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### Elder Abuse in Canada: Dimensions and Policy Responses

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**Elder Abuse in Canada: Dimensions and Policy Responses**

by

Taylor Marekovic

An Internship Paper  
Submitted to the Faculty of Graduate Studies  
through the Department of Political Science  
in Partial Fulfillment of the Requirements for  
the Degree of Master of Arts  
at the University of Windsor

Windsor, Ontario, Canada

2022

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**Elder Abuse in Canada: Dimensions and Policy Responses**

by

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December 14, 2022

## **DECLARATION OF ORIGINALITY**

I hereby certify that I am the sole author of this internship paper and that no part of this internship paper has been published or submitted for publication.

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## **ABSTRACT**

Elder abuse and neglect continues to be a gray area when it comes to convicting perpetrators such as family, friends, strangers, and caregivers who commit any form of physical, psychological, financial, neglect, or sexual abuse towards an elder. This is due to the legal definition being vague and non-transparent. The legal and health systems rely on two different definitions of what is deemed to be elder abuse and neglect in Canada when reviewing or assessing allegations of such abuse. Elder abuse and neglect increased throughout the COVID-19 pandemic, during which Ontario and the rest of Canada experienced staffing shortages in long-term care homes and for those cared for at home. Elder abuse in Indigenous communities poses special problems, in particular that of spiritual abuse that occurs when an Indigenous elder is forced to practice and develop religious beliefs other than their own. The law in Canada, including the Criminal Code, has proven to be an ineffective mechanism to combat elder abuse.

## **DEDICATION**

I would like to dedicate this master's paper to all my wonderful and supportive family, friends, and professors for helping and encouraging me to achieve this goal in my life in obtaining a master's degree.

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## **LIST OF ABBREVIATIONS/SYMBOLS**

CC	Criminal Code
LTC	Long-Term Care
PSWs	Personal Support Workers
WHO	World Health Organization

## **Chapter 1**

### **Introduction**

Elder abuse continues to be a critical social, health and economic problem that Canada fails to address, leaving many seniors who experience abuse unable to access needed services in a timely manner. The social phenomenon of elder abuse has come to public attention with the aging of the Baby Boomers (1946-1964) who have been retiring from the workforce and entering into long term care settings or who are in need of a caregiver to assist with their daily needs. The Baby Boomers and older generations are now considered to be the most vulnerable to abuse at the hands of their caregivers and family members. There is concern that, "...with the increase in the aging population globally, the occurrence of elder abuse is on the rise" (Sooryanarayana., Choo., & Hairi., 2013, p.316). Notwithstanding the challenges of an aging population, the provincial government of Ontario and federal government of Canada are failing to provide adequate programming and services that address abuse and neglect towards seniors.

The abuse and neglect experienced by the elderly is oftentimes inflicted by someone they know or are related to, whether it may be a family member, friend, or a caregiver. When abuse is conducted by an individual that the elder person knows, it often is the case that the victims are reluctant to report it due to the fear of receiving more abuse by the perpetrator. Oftentimes the victim relies heavily on the family member, friend, and/or caregiver as the main person who provides necessary care. Another reason elder abuse goes underreported is due to "...many older people wanting to remain within

their abusive families to retain a sense of positive identity and of belonging to family and culture, as well as for reasons of fear and shame” (Harbison., Coughlan., Beaulieu., Vanderplaat., Wildeman., and Wexler., 2012, p.92).

The second consequence involves health. Abuse leads to various health issues that often need immediate attention. “It is associated with major health consequences including physical and psychological morbidity, increased health care utilization, premature mortality” (Gill., 2022., p. 460). The longer the victims of elder abuse decide not to report the abuse they are receiving at the hands of their caregivers, the more likely it is that they will suffer these health consequences. By the time law enforcement and health officials discover the abuse, it may be too late. Serious psychological and/or physical consequences, and even death may result.

The last consequence is economic. Seniors are the most vulnerable segment of the population subjected to various forms of fraud and other financial crimes. They are more likely to believe that what in fact is a scam is legitimate, giving their personal debit or credit card, or social insurance information, thinking it is the government of a legitimate private organization that is requesting this information. The five most common financial crimes that elderly persons fall for include, “...investment fraud, wage theft or money owed, consumer fraud, imposter schemes, and manipulated by a trusted person” (Nguyen et al ., 2021, p.998). An elderly person will often have a family member take care of their finances if they are mentally or physically incapable of making decisions regarding such matters. Elderly persons may be victims of fraud or theft, whether by family members or others, due to “lower levels of cognitive function and ... mild cognitive impairment”

(Nguyen et al., 2021, p.997). Those who have a cognitive impairment are the most likely to be targeted, since they often have memory loss that makes them more vulnerable.

