



# Responding to Elder Abuse: A Legal and Ethical Overview to Enhance your Practice

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## Presentation outline

1. Relevant laws in Canada
2. Ethical principles
3. Key agencies
4. Practice tools & resources



# Disclaimer

This presentation is not legal advice



# Canadian Centre for Elder Law

1. Legal research
2. Law reform
3. Legal education
4. Outreach



## [www.bcli.org/ccel](http://www.bcli.org/ccel)

1. [Practical Guide to Elder Abuse and Neglect Law in Canada](#)—book / wikibook
2. [Elder Abuse and Neglect: What Volunteers Need to Know](#)—PPTs
3. [Counterpoint Project](#)—videos and fact sheets
4. [Promising Practices in Housing Older Women Fleeing Abuse](#)—11 practices
5. [Power of Attorney Elder Abuse Awareness Project](#)—brochures

## What is elder abuse?

- Elder abuse refers to the deliberate mistreatment of an older person
- Includes actions and/or behaviour, or lack of action
- Physical, mental, emotional, financial, sexual harm or loss of autonomy

## What is neglect?

- Failure to provide necessary care, assistance, or attention to an adult



## Who are the abusers?

- Strangers
- Con artists
- Relationships of trust\*\*\*





## Sample definition of abuse

The deliberate mistreatment of an adult that causes the adult

- (a) physical, mental or emotional harm, or
- (b) damage or loss in respect of the adult's financial affairs,

and includes intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy or denial of access to visitors”

[Adult Guardianship Act, RSBC 1996, c 6, s 1](#)

## Sample definition of abuse 2

"abuse" means the deliberate mistreatment of an adult who lacks the capacity to protect himself or herself that causes or is reasonably likely, within a short period of time, to cause the adult

- (i) serious physical, psychological or emotional harm,  
or
- (ii) substantial damage to or substantial loss of assets  
and includes intimidation, humiliation and sexual assault;

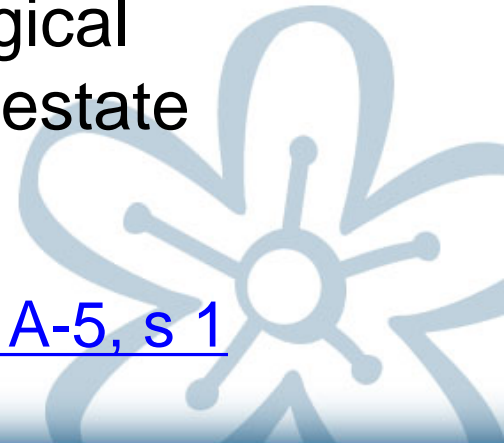
[Adult Protection Act, SNL 2011, c A-4.01](#)



## Sample definition of neglect

“neglect” means a lack of or failure to provide necessary care, aid, guidance or attention which causes or is reasonably likely to cause the victim severe physical or psychological harm or significant material loss to his estate

[Adult Protection Act, RSPEI 1988, c A-5, s 1](#)





## Sample definition of neglect 2

“any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage or loss in respect of the adult's financial affairs, and **includes self neglect**”

[Adult Guardianship Act, RSBC 1996, c 6, s 1](#)

## Federal law: *Criminal Code of Canada,*

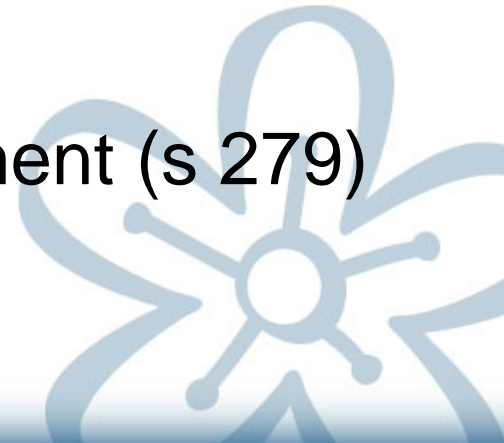
Is elder abuse or neglect a crime?

