Counterpoint Tools

Resources to Enhance Practice

Take Action to Prevent Abuse of Older Adults

Guidelines for Developing Improved Practices

Responding to Elder Abuse and Neglect

The Counterpoint Project brings together research on elder abuse and neglect laws across the country and analysis of key Canadian elder abuse and neglect cases. The purpose of this exercise is to support enhanced practice among health care and social services workers in relation to elder abuse and neglect prevention and response. These guidelines have been produced to assist employers, government and other service providers to support enhanced practice within their institutions.

This publication includes:

- An overview of challenges to delivering services
- A summary of key recent elder abuse and neglect cases
- Recommendations for developing guidelines

This project has been supported by the Public Health Agency of Canada through the Federal Elder Abuse Initiative.
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CANADIAN CENTRE FOR ELDER LAW
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Overview of challenges to delivering services

Health care and social service professionals are uniquely positioned to detect circumstances of abuse and neglect, or identify older adults at risk, by virtue of opportunities to interact with older adults in their homes, communicate with their other formal and informal caregivers, and make observations about health and well-being. By virtue of a mandate to provide care and services, this community of professionals also has opportunities to develop relationships of support that could mitigate against increased vulnerability to abuse and further harm.

Most employees, institutions and employers appreciate that delivering services to older adults gives rise to legal and ethical responsibilities. However, in practice, even individuals with the best of intentions encounter significant barriers to responding to concerns about elder abuse and neglect in an appropriate and timely manner. Here are but a few of the tricky questions health care and community service workers are confronted with on a regular basis:

- What is my obligation to respond to abuse and neglect?
- Does my duty apply to *risk* of abuse?
- How can I simultaneously adhere to professional practice guidelines, adult protection laws and other relevant legislation, and employer policies?
- What is my duty when these rules appear to conflict?
- What confidentiality rules apply to practice?
- How can I respond to concerns regarding risk in a manner that respects an older adult's right to privacy and independence and decision to live at risk?
- How can I support the older adults I work with to live (and sometimes die) with dignity, and to age in place, without abandoning them to abusive relationships?
- How can I accomplish the above in a context of increasing deinstitutionalization of health care and greater emphasis on community care?

None of the above questions lends itself to a simple answer. Collectively, these questions illustrate the extent to which addressing elder abuse and neglect may present practitioners with additional daily stressors on top of a job description that is likely very demanding.

The purpose of the Counterpoint Project is to:

1. **clarify the legal obligations of health care and social services workers;**
2. **make recommendations for policy and protocol that will assist health care and social services workers in relation to responding to elder abuse and neglect, and**
3. **identify educational tools that will support enhanced practice.**

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Summary of key recent elder abuse and neglect cases

Case	Jurisdiction	Facts	Court Decision	Type of Abuse
Grant[i]	New Brunswick	Margaret Grant lived with her 78-year-old mother. Grant was the only person with whom the mother had contact during the last months of her life. By the time Grant called 911, her mother was malnourished, sitting in urine and faeces and suffering from advanced gangrene to the point that some organs were exposed. The older woman was seated in a chair from which she had likely not been moved for several months.	Guilty of failing to provide the necessaries of life[ii] Sentenced to four years in prison	Neglect
Vallée[iii]	Quebec	Jeanne Vallée worked as a housekeeper for a number of other older adults. In the year after the wife of 81-year-old Marchand passed away, Vallée became his housekeeper. The older man quickly fell in love with 45-year-old Vallée. Within a year of meeting Vallée, the man had spent all his life savings on extravagant gifts to Vallée. Marchand suffered from a number of health problems including Alzheimer's-associated dementia and blindness. Previously he had been a conservative and prudent spender.	Behaviour was exploitation under article 48 of the Quebec *Charte des droits et libertés de la personne*[iv] Ordered to pay $66,599 in damages	Financial abuse
Chartrand[v]	Ontario	Daniel Chartrand was the sole caregiver for 76-year-old Henry Matthews. Matthews was paying at least $3,000 a month for care from Chartrand. Matthews was found in his apartment lying amongst urine and faeces stains, in a state of malnourishment and dehydration. In previous years Matthews had given Chartrand a great deal of money, sometimes as much as $8,000 a month.	Guilty of failing to provide the necessaries of life[vi]	Neglect Financial abuse
Foubert[vii]	Ontario	Allan Foubert was employed as a personal support worker at a veterans' care facility, on a locked wing for residents with dementia and Alzheimer's. Staff witnessed him: (a) apply excessive force to residents; (b) knee a resident in the hand, breaking skin; (c) order a second worker to change a resident while Foubert suspended the resident in mid-air over his wheelchair, and (d) drop a resident with soiled buttocks on a bed, yelling repeatedly, "See what happens when you don't listen."	Assault[viii] Sentenced to eight months imprisonment, with two years probation, and a 10-year weapons prohibition	Dehumanizing and degrading treatment Physical abuse Threats Psychological abuse
Matthias[ix]	British Columbia	Parker Matthias lived alone in a trailer with his 79-year-old mother. In the context of an argument he set his mother on fire, causing burns to half of her body. She died as a result of her injuries.	Guilty of manslaughter[x]	Physical abuse
Morin[xi]	Alberta	Clifford Morin shared an apartment with his 75-year-old mother. In order to manage her compulsive scratching, he bound his mother's hands in mittens and restrained her in her bed or a chair. Morin threatened to throw his mother off the balcony.	Guilty of confinement without lawful authority and uttering a death threat[xii]	Physical abuse Forced confinement Threats

