 for failure to provide the necessities of life. These cases often involve an older person living with a younger family member in circumstances of extreme social isolation where the family member has become the older person's only contact with the outside world. Cases of neglect that proceed to court provide extreme examples of neglect.

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<sup>25</sup> R.S.C. 1985, c. C-46.

<sup>26</sup> *R v. Morin*, 2009, ABQB 486, [2009] A.J. No. 889.

<sup>27</sup> *Ibid.* at 6.

<sup>28</sup> *Ibid.* at 111 and 115.

<sup>29</sup> *Ibid.* at 112, 121 and 124.

In 2009 Margaret Grant pled guilty to a charge of failing to provide the necessities of life to her 78-year old mother Elizabeth Grant.<sup>30</sup> By the time the daughter called 911, her mother was malnourished, sitting in urine and faeces, suffering from advanced gangrene to the point that organs were exposed, and she was sitting in a chair from which she had not likely been moved for several months.<sup>31</sup>

Also, under the *Criminal Code* (s. 718.2(a)(i)), if a person has victimized an older adult, a judge may take the age of the victim into account when making a sentencing decision. If a person who has been convicted of a crime has intentionally targeted an older woman because she was perceived to be vulnerable or weak, or victimized a community of older people, then sentencing might be harsher. However, although this language remains part of the criminal legislation arsenal, it does not appear to be invoked very often in reported criminal cases involving elder abuse.

## **(b) Provincial and Territorial Legislation**

The law in relation to abuse of older women is complex and varies significantly from jurisdiction to jurisdiction.<sup>32</sup> It is impossible to thoroughly summarize the area in a brief submission. The goal of this summary is to outline the different kinds of existing legal approaches in order to frame a discussion of solutions and resources available under current law. We highlight a few laws to provide a sense of the range of approaches. In the final section of this submission we will comment on what is missing from these frameworks and highlight areas for potential response at the federal level, connecting back with the overarching theme of victim empowerment that we highlighted in our introduction.

In Canada each of the provinces and territories has taken a unique approach to creating legislation that applies to adult protection and abuse and neglect of older people. In this overview we outline:

- i. Adult protection laws
- ii. Protection for persons in care legislation
- iii. Neglect legislation
- iv. Domestic violence legislation
- v. The Québec *Charter of Human Rights and Freedoms*
- vi. Public Guardian and Trustee legislation

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<sup>30</sup> *R v. Grant*, 2009 NBPC 17, [2009] N.B.J. No. 89.

<sup>31</sup> *Ibid.* at 3 and 4.

<sup>32</sup> For a more thorough summary we refer you to the following publications by the Canada Centre for Elder Law: *A Practical Guide to Elder Abuse and Neglect Law in Canada* (2011), online: <<http://www.bcli.org/ccel/projects/practical-guide-elder-abuse-and-neglect-law-canada>> (English and French versions available); *The Counterpoint Discussion Paper, Moving From Scrutiny to Strategy: An Analysis of Key Canadian Elder Abuse and Neglect Cases* (2011), online: <<http://www.bcli.org/ccel/projects/counterpoint-project>> (English and French versions available) [*The Counterpoint Discussion Paper*]; *Overview of Abuse and Neglect Legislation in Canada* (2007), online: <<http://www.bcli.org/ccel/publications/2007-overview-elder-abuse-and-neglect-legislation-canada>>.

The overview does not cover some legislation that may be applicable to abuse of older women, such as mental health law, and health care consent law.

