

# Canada and the UN Principles for the Older Person

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## **Introduction**

In December of 1991, The United Nation (UN) established the Principles for Older Persons<sup>1</sup>, a list of principles for the rights of the older person that it encourages governments to incorporate into their national programmes. They defined five core principles (Independence, Participation, Care, Self-Fulfilment, and Dignity) in response to scientific research disproving stereotypes about aging, and in recognition that individuals are reaching advanced age in greater numbers each year. I had originally endeavoured to write a paper to create a prototype for a Canadian Elder Law Charter, which would entrench the rights of older persons in Canada, but, as I conducted the research for this topic, I realized that the process of creating this Elder Law Charter would first require a detailed analysis of Canada's current policies and actions regarding the UN's proposed rights of older persons. Given the time and length constraints of the project, I decided that the foundational work of assessing if Canada already implements these five principles in its laws, policies, and actions would be the more productive path to take. As a result, this paper discusses the current state of Canada's various legislation and practices regarding the five proposed UN principles.

Sadly, the results of my analysis indicate that, while many of the Principles for the Older Person are embedded in Canadian law and legislation, the policies meant to ensure the rights, safety, dignity, and care of older persons are often difficult to enforce or easily abused, misused, or not invoked when necessary. This paper will demonstrate that Canada's current systems and legislation fails to provide its older persons with adequate rights, which suggests a systemic disregard and neglect for the well-being of older persons.

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<sup>1</sup> United Nations Principles for Older Persons, UN Doc A/46/91, pp. 161.

### *Purpose of This Paper*

This paper will discuss some of Canada's legal and social policies and attitudes towards older persons regarding the UN Principles for Older Persons' five core principles. The principles are, as was mentioned above, Independence, Participation, Care, Self-Fulfilment, and Dignity, and will act as the headings of the paper. Each principle has between two and five requirements, which collectively determine whether a principle has been fulfilled in Canada or not; these requirements will appear after the headings, and will be fleshed out in the order that they appear, discussing whether that requirement is technically met by way of social welfare or legal protections offered, and whether the requirement is actually met and why.

I will then conclude by reiterating the reasons why an elder law charter in Canada is necessary, based on Canada's inability to uphold the principles laid out in the UN Principles for Older Persons.

### *Definitions and Key Terms*

Before I begin, I will define a number of terms and parameters that I will be using throughout this paper:

For this paper, an older person is typically someone 65 years or older, as this is the age at which a person may receive a full pension from the Canadian Pension Plan<sup>2</sup>, and abuse against a person 65 years or older is considered "elder abuse" in the Canadian criminal context<sup>3</sup>, but may

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<sup>2</sup> "Government of Canada — Action for Seniors report" (last modified 16 February 2021), online: *Employment and Social Development Canada* <[www.canada.ca/en/employment-social-development/programs/seniors-action-report.html](http://www.canada.ca/en/employment-social-development/programs/seniors-action-report.html)>.

<sup>3</sup> "Legal Definitions of Elder Abuse and Neglect" (last modified 24 March 2015), online: *Department of Justice* <[www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/elder-aines/def/p23.html](http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/elder-aines/def/p23.html)>.

occasionally refer to someone younger than 65 years old if that person happens to be more frail or less mentally capable.

For this paper, the term “autonomy” is to be defined as the right to determine one’s own future and make their own decisions, independently or with assistance as they choose, regardless of the objective or perceived pros and cons of their decision, while “Capacity” is the ability to make decisions (“mental capacity”) and act upon them (“physical capacity”). Capacity is required for autonomy, and capacity can be supported in cases of diminished capacity to enable autonomy.

## *Independence*

1. Older persons should have access to adequate food, water, shelter, clothing, and health care through the provision of income, family and community support and self-help.
2. Older persons should have the opportunity to work or to have access to other income-generating opportunities.
3. Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place.
4. Older persons should have access to appropriate educational and training programmes.
5. Older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities.
6. Older persons should be able to reside at home for as long as possible

- United Nations Principles for Older Persons, UN Doc A/46/91.

Autonomy is not only a key fundamental right, and a linchpin in promoting the rights of the older person<sup>4</sup>, but it is also key in maintaining an older person's health and wellbeing. It has been found that older persons with greater self-determination are healthier, more independent, more well-adjusted, and better able to recognize and resist abuse<sup>5</sup>. People who are denied autonomy tend to feel helpless, hopeless, and self-critical<sup>6</sup>, and experience "low self-esteem, passivity, and feelings of inadequacy and incompetency"<sup>7</sup>.

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<sup>4</sup> Ontario Human Rights Commission, "16. Consent and Capacity" (Accessed 16 June 2021), online: [ohrc.on.ca <http://www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions/16-consent-and-capacity>](http://www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions/16-consent-and-capacity)

<sup>5</sup> Brian O'Connor & Robert Vallerand, "Motivation, Self-Determination, and Person-Environment Fit as Predictors of Psychological Adjustment Among Nursing Home Residents" (1994) 9:2 *Psychology & Aging* 189.

<sup>6</sup> Edward Deci, *Intrinsic Motivation*, (Boston, MA: Springer, 1975) 208.

<sup>7</sup> Bruce Winick, "The Side Effects of Incompetency Labeling and The Implications for Mental Health Law" (1995) 6:42 *Psychology, Public Policy, & L* 21.

## *Autonomy Requires Money*

### *Pensions*

Practically speaking, for a person to be autonomous, they require sufficient financial resources, otherwise their ability to make choices would be limited by what they can or cannot afford. Finances can be provided through their salary, their savings and investments, their family, or their pension. To this end, Canada administers the Canadian Pension Plan, which helps older persons maintain their autonomy via a moderate source of income from the government. This pension changes in value based on several factors, including how long the person has resided in Canada, how much they contributed each year, whether they stayed at home to raise children or were disabled for a period, at what age they chose to retire, and their annual income prior to retiring.<sup>8</sup>

The amount of money received from the Canada Pension Plan and Old Age Security can vary significantly from person to person, with the average 65-year-old Canadian receiving about \$1,285.87 per month, with additional money for low-income pension recipients<sup>9</sup>. This is not very much, as the average rent across Canada for a one-bedroom apartment is about \$1,450 a month, rising to an average of over \$1800 in Toronto and nearly \$2000 in Vancouver.<sup>10</sup> Additionally, an older person may need home care to maintain their level of health, which can cost between \$241-\$315 per month in Ontario.<sup>11</sup>

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<sup>8</sup> Employment and Social Development Canada, “CPP Retirement Pension: Overview” (last modified: 27 April 2020), online: *Government of Canada* <[www.canada.ca/en/services/benefits/publicpensions/cpp.html](http://www.canada.ca/en/services/benefits/publicpensions/cpp.html)>.

<sup>9</sup> Mathieu De Lajarte, “Common Sense Advice to Nail Those Retirement Savings” (23 January 2020), online: *Chartered Professional Accountants Canada* <[www.cpacanada.ca/en/the-cpa-profession](http://www.cpacanada.ca/en/the-cpa-profession)>.