The underreporting of elder abuse may sometimes be due to cultural factors. Fear of jeopardizing their family honor or name in one's community may cause victims to remain silent. For example, members of the Chinese community tend to view reporting elder abuse as dishonoring the family name. "Familism...emphasizes a family's cohesiveness and prioritises family honour and harmony over the well-being of individual family members" (Fang., Li., Yang., Zhou., & Hu., 2021, p.3). Abuse of any kind, whether it be financial, physical, emotional or sexual is less likely to be reported to local authorities in communities where familism is strong. Reporting will bring shame to the family name and may result in isolation from peers within one's ethnic community. Much of the Asian community practices Confucianism, an ancient philosophy that has shaped the societal values, institutions, and transcendent ideals of the community. Confucianism provides norms and rules regarding the duties and responsibilities of each member of the household to ensure they maintain the family name and honor. Elders in the family, "were expected to take good care of their children when they were young, and adult offspring were expected to provide material support, care, and respect for parents, discipline themselves to preserve the family honor, and avoid bringing shame to the family name" (Wang., Zhu., Lai., Chen., & Zhuang., 2022, p.2).

The pressure to maintain the family name within much of the Asian community may contribute to adult children becoming perpetrators of abuse toward their parents and/

or other elderly family members. Some researchers argue that adult children who are expected to live up to the patriarchal standards of Asian communities, may react through elder abuse and neglect. “When adult children are forced to live up to these ingrained responsibilities or obligations, the burden felt may cause them to turn around and abuse elders instead, to relieve some of their tension and stress” (Sooryanarayana., Choo., & Hairi., 2013, p. 213). Under immense stress to maintain the patriarchal teachings of their community, including taking on responsibility for the care of elderly family members, the caregiver may experience burnout and relieve their anger and stress by abusing the elderly. Adult children are taught by their parents from an early age of the importance of maintaining the patriarchal structure in the family, including the traditional gender roles of women providing care to the elderly and men working outside of the home.

There are various reasons as to why a perpetrator may abuse or neglect an elderly person. They include financial gain, paying for their drug or alcohol addiction, acquiring a victim’s assets such as a house, car, or additional property, or caregiver burnout. These are the four most common factors that explain why a perpetrator will carry out abuse towards the elderly person. The perpetrator of elderly abuse will often steal from the elderly individuals' finances such as credit and/or debit cards, cheque books, or loans taken out in the elderly person’s name. This is usually conducted in a discreet way where the perpetrator will lie to the elderly person, claiming that they need to have a power of attorney to manage their finances.

Many elderly people in Canada often suffer from dementia. In Canada, the number of elders diagnosed with dementia continues to increase substantially. The Alzheimer Society of Canada reports that “in 2020, it was estimated that there were 597,000 individuals living with dementia in Canada. By 2030, we can expect this number will reach close to 1 million” (2022). The number of elderly Canadians being diagnosed with dementia will continue strain the healthcare system if the issue is not adequately addressed by the government. The Canadian Institute for Health Information reports that currently “...1 in 4 seniors age 85+ have been diagnosed with dementia” in Canada (2022). This is a major neurocognitive disorder that can interfere with the person’s daily memory and inability to make personal decisions. When an elderly individual can no longer make sound financial or legal decisions concerning their life, a caregiver, family member, or friend may assume the power of attorney over their financial and legal decisions. In some cases, the person who has power of attorney on behalf of the elderly person will abuse this trust.

The following chapters will examine the dimensions of the elder abuse and neglect problem. These include its causes and consequences; why the elderly are particularly vulnerable; who is most likely to perpetrate such abuse; and shortcomings in the law and policy that result in underreporting of neglect and abuse and difficulties in prosecuting offenders.

## Chapter 2

### Legal Definition of Elder Abuse and Neglect

In Canada, the legal definition of elder abuse and neglect is vague and changes from time to time in various court cases and government documents. This leads to confusion as to what elder abuse and neglect means in a legal sense. Ploeg., Lohfeld., and Walsh, (2013) argue that “despite more than three decades of research and discussion on the issue, there are ongoing challenges in the conceptualization and definition of elder abuse” (p.397). Nevertheless, the legal system in Canada continues to recognize and use the medical terminology of elder abuse in the court systems. The medical definition of elder abuse and neglect is not applied strictly when identifying what the term means.

