The 51st State – The "State of Denial"

A Comparative Exploration of Penal Statutory Responses to "Criminal" Elder Abuse in Canada and the US

Laura Watts and Leah Sandhu

Laura Watts received her law degree from the University of Victoria in 1998. She is the Program Director of the Canadian Centre for Elder Law Studies (www.ccels.ca). She will serve as editor-in-chief of the upcoming Canadian Journal of Elder Law and actively writes, teaches and presents internationally on Elder Law issues. A Board member of the CBA National Elder Law Section and an international member of NAELA, she is also the founder / facilitator of the World Study Group on Elder Law and the organizer of the annual Canadian Conference on Elder Law.

Leah Sandhu graduated with a degree in law from the University of British Columbia in 2005 and is currently employed as a Research Assistant at the Canadian Centre for Elder Law Studies. She continues her research into issues affecting older adults.

Elder abuse is a term common to both the Canadian and American lexicons. Its meaning is similarly debated, discourses around the identifiable types of elder abuse are consistent and the aging demographics are nearly identical. Yet the similarities in the civil aspects of elder abuse and neglect debates do not extend into the criminal justice discourse. Rather, Canada and the United States have had very different experiences around issues of penal elder abuse legislation.

The authors explore the differences in the criminal elder justice debate between the United States and Canada. They examine both legal discourses, substantive laws and structural underpinnings of Canadian and American experiences in criminal elder justice.

They challenge this Canadian legal silence and conclude that Canada must enter into a vigorous analysis of criminal justice issues regarding older adults. They suggest that current Canadian criminal laws may require reform in order to better respond to issues of elder abuse and neglect in the modern context.

The 51st State – The "State of Denial"[1]

A Comparative Exploration of Penal Statutory Responses to "Criminal" Elder Abuse in Canada and the US

Introduction

"Elder abuse" is common to both the Canadian and American lexicons. Its meaning is similarly debated, discourses around the identifiable types of elder abuse are consistent and the aging demographics are nearly identical. Yet Canada and the United States have had very different experiences around issues of penal elder abuse legislation.

Notably, the US has experienced a vibrant and substantive discussion of the issues related to the criminality of elder abuse over the course of approximately 40 years. Many states have enacted specific penal statutes with "elder abuse" or "vulnerable adult" criminal charges; others have chosen to address the criminality of elder abuse by way of mandatory charging, "no drop" policies, judicial case management or elder-specific sentencing principles, or a combination of the foregoing.[2]

[1] The title "The 51st State" as a state of denial was inspired by an interview on the Canadian Broadcasting Corporation with Kurt Vonnegut, Feb 1st, 2006. www.cbc.ca on issues unrelated to aging.
[2] For an excellent discussion of the various American state responses see: Moskowitz, Seymour "Saving Granny from the Wolf: Elder Abuse and Neglect – The Legal Framework", 31 Conn. L. Rev. 77, 1998-1999.

By contrast, the few whispers in Canada about elder abuse and criminality are primarily experiential and lacking in evidence-based research.[3] Sometimes, silence must be examined even more thoroughly than debate.

This paper will examine Canadian and American differences in legal discourse and substantive law surrounding criminal elder abuse issues, in an attempt to explain the notable Canadian legal silence.

The key questions to be addressed are:

A. What is the state of the law in Canada regarding criminal elder abuse or neglect, and what analogous, but elder specific criminal provisions, exist in the United States?

B. What factors may have contributed to the differences in the Canadian and American experience related to criminal elder abuse and neglect?

This article by no means purports to provide an exhaustive analysis of the law in each American jurisdiction, or of the storied American legal history leading to the strong institutions now in place for older Americans.[4] Rather, it seeks to shed light on a dark

[3] When discussed at all, these issues tend to be raised as anecdotal experience by older adults, specific lawyers or law enforcement professionals.

[4] The American literature is significant. See the American Bar Association Commission on Law and Aging research generally at: http://www.abanet.org/aging/ or the Administration on Aging at: http://www.aoa.dhhs.gov/eldfam/Elder_Rights/Elder_Abuse/Elder_Abuse.asp
See also, for example: Bonnie, Richard J. and Robert B. Wallace (2002) (Eds) *Abuse, Neglect and Exploitation in an Aging America*. Washington, DC. National Academics Press; Hieri, Thomas J. (1988) The Prevention,

void in Canadian legal discourse, and to spark a debate around the relative merits of creating specific criminal elder abuse offences in Canada.[5] This exploration concludes that Canadians need to start the same public conversation that the Americans have been engaged in for nearly four decades about the philosophical and sociological effects of enshrining elder abuse offences in the Canadian *Criminal Code*.

This public debate in Canada will naturally be informed by different legal traditions, social values and governmental infrastructures than those of the United States. As a result, Canadians may arrive at different conclusions on issues around criminal elder abuse than Americans. However the need for a national discourse on this particular subject in Canada is both critical and long overdue.

Identification and Treatment of the Elder Abuse Act of 1987: Is it a Proper Federal Response to Elder Abuse? *N.Y.L Sch. J. Jum. Rts*., 6, 383-395.; Heisler, Candace J. and Lori A Stiegel (2002) Enhancing the Justice System's Response to Elder Abuse: Discussions and recommendations of the "Improving Prosecutions" Working Group of the National Policy Summit on Elder Abuse. *Journal of Elder Abuse & Neglect*, 14(4), 31-54.

[5] The Toronto, Ontario-based Advocacy Centre for the Elderly is Canada's only legal aid office dedicated to advocating for older adults, and is jurisdictionally bound to Ontario. They have been a rare voice in calling for discussion on this subject. For example see: Wahl, Judith and Sheila Purdy, *Elder Abuse: The Hidden Crime* (Toronto: Advocacy Centre for the Elderly and Community Legal Education Ontario, 2002): 4 or online at: http://www.advocacycentreelderly.org/elder/pubs.htm

A. What is the state of the law in Canada regarding criminal elder abuse or neglect, and what analogous, but "elder specific" criminal provisions, exist in the United States?

A.1 Legal Frameworks

Unlike in the United States, where much of the criminal law is governed at the state-level, Canada has a single governing penal statute. The *Criminal Code*[6] ("CC") is a comprehensive and universally applicable codification of all criminal offences[7] in Canada. Changes to the CC can only be made at the federal level and once the statute is revised, application of the change is country-wide.[8]

As such, changes to the CC may be understood as normatively different from changes to American state criminal legislation. Indeed, something of the Canadian national identity is infused into CC changes. The statement "*this is what we as a country have decided is criminal*" has arguably greater, or at least different, heft than single-state penal changes. A government publication puts it this way: "Our laws mirror those values that all Canadians regard as important and demonstrate how they will be protected."[9]

---

[6] [Revised Statutes of Canada, 1985, c.46], or online at: http://www.canlii.org/ca/sta/c-46/

[7] There are some exceptions within other statutes which may provide criminal or quasi-criminal purview in limited matters.

[8] It is also notable that in Canada any case may be appealed to the Supreme Court of Canada, including any type of criminal matter.

[9] Statistics Canada "*Canada's E-Book*", September 2004, Online at:http://142.206.72.67/04/04b/04b_000_e.htm

A. 2. The Deafening Silence: Criminal Elder Abuse Discourse in Canada

The literature surrounding the criminality of elder abuse typically contains no more than vague or general statements. In one lengthy Health Canada report[10] the only substantive reference to the criminal sanctions of elder abuse is the following:

> A number of legal remedies are available to Canadians in dealing with the problem of elder abuse and neglect. General legal safeguards found in the Criminal Code deal with physical abuse, assault and neglect.[11]

Notably, the Ministry of Health generated this foundational report, indicating that Canadians generally perceive elder abuse as a health, or possible civil law issue, rather than a criminal justice issue.

A similarly Spartan review of the CC's applicability to elder abuse cases can be found in the Canadian Department of Justice's *Fact Sheet*[12] on the subject, which lists in detail all the possible underlying offences, also noting that,

> to date, much of the response to abuse of older adults has focused on the welfare and protection of older adults…[however]…there are also many Criminal Code provisions that may be applicable in cases of abuse of older adults.[13]

---

[10] McDonald, L and A. Collins. *Abuse and Neglect of Older Adults: A Discussion Paper*, (2000) Family Violence Prevention Unit, Health Canada, p. 43.
[11] Ibid at 43.
[12] Abuse of Older Adults: A Fact Sheet from the Department of Justice Canada, online at: **http://www.justice.gc.ca/en/ps/fm/adultsfs.html#_edn39**
[13] *Criminal Code* provisions that may apply in cases of financial abuse include: theft ss.323, 328-332, 334, criminal breach of trust s.336, extortion s.346, forgery s.366, fraud s. 380 (1). *Criminal Code* sections that might apply in cases of physical and sexual abuse include: failure to provide the necessaries of life s.215, criminal negligence causing bodily harm or death ss. 220-221, unlawfully causing bodily harm s.269, manslaughter ss.234, 236, murder ss. 229-231, 235, counselling suicide s.241, assault ss.265-268, sexual assault ss.271-273, forcible confinement s.279 (2), breaking and entering s.348, unlawfully in a dwelling s.349. Some of the *Criminal Code* provisions that may apply in cases of psychological abuse include: criminal harassment s.264, uttering threats s.264.1, harassing telephone calls s.372 (2) & (3), intimidation s.423.