<sup>10</sup> Ben Myers, “Rentals.ca June 2021 Rent Report” (last visited 19 June 2021), online: *Rentals.ca* <[rentals.ca/national-rent-report](http://rentals.ca/national-rent-report)>.

<sup>11</sup> Closing the Gap Healthcare Group Inc, “Long-Term Care Homes vs. Retirement Homes vs. Home Care in Ontario” (8 February 2019), online: *Closing the Gap Healthcare* <[www.closingthegap.ca/long-term-care-homes-vs-retirement-homes-vs-home-care-in-ontario/#long-term](http://www.closingthegap.ca/long-term-care-homes-vs-retirement-homes-vs-home-care-in-ontario/#long-term)>.

If an older person needs to live in a long-term care home, the monthly rate averages around \$1,850 per month if the person is willing to live 3-4 people to a room, and around \$2,640 per month if they want a private room in Ontario.<sup>12</sup>

As a result, an older person hoping to live autonomously in Canada, would have to have built up a significant nest-egg over the years to maintain a consistent means of income while they are retired, aside from their pension. Many older Canadians lack this advantage for a plethora of reasons, such as having had to work low-wage jobs, having to support children with disabilities, or having lost their savings through bad investments or unscrupulous scam artists.

To maintain the highest level of autonomy, a person should be fully financially independent, but the UN Principles for the Older Person also suggests that an older person may be provided with assistance from family members or the community<sup>13</sup>. In the vast majority of cases, there is nothing problematic with a child assisting their parent financially. A problem arises, however, when a child uses their medical or social support as leverage against the older parent<sup>14</sup> in ways that impact Dignity, which I will discuss in more detail later in this paper.

### *Choosing to Remain in, or Retire from, the Workforce*

Across Canada, under each provincial Human Rights Code, the government cannot force older persons to retire (except for some very specific professions), and an employer must show

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

<sup>13</sup> United Nations Principles for Older Persons, UN Doc A/46/91, point 1 “Older persons should have access to adequate food, water, shelter, clothing, and health care through the provision of income, *family* and community support and self-help.”

<sup>14</sup> Sophie Jones, “3 Signs of Family Financial Abuse Seniors Should Be Aware of” (7 February 2019), online: *Chartered Professional Accountants Canada* <[www.cpacanada.ca/en/news/canada/2019-07-02-family-financial-abuse-seniors](http://www.cpacanada.ca/en/news/canada/2019-07-02-family-financial-abuse-seniors)>.

that the termination of an older person was executed in good faith for a reason unrelated to the person's age.<sup>15</sup> These reasons include that the person no longer meets a Bona Fide Occupation Requirement, or that the employer cannot afford to accommodate the older employee's disabilities without experiencing undue hardship.

### *Autonomy Requires Knowledge*

#### *Financing Education and Training Programs*

The federal government and each provincial government have the means to subsidise tuition, additional school fees, living and supplies expenses, and even childcare through grants and student loans.<sup>16,17,18,19</sup> These grants and loans can significantly mitigate the tuition costs for postsecondary education. Since 2018, the maximum age for an individual applying to the government for financial aid has been removed and the length of time they have been out of school is no longer a consideration in the eligibility of the applicant; A person that has been out of school for four years is considered as admissible as a person that has been out of school for forty years.<sup>20</sup> Some institutions and faculties even offer a reduced tuition to older persons. Individual educational institutions vary in their requirements for accepting a mature student, and

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<sup>15</sup> Olev Edur, "You Can't be Fired for Being 65" (8 June 2021), online: *Good Times* <goodtimes.ca/cant-fired-65/>.

<sup>16</sup> Employment and Social Development Canada, "Canada Student Grants and Loans – Apply with your province or territory" (last modified: 22 February 2021), online: *Government of Canada* <www.canada.ca/en/services/benefits/education/student-aid/grants-loans/province-apply.html>.

<sup>17</sup> Ministry of Colleges and Universities, "Learn about OSAP" (last modified: 18 May 2021), online: *Government of Ontario* <www.ontario.ca/page/learn-about-osap#section-1>.

<sup>18</sup> B.C. Government, "Adult Upgrading Grant Application" (last visited 19 June 2021), online: *StudentAidBC* <studentaidbc.ca/explore/grants-scholarships/adult-upgrading-grant-application#What\_is\_available>.

<sup>19</sup> Manitoba, "What About My Funds?" (last visited 19 June 2021), online: *Manitoba* <www.edu.gov.mb.ca/msa/applying-for-student-aid/what-about-my-funds.html>.

<sup>20</sup> FAQs About the New Ontario Student Assistance Program (OSAP) 2018-19 (Ottawa, ON: Queen's Printer for Ontario, 2017). <[https://www.uottawa.ca/financial-aid-awards/sites/www.uottawa.ca.financial-aid-awards/files/osap\\_faq\\_en\\_2018.pdf](https://www.uottawa.ca/financial-aid-awards/sites/www.uottawa.ca.financial-aid-awards/files/osap_faq_en_2018.pdf)>



these requirements may also vary between faculties, programs, or departments within an institution, but the rule of thumb seems to be that schools will accept life and work experience in lieu of recent education.

Overall, then, educational and training programs across Canada seem to be quite accessible to older persons regarding financing. However, studies have shown that the financial cost may not be the most significant barrier to older persons re-entering the education sphere.<sup>21</sup> A 2003 study observed that a number of older persons have had difficulty adjusting to campus life, integrating their studies with family and time pressures, and developing or reacquiring the study skills required for academia.<sup>22</sup> However, in recent years, programs have been developed on most campuses in Canada to accommodate students with special needs—including advanced age—in accordance with the various Human Rights Commissions across Canada. Overall, older persons in Canada do not seem to face a financial barrier to education or training.

### *Discrimination in Education*

Discrimination in Canada is generally handled by provincial Human Rights Commission tribunals. Age is a protected ground, which means that a person may not legally be discriminated against on the basis of being “too old for education” in an academic setting. However, just because this type of discrimination is not legal does not mean that it does not happen: discrimination against older persons does occur in educational settings. Fortunately, recent

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<sup>21</sup> Gordon Thompson, “Tuition-Waiver Policies for Older Learners in University Courses: Past Practices, Current Developments and Future Prospects” (2003) 33:2 *The Can J of Higher Education* 62.

<sup>22</sup> *Ibid* at 64.

jurisprudence suggests that the anti-age-discrimination legislation is being taken seriously in the academic setting by the courts and tribunals.<sup>23</sup>

What matters is that those who are discriminated against can get justice, and that those who discriminate are dealt with appropriately.