### (i) Adult Protection Laws

Nova Scotia, British Columbia, Yukon, New Brunswick and Prince Edward Island have created adult protection laws.<sup>33</sup> Nova Scotia is the only jurisdiction that imposes a mandatory duty on every person to report abuse of adults, or more specifically, mistreatment of an adult in need of protection. Nova Scotia's *Adult Protection Act*<sup>34</sup> states that:

5 (1) Every person who has information, whether or not it is confidential or privileged, indicating that an adult is in need of protection shall report that information to the Minister.<sup>35</sup>

The statute defines an "adult in need of protection" to mean:

an adult who, in the premises where he resides,

- (i) is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting himself therefrom by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom, or
- (ii) is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his adequate care and attention.<sup>36</sup>

As the above language illustrates, adult protection legislation only applies to the abuse of older women who are in some sense incapable of caring for themselves or accessing assistance independently, possibly due to a disability or lack of mental capacity. The BC and Yukon Acts permit anyone to report abuse to an agency designated by regulation to respond to abuse; however, a report triggers upon the designated agency a legal duty to investigate and consider a support and assistance plan for the adult.<sup>37</sup> The Yukon Act addresses guardianship, a remedy often considered when an adult who lacks mental capacity is being abused and considered to require some form of protection.<sup>38</sup> Other jurisdictions deal with guardianship under separate legislation.

More recently created adult protection legislation (like the laws of BC, Yukon and Prince Edward Island) also emphasizes the innate decision-making autonomy of vulnerable adults, promotes consultation with adults in need of protection, and permits or requires a broad range of options for inter-

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<sup>33</sup> *Adult Protection Act*, R.S.N.S. 1989, c. 2; *Adult Guardianship Act*, R.S.B.C. 1996, c. 6; *Adult Protection and Decision-Making Act*, S.Y. 2003, c. 21, Sch. A; *Family Services Act*, S.N.B. 1980, c. F-2.2; *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5.

<sup>34</sup> R.S.N.S. 1989, c. 2.

<sup>35</sup> *Ibid.*, s. 5(1).

<sup>36</sup> *Ibid.*, s. 3(b).

<sup>37</sup> *Adult Guardianship Act*, *supra* note 33 at Part 3; *Adult Protection and Decision-Making Act*, *supra* note 33.

<sup>38</sup> *Ibid.*



vention. The Prince Edward Island *Adult Protection Act*<sup>39</sup> characterizes the potential assistance that may be provided to the adult in need of protection as follows:

10. Without limiting the generality of section 9, assistance may include provision of, arrangement of, payment for or referral to such services as
- (a) assessment and case planning;
  - (b) counseling and other social work;
  - (c) speech and hearing therapy;
  - (d) occupational therapy and physiotherapy;
  - (e) respite care and day care;
  - (f) socio-recreational activity and vocational training;
  - (g) homemaker, nutrition, friendly contact;
  - (h) legal counsel and financial management;
  - (i) application for trustee or guardianship functions;
  - (j) residential accommodation and personal or nursing care, and any other health, social or other type of service that may be determined necessary for the person's welfare.<sup>40</sup>

## **(ii) Protection for Persons in Care Legislation**

A number of provinces have passed laws that require reporting of abuse of people who are residing in a care facility or receiving services from a care facility.<sup>41</sup> Alberta, Manitoba, Nova Scotia and Ontario have taken this approach.<sup>42</sup> Manitoba, Alberta and Nova Scotia have created adult protection laws that require reporting and investigation of abuse occurring in institutions. Unlike the regimes discussed in the previous sections, the residential care regimes deal only with reporting and do not address intervention to support the vulnerable adult or adult guardianship. In some jurisdictions the duty to report applies to a risk of abuse:

### **Duty of service provider**

5 (1) A service provider who has a reasonable basis to believe that a patient or resident is, or is likely to be, abused shall promptly report the belief, and the information on which it is based, to the Minister or the Minister's delegate.

(2) The duty to report applies even if the information on which the person's belief is based is confidential and its disclosure is restricted by legislation or otherwise, but it does not apply to information that is privileged because of a solicitor-client relationship.<sup>43</sup>

Ontario's *Long-Term Care Homes Act*<sup>44</sup> is a lengthy statute that applies to private nursing homes and care facilities. The law deals with many matters concerned with the regulation of care facilities other

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<sup>39</sup> R.S.P.E.I. 1988, c. A-5.

<sup>40</sup> *Ibid.*, s. 10.

<sup>41</sup> *Protection for Persons in Care Act*, S.A., 2009, c. P-29.1; *The Protection for Persons in Care Act*, C.C.S.M., c. P144.