Joan Harbison, who is somewhat more vocal on this issue, is one of the few Canadian academics engaged in a preliminary exploration of criminality and elder abuse in Canada[14]. In a co-authored paper, Harbison and her colleagues write:

> With some hesitation, we support the idea that the primary legal response to physical and sexual abuse should be through the criminal justice system. Taking such an approach breaks down the notion that "elder abuse" is a single phenomenon to which a single Act can adequately respond. It also helps eliminate age as a "master status" defining all experiences relating to the elderly as essentially similar: Violence should sometimes be treated simply as violence, and in particular spousal assault should be treated as spousal assault, whatever the age of the victim.[15]

While Harbison and her colleagues reluctantly admit to a role for criminal justice in some cases of elder abuse, they do not consider the possibility of advocating for elder abuse crimes. Rather, they seek to de-marginalize older adults and de-classify them in the eyes of the law.

Harbison's feminist research on issues of elder abuse generated this observation:

> Despite provisions which would allow for prosecution, little use has been made of the existing Canadian criminal code [*sic*] to address those suffering mistreatment as victims of illegal acts relating to financial abuse or fraud of physical or sexual assault. This appears to follow strongly held beliefs among older people that abuse should be contained within the family…as well, under-resourced police departments have been slow to recognize the need to develop initiatives for dealing with seniors.[16]

---

[14] See also: Charmaine Spencer, located at Simon Fraser University's Gerontology Research Centre, www.sfu.ca/gero . Selected works include (but are not limited to the following): Spencer, Charmaine. (1997, Winter). Ethical dilemmas in dealing with abuse and neglect. *Ethica*; Spencer, Charmaine. (1995) Abuse and neglect of older adults in institutional settings: A discussion paper. Ottawa: Health Canada, Mental Health Division; Spencer, Charmaine (1995). New Directions for Intervention Research on Abused Older Adults. In M. McLean (ed.), *Abuse and neglect of older Canadians: Strategies forCchange*, (Toronto: Thompson, 1995).

[15] Harbison, Joan, Stephen G. Coughlan, Barbara Downe-Wamboldt, Robert Elgie, Patricia Melanson, and Marina Morrow. Mistreating Elderly People: Questioning the Legal Response to Elder Abuse and Neglect: Summary Document. (Halifax: November 1995) p.43.

[16] Harbison, Joan, The Changing Career of 'Elder Abuse and Neglect' as a Social Problem in Canada: Learning from Feminist Frameworks? *Journal of Elder Abuse and Neglect*, 11 (4), p. 59 at 66.

Later, in her paper "*Models for Intervention for Elder Abuse and Neglect: A Canadian Perspective on Ageism, Participation, and Empowerment*", she reluctantly identifies a "limited number of situations where professional intervention should be mandated or warranted", including "those few situations where sufficient evidence to lay charges is provided willingly by the older person to support legal intervention following criminal activity (eg, physical assault, fraud)". However, this analysis does not consider the American experience, where adaptations in prosecutorial policies have been developed to overcome these kinds of barriers.

This may leave the reader with the impression that Canadian elder abuse literature in general is narrow and undeveloped. However, that is not the case. But the Canadian discourse remains almost exclusively focussed on issues of "civil" elder abuse, to the exclusion of a criminal analysis.[17] Only murmurs of a criminal justice response to elder abuse exists in the Canadian discourse. For example, noted Canadian criminology academic Rob Gordon[18] writes that

> applying the criminal law may be counterproductive and may attract resistance on the part of the victim of abuse who does not want to see a family member punished. A criminal justice intervention might not work terribly well if the abuse victim is mentally incapable of giving evidence against his or her abuser.[19]

These comments may be correct. However, evidenced-based research is needed to parse statistical and evidentiary findings from common "elder abuse mythologies". It is

[17] Such as adult protection / guardianship, financial abuse, estates, trusts, health law, aging in place etc.
[18] The current Director of the School of Criminology at Simon Fraser University.
[19] Gordon, Robert M. Adult Protection Legislation in Canada: Models, Issues and Problems. 24, (2001) *International Journal of Law and Psychiatry*, p.117 at 132.

this imbalance in the literature that this paper seeks to both unveil and redress. In summary, the legal literature around criminal justice approaches to elder abuse and neglect is in its infancy.[20]

A. 3 Whispers in the Dark: Selected Criminal Provisions in Canada and the US

No specific criminal elder abuse charges exist in Canada. However, specific provisions of the CC that might be seen to apply more directly to older or vulnerable adults include the following:

- s. 331 "Theft by person holding power of attorney"[21]
- s. 718.2 "Other sentencing principles"[22]
- s. 215 "Duty of persons to provide the necessaries"[23]

---

[20] See also Adult Victims of Abuse Protocols (Government of New Brunswick, September 2005), online at: http://www.gnb.ca/0017/Protection/Adult/AdultProtocol-e.pdf for a plain language description of offences and possible defences, regarding possible crimes against older adults in the abuse or neglect arena.

[21] **331**. "Every one commits theft who, being entrusted, whether solely or jointly with another person, with a power of attorney for the sale, mortgage, pledge or other disposition of real or personal property, fraudulently sells, mortgages, pledges or otherwise disposes of the property or any part of it, or fraudulently converts the proceeds of a sale, mortgage, pledge or other disposition of the property, or any part of the proceeds, to a purpose other than that for which he was entrusted by the power of attorney."

[22] **718.2** A court that imposes a sentence shall also take into consideration the following principles: (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing, (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor, (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner or child…

[23] **215.** "(1) Every one is under a legal duty…(c) to provide necessaries of life to a person under his charge if that person (i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and (ii) is unable to provide himself with necessaries of life. (2) Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies on him, to perform that duty, if (a) with respect to a duty imposed by paragraph (1)(a) or (b),(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or (ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or (b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently. (3) Every one who commits an offence under subsection (2) is guilty of (*a*) an indictable offence and is liable to imprisonment for a term not exceeding two years; or (*b*) an offence punishable on summary conviction."

A. 3.1 Theft by Person Holding Power of Attorney (s.331)

Canada has a historical criminal charge of theft under a power of attorney, a rarely used provision of the CC, stemming from a codification of a particular type of property theft with an added element of breach of fiduciary duty.[24] While it may be true that theft under a power of attorney might proportionally affect older Canadians more than other demographic groups, s.331 is unhelpful in addressing the most common situations of power of attorney abuse.

While it is true that civil remedies do exist around misuse of a power of attorney, these remedies address victim outcomes and damages. By contrast, this paper seeks to address the criminal aspect of financial / power of attorney abuse, which is "abuser-specific", and centres around issues of punishment, deterrence and social harm reduction.

S. 331 only holds a narrow purview over fraudulent sales, mortgages, pledges or other dispositions of real or personal property and the resultant conversion of the asset, is awkward, overly narrow and badly drafted. S.331 is not an "elder abuse" criminal offence, nor does it have any common law "elder abuse" history.

By contrast, several American jurisdictions have robust examples of penal legislation devoted to crimes of financial abuse against older or vulnerable adults, inclusive of theft of monies under a power of attorney.

[24] Notably, the *Queen v Fulton*, (1900), 5 CCC 36 (Que. QB)

For example, the *2005 Florida Statutes, Title XLVI, s. 825.103*[25] captures the narrow theft provision under s.331 of the CC as well as a myriad of financial elder abuse crimes. The Florida laws are elder specific, attuned to the literature, and include serious penalties expressing that state's denunciation of crimes against older adults.[26]

In the Florida legislation, the very purpose of the statute is to acknowledge perceived moral and societal normative differences present in crimes against older or vulnerable persons. Not only is the range of offences captured vastly expanded, compared to the

---

[25] Title XLVI: Crimes, Ch. 825: Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults, 825.103

1) "Exploitation of an elderly person or disabled adult" means:

(a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult; or
2. Has a business relationship with the elderly person or disabled adult; or

(b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

Exploitation of an elderly person or disabled adult; penalties.--

(2)(a) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at $100,000 or more, the offender commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at $20,000 or more, but less than $100,000, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than $20,000, the offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

825.104 Knowledge of victim's age.--It does not constitute a defense to a prosecution for any violation of this chapter that the accused did not know the age of the victim.

825.105 Good faith assistance.--This chapter is not intended to impose criminal liability on a person who makes a good faith effort to assist an elderly person or disabled adult in the management of the funds, assets, or property of the elderly person or disabled adult, which effort fails through no fault of the person.

825.106 Criminal actions involving elderly persons or disabled adults; speedy trial.--In a criminal action in which an elderly person or disabled adult is a victim, the state may move the court to advance the trial on the docket. The presiding judge, after consideration of the age and health of the victim, may advance the trial on the docket. The motion may be filed and served with the information or charges or at any time thereafter.

[26] In Florida, the maximum penalty for exploitation of an older or vulnerable adult's funds, assets or property valued at $100,000 or more is 30 years incarceration, as a first degree felony under s.775.002. While Canadians might learn valuable lessons from their Florida counterparts, aspects of the legislation, such as lengthy custodial sentences, might offend concepts of fundamental justice and the "Canadian" notion of appropriate sentencing.

Canadian provision, but the provision is not limited to any one specific instrument such as a power of attorney. Rather, the intent of the legislation is to address the often subtle financial exploitation of older or vulnerable adults in all its varied forms.

In Canada, power of attorney abuse is generally considered a matter of civil "breach of trust". In Florida, by contrast, it is a matter of criminal exploitation. The legislation emerged from a vigorous debate on the issues of criminal elder abuse, which was no doubt informed by the robust Elder Law programs at academic institutions such as Stetson University, as well as by the demographics of the State populace. While Canadians may not wish to follow in this same path, and indeed may not have the internal academic institutions and demographic factors to mould the development of this type of provision, they should at least be made aware of the marked difference in both intent and quality of penal statutory provisions as found in Florida.

It is time that Canadians consider their values and beliefs in relation to issues such as criminal financial abuse. Canadians may not come to the same conclusions as their American counterparts, but they should be engaged in an informed debate of these criminal issues.