Recommendations for developing guidelines

1 Provide workplace resources, including comprehensive training, to support health care and social service staff to identify elder abuse and neglect in all its diversity.

Framing the discussion of elder abuse with court cases is a useful strategy in terms of allowing us to talk about specific examples without violating confidentiality, but this approach focuses our attention on the more extreme cases of abuse. Elder abuse includes less overtly violent actions and less extreme examples of neglect. Criminal cases also highlight abuse by family caregivers, which is likely only a facet of elder abuse and neglect in Canada. Older adults are abused not only by lay and professional caregivers, but also by family members who are dependent on older adults for care and financial support. Abuse occurs in contexts of interdependency, and relatively healthy and active older adults may experience abuse. Elder abuse and neglect occurs in all sorts of circumstances, and health care and social service workers must be empowered to recognize mistreatment in different settings and relationships.

2 Develop or utilize thoughtful resources that support practitioners to make good decisions in complex situations.

Education efforts must recognize that responding to concerns about abuse and neglect raises complex ethical questions that do not lend themselves to simple solutions. Health care and social service staff require resources and support that will empower them to navigate these challenges in a thoughtful manner. Comprehensive and appropriate training includes both developing educational tools and teaching staff.

3 Explore what can be done within your own institutions to facilitate the development of a workplace culture that values elder abuse and neglect prevention.

Commend staff efforts to reveal abuse and deliver compassionate care in spite of significant demands on their time and energy. Consider how to foster zero tolerance of violence against staff, residents and patients in a manner that recognizes the challenging behaviours that may be exhibited by adults diagnosed with conditions associated with dementia and aggression.

4 Support health care and social service staff to understand and respond to ageism before it leads to abuse and neglect.

Ageism may be a factor in perpetuating abuse. A number of the abusive actions and comments discussed in the cases reviewed for this project were infantilizing and demeaning, showing a general lack of respect for the older adult's autonomy and dignity, and demonstrating ageist attitudes toward older people. Action to combat ageism will require both developing educational tools and teaching staff.

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5 **Develop tools, and provide comprehensive training, to support health care and social service workers to make inquiries about abuse and neglect and to document risk.** Information that indicates a client or patient is vulnerable to abuse or neglect, especially by virtue of factors such as social isolation, alcohol issues, and/or a history of significant interventions in the home by police, paramedics, mental health or child protection authorities—indicators that came up in the cases reviewed as part of the Counterpoint Project—can be instrumental to a timely response. The Counterpoint Project discussion paper contains a discussion of vulnerability and risk that may be of assistance in developing these tools.

6 **Ensure health care and social service workers and other staff are able to easily access the appropriate contact numbers for reporting abuse and neglect.** It is not always easy to identify the appropriate agency or supervisor.

7 **Develop best practices on how to offer services in a non-invasive manner that respects the unique lifestyle choices of each older adult and recognizes the social and emotional factors that make it challenging for adults to disclose abuse or pressure and accept assistance.** All adults with mental capability have the right to choose to live in risky circumstances. Staff may be called upon to investigate whether an adult truly chooses his/her circumstances by offering services and exploring whether the adult's decision making is being manipulated by an abuser.