### *Autonomy Requires a Secure Space*

#### *Live in Safe and Adaptable Environments*

An older person ought to be able to live in a safe environment that can be adapted according to their personal preferences and changing capacities, just as any younger person should be able to. Outside funding for making an apartment, apartment complex, condominium, or rental property more accessible has been made available through grants or loans from charitable or community organizations, various levels of government, or community agencies.<sup>24</sup> This can ease the burden for landlords in making their properties more accessible to older tenants, but even if they cannot have the costs entirely covered, they must do their best to accommodate. Ontario and other provinces have protections for those with disabilities, including advanced age, in their various Human Rights Codes, requiring landlords to accommodate their tenants up to the point of undue hardship.<sup>25</sup> Undue hardship in this matter would be consist of

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<sup>23</sup> Sun v. Escobar 2017 CarswellOnt 23688, 2017 HRT0 747. A summary hearing to determine whether the complainant's allegations of discrimination by a professor (the respondent) on the grounds of the complainant's advanced age should be dismissed in whole or in part on the basis that there is no reasonable prospect that the application will succeed. The case was determined to have sufficient merit to move onto the next stage.

<sup>24</sup> Landlord Self Help, "A Landlord's Reference Guide to Human Rights in Rental Housing" (16 June 2021) at 12, online (pdf): *Landlord Self Help* <[https://landlordselfhelp.com/media/2015/12/HR\\_Book\\_final2012.pdf](https://landlordselfhelp.com/media/2015/12/HR_Book_final2012.pdf)>.

<sup>25</sup> Community Legal Education Ontario, "What are my rights as a tenant if I have a disability?" (31 August 2015), online: *Steps to Justice* <[~9~](http://stepstojustice.ca/questions/human-rights/what-are-my-rights-tenant-if-i-have-disability/#:~:text=Ontario%27s%20Human%20Rights%20Code%20says,change%20their%20rules%20or%20practices.></a>>.</p></div><div data-bbox=)

accommodations that cost the landlord more than they can afford, taking into account sources of outside funding, and/or health and safety considerations.<sup>26</sup>

Regarding health and safety considerations, the landlord and disabled tenant must work together to figure out a solution to best accommodate the tenant's disability.<sup>27</sup> If, for instance, the older tenant is becoming forgetful, the landlord and tenant could work together to have an automatic shut-off for the stove and/or water, to prevent fires and/or flooding. Installing such a device can both reduce the risk of damage to the rental property and decrease the landlord's insurance rates, while making the older person's living space safer and more accommodating.<sup>28</sup>

Unfortunately, even if the landlord wishes to make their rental spaces as accommodating as possible, they can run into some practical and legal issues. For example, fire evacuation plans need to take tenants' mobility and sensory awareness into account,<sup>29</sup> meaning, perhaps, that only apartments on the first few floors can be safely rented to older persons, so that they can be quickly checked-on during a fire alarm, and do not have to manage as many flights of stairs. Another issue is that, if an older tenant has not been seen for a time, the landlord will legally have to wait until they have reasonable cause to enter the tenant's rented space,<sup>30</sup> which can lead to unfortunate consequences should the tenant suffer a sudden health emergency.

Furthermore, if a tenant's family member asks the landlord to check in on their older relative, the landlord is legally prohibited from doing so, according to the *Residential Tenancies*

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<sup>26</sup> *Ibid.*

<sup>27</sup> *Supra* 24 at page 11.

<sup>28</sup> Studio Think, "Thinking of Purchasing a Water Sensor? Here's Our Experience" (last visited 19 June 2021), online: *Janzen Insurance* <[www.janzeninsurance.ca/news-resources/water-sensor-our-experience](http://www.janzeninsurance.ca/news-resources/water-sensor-our-experience)>.

<sup>29</sup> Barbara Carss, "A Call for Resources for Lone Elderly Residents" (7 April 2016), online: *Canadian Apartment* <[www.reminetwork.com/articles/a-call-for-resources-for-lone-elderly-residents/](http://www.reminetwork.com/articles/a-call-for-resources-for-lone-elderly-residents/)>.

<sup>30</sup> *Ibid.*

*Act* ensuring the privacy of the tenant.<sup>31,32</sup> The remedy to this is to sensitively suggest to the older tenant that they form some pre-arranged agreements as to when the landlord may enter the older tenant's dwelling, such as to check in the tenant's status, or when the landlord or the tenant's relatives have reasonable concerns as to the tenant's health. However, at the moment, such agreements are only permitted under section 27(1)(5) of the *Residential Tenancies Act* if the agreement is specified in the tenancy agreement, and only with 24 hours notice.<sup>33</sup> This forced delay could lead to unfortunate consequences for both the older tenant and the landlord; however, omitting this privacy protection would infringe on the tenant's autonomy, so it would have to be negotiated carefully between the older tenant and the landlord. This is merely intended as a suggestion, and I do not mean to imply that this should be mandatory, but it could be a practical solution to a salient concern: that said, if the older person does not wish to be checked in on, for better or worse, their autonomy ought to be respected.

### *Ability to Reside in Their Own Home*

The rights of older persons to live in a safe and accommodating environment directly relate to their right to reside in their own home, unless they consent to be moved, or unless good reasons can be proven to make removal necessary.<sup>34</sup> Funding for making homes more accessible, such as ramps, automatic shut-off devices, specialized bathroom fixtures, etc., are available from

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<sup>31</sup> *Ibid.*

<sup>32</sup> *Residential Tenancies Act*, 2006, S.O. 2006, c. 17 2006, c. 17, s. 25

<sup>33</sup> *Ibid* <https://www.ontario.ca/laws/statute/06r17 - BK31> s. 27(1)(5)

<sup>34</sup> For instance, if a person poses a risk to themselves or others, perhaps because there is reasonable cause that they may cause a fire due to their forgetfulness, or because their home has become unsuitable for their newly limited capacity, such as the house falling into disrepair and the older person has no inclination or is unable to have it repaired.

local community organizations, the federal and provincial governments, and charitable organizations, depending on what province the older person resides in.<sup>35</sup>

Aging in place may not be a possibility for those older persons that lack capacity, as they are either unable to take care of themselves, or because their family is ill-equipped to assist in the person's care. In Ontario, a person's capacity can be assessed by an evaluator, which is defined as a member of a specified health or social work college, according to the *Health Care Consent Act*.<sup>36</sup> However, the *Health Care Consent Act* does not require that the evaluator be trained in conducting evaluations, just that they are of one of the specified medical or social work colleges, many of which do not provide or require such training,<sup>37</sup> and there is no definitive test to definitively determine capacity.<sup>38</sup> A person can be deemed to lack capacity by someone who is technically qualified by the relevant legislation, but has no understanding of how to properly determine capacity.<sup>39</sup> Once a person is deemed to lack capacity, or, incapable, the decision of where the older person will live the rest of their life falls to their substitute decision-maker (the spouse, their child, their next of kin, or whoever they had assigned before being declared incapable).<sup>40</sup> Canadian courts and the Consent and Capacity Board have repeatedly found that evaluators are ill-informed as to the test of capacity,<sup>41</sup> which is extremely concerning, considering that the difference between the lawful admission of a person into a long-term care

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<sup>35</sup> Chip Reverse Mortgage. "Government Assistance for Seniors Living at Home: HomeEquity Bank", (2021), online: The ABCs of Government Assistance for Older Canadians Living at Home <[www.chip.ca/reverse-mortgage-resources/retirement-planning/government-services-benefits-for](http://www.chip.ca/reverse-mortgage-resources/retirement-planning/government-services-benefits-for)>.