A. 3.2 Other Sentencing Principles (s. 718(a)(i))

In Canada, given the absence of specific elder abuse crimes, one might assume that the socially reprehensible nature of crimes involving older adults may best be emphasized through the use of sentencing provisions in s. 718.2 of the CC. These

provisions allow the trier of fact to consider mitigating or aggravating principles found in an underlying charge such as assault, theft, etc. A more common example of the use of s. 718.2 sentencing principles in Canada can be found in the spousal assault context. In Canada, charges for spousal or "domestic partner" assault are laid under the general assault[27] provisions of the CC (Part VIII). Upon conviction, the court has discretion to apply domestic assault sentencing principles found in s. 718.2(a)(ii). These specific domestic-assault sentencing principles were the result of a rigorous discourse and public debate of the issues, led by proponents of the feminist movement.

At first it might appear that s. 718.2(a)(i) provisions might adequately redress cases of crimes against older adults given that *age* is included in the basket-clause of *other aggravating factors*.[28] However, it is important to stress that in order for this section to be applied, an abuser must already have been charged and successfully prosecuted with some underlying "basic offence" (such as assault, theft etc). A central issue in the elder abuse discourse is that the traditional criminal charges are not only under-used, but rather are not seen to apply to older adults. Seniors become, in effect, second-class citizens, not protected under the criminal law in the same way as their younger counter-parts.

Assuming that the hurdle of a successful conviction of some underlying base offence can be overcome, a prosecutor[29] arguing for the application of s. 718.2(i)(a) must show

[27] Sexual assault has its own specific offence.
[28] Or conversely, for cases of older offenders.
[29] Commonly referred to as "Crown Counsel", with either a federal or provincial jurisdiction, and analogous to American District Attorneys. Crown counsel act on behalf of the government and are not elected.

that the offence was *motivated by bias, prejudice or hate based on* race, national or ethnic origin, language, colour, religion, sex, *age*, mental or physical disability, sexual orientation, or any other similar factor.[30]

Proving or rebutting motivation of bias, prejudice or hate based on age seems again to miss the point. One hardly imagines the average case of criminal elder abuse as a scenario where the abuser makes it clear, especially to criminal standards, that the actions taken were thus motivated by *ageism*. It is notably different for a person to commit a crime such as assault, based on a specific motivation of ageism (i.e. "I am hitting you and stealing your bag because you are old and I hate old people"). Rather, it seems far more probable that older or vulnerable adults may be targeted by criminals because of a perceived ease of gain from the crime (i.e. "I am hitting you and stealing your bag because I perceive that you have things of value and you will not easily be able to stop me").

S. 718.2 has occasionally been used in cases of crimes against older adults, notably in cases of home invasion.[31] This particular crime is generally understood to be different from a regular break-and-enter / theft crime, in that there is a "premeditated confrontation with the victim with the intent to rob and/or inflict violence on the occupants of the household."[32] Studies have shown that older Canadians are nearly

[30] Emphasis mine.
[31] *R v Whicher*, (2002), 165 CCC (3d) 535 (B.C. C.A.)
[32] Kowalski, Melanie. (June 2002) *Bulletin: Canadian Centre for Justice Studies*, Cat. No. 85F0027XLE at 3, or online at: http://dsppsd.pwgsc.gc.ca/Collection/Statcan/85F0027X/85F0027XIE2002002.pdf

three times more likely to be victims of this type of crime.[33] However, a review of case law uncovers the inherent shortcomings of s. 718.2(a)(i) in cases of criminal elder abuse or neglect.

In the case of *R v Harris*[34] the Nova Scotia Court of Appeal[35] noted that the accused had pleaded guilty to robbery and assault, in the course of a home invasion. The court found that the perpetrators targeted a street largely populated by elderly and potentially wealthy residents.[36] That Court of Appeal affirmed the trial judge's finding that s. 718.2 should be applied to specifically denounce unlawful conduct and to deter persons from committing "the type of offence where people prey on elderly people in their own homes with actual or potential for violence."[37] However, the court does not make clear what impact the issue of older aged victims *per* s.718.2(a)(i) had on sentencing.

Judicial statements have also been made to the effect that s.718.2 is not a complete enumerated list of factors which can be considered by the court. In *R v Wismayer*[38] the Ontario Court of Appeal held that, "the opening words of s. 718.2 itself direct the court to take into account any relevant aggravating or mitigating circumstances."[39] In a highly publicized home invasion case, a five-member panel of the British Columbia Court of Appeal made value judgments to the effect that the case they were reviewing was "less heinous than those recent breaking and entering [cases] in which the perpetrators have

[33] Ibid.
[34] (2002) 142 (C.C.C.) [Canadian Criminal Cases] (3d) 252 (NSCA)
[35] The highest court in that province.
[36](2000) 142 CCC (3d) 252 (N.S. C.A.), at 255
[37] (2000) 142 CCC (3d) 252 (N.S. C.A.), at 264
[38] (1997) 115 CCC (3d) 18 (Ont. C.A.)
[39] (1997) 115 CCC (3d) 18 (Ont. C.A.), at 40

offered violence to frail, elderly householders…[but]…nonetheless, all breaking and enterings accompanied by robbery are grave"[40]. This *obiter dictum* leaves the impression that the same home invasion crime would somehow be worse if it occurred against elderly victims, but there is no indication of how this hint at judicial values impacts sentencing.

There is no evidence-based Canadian research to show that age as an aggravating factor has had any impact in the few cases which consider the older age of the victim in s. 718(a)(i) sentencing.

Canadians already do not necessarily view "jail time" as the most desirable judicial outcome and Canadian courts have already conceded that the "general deterrent effect of incarceration has been and continues to be somewhat speculative and that there are other ways to give effect to the objective of general deterrence."[41] Meanwhile, there are few, if any, non-incarcerative sentencing alternatives with a specific focus on older or vulnerable adult victims.[42] Alternatives to incarceration are an available sentencing option for the Canadian judiciary; however, specific alternatives do not capture the socially normative difference in victimizing older adults.[43]

[40] *R. v Bernier* (2003),177 CCC (3d) 137 (B.C. C.A.), at 143
[41] *R v Wismayer*, (1997), 115 CCC (3d) 18 (Ont. C.A.), at 20 (although in this case the Court was discussing the use of conditional sentences under s.742.1 of the CC.)
[42] However, some research is being done on these questions by such scholars as Dr. Robert Gordon at Simon Fraser University. See the Centre for Restorative Justice online at: http://www.sfu.ca/crj/about.html#what
[43] There are some alternative sentencing provisions or local programs which may focus on vulnerable victim impact, however.

A review of the case law suggests that the older age of the victim is actually only a minor factor in an array of considerations going to sentencing weight. Even in such high-profile cases as "home invasions", which are disproportionately crimes against older adults[44], the older age or vulnerability of the victim is not a significant focus of the sentencing decision. Consequently, the older age or vulnerability of the victim may simply fall "off the radar". As such, s.718.2(a)(i) applicability may actually have the effect of diluting the impact of age as a factor in assessing the gravity of crimes against older adults. There is a need for critical analysis in this area, as well as more precise legislative drafting, to allow the elder victim to be both statistically visible and judicially acknowledged.

The judiciary has not adopted the use of sentencing provisions under s. 718.2(a)(i) to address crimes against older adults. In part, this may be due to the fairly broad discretion Canadian judges exercise in sentencing. Canadians have not embraced a system of minimum or mandatory sentences in their criminal courts.[45] There is little exposition as to the weight and effect the victim's older age had on sentencing.

.

The preceding discussion challenges the efficacy of using s. 718.2 in elder abuse criminal cases. Its usefulness and effect is somewhat dubious. The language of *motivation* of *bias and hate based on age* does not strike to the heart of criminal elder abuse in modern society, which is far more directed in nature. Nor does it seem, as

[44] Kowalski, Melanie. (June 2002) *Bulletin: Canadian Centre for Justice Studies*, Cat. No. 85F0027XLE at 3, or online at: http://dsppsd.pwgsc.gc.ca/Collection/Statcan/85F0027X/85F0027XIE2002002.pdf

[45] Minimum sentences exist only in very specific crimes, such as murder etc.

best as one can divine from the paucity of research on the subject, that application of sentencing principles may affect post-sentencing outcomes more generally. At best it may be understood as a provision of formal equality;[46] at worst it can be seen as rhetorical legislation.

By contrast, the State of Arizona has specific sentencing principles addressing issues of age or vulnerability in Title 13 of the Arizona Criminal Code. Section 13-702 states that a judicially noticed "aggravated circumstance" in sentencing principles include the age or disability of the victim[47].

In California, a far more complex sentencing system exists. Californians have layered "elder specific" sentencing guidelines on top of "elder specific" criminal offences. Mandatory sentencing is established for crimes against older adults or disabled persons. The California legislature has been unambiguous in its condemnation of the repugnant nature of crimes against older adults. The state even has a sliding scale of iniquity codified: the older or more disabled a victim is, the worse it is to commit a crime against them.[48]

---

[46] All groups are treated the same, rather than focussed efforts to determine how to effect substantive equality or justice.

[47] S. 13-702 "The victim of the offence is at least sixty-five years of age or is a disabled person as defined by section 38-492"

[48] The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or

In comparison, Canada has no "elder specific" charges, nor does it have any real "elder specific" sentencing principles. The s. 718.2(a)(i) provisions are vague, weak and rarely used in regards to older age as a specific aggravating factor. Adding to this hurdle, the Canadian sentencing provisions require proof of *motivation of hate or bias* absent in American sentencing considerations. Also, many American states have adopted standards of criminal strict liability, which cannot be found in Canadian traditions.