<sup>42</sup> *Protection for Persons in Care Act*, *ibid.*, s. 7(5); *The Protection for Persons in Care Act*, *ibid.*, s. 12(1); *Protection for Persons in Care Act*, S.N.S. 2004, c. 33, ss. 4-6; *Long-Term Care Homes Act*, S.O. 2007, c. 8, s. 24(5).

<sup>43</sup> *Protection for Persons in Care Act*, S.N.S., s. 5. See also *The Protection for Persons in Care Act*, C.C.S.M., *ibid.*, s. 3.

<sup>44</sup> S.O. 2007, c.8.

than abuse and neglect, but includes a duty on operators of care homes to protect residents from abuse and neglect, and makes it an offence for any of the following people to fail to report abuse:

- Staff;
- Care home managers;
- Any person who provides professional services to a resident in the areas of health, social work or social services work; and
- Any person who provides professional services to a licensee in the areas of health, social work or social services work.<sup>45</sup>

### (iii) Neglect Legislation

Newfoundland is unique in that although there is no legislation that applies to the physical abuse of older adults in the province, neglect of older people is specifically addressed under the *Neglected Adults Welfare Act*.<sup>46</sup> This law applies to adults who are unable to care for themselves but are not residing in a mental health facility.<sup>47</sup> Under the *Neglected Adults Welfare Act* any person who suspects neglect is guilty of an offence if they fail to report.<sup>48</sup> The law also creates an offence of contributing to a person's neglect through an act or omission.

There is no language in this statute that emphasizes the right of an adult to refuse services or choose to live at risk; rather, the law grants the state broad powers to override the autonomy of an adult.<sup>49</sup>

### (iv) Domestic Violence Legislation

In a number of jurisdictions there is no legislation that deals specifically with either adult protection or the protection of people who reside in care facilities. In Nunavut, Northwest Territories and Saskatchewan one of the primary statutes that is relevant to abuse of older women is domestic violence legislation.<sup>50</sup> Other jurisdictions discussed above also have domestic violence legislation,<sup>51</sup> but are not highlighted in this section because adult protection legislation is in place and there are many similarities between the various domestic violence statutes.

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<sup>45</sup> *Ibid.*, s. 24(5).

<sup>46</sup> *Neglected Adults Welfare Act*, R.S.N.L., c. N-3. A number of the laws discussed in this submission address abuse and neglect; Newfoundland is unique in that the law applies exclusively to neglect, which is defined to include the concept of self-neglect (s. 2).

<sup>47</sup> *Ibid.*, s. 2(i).

<sup>48</sup> *Ibid.*, s. 4.

<sup>49</sup> *Ibid.*, s. 2.

<sup>50</sup> *Family Abuse Intervention Act*, S.Nu. 2006, c. 18; *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24; *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02.

<sup>51</sup> These jurisdictions include Alberta, Manitoba, Yukon, Prince Edward Island, Nova Scotia and Newfoundland. See *Protection Against Family Violence Act*, R.S.A., c. P-27; *The Domestic Violence and Stalking Act*, S.M. 1998, c. 41; *Family Violence Prevention Act*, R.S.Y. 2002, c. 84; *Victims of Family Violence Act*, R.S.P.E.I. 1998, c. V-3.2; *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29; *Family Violence Protection Act*, S.N.L. 2005, c. F-31.

The family violence laws of the Northwest Territories and Saskatchewan apply to abuse that occurs when the victim and the abuser reside together or resided together at some point.<sup>52</sup> In these two jurisdictions the laws do not apply to residents of care facilities vis-à-vis mistreatment by employees and other caregivers. The *Family Abuse Intervention Act*<sup>53</sup> of Nunavut applies more broadly to family relationships, relationships of intimacy, and relationships of care — current or past.<sup>54</sup> The Nunavut Act uniquely uses the word “abuse,” other family violence legislation refers to “violence.”