- Some actions can be a crime
- Almost all crimes are age neutral
- Police will sometimes respond to elder abuse



## ***Criminal Code: physical abuse***

- Murder (s 229)
- Assault (s 265)
  - With a weapon or causing bodily harm (s 267)
- Aggravated assault (s 268)
- Forcible confinement or imprisonment (s 279)



## ***Criminal code: sexual abuse***

- Incest (s 155)
- Sexual assault (s 271)
  - With a weapon, threats to a third party or causing bodily harm (s 272)
- Aggravated sexual assault (s 273)
- Voyeurism



## Sexual violence

Canadian Network for the Prevention of Elder Abuse  
[Sexual Assault Against Older Adults—A Literature Review \(2018\)](#)

Sexuality, consent and dementia

CBC radio interview of Judith Wahl & Mary Schultz



## ***Criminal code: psychological/ emotional abuse***

- Uttering threats (s 264.1)
- Intimidation (s 423)



## ***Criminal code: financial abuse***

- Theft (s 322)
- Theft by a person holding a POA (s 331)
- Misappropriation of money held under direction (s 332)
- Criminal breach of trust (s 336)
- Theft, forgery, etc. of a credit card (s 342)
- Robbery (s 343; 344)

## Power of attorney abuse

Learn more about POAs

- Seniors First BC [fact sheet](#) on POA abuse
- Legal Information Society of Nova Scotia [POA info](#)
- Understanding the Legal Dimensions of a Power of Attorney (Ontario) by [NICE](#)
- Theft by Person Holding a Power of Attorney Officers Investigators Guide by [NICE](#)

# Undue Influence

Recognition/Prevention

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A Reference Aid

[4 page reference aid](#)

## ***Criminal code: neglect***

- Failure to provide necessities of life (s 215)
- Criminal negligence (s 219)
- Manslaughter (abuse or neglect causes unintentional death) (s 234)



## Criminal and non-criminal forms of elder abuse

Non-criminal	Criminal
<ul style="list-style-type: none"> <li>• isolation</li> <li>• ignoring the older adult</li> <li>• mental cruelty</li> <li>• neglect (non-criminal)</li> <li>• humiliation</li> <li>• ridicule</li> <li>• insults</li> <li>• frightening the older adult</li> <li>• infantilizing the older adult</li> </ul>	<ul style="list-style-type: none"> <li>• assault (intentional application of force, directly or indirectly, without consent, including sexual assault)</li> <li>• criminal negligence (failure to provide the necessaries of life)</li> <li>• stalking, harassing, intimidating or threatening the adult</li> <li>• murder or manslaughter</li> <li>• forcible confinement</li> <li>• theft, fraud, forgery or extortion</li> </ul>



## *Protecting Canada's Seniors Act*

- 2012 amendment to the Criminal Code
- aggravating or mitigating circumstances
- s. 718.2(1a)(iii.1)

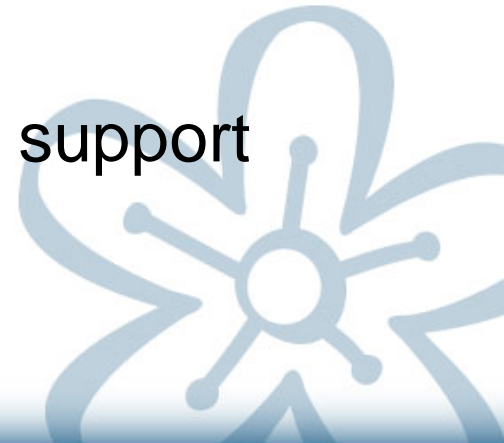
“evidence that the offence had a significant impact on the victim, considering their **age** and other personal circumstances, including their health and financial situation”



## Elder abuse laws across the country

Each province and territory has taken a unique approach to developing:

- *Laws* to address abuse of vulnerable adults
- *Public agencies* with a mandate to support adults who experience abuse
- Policy choice







# Elder abuse laws across the country

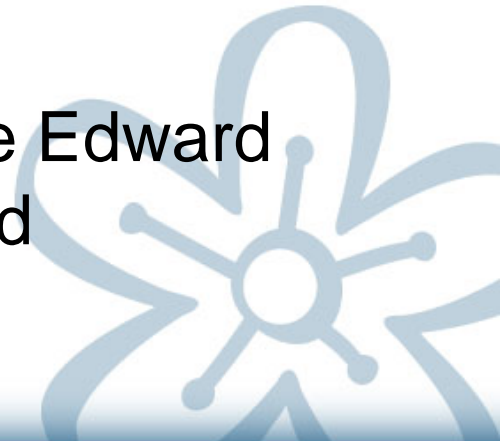
- Adult guardianship/protection legislation
- Domestic violence legislation
- Care facility legislation
- Public guardian and trustee laws
- Unique approaches





# Adult protection / guardianship legislation

- Response to abuse/neglect of vulnerable adults
- Can report abuse to agency designated in the law
- British Columbia, Nova Scotia, Prince Edward Island, Yukon, and Newfoundland and Labrador





## Domestic/family violence legislation

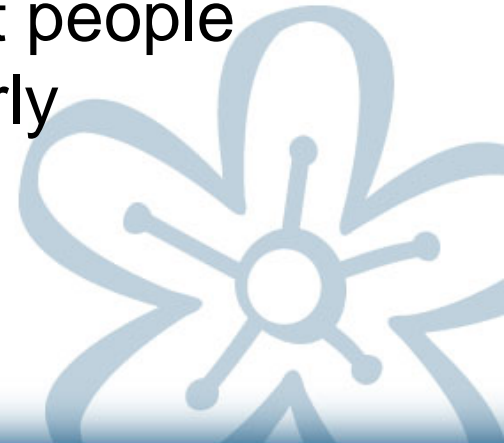
- Although designed to address spousal violence, can be applied to elder abuse
- Provide emergency court powers, eg:
  - protection orders
  - warrants
- Adult would need assistance to get legal advice and possibly can get legal aid





## Protection for persons in care legislation

- Creates a requirement for care facilities to respond to abuse occurring in the facility
- Grounded in an understanding that people living in care facilities are particularly vulnerable





# Public guardian and trustee legislation

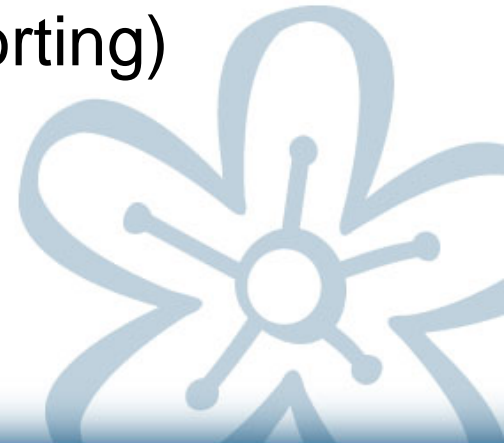
- Powers to intervene in circumstances of financial abuse or abuse by a power of attorney, trustee or guardian
- Example = power to freeze assets
- Powers vary significantly across the country





## Unique approaches

- Quebec: Human rights law permits human rights agency to respond to exploitation of older adults
- Manitoba: *Vulnerable Persons Living with a Mental Disability Act* (mandatory reporting)



# Responding to abuse and neglect

Consider urgency:

1. Is the adult in danger of harm?
2. Will money be stolen or spent?  
Property taken away?
3. Does the adult appear to lack mental capacity?