<sup>36</sup> *Health Care Consent Act, 1996*, S.O. 1996, c. 2, Sched. A s. 2(1)

<sup>37</sup> Meadus, Jane E. "Admission to Long-Term Care Homes: Are Evaluations of Capacity Being Conducted in Accordance with The Law", (July 2021) at 1, online (PDF): *Advocacy Center for the Elderly*

<[www.aclew.ca/appimages/file/Admission%20to%20LTC-Are%20Evaluations%20being%20Conducted%20in%20Accordance%20with%20the%20\(updated%20Aug2016\)\\_.pdf](http://www.aclew.ca/appimages/file/Admission%20to%20LTC-Are%20Evaluations%20being%20Conducted%20in%20Accordance%20with%20the%20(updated%20Aug2016)_.pdf)>.

<sup>38</sup> *Ibid* at 3.

<sup>39</sup> *Ibid* at 2.

<sup>40</sup> *Ibid* at 2.

<sup>41</sup> *Ibid* at 4.

home and false imprisonment in a care facility is entirely based on the informed consent of the person being admitted to the facility.<sup>42</sup> Further concerns arise when it one considers that evaluators often conflate an older person's capacity with what the evaluator believes is in the person's best interest: this can result in instances of the older person being deemed incapable merely because they disagree with the evaluator's recommendations for treatment or that they ought to be admitted to a long-term care home.<sup>43</sup> Of course, a person may appeal the evaluator's determination of incapacity to the Consent and Capacity Board (and their counsel will be provided by Legal Aid Ontario),<sup>44</sup> but many older persons are unable or unwilling to do so for other health reasons.<sup>45</sup>

One might think that an older person in Canada would have the right to stay in their home for as long as possible: they have access to financial assistance and community programs to age in-place and are being encouraged to do so now more than ever due to COVID-19.<sup>46,47</sup> However, until an older person is safe from being incorrectly being deemed incapable, and having their right to choose where they live stripped from them, it is hard to claim that Canada respects an older person's right to stay in their own home for as long as that person wishes.

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<sup>42</sup> *Ibid* at 6.

<sup>43</sup> *Ibid* at 8.

<sup>44</sup> Chapter VII of Law Commission of Ontario. *Legal Capacity, Decision-Making & Guardianship: Final Report* (Toronto: Law Commission of Ontario, 2017.) online (pdf): *Law Commission of Ontario* <[www.lco-cdo.org/en/publications-papers/](http://www.lco-cdo.org/en/publications-papers/)>

<sup>45</sup> *Supra* 37 at 8.

<sup>46</sup> Canada, National Research Council. "Aging in Place Challenge program", (15 March 2021), online: *National Research Council Canada* <[nrc.canada.ca/en/research-development/research-collaboration/programs/aging-place-challenge-program](http://nrc.canada.ca/en/research-development/research-collaboration/programs/aging-place-challenge-program)>.

<sup>47</sup> Employment and Social Development Canada, "Core Community Supports to Age in Community" (last modified: 26 May 2021), online: *Government of Canada* <[www.canada.ca/en/employment-social-development/corporate/seniors/forum/core-community-supports.html](http://www.canada.ca/en/employment-social-development/corporate/seniors/forum/core-community-supports.html)>.

## *Participation*

7. Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.

8. Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.

9. Older persons should be able to form movements or associations of older persons.

- United Nations Principles for Older Persons, UN Doc A/46/91.

The government of Canada, and each of the provincial and territorial governments, are making great efforts to keep older persons socially and physically engaged in Canadian society.<sup>48</sup> They have collectively recognized the advantages of older persons aging in place, and are promoting programs to empower them to do so according to the challenges and culture of the jurisdiction, and the resources afforded to the community.<sup>49</sup> The various levels of government in Canada are attempting to assist communities and individuals in overcoming social, emotional, and physical isolation, and financial difficulties, and are attempting to find new and innovative ways to combat the various forms of isolation by looking around the world at other countries' initiatives.

The ability for an older citizen to associate and form movements, participate in the formation of policy within their community, or serve the community are not hindered in Canada, due to the various Human Rights Codes, as noted above. Additionally, section 2(d) of the

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<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

*Canadian Charter of Rights and Freedoms* protects individuals against more powerful entities,<sup>50</sup> and enables the achievement of individual potential through interpersonal relationships and collective action.<sup>51</sup>

Older persons in Canada are generally being supported across Canada, though it has been recognized that more work can be done to expand the supports and funding available as the population and difficulties of the older persons increases.<sup>52</sup>

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<sup>50</sup> *Mounted Police Association of Ontario v. Canada*, 2015 SCC 1 at paragraph 58.

<sup>51</sup> *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016 at paragraph 17.

<sup>52</sup> Employment and Social Development Canada, “Core Community Supports to Age in Community” (last modified: 26 May 2021), online: *Government of Canada* <[www.canada.ca/en/employment-social-development/corporate/seniors/forum/core-community-supports.html](http://www.canada.ca/en/employment-social-development/corporate/seniors/forum/core-community-supports.html)>.



## Care

10. Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values.
11. Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental, and emotional well-being and to prevent or delay the onset of illness.
12. Older persons should have access to social and legal services to enhance their autonomy, protection, and care.
13. Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation, and social and mental stimulation in a humane and secure environment.
14. Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.

- United Nations Principles for Older Persons, UN Doc A/46/91.

### *Benefit from Family and Community Care and Protection*

As noted above, Canada and the provinces and territories have made great efforts to provide older persons with community care and programs and encourage families to contribute to their older relative's care and socialization.

However, abuse by family or long-term care facilities may not be recognized because of ageist or ableist beliefs: in one case, an older person died while in the care of a nursing home due to negligence, and the older person's family were unable to recover any damages because "their mother had long ceased to be a companion for she had been physically, mentally, and emotionally incapacitated for a considerable time before her death."<sup>53, 54</sup> Advocacy Center for the

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<sup>53</sup> Romano, Lisa & Jane Meadus. "Congregate Living and the Law as it Affects Older Adults" (5 August 2009) at 12 online (pdf): *Advocacy Centre for the Elderly* < [http://www.advocacycentreelderly.org/appimages/file/ACE-LCO-Congregate\\_Living\\_and\\_the\\_Law\\_as\\_it\\_Affects\\_%20Older\\_Adults.pdf](http://www.advocacycentreelderly.org/appimages/file/ACE-LCO-Congregate_Living_and_the_Law_as_it_Affects_%20Older_Adults.pdf)>.

<sup>54</sup> *McDonnell Estate v. Royal Arch Masonic Homes Society*, [1998] 5 W.W.R. 268.