A.3.3 Duty of Persons to Provide the Necessaries (s. 215)

Section 215 CC provisions provide a whisper of a more American criminal elder neglect approach.

Historically, charges under the "failure to provide the necessaries of life" provision of the CC were overwhelmingly cases involving harm caused by the neglect of children. A

---

health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars ($6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(C) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanour. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars ($2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

preliminary and exploratory line of cases, however, is developing around the duty of care owed by adult children or caregivers to vulnerable adults *under their charge*.

In *R v Middleton*,[49] a 1997 case, a 61- year old man was convicted of failure to provide the necessaries of life for his 56 year old mildly disabled common law spouse who had suffered a fracture.[50] The woman remained untreated, injured and ill in the presence of her spouse who watched her slowly die of her injuries. While not specifically an elder abuse case, it does represent some movement towards an understanding of the duty of care owed to vulnerable adults in the criminal context.

In 2000, the Ontario Court of Justice heard the case of *R v Swereda*[51] in which two professional caregivers at a group home left a 31- year old severely mentally disabled man out for hours in brutally cold weather, which caused him bodily harm. After reviewing the general principles of s.215 and foundational case law[52] in the area, the court held that in this case, the "duty of care was profound. It extended to all aspects of Mr. Kireto's life and well being at all times. He is an extremely helpless and vulnerable person and should not have been subjected to this kind of treatment."[53] The court expands the notion of duty of care to certain (in this case vulnerable) adults to fiduciary levels.

---

[49] [1991] Ontario Judgments (OJ) No. 2753 (Ontario Court of Justice General Division)

[50] The case was appealed, challenging the constitutionality of the reverse onus provision in s.215. The reverse onus was upheld and the appeal dismissed. Subsequently, the reverse onus provision was held to be unconstitutional in the case of *R v Curtis* (1998), 123 CCC (3d) 178 (Ont. C.A.)

[51] [2000] OJ No. 2537

[52] *R v Naglik* (1993), 83 CCC (3d) 526 at 538 includes the seminal judgement of the Right Honourable Chief Justice Lamer (as he then was) on the interpretation of s.215.

[53] *R v Swereda*, [2000] OJ No. 2537 at para 42.

In the case of *R v Chappell,*[54] Madam Justice Matheson delivered oral reasons on sentencing in a rare case of criminal *elder* neglect charged under s.215.[55] This case, which garnered some local media attention,[56] surrounded issues of neglect of a 62- year old woman with multiple sclerosis by her 35- year old paid caregiver in a private home setting. This was a case of egregious neglect resulting in severe bedsore ulcers, which became septic, pneumonia, malnutrition and dehydration causing death. Special coroner evidence was given that this was one of the most severe cases of bedsore neglect ever discovered.

The accused pleaded guilty, which is why this case is neither widely-known nor cited. Transcripts of the oral sentencing, however, show that the decision of Madam Justice Matheson contains some of the most powerful judicial statements on criminal elder neglect in Canada. She held that:

> This is not just a case of neglect. This is case of neglect which eventually contributed to the death of a sick and elderly person. Failure to denounce this conduct in the strongest terms would not meet one of the fundamental purposes of sentencing…Our society cannot condone such conduct in any manner and a denunciatory sentence is called for in this case. Given the number of elderly people in this jurisdiction, the court must send out a clear message that those being cared for in

[54] *R v Chappell*, April 17, 2000 unreported, Docket: CSC-17642, Charlottetown, PEI (Supreme Court Trial Division).

[55] The author most gratefully acknowledges the assistance of Ms. Cindy Wedge of the PEI Crown Attorney's office in locating and providing a transcript of the oral reasons for sentencing in this case.

[56] See: "*Woman Facing Elder Abuse Trial*", The Journal-Pioneer (Summerside) Saturday, December 11, 1999 p. A3; Armstrong, Nigel "*City Woman Faces Charges of Elder Abuse in Death*", The Guardian (Charlottetown), The Province, Saturday December 11, 1999, p.A2; "*Woman Pleads Guilty for Failing to Take Care of Elderly Person Under her Charge*", The Guardian (Charlottetown), the Province, February 16, 2000, p. A2; "*Tearful Accused Apologizes to Family of Dead Woman*", The Guardian (Charlottetown), the Province, April 18, 2000, p. A8; Ryder, Ron, "*Negligent Caregiver Sentences to One Year in Jail and Probation*", The Guardian (Charlottetown), the Province, April 20, 2000; Armstrong, Neil "Judge Rules Chappell Stays in Jail Pending Appeal in Death of Senior", The Guardian (Charlottetown), the Province, May 2, 2000, p. A3; "Relatives of Elderly City Woman Sue Caretakers Over Death" The Guardian (Charlottetown), the Province, May 4, 2000, p. A5; "*Chappell Withdraws Appeal to Island Court: Woman had been sentenced to a year in jail for failing to provide the necessaries of life to Isabel Gerrard who died*", The Guardian (Charlottetown), the Province, May 20, 2000, p. A2.

> unsupervised settings in private homes, or private care must not be neglected and those who do neglect such elderly people will be punished. A conditional sentence would not send out the necessary denunciatory message…"[57]

In this case, a one-year custodial and eighteen-month probationary sentence was handed down.[58] What is also notable about this case, beyond the s. 215 analysis, is that the judge referred to sentencing principles under s. 718.1 and s. 718.2 in some detail. However, despite a specific "sentencing principles" discussion in her decision, no reference whatsoever was made in the course of that analysis to the age of the victim. Comments on the age and medical vulnerability of the victim were general in nature, or located in her s.215 analysis. This case encapsulates how s.718.2 "age" provisions are largely rhetorical in Canada, and how the current legislative drafting captures neither the nature nor the reality of criminal elder abuse or neglect.

The most important trial of criminal elder neglect to be prosecuted under s. 215 is the very recent case of *R v Peterson*, a 2005 decision of the Ontario Court of Appeal.[59] Notably, no analysis or consideration of *R v Chappell* was given in the course of this judgment, likely because *Chappell* never went to trial, and the reasons were delivered orally.

---

[57] *R v Chappell*, April 17, 2000 unreported, Docket: CSC-17642, Charlottetown, PEI (Supreme Court Trial Division).
[58] The matter initially was marked for appeal. A Chambers judgment of the Honourable Chief Justice Carruthers held that the Ms. Chappell would remain incarcerated pending appeal at: *R v Chappell*, [2000] P.E.I.J. No. 58. The appeal was subsequently dropped.
[59] *R v Peterson* (2005), 201 CCC (3d) 220 (Ont. C.A.)

In *Peterson*, the accused was a 41- year old man who severely neglected the care of his elderly father, aged 84 at the time of the incident in 2000. The egregious facts of the case were detailed in the majority decision at some length.[60] Madam Justice Weiler noted for the majority that

> this appears to be the first case to reach an appellate court in which the meaning of the phrase "under his charge" in s.215(1)(c) as between an adult child and his parent is in issue.[61]

The majority decision largely limited its analysis to the concept of being "under the charge" of another. What distinguishes this case in the context of an elder abuse analysis is the partially dissenting judgment of Mr. Justice Borins, who would have substituted a custodial sentence for a conditional sentence.

In the first judicial interpretation of s. 215 CC as regarding an adult child's criminal responsibility to a parent, Mr. Justice Borins held that the pivotal issue is whether a parent is *under the charge* of his or her child. He found that

> the duty or responsibility of a child to be the caregiver of his or her aging parent and the criminalization of the failure to provide the required standard of care are based on late 19th century legislation that is completely unsuitable in the 21st century. The problem arising from the failure of the legislation to provide any guidance in respect to where one is in the charge of another is apparent from the analysis undertaken by Weiler J.A. to breathe life into "charge" within the meaning of s. 215(1)(c). [62]

Mr. Justice Borins then took the notable step of calling for legal discussion and legislative reform on issues of criminal elder abuse. Markedly, he brings into his

[60] At trial, counsel agreed that the reverse onus was unconstitutional and that the onus indeed rested on the prosecution to prove the essential elements of the charge beyond a reasonable doubt.
[61] *R v Peterson* (2005), 201 CCC (3d) 220 (Ont. C.A.)at 230.
[62] *Ibid.,* at 240.

judgment American demographic statistics, reports of powerful American seniors advocacy groups and quotes American populist news media to support his reasoning. He writes

> In my view, contemporary legislation is required to deal with the issue of parent/child role reversal, which is one of the results of human longevity. An estimated 22.4 million households in the United States -- nearly one in four -- are providing care to a relative or friend aged fifty or older according to a 1997 survey by the National Alliance for Caregiving and the American Association of Retired Persons. It is likely that adults born between 1946 and 1965 will spend more years caring for a parent than for their children. As Susan Dominus pointed out in an article in The New York Times Magazine: "The philosophical impact [of human longevity] [*sic*] on family dynamics will be profound, as parents continue to lean on children long past retirement themselves, and people in their 80's learn what it means, at that age, to still be somebody's child." ("Life in The Age of Old, Old Age", The New York Times Magazine, February 22, 2004.)
>
> In an article, "Longer Lives Reveal the Ties That Bind Us" (The New York Times, October 2, 2005), David Brooks points out that between now and 2050, the percentage of the population above age eighty-five is expected to quadruple. Brooks quotes Dr. Leon Kass, the former Chairman of the President's Council on Bioethics, as stating: "The defining characteristic of our time seems to be that we are both younger longer and older longer." To which Brooks adds:
>
> “Parents have to spend more time preparing their children for the new economy and children have to spend a lot more time caring for their parents when they are old. In other words, technology, which was supposed to be liberating, actually creates more dependence. We spend more of our lives while young and old dependent upon others, and we spend more time in between caring for those who depend on us.”
>
> Although these data and comments apply to the United States, there is little doubt that they also apply to Canada. This is why it is no longer satisfactory to rely on legislation designed for another purpose in another era to define what contemporary society requires of its members who have aging parents in need of care. Children of aging parents no doubt accept that their parents require some form of care, be it in respect to financial affairs or personal care. As the elderly lose their ability to remain self-sufficient, their adult children are gradually required to assume caregiving responsibilities. As a result of rising life expectancy, the child who becomes his or her parent's caregiver, is often well within the "senior citizen" age category. In addition,