## Inter-disciplinary practice

- BC Adult Abuse and Neglect Prevention Collaborative
- Alberta Elder Abuse Network
- Prevent Elder Abuse Manitoba
- Newfoundland and Labrador Network for the Prevention of Elder Abuse

[cnpea.org](http://cnpea.org)



## Who supports the older person?

Social worker  
Community health nurse  
Victim assistance worker  
ER staff  
Police officer  
Lawyer or advocate  
Neighbour  
Counsellor





## Mandatory duty to report

- Care facilities (Alberta, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario)—if you work in a care facility you must report abuse to supervisor
- Reporting abuse is mandatory in Nova Scotia if occurring anywhere in community



## Responding to abuse

Does the person need...

- Crisis counselling?
- Legal advice?
- Urgent medical care?
- Safe housing?

CNPEA has a [list of helpful numbers](#) for each province or territory

# Guiding Principles Responding to Abuse

## 1. Talk to the older adult

Ask questions. Talk to the older person about his or her experience. Help the person to identify resources that could be helpful.



# Guiding Principles Responding to Abuse

## 2. **Respect personal values**

Respect the personal values, priorities, goals and lifestyle choices of an older adult.

Identify support networks and solutions that suit the older adult's individuality.



# Guiding Principles Responding to Abuse

## **3. Recognize the right to make decisions**

Mentally capable older adults have the right to make decisions, including choices others might consider risky or unwise.



# Guiding Principles Responding to Abuse

## 4. **Seek consent or permission**

In most situations, you should get consent from an older adult before taking action.



## Guiding Principles Responding to Abuse

### **5. Respect confidentiality and privacy rights**

Get consent before sharing another person's private information, including confidential personal or health information.



# Guiding Principles Responding to Abuse

## 6. Avoid ageism

Prevent ageist assumptions or discriminatory thinking based on age from affecting your judgment. Avoid stereotypes about older people and show respect for the inherent dignity of all human beings, regardless of age.

# Guiding Principles Responding to Abuse

## **7. Recognize the value of independence and autonomy**

Where this is consistent with the adult's wishes, assist the adult to identify the least intrusive way to access support or assistance.

# Guiding Principles Responding to Abuse

## **8. Develop a trauma-informed practice**

Learning how to support people who have experienced trauma will enhance your practice



# Guiding Principles Responding to Abuse

## 9. Consider Indigenous experiences

Indigenous experience often includes distrust of supposedly helpful agencies due to experiences of racism and colonization, including residential schools and foster homes.

# Guiding Principles Responding to Abuse

## **10. Apply a holistic lens**

Aim to consider older people in a holistic manner in order to work to identify the most helpful and acceptable services of support.



## Resources

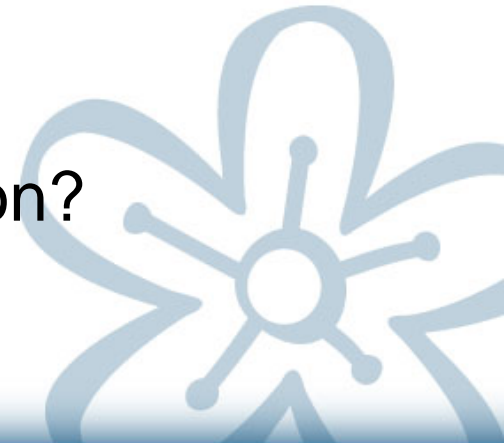
- Find laws: Canadian Legal Information Institute: [CanLii](http://CanLii)
- Find help: [cnpea.ca](http://cnpea.ca)
- Find CCEL tools and resources: [bcli.org/ccel](http://bcli.org/ccel)



## Review

The appropriate response depends on:

- Where is abuse occurring?
- Does the older person have the capacity to take action on her own?
- What is the degree of urgency?
- What matters most to the older person?



## Review

In most situations:

- Reporting abuse is **not** mandatory
- Supporting a person who is experiencing abuse is usually a process—takes time and trust
- What happens will depend on the helpful resources are available in your community





# Canadian Centre for Elder Law

[www.bcli.org/ccel](http://www.bcli.org/ccel)

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