Elderly (ACE) submits that the rights of older persons are not adequately protected in Canada due to three primary factors: there is a “power imbalance between older adults and their service providers; the limited awareness of legal rights by both older adults and service providers; and ageism”<sup>55</sup>

ACE recommends ensuring that older persons are provided with information to understand their rights and how to exercise them when need arises, while also ensuring that staff and service providers understand the rights of residents and their own responsibilities to the residents.<sup>56</sup> In order for this to be possible, a fulsome and consistent definition of elder abuse needs to be established, which is, as was mentioned above, currently in the works.<sup>57</sup>

The Government of Canada has recognized the prevalence and severity of elder abuse in Canada and has launched the Consultation on Federal Policy Definition of Senior Abuse to create a Canadian federal policy definition of “elder abuse” to “support more consistent and informed awareness and prevention activities, data collection, as well as program and service delivery.”<sup>58</sup>

### *Access to Social and Legal Services*

Legal Access in Canada is underfunded and hard to obtain, especially for seniors. Across Canada, legal aid programs have been subjected to financial cuts and/or have been required to take on more cases without receiving additional funding,<sup>59</sup> leading to income ceilings (the

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<sup>55</sup> *Supra* 53 at 83.

<sup>56</sup> *Supra* 53 at 83.

<sup>57</sup> Employment and Social Development Canada, “Government of Canada Launches Consultation on Federal Policy Definition of Senior Abuse” (last modified: 17 June 2021), online: *Government of Canada* <[www.canada.ca/en/employment-social-development/news/2021/06/canage-event--launch-of-public-consultation-on-senior-abuse0.html](http://www.canada.ca/en/employment-social-development/news/2021/06/canage-event--launch-of-public-consultation-on-senior-abuse0.html)>.

<sup>58</sup> *Ibid.*

<sup>59</sup> Department of Justice, “An Analysis of Poverty Law Services in Canada” (last modified: 7 January 2015), online: *Government of Canada* <[www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr03\\_la13-rr03\\_aj13/p0\\_1.html](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr03_la13-rr03_aj13/p0_1.html)>.

maximum annual income to qualify for Legal Aid) of less than \$23,000,<sup>60</sup> which excludes many low-to-middle income Canadians who, while above the poverty line, cannot afford legal representation. But even though the incomes of many, *many* older Canadians *are* below the poverty line,<sup>61</sup> they are unable or unwilling to seek out legal remedy for several reasons. A report by the Ontario Women’s Justice Network found that elderly females’ access to the legal system is often obstructed by its financial expense and time-consuming nature; a lack of accessible and sufficient legal information; the tendency of lawyers to be insensitive and unable/unwilling to communicate in simple language; the discovery that older peoples’ (especially women’s) claims of abuse or neglect are often not taken seriously; and the lack of connection between the legal system and other social services.<sup>62</sup> Many of the issues faced by the women interviewed in the report are also applicable to elderly men, and the issues are expected to become worse amid possible funding cuts to Legal Aid Ontario,<sup>63</sup> and other jurisdictions.

It has been noted that Legal Aid can sometimes be thought of as a cure-all, which distracts from other, more viable solutions to legal, social, and family disputes.<sup>64</sup> For instance, a judge became incensed when he discovered that the simple, yet lengthy family law case he was presiding over was being financed by Legal Aid for both sides, when the whole matter could

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<sup>60</sup> Dale Smith, “The Hard Truth About Legal Aid” (19 November 2019), online: *The Canadian Bar Association* <[nationalmagazine.ca/en-ca/articles/law/access-to-justice/2019/the-hard-truth-about-legal-aid](http://nationalmagazine.ca/en-ca/articles/law/access-to-justice/2019/the-hard-truth-about-legal-aid)>.

<sup>61</sup> Healthcare of Ontario Pension Plan. “Senior Poverty - Canada's Next Crises?”, (August 2017) at 3, online (pdf): *Healthcare of Ontario Pension Plan* <[hoopp.com/docs/default-source/newsroom-library/research/hoopp-research-article---senior-poverty---canada-next-crises.pdf](http://hoopp.com/docs/default-source/newsroom-library/research/hoopp-research-article---senior-poverty---canada-next-crises.pdf)>.

<sup>62</sup> Alberta Civil Liberties Research Centre, “Access to Justice and Canadian Elders” (last visited 19 June 2021), online: *Alberta Civil Liberties Research Centre* <[www.aclrc.com/new-page-30#eldersaccess](http://www.aclrc.com/new-page-30#eldersaccess)>.

<sup>63</sup> Alyshah Hasham, “Legal Aid Ontario Facing Up to \$70 Million Funding Drop Amid COVID-19 Perfect Storm” (13 July 2020), online: *Toronto Star Newspapers Ltd* <[www.thestar.com/news/canada/2020/07/13/legal-aid-ontario-facing-up-to-70-million-funding-drop-amid-covid-19-perfect-storm.html](http://www.thestar.com/news/canada/2020/07/13/legal-aid-ontario-facing-up-to-70-million-funding-drop-amid-covid-19-perfect-storm.html)>.

<sup>64</sup> Omar Ha-Redeye, “Sometimes Legal Aid Is the Problem, Not the Solution” (19 March 2017), online: *Slaw* <[www.slaw.ca/2017/03/19/sometimes-legal-aid-is-the-problem-not-the-solution/](http://www.slaw.ca/2017/03/19/sometimes-legal-aid-is-the-problem-not-the-solution/)>.

have been dealt with outside of court through mediation.<sup>65</sup> Omar Ha-Redeye suggests that, rather than increasing funding for legal aid, the legal system as a whole needs to be revamped to include more alternative dispute resolution options and social-legal triage, as the current adversarial practices are expensive, time-intensive, and ineffective at solving disputes in families.<sup>66</sup>

The adversarial atmosphere is particularly toxic when it comes to the field of elder law. According to a report from the Law Commission of Ontario, the adversarial nature of litigation leads to a grim choice for an older person who has faced abuse or neglect from a family member or friend: should they protect their rights, or their relationships?<sup>67</sup> In the current system, there is no middle ground, as familial relationships are often destroyed by litigation.

Furthermore, even outside of litigation, an older person's rights may be trampled, and there may be no recourse at all. In Ontario, the Public Guardian and Trustee handles cases of abuse by those in guardianship positions over persons deemed incapable: they have the authority to revoke a guardian's power of attorney and take temporary guardianship over the incapable person if, and only if, the abuses or indiscretions of the guardian amount to serious adverse effects.<sup>68</sup> The issue is that this is the main protection for older, incapable persons, and it can only intervene in very serious cases of physical, emotional, financial, or sexual abuse, but not in lesser cases, and not when the older person is deemed capable. Thus, an abused person may be powerless to get help, but if the abuse is not *too* severe, and the person is not *too* powerless, then they are entirely on their own.