> given that the age at which children are conceived is rising, the expectation is that there will be a sizeable group of children who will face a double "necessaries" duty in respect to both their children and their parents, raising, perhaps, the need to choose between the welfare of their children and their parents. It is, therefore, of critical importance that if the duty to care for an aging population continues to be within the ambit of the criminal law, that care is taken to clearly define what constitutes criminal neglect or penal negligence.[63]

In analysing the new elder abuse and neglect interpretations under s.215, Mr. Justice Borins grants that determining the level of responsibility that an adult child should bear for an elder parent together with defining the appropriate standard of care are difficult and challenging issues. He then particularly queries whether these issues should continue to be governed by criminal law. Drawing specifically from the American legislation, he highlights modern legislative frameworks "related to elder abuse and elder care, entrenching a defined duty of care" and particularly notes with approval the legal systems in place in California, Illinois and Massachusetts regarding both civil and criminal liability.[64]

Mr. Justice Borins' comments seem to call for a more thorough debate in Canada on issues of criminal and civil elder abuse and neglect. Drawing particular attention to the vibrant American discourse, his concern focusses on the need for Canadians to predictably socially order their lives, and to be able to clearly understand filial duties of care. His comments indicate that the use of s.215 for elder abuse criminal cases is blurring the line and twisting existing penal provisions to suit this "new" range of cases. Rather, he appears to suggest either new Criminal Code provisions to deal with elder abuse cases, or a redrafting of specific provisions to more correctly define the crime.

---

[63] *R v Peterson*, (2005), 201 CCC (3d) 220 at 240-241.
[64] *Ibid.,* at 241-242.

The future of elder abuse and neglect under s. 215 is uncertain. An appeal has been filed in this matter to the Supreme Court of Canada[65]. At the time of writing, the Supreme Court of Canada has not yet decided on whether to grant leave to appeal. Yet even this appellate level decision in *R. v Peterson*[66] is remarkable for several reasons. First, it represents a preliminary acknowledgment that elder abuse and neglect crimes might somehow be normatively different than the bare underlying offences alone. Second, this case may be read as calling for specific legislative reform to the Canadian CC. Third, it positively calls on Canadians to review American criminal elder justice discourse, to inform future Canadian debate on these issues.

Whether these issues are best addressed by the Supreme Court of Canada, rather than at the grassroots or parliamentary level, is uncertain. However, as the case becomes more widely recognized, it may spark public debate on criminal elder abuse issues. These judicially seeded comments may result in a germination of discourse around the rights and roles of older Canadians within the criminal justice system.

Again, by contrast, several American states have drafted penal provisions on criminal elder abuse and neglect. In Illinois, provisions pertaining to "criminal abuse or neglect of an elderly person or person with a disability"[67] are detailed in nature.

---

[65] *R.v Peterson*, [2005] SCCA No. 539
[66] *R v Peterson*, (2005), 201 CCC (3d) 220
[67] (720 ILCS 5/12 21) (from Ch. 38, par. 12 21)
Sec. 12 21. Criminal abuse or neglect of an elderly person or person with a disability.
(a) A person commits the offense of criminal abuse or neglect of an elderly person or person with a disability when he or she is a caregiver and he or she knowingly:
(b) (1) performs acts that cause the elderly person or

Canadians strain to hear bare whispers of some form of nascent criminal “elder neglect” case law under s.215. Residents of Illinois, by comparison, have a complete codification of specific elder abuse and neglect crimes clearly stated in their penal law. Additionally, this legislation enumerates and particularizes the concept of “necessaries”

---

person with a disability's life to be endangered, health to be injured, or pre existing physical or mental condition to deteriorate; or

(2) fails to perform acts that he or she knows or reasonably should know are necessary to maintain or preserve the life or health of the elderly person or person with a disability and such failure causes the elderly person or person with a disability's life to be endangered, health to be injured or pre existing physical or mental condition to deteriorate; or

(3) abandons the elderly person or person with a disability; or

(4) physically abuses, harasses, intimidates, or interferes with the personal liberty of the elderly person or person with a disability or exposes the elderly person or person with a disability to wilful deprivation.

Criminal abuse or neglect of an elderly person or person with a disability is a Class 3 felony. Criminal neglect of an elderly person or person with a disability is a Class 2 felony if the criminal neglect results in the death of the person neglected for which the defendant, if sentenced to a term of imprisonment, shall be sentenced to a term of not less than 3 years and not more than 14 years.

(c) For purposes of this Section:

(d) (1) "Elderly person" means a person 60 years of age or older who is incapable of adequately providing for his own health and personal care.

(2) "Person with a disability" means a person who suffers from a permanent physical or mental impairment, resulting from disease, injury, functional disorder or congenital condition which renders such person incapable of adequately providing for his own health and personal care.

(3) "Caregiver" means a person who has a duty to provide for an elderly person or person with a disability's health and personal care, at such person's place of residence, including but not limited to, food and nutrition, shelter, hygiene, prescribed medication and medical care and treatment.

Caregiver" shall include:

(A) a parent, spouse, adult child or other relative by blood or marriage who resides with or resides in the same building with or regularly visits the elderly person or person with a disability, knows or reasonably should know of such person's physical or mental impairment and knows or reasonably should know that such person is unable to adequately provide for his own health and personal care; (B) a person who is employed by the elderly person or person with a disability or by another to reside with or regularly visit the elderly person or person with a disability and provide for such person's health and personal care; (C) a person who has agreed for consideration to reside with or regularly visit the elderly person or person with a disability and provide for such person's health and personal care; and (D) a person who has been appointed by a private or public agency or by a court of competent jurisdiction to provide for the elderly person or person with a disability's health and personal care.

"Caregiver" shall not include a long term care facility licensed or certified under the Nursing Home Care Act or any administrative, medical or other personnel of such a facility, or a health care provider who is licensed under the Medical Practice Act of 1987 and renders care in the ordinary course of his profession. (4) "Abandon" means to desert or knowingly forsake an elderly person or person with a disability under circumstances in which a reasonable person would continue to provide care and custody. (5) "Willful deprivation" has the meaning ascribed to it in paragraph (15) of Section 103 of the Illinois Domestic Violence Act of 1986.

(Source: P.A. 92 328, eff. 1 1 02; 93 301, eff. 1 1 04.)

of life. Canadian laws barely test the criminal "elder neglect" waters; Illinois law appears to elevate neglect to the same level as overt harms.

Lastly, Canadian s.215 law is narrowly focussed and subject to judicial interpretation of the oblique notion that the victim must have been "*under the charge*" of the accused. By contrast, Illinois criminal elder abuse and neglect penal laws are clearly written, and are significantly broader in scope. They even confront issues such as abandonment, harassment and interference with personal liberty.

The Illinois model is an important one to consider, not only for its particularized criminal provisions, but also for the important multi-disciplinary approach taken. The Illinois State Triad published its Model Protocol for Law Enforcement "*Responding to Elderly Crime Victims*" on January 22, 1993. TRIAD was a national initiative funded by the American Association of Retired Persons, the International Association of Chiefs of Police and the National Sheriffs' Association. TRIADs were developed throughout Illinois on smaller scales, followed thereafter by establishing a state-wide TRIAD program. The nearly 80-page report has information on all aspects of criminal elder abuse, including response networks, police officer protocols, governing legislation and demographic statistics.

While the TRIAD is interesting from a management model, it is also of particular importance to Canadians as it encapsulates decades of vibrant, active and multi-

disciplinary discourse. Canadians, on the other hand, are on the brink of deciding whether to break this legal silence.

A. 4 Straining to Hear: The State of the Law in Canada Evaluated

Charges under the CC s. 331 are almost never laid, nor does this provision speak to contemporary experiences of elder abuse and neglect. Sentencing provisions under s.718.2 largely fall wide of any understanding of criminal elder abuse in modern society and might indeed, actually do a disservice to older adults by masking the issue with formal equality language. Section 215 shows some early promise in cases which sound in the realm of "elder neglect", rather than elder abuse. Still, a judicial obiter dictum about the need for law reform for elder abuse and neglect in the CC, as well as an analysis of the American models, is an important legal development in Canada. While nascent, this seed of judicial comment may take root in Canadian discourse.

B. What factors may have contributed to the differences in the Canadian and American experience related to criminal elder abuse and neglect?

B.1 The Comparative Landscape

Much has been said about the ongoing and imminent generational aging both in Canada and the US and how sheer demographics make elder issues of importance to

both countries. In Canada, national statistics indicate that by 2041, nearly one out of every four Canadians will be over the age of 65.[68] In some provinces, such as British Columbia, that same figure will be reached by 2030.[69] American demographics are not disanalogous[70]. While Canada's citizenry is approximately one tenth the size of the American population[71], the "civil"[72] elder abuse and neglect literature remains similar both in scope and issue analysis[73].

The populations of both countries are also strongly inter-related and "cross-border" in character. These mobile populations include a familiar sub-set of older adults actively enjoying lengthy stays or semi-permanent residence in either country.