The primary purpose of domestic violence statutes is to provide authority to obtain protection orders and short-term emergency protection orders in circumstances where family violence has occurred. Domestic violence legislation grants the judiciary wide discretion in tailoring an award to serve the circumstances surrounding family violence; however, the nature of a protection order does not encapsulate delivering services in support of the victim. Typical terms of an emergency protection order are no-contact provisions, exclusive occupation of the home by the victim, or a weapons prohibition on the abuser; the goal is “immediate protection” translated into keeping the victim and the abuser apart.<sup>55</sup> The goal of a protection order is to affect a slightly broader remedy to the problem, and could include a requirement that the abuser follow anger management counseling or provide restitution for the victim’s monetary losses.<sup>56</sup> In Nunavut the language of “Community Intervention Order” is used as opposed to protection order, but the scope of intervention is largely the same, being limited to counseling.<sup>57</sup>

#### (v) The Québec Charter of Human Rights and Freedoms

In Quebec the only legislation that refers to the mistreatment of older adults is the *Charter of Human Rights and Freedoms*.<sup>58</sup> The Charter accords older people a right to be free from “exploitation.” The law states that:

48. Every aged person and every handicapped person has a right to protection against any form of exploitation.

Such a person has a right to the protection and security that must be provided to him by his family or the persons acting in their stead.<sup>59</sup>

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<sup>52</sup> *The Victims of Domestic Violence Act*, *supra* note 50, s. 2(a) and *Protection Against Family Violence Act*, *supra* note 50, s. 2.

<sup>53</sup> *Family Abuse Intervention Act*, *supra* note 50.

<sup>54</sup> *Ibid.*, s. 2.

<sup>55</sup> *The Victims of Domestic Violence Act*, *supra* note 50, s. 3(3) and *Protection Against Family Violence Act*, *supra* note 50, s. 4(3).

<sup>56</sup> *The Victims of Domestic Violence Act*, *ibid.*, s. 7, and *Protection Against Family Violence Act*, *ibid.*, s.7.

<sup>57</sup> *Family Abuse Intervention Act*, *supra* note 50, s. 17.

<sup>58</sup> *Charter of Human Rights and Freedoms*, *supra* note 24. In Quebec there is also the *Public Curator Act*, R.S.Q. c. C-81, but this law is silent regarding abuse and reporting.

<sup>59</sup> *Ibid.* at art. 48.

The placement of adult protection within the *Charter of Human Rights and Freedoms* grants these rights quasi-constitutional status.<sup>60</sup> As such, the meaning of exploitation has been interpreted fairly broadly to encompass different forms of elder abuse where there was an element of dependency and vulnerability present on the part of the older person. In one decision, the Human Rights Commission clarified:

The “aged person” is not defined in article 48; it refers simply to a person who is elderly and the notion of exploitation refers to a state of dependence that aged persons could find themselves in. Exploitation includes the notion of profiting from a position of force to the detriment of the interest of the vulnerable person. It is not limited to economic exploitation; it could also be physical, psychological, social or moral.<sup>61</sup>

The notion of vulnerability by virtue of dependency is an aspect of the meaning of “exploitation.” In this sense the law protects only *dependent* vulnerable older people, even though article 48 refers to “every aged person.”

Under the Charter approach an investigation is triggered when someone—the older adult victim or her legal guardian, the Human Rights Commission, a witness—files a complaint with the Human Rights Tribunal. The available remedies appear to be monetary, either pecuniary, to reimburse the abused adult for financial losses, or additional exemplary (punitive) or moral damages, in the event of certain egregious conduct. Perhaps it is for this reason that a significant percentage of the reported cases on article 48 pertain to financial abuse. However, the Commission does have the power to investigate abuse and indicates it initiated 48 investigations for elder exploitation in 2009.<sup>62</sup>

#### (vi) Public Guardian and Trustee Legislation

In some provinces and territories the public guardian and trustee (PGT)<sup>63</sup> has some powers to intervene in circumstances of financial abuse or abuse by a power of attorney, guardian, trustee or other substitute decision-maker. In Yukon, British Columbia, Alberta, Saskatchewan, Québec and Ontario the PGT has the power to investigate abuse.<sup>64</sup> In BC the PGT may investigate financial abuse

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<sup>60</sup> *Vallée c. Commission des droits de la personne et des droits de la jeunesse*, 2005 QCCA 316, [2005] R.J.Q. 961, at para. 26.