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<sup>65</sup> *Ibid*; Abdulaali v Salih, 2017 ONSC 1609 (CanLII), <<https://canlii.ca/t/h1r0n>>, retrieved on 2021-06-19 at paras 1-3, 18-27.

<sup>66</sup> *Ibid*.

<sup>67</sup> *Supra* 44 at 206.

<sup>68</sup> *Supra* 44 at 203-205.

A distressing outcome of this system is that there have been reports that healthcare workers, to help an older patient being abused by their family member, had the older person deemed incapable so that the Public Guardian and Trustee board would intervene and remove the older person from the abuser's guardianship.<sup>69</sup> Sadly, this can be accomplished without the older person having the opportunity to speak for themselves<sup>70</sup>, as the whole process can be done before the older person has the chance to challenge the healthcare provider's declaration of incapacity, and the process does not require, or has a designated point for, the older person to voice their opinion on what should be done; where they will be living, who will be taking care of them, and how their money will be spent can all be decided for them without them having a chance to say anything about it.

The report recommends that the current system for determining legal capacity, guardianship, and decision making in Ontario be revamped such that there is one tribunal that investigates cases holistically, with many experts of various fields offering knowledge. This tribunal would have a broader jurisdiction and a pool of remedial options to draw from, including the use of alternative dispute resolution methods and mediation instead of, or in supplement to, the adversarial system.<sup>71</sup>

Overall, then, the current level of access to legal and social supports for elder adults in Canada – and in Ontario in particular – leaves much to be desired.

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<sup>69</sup> *Supra* 44 at 209-210.

<sup>70</sup> *Supra* 44 at 213.

<sup>71</sup> *Supra* 44 at 215-229.

*Gain, Regain, or Maintain Optimal Health*

Ageism, as coined by Robert Butler is defined as “prejudice by one age group toward other age groups”<sup>72</sup> is rampant in the Canadian healthcare system. A study examining patients’ time from triage-to-treatment found that, after accounting for other possible variables, if a patient’s age was over 60 years, the patient would have to wait nearly twice as long as a younger patient before they could receive treatment for a spinal injury.<sup>73</sup> The older patients also had higher rates of adverse event (such as issues with their medication or developing pneumonia post-operation) and had a higher rate of mortality than their younger counterparts.<sup>74</sup>

The Ontario Human Rights Commission (OHRC) has acknowledged that the ageist attitudes of health care professionals can be detrimental to the physical and mental well being of older patients.<sup>75</sup> Notable examples of these attitudes include asking the patient “what do you expect for your age”, or assuming that declining senses are an unavoidable outcome of aging.<sup>76</sup> Furthermore, doctors tend to focus their efforts on acute care with less emphasis on long term chronic care, and providing services that emphasize speed and efficiency, which may result in insufficient time being spent with older patients.<sup>77</sup> The OHRC is particularly concerned that ageism does not evoke the same moral outrage as other forms of unequal treatment, indicating that it is more ingrained in our society and societal structures.<sup>78</sup>

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<sup>72</sup> Butler, R. N. (1969). "Age-ism: Another form of bigotry". *The Gerontologist*. 9 (4): 243–246. At 246, online (pdf): [www.romolocapuano.com/wp-content/uploads/2017/03/Butler\\_Age-ism.pdf](http://www.romolocapuano.com/wp-content/uploads/2017/03/Butler_Age-ism.pdf).

<sup>73</sup> Henry Ahn et al, “Effect of Older Age on Treatment Decisions and Outcomes Among Patients with Traumatic Spinal Cord Injury” (2015) 187:12 CMAJ 873.

<sup>74</sup> *Ibid.*

<sup>75</sup> Ontario Human Rights Commission, “Ageism” (Accessed 16 June 2021), online: [ohrc.on.ca <http://www.ohrc.on.ca/en/time-action-advancing-human-rights-older-ontarians/ageism >](http://www.ohrc.on.ca/en/time-action-advancing-human-rights-older-ontarians/ageism)

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

ACE pointed in out that, in 2009, while a patient could make complaints about an individual health practitioner to their College, they could not make complaints to third parties about a hospital as a whole or about care provided by a treatment team.<sup>79</sup> However, in 2014, the position of the Patient Ombudsman (for Ontario) was created with amendments to the *Excellent Care for All Act 2010*, which do provide a form of recourse against hospitals, long term care homes, or healthcare professionals that have been ageist or dismissive of an older persons health care concerns.<sup>80</sup>

Despite the various human rights concerns and commissions, the idea that “we can't do everything for everyone, so why spend money on old people, who have little chance to benefit” is still prevalent in our society and the medical field.<sup>81</sup> There is a utilitarian argument that, in a socialized healthcare system, doctors and caregivers have a responsibility to do the most good with the least resources possible. As such, it would be sensible to use the limited tax dollars and doctors' time on younger patients who require less post-operative care and have more years remaining to take advantage of their improved health.

However, one geriatrician suggests that the frailty of older patients reveals flaws in our medical system's approach to treatment. They suggest that our health system is designed to tackle a patient's singular illness, and, while this is very effective in younger patients, its effectiveness is severely reduced when the patient has multiple co-morbidities stemming from different illnesses, as tends to be the case in older patients.<sup>82</sup> For instance, a patient may suffer

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<sup>79</sup> *Supra* 54 at 81.

<sup>80</sup> Patient Ombudsman, “What We Do” (last visited 19 June 2021), online: *Patient Ombudsman* <[www.patientombudsman.ca/About-Us/What-We-Do](http://www.patientombudsman.ca/About-Us/What-We-Do)>.

<sup>81</sup> Kenneth Rockwood, “Should Our Health Care System Be Ageist?” (7 February 2017), online: Huffpost <[www.huffingtonpost.ca/kenneth-rockwood/health-care-system-ageism\\_b\\_14632078.html](http://www.huffingtonpost.ca/kenneth-rockwood/health-care-system-ageism_b_14632078.html)>.

<sup>82</sup> *Ibid.*

from arthritis, and as a result cannot run or perform exercises to stay fit in their older age; because of this lack of activity, their heart becomes weaker and so now they have both an arthritis issue and a cardiac issue. Because the cardiac issue is more severe and life threatening, the physicians may attempt to focus on that and consider the arthritis “just part of getting old,” and not worth serious treatment or consideration, despite it contributing to the cardiac issues. This focus on specialized care to treat singular illnesses in patients is less effective for older patients, due to their co-morbidities and general frailty, but many failings of the healthcare system are attributed to the patients’ age, rather than to issues in the system’s practices.<sup>83</sup> A younger patient’s general good health obfuscates the issues in the current system, as they are better able to endure, and recover from, being immobilized for extended periods of time, slightly inaccurate medication doses, poor nutrition, and inadequate pain control.<sup>84</sup> These issues would create discomfort in a younger patient, but could kill or incapacitate an older patient.

These inequities demonstrate how ageism influences the Canadian healthcare systems, and highlight the need for the various Human Rights Commissions to redouble their efforts to combat it in the hospitals and long-term care homes. Improvements in elder care practices will benefit not just the elderly, but Canadians of every age.