When commencing comparative research in this area one might instinctively assume similarity in "criminal" elder abuse and neglect discourse. This is not the case. Americans have been engaged in a vibrant debate over the pros and cons of the appropriateness, legitimacy and efficacy of creating criminal elder abuse and neglect penal charges, or specific sentencing provisions. Canada, on the other hand, has a comparative dearth of literature on the topic. The rest of this paper seeks to explore some possible explanations for the relative Canadian legal silence.

---

[68] Statistics Canada. *Population Projections for Canada, Provinces and Territories, 2005 to 2031*, or online at: http://www.statcan.ca/Daily/English/051215/d051215b.htm

[69] *Ibid*.

[70] By 2020 it is projected that persons over the age of 65 will be 17.7% of the population and by 2050, will be 25% of the population. US Dept. of Commerce, Bureau of the Census, Statistical Abstract of the United States: 1990, at 16, 37 (110th ed 1990) (table no. 18, Projections of the Total Population by Age, Sex and Race: 1989 to 2010)

[71] Current American statistics put the American population at: 296,410,404. U.S. Census Bureau, (2005) *Population Estimates*, Census 2000, or online at: http://factfinder.census.gov/servlet/SAFFPopulation?_submenuId=population_0&_sse=on

[72] As compared with "criminal" elder abuse issues, which this paper seeks to address.

[73] Although Americans and Canadians often come to different conclusions, the range of issues is largely consistent across the border.

B. 2 Who Do We Think We Are?: Founding Mythologies

Political humourists have noted that some of the fundamental differences between Americans and Canadians can be traced back to each country's beginnings: Americans fought a war of independence against their colonial oppressors; Canadians asked nicely if they could please have their own sovereign country.

While the irony has its limitations, it does strike to some of the structural roots of legal traditions and institutions in both countries. It is perhaps trite to note that the American system is one of radical individualism and elected representation with significant internal checks and balances. The Canadian governmental system, by comparison, works on a federal parliamentary basis, with a social welfare underpinning. Historically, Canadians have given their leaders more unchecked power,[74] and appear to have more trust than their American counterparts that their basic financial, health and social needs will be provided for by the Canadian social safety net.

B.3 In Whom We Trust: Appointed vs. Elected Officials and the "Seniors' Vote"

It is also suggested that Canadians have a stronger history of government appointment and civil service than Americans. This is evidenced in our bicameral system. Canadians have an elected lower house – The House of Commons – and a federally

[74] Although this is perhaps, now arguable due to post-911 legislative developments in the US such as the Patriot Act.

appointed upper house – the Senate.[75] The mandate of the Senate is to provide a "sober second look" at laws developed by the democratically elected officials of the lower house.

This relative comfort with a mix of non-elected persons of governmental power extends to the Canadian justice system. For example, Canadian prosecutors are not elected. They work within the "Crown Office" as legal civil servants in significant positions of influence and discretion.

More notably, judges are appointed in Canada. The role of the independent judge is largely considered sacrosanct; Canadians often meet the notion of an elected judiciary with reactions ranging from incredulity to scepticism to horror.[76]

The United States also has a bicameral system of government, but unlike Canada, the American model has democratically elected representatives in both lower and upper houses. Additionally, the American Senate may exist for a different purpose than its Canadian counterpart. A Canadian appointed Senate has historically had a mandate of providing a "sober, second thought" to any proposed Bill. The Canadian Senate was originally conceived as a serious, calming, and non-partisan body which would curb any radical steps taken at the House of Commons level, out of a vague distrust of elected officials who were headily flushed with inappropriate populist zeal.

[75] Although long-standing political promises have been made regarding changing the appointed senate to an elected one, especially by the newly elected minority Conservative government of Prime Minister Stephen Harper.
[76] This is not to say that there are no Canadian voices lobbying for a reduction of appointments, including judicial appointments, but the history of civil service and appointment have been part of Canada's historic governmental system.

By contrast, the American Senate serves a very different purpose than its Canadian counterpart. It offers a form of elected balance in the democratic system, with more partisan influence and active governing involvement than its Canadian counterpart.

The difference in elected / appointed legal traditions has a concrete impact on the visibility of seniors' issues in each country, through the impact of the "seniors' vote". Seniors vote more regularly and more often than any other age group in both countries.[77] However, as discussed, Americans vote for many official positions of criminal justice power and influence, while Canadians do not. In the United States, depending on the jurisdiction and level of office, some police officials, prosecutors, and judges are elected. If candidates expect to stand elected, then engaging in discourse around issues that seniors care about, such as criminal elder abuse and neglect, simply makes good political sense.

Canadian seniors, like their American counter-parts, vote more regularly and more often than any other sector of the Canadian population. However, Canadian police officials, prosecutors and judges are all *civil service based or appointed*. These actors are not constrained by the effect of the seniors' vote, as they are neither forced to account to the wishes of voters, nor to stand for re-election for their continued

[77] Sutherland, Tucker. Seniors are Consistent Voters, Increasingly Larger Share of Vote: Trend line says seniors will dominate future elections. *Senior Journal*, Oct 24, 2004, or online at: http://www.seniorjournal.com/NEWS/Politics/4-10-28SeniorVote.htm; for Canadian statistics see: Statistics Canada Political Activity Among Young Adults, 2003 *Canadian Social Trends*, Winter 2005, 79, or online at: http://www.statcan.ca/Daily/English/051206/d051206b.htm

employment. This difference may partially account for why a vibrant discourse on criminal justice elder abuse provisions exists in the United States, but not in Canada.

B.4 Lend Me Your Ears: Seniors' Lobbying Differences in Canada and the US

Perhaps as a result of the heft and impact of the US seniors' vote phenomenon, Americans have a much stronger seniors' lobby movement than their northern neighbours. American seniors are effectively organized in order to influence elected officials' voting patterns, and are more able to put seniors' issues on the national agenda. Impressively, the American Association of Retired Persons boasts a membership of over 36,000,000 members,[78] out of a total population of approximately 300,000,000 US citizens. Access to individual elected officials in the United States at least appears to be somewhat easier and there are, due to an American elected Senate, theoretically twice as many elected officials to lobby.

Canadian lobbying appears to be far less concentrated or developed than in the United States. While the AARP has 36,000,000 members, the Canadian Association of Retired Persons has a membership of 400,000[79] out of a total Canadian population of approximately 32,000,000 citizens.[80] The AARP has singular power and sway in the US

[78] American Association of Retired Persons Annual Report, 2005, or online at:http://assets.aarp.org/www.aarp.org_/articles/aboutaarp/AARP2004AnnualReport.pdf
[79] Canadian Association of Retired Persons, online at: http://www.carp.ca/display.cfm?cabinetID=264&libraryID=58&documentID=1522&libID=89
[80] Statistics Canada, CANSIM table, October 1, 2005 at 270 or online at: http://www40.statcan.ca/l01/cst01/demo02.htm?sdi=population

lobby movement. On the other hand, CARP is not viewed as a powerful or central lobby organization.[81]

Adding to the difficulty in lobbying, the Canadian parliamentary system has strong traditions of party discipline that can further frustrate the development of an influential seniors' lobby. It is a rare event for elected members of Canada's governing Parliament to vote against the party line. Failure of a proposed piece of major legislation in the Canadian Parliament amounts to a vote of non-confidence, and the government may fall. With stakes this high, rebel Members of Parliament are typically harshly reprimanded for any disloyalty. Added to this mix, Bills introduced by private Members of Parliament have an extremely high attrition rate, and are generally poorly received by the governing party as a whole. By convention, Bills are introduced by a member of the Cabinet.

Because of these legal traditions, lobby groups often have to either focus on the whole of the government body, or win favour with the opposition parties in an effort to sway the majority. In minority governments, where no one party has the required number of seats to pass laws, deal-making and conciliation are the order of the day. This may allow lobby groups to exert some pressure more easily in some circumstances, but in other cases it can make the situation even more difficult. That is not to say that lobbying does not occur in Ottawa. It does. However, it differs in nature, tone and

[81] Certainly, there are many more organizations concerned with issues of seniors, from the national to the grassroots level. Yet none even compare to the influence that American seniors' lobby groups hold sway.

audience.

B.5 Legal Multiculturalism: The Plurality of Canadian Legal Traditions

It is an oft-quoted observation that the United States is a "melting-pot" of cultures, ideas and peoples. Worldwide, Americans are Americans. They form a coherent whole. While past histories and traditions may be socially valued, the country of "fresh-start" immigration infuses its citizens with dominant cultural norms. It is not surprising, then, that Americans have only one substantive legal tradition.[82]

Reflecting the historical strength and independence of the individual states, penal law is primarily generated at the state level. The result is that each state has a separate opportunity to decide for itself what is criminal within that state, as well as the appropriate punishment for engaging in criminal activity. As a result, changes to one state's penal law do not impact citizens of other states.[83]

Canadians chose a different path. Canada has formally adopted a national identity of "multiculturalism". The official stance on multiculturalism is

> Canadian multiculturalism is fundamental to our belief that all citizens are equal. Multiculturalism ensures that all citizens can keep their identities, can take pride in their ancestry and have a sense of belonging. Acceptance gives Canadians a feeling of security and self-confidence, making them more open to, and accepting of, diverse cultures. The Canadian experience has shown that multiculturalism encourages racial and ethnic harmony and cross-cultural understanding, and discourages ghettoization, hatred, discrimination and violence. Through multiculturalism, Canada recognizes

[82] It is noted however, that the State of Louisiana maintains French Civil Law traditions. Also, American aboriginal legal scholars may validly disagree with this analysis. It is also recognized that Americans have jurisdiction over several territories with varying degrees of control.

[83] Except, naturally, when the person or their property might be located in another state jurisdiction.