Muehlbour and Crane claim that in healthcare, “abuse is defined as the infliction of injury, unreasonable confinement, intimidation, or punishment, resulting physical harm, pain, or mental anguish. It can also be the willful deprivation by a caregiver of goods or services that are necessary to maintain physical or mental health” (2006, p.44). This definition is used by hospital staff and other healthcare workers who deal with elder abuse and neglect. The legal definitions are written from a medical and healthcare standpoint. “The distinction between legal and other definitions of elder abuse—such as those emerging from a medical or health context—is fuzzier than one might expect, likely in part due to the interdisciplinary nature of the work. Legal definitions often borrow from definitions that are not strictly speaking legal” (Department of Justice of Canada document., 2009, p.1). The elder abuse and neglect definitions used in the legal sense fail to consider how such definitions affect the implementation of laws and policies.



Elder abuse and neglect are also difficult to define because of the overlap between the federal and provincial powers in this policy area. “[T]he context of defining elder abuse and neglect, the result of the overlap between federal and provincial powers, is that relevant legislation falls within both jurisdictions” (Department of Justice Canada document., 2009, p.7). This overlap has led to inconsistency of the terms elder abuse and neglect across Canada, making it difficult to properly define in a legal sense. Officials in the justice system are left with no choice except to rely on the medical definition of elder abuse and neglect.

The federal government of Canada defines elder abuse rather vaguely as follows: “[S]enior abuse is a generic term referring to a wide variety of harms to older adults that are committed by a person or persons they know and would normally have a reason to trust. It is considered different than harms from strangers” (Government of Canada Legal Definitions of Elder Abuse and Neglect., 2021). The problem with this definition is that it fails to recognize the various forms of elder abuse, along with definition being so broad that it can lead to a misunderstanding as to what elder abuse and neglect mean. The definition does not include where abuse takes place, such as long-term care homes, retirement homes or other institutions where the elderly receive care. The federal government’s definition of elder abuse and neglect only recognizes that elder abuse is committed by an individual in a position of trust. As indicated previously, the person of trust is often a caregiver who may be a family member, friend, or a stranger such as a personal support worker or nursing home worker.

The provincial government of Ontario goes into a little more depth in its definition of elder abuse, considering it to involve, "...any act or lack of action, within a relationship where there is an expectation of trust that harms a senior and causes them distress or risks their health or welfare" (Provincial Government of Ontario website, Information about Elder Abuse, 2017). The Ontario government definition provides greater detail by identifying the various forms of elder abuse, the warning signs of elder abuse, and how to go about reporting the abuse.

The World Health Organization (WHO) is part of the United Nations organization that holds special responsibility for international public health. The WHO defines elder abuse and neglect as a crime against humanity and a public health issue that needs to be addressed immediately. Their definition of elder abuse is, "a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person" (Ploeg., Lohfeld., & Walsh., 2013, p.397). The WHO recognizes that elder abuse can occur within any relationship, whether it involves family, friends, caregivers, or strangers, that commit a wide range of abuses towards the elderly.

## Chapter 3

### Divided Jurisdiction

Both the federal government of Canada and provincial governments have legislative responsibilities that involve long-term care and matters that relate to elder abuse and neglect. The municipal level of government and the private sector are the main providers of long-term care. Some of the providers are for-profit businesses and others, many of which are faith-based, operate on a non-profit model. All of the providers fall under the authority of their respective provincial government.

The fact that long-term care and related matters of abuse and neglect fall principally under provincial authority allows for inconsistencies in policies across the country. A Government of Canada document on defining elder abuse and neglect states that, “this has led to considerable variation and inconsistency across the country, with different legislative approaches in each province and territory with respect to a number of relevant areas, including adult protection, family relations, marriage, property rights, health and human rights” (2021).

When it comes to financial responsibility, “provincial governments are responsible for funding public LTC facilities and regulating both private and public LTC facilities. In LTC facilities, care is covered as it would be in a hospital. Individuals only pay for accommodation, the price of which is capped through regulations, as well as any other optional costs” (Rolland., 2022, The Canadian Bar Association). Provinces throughout Canada contract out long-term care to private non-profit operators, typically providing additional funding to those private facilities with which they have a legal

agreement. The wait times for residents to get a bed in an LTC home typically is about a hundred days or more, residents and their families being forced to accept the first long-term care facility that has available space unless they are willing to wait even longer. Long wait times are due to the insufficient funding and inadequate staffing of LTC homes. The federal government has no direct role in the funding of LTC facilities.