### *Institutional Care Providing Protection, Rehabilitation, and Stimulation*

Long term care homes have been a concern in Canada, especially Ontario, for a long time. While COVID-19 exacerbated the problems in long term care homes, their inadequacies

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<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*



had been noted in numerous past reviews well before the pandemic began.<sup>85</sup> According to the Long Term Care COVID-19 Commission report, the long term care sector has suffered from “chronic underfunding, severe staffing shortages, outdated infrastructure, and poor oversight,”<sup>86</sup> which contributed to the vastly disproportionate number of older persons dying during the pandemic.<sup>87</sup> According to the Commission’s April 2021 report, of the over 7,900 deaths in Ontario, over 4,000 of those deaths occurred in long term care homes (when the Commission’s report was released, April, 2021). Of the over 500,000 cases in Ontario as of June 16<sup>th</sup>, 2021, around 96,000 of those cases have been in persons above the age of 60. The report indicates that the main reasons that long-term care homes had such devastating infection and mortality rates were poor facility design, resident overcrowding, severe and chronic staffing and funding shortages, inadequate infection control measures, and a lack of oversight.<sup>88</sup> These issues had been plaguing the long-term care home system long before the current COVID-19 pandemic.<sup>89</sup>

Some have attributed the inadequate care in long term care homes to the privatization of a sector that is meant to assist vulnerable individuals (as well as the ailing public system).<sup>90</sup> However, it has been noted by some journalists that the issue is not a clear-cut as “privatized bad, public/not-for-profit good,” as each province has its own mix of public and private long-term care homes, and each province fared differently in protecting residents in the homes.<sup>91</sup> That

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<sup>85</sup> Marrocco, Frank N. “Ontario's Long-Term Care COVID-19 Commission Final Report”, (30 April 2021) at 12, online (pdf): Ontario's Long-Term Care COVID-19 Commission <[www.ltccommission-commissionsld.ca](http://www.ltccommission-commissionsld.ca)>.

<sup>86</sup> *Ibid* at 12.

<sup>87</sup> *Ibid* at 6.

<sup>88</sup> *Ibid* at 11.

<sup>89</sup> *Ibid* at 12.

<sup>90</sup> National Union of Public and General Employees. “Neglecting the Most Vulnerable: the Privatization of Long-term Care”, (February 2021) at 3, online (pdf): National Union of Public and General Employees <[www.nupge.ca/sites/default/files/documents/Neglecting%20the%20Most%20Vulnerable%20Report%20-%202021%2002%2008.pdf](http://nupge.ca/sites/default/files/documents/Neglecting%20the%20Most%20Vulnerable%20Report%20-%202021%2002%2008.pdf)>.

<sup>91</sup> Matt Gurney, “OPINION: Something needs to be done about long-term care in Ontario. But there’s a gigantic issue with the NDP plan to fix it” (29 October 2020), online: TVO <[www.tvo.org/article/private-long-article-care-is-not-the-problem-we-are-the-problem](http://www.tvo.org/article/private-long-article-care-is-not-the-problem-we-are-the-problem)>.

being said, the practices and atmosphere of private long-term care homes do not seem to promote health and rehabilitation. One of the private long term care homes that was given military aid by the 4<sup>th</sup> Canadian Division Joint Task Force in April, 2020, was reported to have a “general culture of fear to use supplies because they cost money (fluid bags, dressings, gowns, gloves etc.).”<sup>92</sup> In general, the private long-term care homes had a culture and atmosphere of fear, such that staff are afraid to, or are unable to, complain to management about being overworked, and the staff of both private and public long term care homes have been found to be improperly or entirely untrained, and/or burnt out.<sup>93</sup> In both the private and public long-term care homes, the staff were noted to treat the residents roughly or in an undignified manner, and were generally overwhelmed, understaffed, under equipped, and undertrained,<sup>94</sup> though all of these concerns had been endemic prior to COVID-19.<sup>95</sup> Many residents were being treated with unsterilized bandages and packing, skin abrasions and wounds going untreated, and residents being left in soiled linens.<sup>96</sup>

While both the public and private long-term care facilities have surpassed even the wildest of nightmares, there has been a stark contrast in the reaction to COVID-19 between them: between April 28 and May 5 of 2020, the number of deaths compared to number of beds in public long-term care homes dropped over 18%, while the for-profit homes’ death per beds rate increased by over 28%.<sup>97</sup>

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<sup>92</sup> 4<sup>th</sup> Canadian Division Joint Task Force (Central), *OP Laser – JFTC Observations in Long Term Care Facilities in Ontario*, (military after action report) at A-1, (19 May 2020) online (pdf): <s3.amazonaws.com/zweb-s3.uploads/carp/2020/05/OP-LASER-JTFC-Observations-in-LTCF-in-ON.pdf>

<sup>93</sup> <https://s3.amazonaws.com/zweb-s3.uploads/carp/2020/05/OP-LASER-JTFC-Observations-in-LTCF-in-ON.pdf>

<sup>94</sup> *Supra* 92.

<sup>95</sup> *Supra* 85 at 11.

<sup>96</sup> *Supra* 92 at A-1, B-2, C-1, D-2, and E-1.

<sup>97</sup> Ontario Health Coalition, “RELEASE & ANALYSIS: COVID-19 Death Rates in Ontario Long-Term Care Homes Significantly Higher and Increasing in For-Profit Homes vs. Non-Profit and Publicly-Owned Homes: New

In the meantime, two of the major long-term care home operators received \$157 million in federal and provincial aid in 2020 to help them hire more staff and subsidize the costs for the residents, and yet the two operators paid out \$74 million in dividends to shareholders in 2020.<sup>98</sup> The fact that two major operators of long-term care homes chose to issue dividends when they had knowledge of staffing shortages,<sup>99</sup> expired medicine being administered to patients,<sup>100</sup> and a lack of training for their employees,<sup>101</sup> and that little-to-no attention was paid to this issue until residents were dying in droves from COVID-19 must be characterized as neglect, pure and simple, the full extent of which has yet to be tabulated.<sup>102</sup>

While Ontario's failures were the most prominently featured in the above analysis, the issues facing long-term care homes—and government responses to these issues—especially before the pandemic, have been much the same across the country: ignored for too long, noticed too late.<sup>103</sup> This indicates that Canada does not promote the principle of providing institutional care, protection, rehabilitation, and stimulation.

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Data Analysis?" (6 May 2020), online: *Ontario Health Coalition* <[www.ontariohealthcoalition.ca/index.php/death-rates-in-long-term-care-by-ownership-release/](http://www.ontariohealthcoalition.ca/index.php/death-rates-in-long-term-care-by-ownership-release/)>.

<sup>98</sup> John Lancaster, "2 Ontario LTC operators got \$157M in COVID-19 aid. They also paid \$74M to shareholders" *CBC* (9 December 2020), online:< [www.cbc.ca/news/canada/toronto/big-spend-long-term-care-aid-dividends-1.5832941](http://www.cbc.ca/news/canada/toronto/big-spend-long-term-care-aid-dividends-1.5832941)>.