<sup>61</sup> *Commission des droits de la personne c. Brzozowski*, 1994 CanLII 1792 (QC T.D.P.).

<sup>62</sup> Commission des droits de la personne et des droits de la jeunesse, Press Release, “A team of specialists of the Commission des droits de la personne et des droits de la jeunesse ready to intervene to protect the elderly” (1 April 2010), online: [http://www.cdpdj.qc.ca/en/publications/docs/COMM\\_exploitation\\_elderly\\_team.pdf](http://www.cdpdj.qc.ca/en/publications/docs/COMM_exploitation_elderly_team.pdf).

<sup>62</sup> *Ibid.*

<sup>63</sup> In this submission we use the generic term PGT; however, different designations are used in different provinces and territories and some jurisdictions split the functions between two separate individuals appointed by government, i.e., the Public Guardian and the Public Trustee.

<sup>64</sup> *Public Guardian and Trustee Act*, R.S.B.C. 1996, c. 383, s. 17; *The Adult Guardianship and Trusteeship Act*, S.A. 2008, c. A-4.2, ss. 75-77; *The Public Guardian and Trustee Act*, S.S. 1983, c. P-36.3, s. 40.7; *Public Guardian and Trustee Act*, S.Y. 2003, c. 21, Sch. C, Part 2., s. 9(1); *Public Curator Act*, R.S.Q. c. C-81, s.27; *Substitute Decisions Act*, S.O. 1992, c. 30, s. 27.

of any individual even in the absence of a power of attorney, guardian, representative or substitute decision-maker having been previously appointed.<sup>65</sup> Some jurisdictions grant other institutions to power to intervene in circumstances of financial abuse: for example, under *The Public Guardian and Trustee Act* of Saskatchewan, financial institutions may freeze the funds of a vulnerable adult's account for up to 5 business days if the institution has reasonable grounds to believe that another person is subjecting the adult to financial abuse.<sup>66</sup>

## 5. The Social Dynamics of Abuse of Older Women

In terms of developing legal and social policy responses to the phenomenon of abuse of older women, it is important to consider the larger social and economic dynamics surrounding elder abuse. Older women, like other victims of elder abuse or domestic violence, can be reluctant to disclose abuse. This can be especially true when the abuse is long-standing. There are many reasons why women hesitate to report abuse:<sup>67</sup>

- Women may fear a loss of independence, perhaps through institutionalization in congregate housing or long-term care facilities;
- Women may not know where to turn for assistance and may be unaware of available resources and legal rights;
- Woman may not be aware that their experiences amount to abuse;
- Women may be afraid of law enforcement or judicial systems;
- Women may feel shame or embarrassment or a desire to protect their privacy;
- Woman may feel love for and provide care to the abuser;
- Women may fear reprisal from the abuser.

Another factor that contributes to the complexity of abuse of older women is some of the health issues that can be linked to aging. Older people can be more prone to injury, slower to heal, and can suffer from illnesses, disabilities or cognitive impairments.<sup>68</sup> Although dependency on a caregiver is not a clear risk factor, if an older woman is dependent on her abuser for mobility, financial support or emotional companionship then this dependency or interdependency will pose a barrier to accessing support and separating herself from an abusive dynamic.

Although there is a fair amount of controversy and a lack of research into abuse of older women, the literature and jurisprudence on elder abuse indicates that social isolation is a risk factor in terms of abuse – either lack of regular contact with other people or isolation with the abuser. Isolation can make abuse harder to detect, render a woman more vulnerable to abuse, and make it harder to access support and assistance.

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<sup>65</sup> *Public Guardian and Trustee Act*, R.S.B.C., *ibid.*, s. 17(1) (b).

<sup>66</sup> *The Public Guardian and Trustee Act*, S.S., *ibid.*, s. 40.5(2).