Divided responsibility between Ottawa and the provinces, combined with some of the problems in the long-term care system, was highlighted during the Covid-19 pandemic. Long-term care homes in Ontario already experienced a shortage of nurses, personal support workers (PSWs), and other staff members, a problem that was exacerbated during the pandemic. This led the Ontario government to request that Ottawa send military support to assist with the care of residents in the long-term care homes. Rolland reports that Canadian Armed Forces (CAF) personnel working in the long-term care homes in Ontario witnessed all forms of elder abuse and neglect: "... [They] were often met with a disorganized, skeleton staff. Personnel found residents who had been receiving expired medication for months, had missed multiple meals, and/or who had not been bathed for weeks. Personnel also described witnessing residents crying out for help for up to two hours" (2022, The Canadian Bar Association).

Aside from the Criminal Code, the limitations of which in addressing elder abuse already have been described, most of the mechanisms for detecting and remedying this problem are at the provincial and local levels. Some critics argue that these mechanisms are inadequate. For example, “In Ontario there is no adult protection legislation that addresses issues of elder abuse. This means that social and health care agencies, which may be well placed to identify and address abuse experienced by seniors, are more limited in what they can do” (Government of Canada document., 2021, p.21). In Ontario, nurses, personal support workers (PSWs) and other long-term care home staff are limited to reporting crimes of abuse and neglect towards the elderly in LTCs. There are, however, some organizations and projects at the municipal level that offer services and programming to elders who may be victims of abuse. A federal government report on these locally-based services states, “There are projects connecting police, community, social, and health services locally in integrated teams and fostering coordinated community responses. Another project establishes community lookouts to identify seniors experiencing difficult situations, such as abuse, and find them assistance” (Government of Canada document., 2021, p.20-21).

## Chapter 4

### Different Forms of Elder Abuse

The elderly population in Canada is at risk of various forms of abuse at the hands of families, friends, and caregiver(s). The five most common forms of elder abuse in Canada and the United States are physical, financial, psychological, neglect, and sexual abuses. In most cases abuse is inflicted by someone with whom the victim already has a close relationship and whom they rely on for assistance with daily routines.

Physical abuse is the most common form of abuse that the elderly experience in their home or in long-term care home settings. Aysan (2009) defines physical abuse as “intentional acts to cause pain or injury. Beating, burning, or scalding, pushing, shoving, hitting, and slapping are the most common forms of physical abuse” (p.280). Physical abuse can involve restrictions on movement around or outside of the house. Physical acts of forcible confinement may include, “tying elderly persons to heavy furniture, forcibly restraining them, locking them up or confining them to a room, forcing them to remain in beds, chairs or bathrooms” (Aysan., 2009, p. 280). Often, an elderly person who has experienced physical abuse will suffer broken bones, scratches, bruising, and even death.

Financial abuse is the second most common form of abuse towards the elderly in Canada. This kind of abuse is when a caregiver, friend, or stranger illegally misuses the senior person’s financial assets. Examples include signing power of attorney and changing the elderly person’s will. Aysan (2009) notes that financial abuse “...includes selling property/homes of the elderly without their informed consent, stealing their

pension or disability checks, and wrongfully acquiring/using their power of attorney, or forcing them to change their will” (p.280). This kind of abuse may have devastating effects on the individuals’ financial situation. Elderly people in Canada are the primary targets of fraudulent schemes. “Economic abuse involves financial manipulation and exploitation. It may also include theft, fraud, forgery, extortion, or charging the exorbitant fees/prices for cheaper goods/services” (Aysan., 2009, p.280).

Perhaps the most common and underreported form of abuse toward the elderly is neglect. This kind of abuse is difficult to prove since many of those who are victimized by this kind of abuse will deny to healthcare providers and others that their needs are not being met, due to their fear of repercussions. Neglect is a form of abuse when a caregiver fails to meet and provide the necessities of life and care for the elderly person. This includes withholding food and medicine, overmedicating them, leaving them bedridden, not showering or changing their clothes, or requiring unnecessary routines and/or medical procedures. This kind of abuse may have dire consequences for a person’s health if they are given too much medication, which can lead to organ failure, a decrease in their cognitive ability, and psychological changes affecting the movement of their body. Often, seniors who are unable to keep up with their daily hygiene needs and physiology movement issues from which they may suffer are left unattended for an extended period in a bed, leading many to develop bedsores that can develop into infections when left medically unattended. As Aysan writes, “examples of neglect include failing to provide proper nutrition or clothing, failing to attend to the hygiene of those who may be

bedridden, failing to provide private bathroom arrangements, or leaving incapacitated adults unsupervised for long periods of time” (Aysan., 2009, p.208).