<sup>99</sup> *Supra* 85 at 47.

<sup>100</sup> *Supra* 92 at A-1.

<sup>101</sup> *Supra* 85 at 55.

<sup>102</sup> Caryn Lieberman, "Toronto-Area LTC Residents Died of 'Dehydration and Malnourishment,' New Military Documents Reveal" *Global News* (10 May 2021), online: <[globalnews.ca/news/7849622/toronto-area-ltc-residents-died-dehydration-malnourishment-military-documents/](http://globalnews.ca/news/7849622/toronto-area-ltc-residents-died-dehydration-malnourishment-military-documents/)>.

<sup>103</sup> Canadian Institute for Health Information. "The Impact of COVID-19 on Long-Term Care in Canada", (2021) at 6, online (pdf): *CIHI* <[www.cihi.ca/sites/default/files/document/impact-covid-19-long-term-care-canada-first-6-months-report-en.pdf](http://www.cihi.ca/sites/default/files/document/impact-covid-19-long-term-care-canada-first-6-months-report-en.pdf)>.

### *Self-fulfilment*

15. Older persons should be able to pursue opportunities for the full development of their potential.

16. Older persons should have access to the educational, cultural, spiritual and recreational resources of society.

- United Nations Principles for Older Persons, UN Doc A/46/91.

As noted earlier in this paper, age is already a protected grounds under the various provincial Human Rights Codes, and section 15(1) of the *Canadian Charter of Rights and Freedoms*, thus older persons do not face a legal barrier in accessing opportunities for the full development of their potential.

Also noted above, older persons are unlikely to face financial barriers in pursuing further education, even if they have struggling financially elsewhere. Many universities have programs to teach students, young and old, studying techniques and how to integrate studying time into their lives.

Regarding culture and spirituality for the elderly, Canada is a multicultural country, with protections for cultural practices and spiritual beliefs contained in the *Charter* and the various *Human Rights Codes*, so achieving spiritual and cultural fulfilment generally have not been an issue faced by older Canadians in particular. That being said, a *Charter* challenge must be brought against the offending party, and as noted above, many older persons cannot afford lawyers' fees, and are not eligible for financial aid, which may render this point moot.

## *Dignity*

17. Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.

18. Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.

- United Nations Principles for Older Persons, UN Doc A/46/91.

## *Living In Dignity and Security*

As noted above, it would be incorrect to claim that older persons in Canada live in conditions of dignity and security. From the very real and very serious risk of being declared incapable and having your rights to liberty and autonomy being handed to someone else; to the possibility of being left to starve to death in soiled linens in a long-term care home; to the possibility of not having access legal recourse if you have been abused; to possibly having to choose whether one wants to protect their own rights or continue to have friends or family. 10 per cent of older Canadians are the victims of crime annually; 4-5 per cent of older Canadians report experiencing abuse from age 65 on; and older Canadians are less likely to report being the victims of crimes or abuse than younger Canadians.<sup>104</sup>

Living in old age in Canada does not seem to be secure from physical or mental abuse, and it does not seem to be very dignified.

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<sup>104</sup> Department of Justice. "Crime and Abuse Against Seniors: A Review of the Research Literature With Special Reference to the Canadian Situation", (7 January 2015), online: *Justice* <[www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/crim/sum-som.html](http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/crim/sum-som.html)> <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/crim/sum-som.html>

*Fair Treatment, Valued Beyond Economic Contribution*

Put bluntly, the Canadian Pension Plan values older persons by their economic contribution. As noted above, the Canadian Pension Plan is structured to provide those 65 years old and older with a steady income based on how much they contributed to the Plan while they were working. This contribution only considers the person's income and reasons to not be earning an income, but disregards the person's economic and societal contribution. COVID-19 has exposed a very grim reality in our economic system: those that are essential to the economy are not paid a living wage.<sup>105</sup> If an older person worked what is now recognized as an "essential, front-line" job before retiring, they would only be eligible to receive the minimum pension available. While they were working the minimum wage job, they would be unable to save enough money to retire comfortably, as the minimum wage is below the livable wage across Canada and would be unable to supplement their pension with their savings.<sup>106</sup>

When you then consider other reasons that a person may have been getting paid less while working, such as their race, sex, ethnicity, and socio-economic status, and how that would compound the negative effect on the level of pension they would receive, it is hard to claim that Canada does not treat older persons differently based on their perceived economic value while they were in the work force.

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<sup>105</sup> Hristova, Bobby. "Ontario and feds have no plans to pay low-wage essential workers a living wage | CBC News", (21 May 2020), online: *CBC News* <[www.cbc.ca/news/canada/hamilton/living-wage-coronavirus-1.5564541](http://www.cbc.ca/news/canada/hamilton/living-wage-coronavirus-1.5564541)>.

<sup>106</sup> Belmonte, Lisa. "Living Wage in Canada Differs Between Provinces But It's Pretty Bad All Around", (6 November 2019), online: *Narcity* <[www.narcity.com/living-wage-in-canada-differs-between-provinces-but-its-pretty-bad-all-around#:~:text=Even%20though%20the%20amount%20needed,the%20worst%20it%20could%20be.&text=In%20Toronto%2C%20the%20living%20wage,wage%20is%20set%20at%20%2413.85](http://www.narcity.com/living-wage-in-canada-differs-between-provinces-but-its-pretty-bad-all-around#:~:text=Even%20though%20the%20amount%20needed,the%20worst%20it%20could%20be.&text=In%20Toronto%2C%20the%20living%20wage,wage%20is%20set%20at%20%2413.85)>.

## *Conclusion*

The foundations for the UN Principles of the Older Person are present in Canada. We have socialized and subsidized healthcare, minimum standards for long-term care homes, pensions, human rights commissions and the *Charter*, Public Guardian and Trustees, legal aid, and, most of all, we have the resources to support these initiatives.

What Canada, both its governments and its citizens, lack is the willingness to confront its failures: the failure to listen to older persons' healthcare concerns; to maintain living standards for older people; to recognize that income disparities need to be addressed; to uphold the rights of older people; to respect older persons' autonomy and capacity; and to provide decent and efficient access to justice and alternative dispute resolution methods.

The problem of elder care in Canada is a problem of apathy, not money. Many of the issues that are faced by older persons in Canada are also faced by younger people; the difference is that younger people are less vulnerable and have more time to bounce back.

Canada has the foundations to ensure everyone's rights are upheld, and the United Nations have provided a clear list of principles to apply, but having the mere foundations for rights is insufficient if their enforcement is reliant on the good will of the government. For the government to become less apathetic to the needs and rights of older Canadians, Canada needs a charter, a binding legal document that can be used to bring the government to task for infringing upon the rights of older persons, because, as it stands, older persons have little legal recourse, and governments have little reason to respect their rights, their care, or their lives.