> the potential of all Canadians, encouraging them to integrate into their society and take an active part in its social, cultural, economic and political affairs.[84]

One result of Canadian multiculturalism is a broad mosaic of legal traditions. While a cherished aspect of the Canadian national identity, manoeuvring within this multicultural system requires significant tolerance, sensitivity and a fine balance.

Canada generally has a common law tradition, but for the province of Quebec, which is generally governed according to French Civil law. Since the 1997 landmark decision of *Delgamuukw v the Province of British Columbia*,[85] Aboriginal law also now exists as a separate and equal legal tradition in Canada. Further, Canada's jurisdictional boundaries have recently changed. "Nunavut", Canada's newest territory, was created April 1, 1999. It is the ancestral homeland of the Inuit peoples, who also have distinct legal traditions. With such a myriad of perspectives to consider, changes to the CC are both deliberative and highly contentious. One small alteration in the CC, and the laws across a large country, with diverse legal traditions, are affected. Certainly these impediments can be overcome, but at some political cost.

These structural differences may be important in understanding why Canada has not engaged in either an active discourse on criminal elder abuse laws, nor effected any criminal charges, prosecutorial policies or specific sentencing principles.

[84] Heritage Canada, online at: http://www.canadianheritage.gc.ca/progs/multi/what-multi_e.cfm
[85] [1997] 3 S.C.R. 1010.

B.6 An Ear to the Keyhole, A Nose to the Windowpane:

A Canadian Reflection on American National Elder Abuse Leadership

Americans have a national leadership structure around issues affecting older adults. During the development of the American "Great Society," seniors' issues rose to the national agenda. One result was the passing of The *Older Americans Act of 1965*.[86] The OAA, and its subsequent amendments, still provide a national framework of rights, guarantees and institutions for older Americans.

The OAA created both state and local offices, charging them with data collection duties. Area plans were also founded at both the state and local levels to identify and rectify issues adversely affecting older Americans. This information then flowed upwards to Washington for Congressional funding. Once approved, monies then flowed back to the state and local levels for implementation of the area plans. The groundswell and trickle-down of information concerning the status of seniors throughout the U.S. may be seen as the genesis of the American criminal elder abuse discourse, in that the wide range of abuse, neglect and exploitation problems were set out in these area plans.

Along with these examples of legal structures comes an outflow of responsibilities. No similar impetus or structure for the widespread collection of data from the Provinces to Ottawa exists in Canada and this may be a factor that accounts for the paucity of

[86] *Older Americans Act of 1965* (42 U.S.C. 3001)

literature on Canadian criminal elder abuse issues and the failure of the Provinces to address the issue locally.[87]

American federal legislation on elder issues has not been static. The OAA has been updated and amended. Now, issues of elder abuse and neglect have been formalized in a new Bill, currently circulating in Washington. The proposed *Elder Justice Act*[88] was introduced in revised form at the 109th Congress on November 15, 2005.

One of the defined terms in this Bill is "elder justice," which includes societal "efforts to prevent, detect, treat, intervene in, and *prosecute elder abuse, neglect and exploitation*[89] and to protect elders with diminished capacity while maximizing their autonomy…"[*emphasis mine*].[90]

This Bill is multi-faceted in nature and multi-disciplinary in scope. For example, one of the many national offices or bodies proposed in this Bill includes an "Office of Elder Justice" at the Administration on Aging. Such an office would be established to

> develop objectives, priorities, policies and a long-term plan for elder justice programs and activities relating to the prevention, detection, training, treatment, evaluation, intervention, research and improvement of the elder justice system in the United Sates. The legislation would also establish a parallel office in the Department of Justice.[91]

---

[87] My thanks to Allan Bogutz for his assistance in this aspect of the comparative analysis.
[88] The *Elder Justice Act* Bill was originally introduced at the 108th Congress, 1st Session, s.333 to the US Senate, which was then referred to the Committee on Finance. It was later reintroduced with revisions as noted above.
[89] Emphasis mine.
[90] *Elder Justice Act* Bill
[91] *Ibid.*

The Canadian experience offers virtually nothing in comparison. Elder criminal justice discourse has not developed past its infancy in Canada. National legislation of this type simply does not exist. This is, perhaps, understandable. With the weak seniors' lobby movement, there is an understandable challenge to passing federal legislation. Added to this mix, many of the officials in the justice arena are either civil servants or appointed officials. Canada has a diversity of multicultural legal traditions to canvass and development of legislation can take years to realize.

What is astonishing is the nearly complete silence that exists around criminal elder abuse and neglect issues in Canada.[92] It is one thing to have no federal laws or structures. It is another thing entirely not to even ask for them.

B.7 Puzzling it Out: The Comparative Landscape Evaluated

Not surprisingly, there is no one structural element which clearly defines why the discourse on criminal elder abuse in both countries is so different, while the civil aspects of elder abuse discourse is so similar.

This paper has by no means attempted to provide an exhaustive analysis of the comparative structural or socio-legal differences underlying this divergence in discourse. Rather, it seeks to provide a basis for a more robust inquiry into the legal silences in Canada.

[92] That is not to say that no Canadians wish for a national policy or legislation. Rather, there is not the national discourse on the subject. Certain advocates, scholars and, very occasionally, the rare public figure broaches the topic. However, elder justice issues are nowhere close to being set on the national agenda.

As such, several factors have been preliminarily suggested as being important to consider when engaging in critical analysis on this subject. Differences in founding mythologies and historical traditions underlie many of the reasons why the criminal elder abuse debate has been more fruitful in the United States. The stronger seniors' lobby movement, combined with the important "seniors' vote" phenomenon, creates different legal pressures on government officials. The path towards legislation in the United States may be quicker and less culturally nuanced than in Canada, due to the largely uniform nature of U.S. legal traditions.

The OAA required that state and local jurisdictions prepare an elder abuse area plan, and gather data for Congressional consideration and funding. Once gathered, data regarding abused adults is more difficult to sideline. If the issue is presented in such an evidence-based fashion, and officials are motivated by electoral benefit to move on the issue, then the matter is likely to remain on the national agenda.

Conclusion: The 51st State - The State of Denial

> *Concerns with justice rather than with remedial treatment and welfare should be the new priority. Elders possess rights as citizens. For the most part, they seem capable of exercising those rights* ….[93]

[93] Brogden, Mike and Preeti Nijhar. Crime, Abuse and the Elderly. (Portland: Willan Publishing, 2000), 152-153.

Canadians do not deny the existence of elder abuse. Rather, Canadians have developed a useful discourse on the civil and health aspects of the issue, analogous to that in the United States. What Canadians deny, through their silence, is that elder abuse and neglect might actually be a crime.

This paper does not suggest that the CC immediately be changed to reflect a specific elder abuse criminal provision. It does not even purport that the age of the victim be considered as a specific aggravating circumstance in sentencing.

Rather, the goal of this paper is to unequivocally break the silence on this subject in Canada. Canadians must decide how to deal with crimes against older adults. They must decide in a way that is inherently reflective of Canada's diverse and multicultural population, its own legal traditions and its sense of national purpose. Compared to its closest neighbour, Canada lags 40 years behind. It is time for Canadians to challenge themselves on this issue. It is time for Canadians to break their legal silence.

Bibliography

Jurisprudence

R. v. Bernier (2003), 177 C.C.C. (3d) 137 (B.C. C.A.)

R. v. Chappell, April 17, 2000 unreported, Docket: CSC-17642, Charlottetown, PEI (S.C. Trial Division); [2000] P.E.I.J. No. 58

R. v. Curtis (1998), 123 C.C.C. (3d) 178 (Ont. C.A.)

R. v. Delgamuukw, [1997] 3 S.C.R. 1010

Queen v. Fulton (1900), 5 C.C.C. 36 (Que. Q.B.)

R. v. Harris (2002), 142 C.C.C. (3d) 252 (N.S. C.A.)

R. v. Middleton, [1991] OJ No. 2753 (Ont. C.J.)

R. v. Naglik (1993), 83 C.C.C. (3d) 526 (S.C.C.)

R. v. Peterson (2005), 201 C.C.C. (3d) 220 (Ont. C.A.)

R. v. Swereda, [2000] OJ No. 2537 (Ont. C.J.)

R. v. Wicher (2002), 165 C.C.C. (3d) 535 (B.C. C.A.)

R. v. Wismayer (1997), 115 C.C.C. (3d) 18 (Ont. C.A.)

Legislation

2006 Arizona Revised Statutes, Title 13 Criminal Code

Canadian Criminal Code, Revised Statutes of Canada 1985, c. 46. http://www.canlii.org/ca/sta/c-46/.

Elder Justice Act, Bill s. 333

2005 Florida Statutes. Title XLVI, Ch. 825.

Illinois Compiled Statutes. Criminal Code of 1961. Ch. 38, 720 ILCS 5/

Older Americans Act of 1965 (42 U.S.C. 3001)

Articles and Books

Administration on Aging. (2004) *Elder Rights and Resources*. http://www.aoa.dhhs.gov/eldfam/Elder_Rights/Elder_Abuse/Elder_Abuse.asp

American Association of Retired Persons. *Annual Report, 2005*. <http://assets.aarp.org/www.aarp.org_articles/aboutaarp/AARP2004AnnualReport.pdf>.

American Bar Association Commission on Law and Aging. <http://www.abanet.org/aging>.

Bonnie, Richard J. and Robert B. Wallace. (2002) (Eds.) *Abuse, Neglect and Exploitation in an Aging America*. Washington, D.C. National Academies Press.

Brinig, Margaret F. et. al. (2004) The public choice of elder abuse law. *The Journal of Legal Studies*, 33, 517 ff.