<sup>67</sup> The points discussed in the list are identified in the following three sources: Joan Braun, “Elder Abuse: An Overview of Current Issues and Practice Considerations” in *Elder Law 2009* (British Columbia: Continuing Legal Education Society of BC, 2009) at 10.1.5; Lynn McDonald, “Identifying Elder Abuse and Neglect” in *Judging Women: Aging, Mental Health and Culture* (National Judicial Institute, 2011) at 10; Jane A. Raymond and Bonnie Brandl, *In Their Own Words: Domestic Abuse in Later Life* (National Clearinghouse on Abuse in Later Life/ Wisconsin Coalition Against Domestic Violence, 2008) at 18 [*In Their Own Words*].

<sup>68</sup> McDonald, *ibid.*, at 9.

The reality that women tend to be caregivers and that abuse of older women usually occurs within a relationship of love or trust poses barriers to ending the abuse. Although some stories reveal older people who are vulnerable and dependent as a function of aging, this is not the norm. While historically it was commonly thought that victims of elder abuse were dependent on their abusers, it is now recognized that abusers are often dependent on their victims, for example, financially, emotionally, or as a result of substance abuse issues or disability. Moreover, older women feel a “sense of responsibility to continue parenting an abusive adult child.”<sup>69</sup> The abuser may be dependent on the older woman for care and the older woman may fear what will happen to the abuser if she speaks out about the abuse.

Lack of access to financial resources can be a barrier: women tend to have fewer financial resources, live longer, and have to stretch their often fixed financial resources over a more lengthy time frame.<sup>70</sup> Poverty and lack of economic security can pose practical barriers to leaving an abusive situation, especially when it is not realistic for the woman to maintain paid employment at her advanced age.

Although there is a lack of research in this area, it is logical to assume that other factors that marginalize an older woman will have implications for the kind of abuse she will experience, limit access to support and assistance, and may increase reluctance to report abuse. For example, First Nations women living in remote communities will have difficulty accessing assistance. Immigrant women will encounter barriers, especially if they live in Canada without legal status or have been brought to Canada via sponsorship of an abusive family member.

## **6. Areas for Policy and Program Development**

One of the realities underscored by the above review of jurisprudence, legislation and social science research is that elder abuse is a complex phenomenon. There are many different forms of abuse and different kinds of victims, and no single legal framework or social program is likely to capture all circumstances that fall under the umbrella concept of abuse of older women. Addressing abuse of older women thus requires a multi-faceted national strategy. This submission will identify some areas where the federal government can take leadership in furthering policy and program development in the area of abuse of older women.

Over the years communities and governments have developed legislation, programs and policies that have been successful in assisting women to stop the violence in their lives. However, older women have different experiences and needs and so social and legal programs and policies should be developed that take into account these differences. For example, a transition house may not be an appropriate place for an older woman. Loss of home has different meanings for a woman who is striving to age in place and for whom institutional living is the ultimate fear. Moreover, the rules of the transition house may not be appropriate for an older woman, who will have different needs and abilities to contribute to the shelter community. Also, insofar as isolation has been identified as a

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<sup>69</sup> *In Their Own Words*, *ibid*.

<sup>70</sup> Marie Beaulieu, Robert M. Gordon and Charmaine Spencer, *An Environmental Scan of Abuse and Neglect of Older Adults in Canada: What's Working and Why*. Report prepared for the Federal/ Provincial/ Territorial Committee of Officials (Seniors) (2003) at 12.

primary risk factor in terms of elder abuse, consideration is required into how to make services appropriate and accessible to older women. Various life factors including financial dependency and disability or illness can mean it will take longer for an older woman to develop a strategy to live free of abuse.

### **Recommendation 1**

The needs of older women can be different from those of younger women survivors of abuse. Communities and organizations should be funded to create resource agencies and programs that provide support and assistance to older women who have experienced abuse with particular emphasis on making those resources accessible to older women who are isolated.