8 **Develop policies and protocols to assist front-line staff to apply their discretion to share a client's or patient's confidential personal and health information without consent.** Health care and social service workers may disclose confidential information without consent in order to respond to concerns regarding abuse and neglect in circumstances that fall short of triggering the duty or option to report under adult protection or other relevant legislation. Health and safety exceptions under personal information laws are slightly different in each province and territory, and they use general language that requires interpretation. Employers should provide direction at the policy level by spelling out what these exceptions mean in practice. Such a step will empower staff to act and also generate greater consistency in practice.

9 **Emphasize, in all policies and protocols, the importance of always striving for a patient's or client's informed consent to interventions perceived to be in the adult's best interests.** In some instances it will be impossible or inappropriate to get consent (for example, in circumstances of great urgency or where the adult lacks mental capacity or consciousness). However, consent is always the strongest response to allegations of a breach of confidentiality, and informed consent is a cornerstone of a professional practice that empowers a client or patient through active involvement in decision making. Elder abuse is often characterized by an abuse of power and victimization undermines an individual's sense of personal power and self-determination. Develop best practices that dismantle this pattern of undermining the older adult's will.

10 Ensure all health care and social services professionals who interact with older adults understand the concept of mental capacity.

This means understanding the relationship between capacity and adult protection law and any other legislation relevant to responding to elder abuse and neglect in the jurisdiction in which the professionals work. It also means being aware of the legal and conceptual relationship between capacity and the disclosure of personal information. Make this teaching an aspect of professional development for relevant professions, such as physicians, nurses, social workers and other health professionals. Mental capability is an intrinsic aspect of law and professional practice guidelines in relation to elder abuse and neglect.

11 Develop processes for inquiring about the adequacy of caregiving relationships that do not involve a professional accountable to an employer or a licensing body.

Older adults who receive care from individuals who do not have formal training may not be at greater risk of abuse, but there is a greater risk that abuse occurring in private homes will go unnoticed. Isolation is a significant risk factor in terms of elder abuse and neglect. Safeguards that make this invisible care more visible may help prevent the escalation of abuse and neglect. While older adults who are receiving caregiving services by family and other informal or untrained caregivers represent only a fraction of the victims of elder abuse and neglect, additional inquiry about these relationships by health care and social service workers may prevent abuse and neglect.

[i] *R. v. Grant*, 2009 NBPC 17.
[ii] *Criminal Code*, R.S.C. 1985, c. C-46, s. 215.
[iii] *Vallée c. Commission des droits de la personne et des droits de la jeunesse*, 2005 QCCA 316, [2005] R.J.Q. 961.
[iv] *Charte des droits et libertés de la personne*, R.S.Q. c. C-12, art. 48.
[v] *R. v. Chartrand*, [2009] O.J. No. 1742.
[vi] *Criminal Code, supra* note ii, at s. 215(2).
[vii] *R. v. Foubert*, [2009] O.J. No. 5024.
[viii] *Criminal Code*, *supra* note ii, at s. 265 (1)(a)(b).
[ix] *R. v. Matthias*, 2009 BCSC 1729, [2009] B.C.J. No. 2514.
[x] *Criminal Code, supra* note ii, at s. 229(a)(ii).
[xi] *R. v. Morin*, 2009 ABQB 486, [2009] A.J. No. 889.
[xii] *Criminal Code, supra* note ii, at s. 279(2) and s. 264.1(1)(a).

12 Offer support services to non-professional, informal and volunteer caregivers of older adults to enhance their capacity to manage this physically, emotionally and technically challenging responsibility.

Although abuse and neglect are wrong regardless of the motives or circumstances, some abuse and neglect might be preventable if non-professional caregivers received greater support from health and social services. Isolation, lack of skill and an absence of support on the part of the caregiver contribute to abuse and neglect. Family and informal caregiving save the state significant funds.

13 Develop protocols and mechanisms to facilitate, in a respectful manner, periodic contact with older adult clients and patients with significant health problems who fail to attend medical appointments or maintain medical follow-up.

While mentally competent older adults maintain the right to refuse medical treatment and support services, physical and other barriers may undermine an older adult's efforts or desire to maintain contact with health care providers. Some safety measures should be put in place to ensure that these adults, who may have heightened vulnerability to abuse and neglect, do not disappear from the system unless they make an informed decision to stop or refuse treatment.

14 Develop mechanisms to facilitate interagency communication amongst police, health and social services in circumstances where an older adult appears to be at risk of abuse or neglect.

Ensure these policies and practices hold high regard for the confidentiality of personal and health information. However, bear in mind that confidentiality should not become a barrier to making inquiries to confirm that an older adult is safe.