The fourth common form of abuse is psychological. This may occur where the caregiver makes threats of physical harm, death, isolation, as well as threats of restricting a person from seeing their grandchildren, and/or of having access to finances. Abusive behaviours may include “insulting the elderly, incessantly raising the issue of death with them, socially isolating them, and ordering them around and not allowing them to make decisions that they are capable of making are also part of psychological abuse” (Aysan., 2009, p.279). As is also true of neglect, psychological abuse is difficult to prove in court or in an investigation.

Another form of psychological abuse that elders may face is not being allowed to practice their religious and/or spiritual beliefs and ceremonies. Caregivers who denigrate an elderly person’s, “ spiritual or religious beliefs and practices, forcing the elderly to refrain from participating in the spiritual/religious ceremonies of their choice, or forcing them to participate in ceremonies they do not believe in are also considered to be abusive” (Aysan., 2009, p.279-280). Preventing an individual from practicing their religious/spiritual beliefs and ceremonies is an infringement of human rights that is often unrecognized and ignored and rarely discussed.

The final common form of abuse that elders may experience is sexual. Sexual abuse is an act that is unwanted and forced, where the perpetrator makes threats or takes advantage of an elderly person who may or may not have the mental capacity to issue



consent. Research finds that “elderly [persons] who are more likely to depend on caregivers (some of whom are male), who are institutionalized, who are mentally or physically unfit, or who suffer other types of violations (such as robbery, breaking & entering) are also vulnerable to sexual transgressions” (Aysan., 2009, p.280). The relationship between the caregiver and senior is supposed to be built on foundations of trust. This trust is violated when the caregiver acts in a harmful way by performing sexual acts or harassment towards the elderly individual who may have repeatedly declined sexual advances. Individuals who suffer from dementia make up the largest portion of individuals who are victims of sexual abuse. They lack the full mental capacity to make informed decisions in their life, including sexual consent. There is clearly a power imbalance between the perpetrator (caregiver) and the victim (elder). “...Sexual abuse is not about sex; it is about a perpetrator exerting power over someone who they see as weaker, in a similar manner to the way we view physical abuse” (Brozowski & Hall., 2010, p. 1188). Sexual abuse can happen in numerous ways such as rape, sexual harassment, forced oral sex, and sexual touching, to name but some of the forms that have been reported in institutional settings.

## Chapter 5

### Causes of Elder Abuse

There are multiple factors that explain why elder abuse happens in Canada and elsewhere, including such factors identified in health journals as caregiver burnout, verbal aggressiveness, and neglect. Caregiver burnout increased during the COVID-19 pandemic, leading to increased cases of elder abuse in Canada. Caregivers experienced exhaustion and burnout from working long shifts, not enough staff on site, and limited time to complete the tasks assigned to them. The first dimension of caregiver burnout is the emotional exhaustion, the feeling of being, “at the end of the rope. It reflects the decrease of the caregivers’ resources, and the feeling of no longer being able to assume this role” (Gerain & Zech., 2021, P.NP9739). Emotional exhaustion results from excessive job demands. Exhaustion can have negative health consequences on the person’s body and mind when they are trying to meet their daily goals of showering, dressing, feeding, and in other ways caring for the elderly. The second cause of elder abuse is frustration and a sense of powerlessness that may produce verbal aggressiveness. As Lin (2018) writes, aggressiveness “...oftentimes is used when a person feels frustrated or powerless in a relationship in an attempt to resume control. Verbal assaults and ridicule could result in intimidation and harm that create psychological and emotional damage...” (p.255).

The last factor contributing to elder abuse is when an institution such as a long-term care facility has a high rate of staff leaving their positions and insufficient personnel

to fill them. “Higher job turnover rates in nursing homes have been shown to be associated with worse quality of care, including higher rates of pressure sores, psychoactive drug use, and restraint use” (Lindbloom., Brandt., Hough, and Meadows., 2007, p.614). Nurses and personal support workers (PSWs) have limited time to devote proper care to their residents in nursing and long-term care homes, leading many residents to go days without a proper shower, over-medication or not receiving medication at all, and even being restrained to a bed or chair for long hours of the day without being monitored. Long periods of restraint can result in persons sitting in their feces and urine without being changed, leading to develop infections and bedsores.