Just as older women are different from their younger counterparts, older women are also diverse. There is very little Canadian research on elder abuse in marginalized communities, such as abuse experienced by First Nations women, immigrant women and low-income women. However, the limited research that does exist suggests that identity complicates abuse.

### **Recommendation 2**

Older women are diverse and factors such as immigration status, First Nations heritage and poverty have implications for the kinds of abuse women experience as well as the types of assistance that will be helpful and welcome. Further research should be conducted to identify appropriate strategies and resources that target different communities of older women and also to increase general understanding of dynamics of abuse that are unique in different communities.

Legislation provides for a remedy in some circumstances of abuse, generally only after abuse has occurred. Protection for persons in care legislation to some extent addresses the circumstances of vulnerable older women residing in care facilities. Adult protection, neglect and guardianship legislation provides some solutions where a victim is an older woman who lacks mental capacity or is unable to access assistance due to a disability or a medical condition. Domestic violence legislation provides some tools where the abuser is a co-resident family member or partner. The Québec Charter can provide a route to a financial remedy for circumstances involving exploitation of a dependent and vulnerable older woman. The public guardian may have powers of investigation and asset-freezing. The *Criminal Code* framework is reactive and offender-focused, allowing for punishment of an offender where a criminal act occurred. The criminal law also only applies to criminal acts: many examples of abuse will either not amount to a crime (for example, emotional abuse), or be too difficult to prosecute due to the age of the victim or other dynamics. While it is important to maintain an arsenal of strategies for responding to abuse after it has occurred, it is crucial to develop prevention strategies.

### **Recommendation 3**

An effective national strategy for addressing abuse of older women includes strategies for prevention. This means providing women with alternatives to tolerating abuse, by addressing some of the underlying factors that contribute to dynamics of abuse, such as: economic insecurity; access to resources; awareness of rights; de-stigmatization of victimization, for example, through public awareness campaigns; assistance with caregiving responsibilities; and training

and ongoing support for various professional and service-provider communities – including health care, banking and justice – in relation to abuse of older women.

Where legislation, and sometimes policy, identifies remedies in circumstances of risk and abuse the remedies are often protective measures that take control, independence and power away from a vulnerable older woman. For example, guardianship and substitute decision-making, while necessary in some instances of mental incapacity, remove decision-making power from the older woman. Measures that result in removing a woman from her long-time home and placing her in a care facility or retirement home also undermine independence. Legal institutions focused on mandatory reporting and disclosure of a woman's personal information undermine autonomy, privacy and free decision-making under the guise of protection.

For many older women who are caregivers for their abuser accessing support and assistance is also compounded by dependency and interdependency. Women must be empowered to identify solutions that will work best for them. Sometimes this may mean allowing a woman to live in a relationship of abuse, at least until resources can put into place to help her make certain life changes, because there are no acceptable immediate alternatives.

#### **Recommendation 4**

Abuse of women is generally understood, at least in the domestic violence context, to be an act of control that undermines the autonomy, power and confidence of the victim. Legal and social policy should not prioritize protectionist goals at the expense of undermining women's autonomy and personal power. Rather, legal and policy strategies should be developed through a lens that focuses on empowering older women survivors of abuse – by raising awareness of options, increasing access to services, allowing women to make choices about what steps to take, and providing access to the legal and financial assistance that is required in order to follow through on those decisions.

At the national level there has been tremendous success in Canada in raising awareness about both elder abuse and domestic violence. The challenge becomes how to raise awareness of abuse through the combined lenses of age and gender, and how to provide people with information on the concrete steps they can take to address abuse in their communities. There remains a lack of public awareness about (1) what an older woman can do if she experiences abuse, and (2) what concerned individuals can do if they believe an older woman is being mistreated, abused or exploited.

#### **Recommendation 5**

There is a need to further raise awareness about abuse of older women with a focus on identifying available resources. People need to know how they can participate in supporting vulnerable older women in their communities to access timely support and assistance. Given the threat isolation poses in the area of elder abuse, older women need practical information that pertains to locally available accessible resources, and public awareness initiatives should target remote communities.