Brogden, Mike and Preeti Nijhar. *Crime, Abuse and the Elderly*. Portland: Willan Publishing, 2000.

Caccamise, Paul L and Art Mason. (2004) Policy paper: New York State summit targets elder abuse, "the time to act is now." *Journal of Elder Abuse & Neglect*, 16 (4), 41-61.

Canada. Department of Justice. (2005) *Abuse of Older Adults: A Fact Sheet from the Department of Justice Canada*. Ottawa: DOJ. <http://www.justice.gc.ca/en/ps/fm/adultsfs.html#_edn39>.

Canada. Heritage Canada. (2004) *What is Multiculturalism?* http://www.canadianheritage.gc.ca/progs/multi/what-multi_e.cfm

Canada. Statistics Canada. (2004) *Canada's E-Book*. Ottawa: SC. <http://142.206.72.67/04/04b/04b_000_e.htm>.

Canada. Statistics Canada. *CANSIM Table*. Oct. 1, 2005. <http://www40.statcan.ca/101/cst01/demo02.htm?sdi=population>.

Canada. Statistics Canada. (2005) Political activity among young adults, 2003. *Canadian Social Trends* 79. <http://www.statcan.ca/Daily/English/051206/d051206b.htm>.

Canada. Statistics Canada. (2005) *Population Projections for Canada, Provinces and Territories, 2005 to 2031*. Ottawa: SC. <http://www.statcan.ca/Daily/English/051215/d051215b.htm>.

Canadian Association of Retired Persons. (2005) *Advocacy: The Power to Do More*. <http://www.carp.ca/display.cfm?cabinetID=264&libraryID=58&documentID=1522&libID=89>.

Centre for Restorative Justice. <http://www.sfu.ca/crj/about.html#what>

Dessin, Carolyn L. (2003) Financial abuse of the elderly: is the solution a problem? *McGeorge L. Rev.*, 34, 267 ff.

Dunlop, Burton D., Max B. Rothman and Gretchen M. Hirt. (2001) Elders and criminal justice: International issues for the 21st century. *International Journal of Law and Psychiatry*. 24, 285-303.

Faulkner, Lawrence R. (1982) Mandating the reporting of suspected cases of elder abuse: an inappropriate, ineffective and ageist response to the abuse of older adults. *Fam. L.Q.*, 16, 69-91.

Garfield, Audrey S. (1991) Elder abuse and the states' Adult Protective Services response: time for a change in California. *Hastings Law Journal*, 42, 859 ff.

Golding, Jonathan M. et. al. (2004) Perceptions of elder abuse in the courtroom. *Journal of Elder Abuse & Neglect*, 16 (1), 23-46.

Gordon, Robert M. (2001) Adult protection legislation in Canada: models, issues, and problems. *International Journal of Law & Psychiatry*, 24, 117-134

Gordon, Robert M. (2001) The abuse and neglect of the elderly. *International Journal of Law and Psychiatry*, 24 (2-3), 183-197.

Government of New Brunswick. (2005) *Adult Victims of Abuse Protocols*. Fredericton: NB. <http://www.gnb.ca/0017/Protection/Adult/AdultProtocol-e.pdf>.

Harbison, Joan. (1999) The changing career of "elder abuse and neglect" as a social problem in Canada: learning from feminist frameworks? *Journal of Elder Abuse & Neglect*, 11 (4), 59-80.

Harbison, Joan. et. al. (1995) Mistreating elderly people: questioning the legal response to elder abuse and neglect: Summary Document. Halifax, N.S: Dalhousie University.

Harbison, Joan. et. al. (1999) Models of Intervention for "Elder Abuse and Neglect": A Canadian Perspective on Ageism, Participation, and Empowerment. *Journal of Elder Abuse & Neglect*, 10 (3/4), 1-17.

Heisler, Candace J. and Lori A. Stiegel. (2002) Enhancing the justice system's response to elder abuse: discussions and recommendations of the "Improving Prosecution" working group of the National Policy Summit on Elder Abuse. *Journal of Elder Abuse & Neglect*, 14 (4), 31-54.

Hieri, Thomas J. (1988) The prevention, identification, and treatment of elder abuse act of 1987: is it a proper federal response to elder abuse? *N.Y.L. Sch. J. Hum. Rts.*, 6, 383-395.

Hightower, Jill et. al. (1999) Meeting the needs of abused older women? A British Columbia and Yukon transition house survey. *Journal of Elder Abuse & Neglect*, 11 (4), 39-57.

Kowalski, Melanie (2002) Home invasions. *Bulletin: Canadian Centre for Justice Statistics*. Ottawa: Statistics Canada. <http://dsp-psd.pwgsc.gc.ca/Collection/Statcan/85F0027X/85F0027XIE2002002.pdf>.

Lachs, Mark et. al. (2004) Older adults as crime victims, perpetrators, witnesses, and complainants: a population-based study of police interactions. *Journal of Elder Abuse & Neglect*, 16 (4), 25-40.

Lee, Dyana. (1985) Mandatory reporting of elder abuse: a cheap but ineffective solution to the problem. *Fordham Urb. L.J.*, 14, 723-771.

Lithwick, Maxine, et. al. (1999) The Mistreatment of Older Adults: Perpetrator-Victim Relationships and Interventions. *Journal of Elder Abuse & Neglect*, 11 (4), 95-112.

Loue, Sana (2001) Elder abuse and neglect in medicine and law: the need for reform. *The Journal of Legal Medicine*, 22, 159-209.

Lupinski, Lawrence. (1986) Elder abuse: a pressing need for federal assistance. *Public L. Forum*, 5, 137-178.

Macolini, Ruthann M. (1995) Elder abuse policy: considerations in research and legislation. *Behavioral Sciences and the Law*, 13, 349-363.

Mathews, David P. (1987) The not-so-golden years: the legal response to elder abuse. *Pepp. L. Rev.*, 15, 653-676.

McDonald, L. and A. Collins. (2000) *Abuse and Neglect of Older Adults: A Discussion Paper*. Family Violence Prevention Unit, Health Canada, p. 43.

McKenzie, Pearl. Abuse and Neglect of Seniors: Is it a Crime. *Fact Sheet*. B.C. Coalition to Eliminate Abuse of Seniors. Online at: www.bcceas.ca.

Moskowitz, Seymour. (1998) Saving Granny from the wolf: elder abuse and neglect-the legal framework. *Conn. Law Review*, 31 (77), 77-204.

Payne, Brian K. and Laura Burke Fletcher. (2005) Elder abuse in nursing homes: prevention and resolution strategies and barriers. *Journal of Criminal Justice*, 33 (1), 119-125.

Payne, Brian K., Bruce L. Berg and Jeff Toussaint. (2001) The police response to the criminalization of elder abuse: an exploratory study. *Policing: An International Journal of Police Strategies & Management*, 24 (4), 605-625.

Payne, Brian K., Bruce L. Berg and Kristin Byars. (1999) A qualitative examination of the similarities and differences of elder abuse definitions among four groups: nursing home directors, nursing home employees, police chiefs and students. *Journal of Elder Abuse & Neglect*, 10 (3/4), 63-85.

Quinn, Mary Joy and Candace J. Heisler. (2002) The legal response to elder abuse and neglect. *Journal of Elder Abuse & Neglect*, 14 (1), 61-77.

Skabronski, Jill C. (1995) Elder Abuse: Washington's growing response to a growing epidemic. *Gonzaga Law Review*, 31, 627-643.

Spencer, Charmaine. (1995) Abuse and neglect of older adults in institutional settings: A discussion paper. Ottawa: Health Canada, Mental Health Division.

Spencer, Charmaine. (1997, Winter) Ethical dilemmas in dealing with elder abuse and neglect. *Ethica*.

Spencer, Charmaine. (1995) New directions for intervention research on abused older adults. In M. McLean, Ed. *Abuse and Neglect of Older Canadians: Strategies for Change*. Toronto: Thompson, 1995.

Sutherland, Tucker. (2004) Seniors are consistent voters, increasingly larger share of the vote: trend line says seniors will dominate future elections. *Senior Journal*. <http://www.seniorjournal.com/NEWS/Politics/4-10-28SeniorVote.htm>.

Thomas, Randolph W. (2002) Law enforcement and the Elder Justice Act. *Journal of Elder Abuse & Neglect*, 14 (2/3), 205-207.

United States. Census Bureau. Population Finder. Census 2000. <http://factfinder.census.gov/servlet/SAFFPopulation?_submenuId=population_0&_sse=on>.

United States. Department of Commerce, Bureau of the Census. *Statistical Abstract of the United States: 1990*. 110th Ed. 1990.

Vonnegut, Kurt. The Current. Toronto: Canadian Broadcasting Corporation. 1 February, 2006.

Wahl, Judith and Sheila Purdy. *Elder Abuse: The Hidden Crime*. Toronto: Advocacy Centre for the Elderly and Community Legal Education Ontario, 2002. http://www.advocacycentreelderly.org/elder/pubs.htm.

Weeks, Lori E. et. al. (2004) A gendered analysis of the abuse of older adults: Evidence from professionals. *Journal of Elder Abuse and Neglect*, 16 (2), 1-15.

Werner, Perla, Zvi Eisikovits and Eli Buchbinder. (2005) Lay Persons' Emotional Reactions Toward an Abused Elderly Person. *Journal of Elder Abuse & Neglect*, 17 (2), 63-76.

Whitton, Linda S. (1997) Ageism: paternalism and prejudice. *DePaul L. Rev.*, 46, 453.

Whitton, Linda S. (2001) Finding the elder voice in social legislation. *International Journal of Law and Psychiatry*, 24 (2-3), 149-165.