## Chapter 6

### Settings of Elder Abuse

There are two settings where elder abuse and neglect occur in Canada. One involves institutional settings, such as long-term care facilities (LTC) or residential care facilities, both private and public. The second is in the home where the elderly person resides. Institutional elder abuse occurs in long-term facilities, and nursing homes where the senior relies heavily on the support from their nurse and/or personal support worker (PSW) to assist with their daily needs. The nursing staff and personal support workers (PSWs) "...have a legal or contractual obligation to provide care and protection" to the senior citizens who reside in these institutions (Bake., 2013, p.177). Nurses and personal support workers sign documents and contracts whereby they promise to protect and secure elders from abuse. They have a legal obligation to not engage in any form of abuse towards the residents in these facilities. Nevertheless, elder abuse may take place, particularly when nurses and PSWs have inadequate time or resources needed for the care of patients. As Bake (2013) writes, "elder abuse may involve both the purposeful or active abuse and the passive abuse that results in negligence due to the ignorance or an inability to provide proper care" (p.177).

Long-term care homes in Ontario are regulated by the provincial government, under the Ministry of Health and Long-Term Care. The Ministry regulates and administers policies, procedures, and inspections and establishes residents' fees in all publicly funded long-term care homes across Ontario. Many of the individuals who are placed in long-term care homes in Ontario have complex needs such as chronic illnesses

and/or dementia and require around-the-clock care by nursing staff. As individuals age, some begin to develop more complex health issues that need to be monitored closely either around the clock care or throughout the day by a trained professional such as personal support worker or nurse.

Long-term care homes in Ontario are considered closed environments, meaning they limit residents' ability to make choices in their lives regarding health, when they eat, sleep, how many times a week they are bathed, and the activities in which they take part. Gibson and Singleton (2012) argue that these closed environments may result in "the disintegration of ties to the community and the connection to one's past life" (Chapter 12). A senior citizen who depends on long-term care and nursing staff to provide the necessary care may experience abuse and neglect due to inadequate training and educational courses of facility personnel. During the height of the COVID-19 pandemic, the Ontario long-term care homes faced a shortage of nurses and personal support workers (PSWs). Power and Carson (2022) state that, "...due to chronic care staff shortages pre-pandemic, there is a great deal of agency staff use in Canadian LTC homes. Such workers work per diem shifts at several different homes in a month, thus increasing the risk of transmission from one home to another" (p.26). An increase in the workload of nursing and personal support workers can lead to staff having to rush through all residents' routines and being unable to provide adequate care. Each staff member will be responsible for multiple residents and will have limited time in the mornings with other

duties such as bringing them to the dining hall to eat, charting, conducting reports on the residents, and distributing medication.

The next setting is home care, where inexperienced caregivers such as family members, friends, or strangers will provide care for the elderly person on a voluntary or remunerated basis. Persons who have been providing care to their elderly family members for prolonged periods of time are those most likely to commit abuse or neglect. “Children, family members, friends, and formal caregivers are prospective perpetrators of elder abuse. Sadly, perpetrators of abuse are often a relative who lives with the elder and has cared for the elder for a long period of time” (Stark., 2011, p.431). In some cases the abused may have a drug, alcohol, shopping, or other addiction problem that they need to finance through various forms of theft from the elder in their care.

Other common factors that lead to elder abuse in Canada include, “inadequate support systems, poor coping mechanisms, depression, substance abuse, greater perceived burden, and increased financial strain” (Stark., 2011, p.432). When there are inadequate public support systems that an elderly person can rely on, the risk of having to rely friends or family members for care in the home increases, as does the risk that the caregiver may have problems and needs that can lead to abuse. Stark (2011) concludes that “...the risk of elder mistreatment is higher for individuals who are in poor health, unemployed or retired, have low levels of social support, low household income, and/or have experienced a prior traumatic event” (p.432).

In short, the causes and consequences of elder abuse and neglect are well known. The solutions appear to require some combination of greater resources and better regulation of caregivers and the settings in which such care is provided.

## Chapter 7

### Indigenous Elder Abuse

There is little known about Indigenous elders who are victims of spiritual abuse. Spiritual abuse has not been acknowledged by the federal, provincial, or municipal governments in Canada or Ontario, and indeed there is so little research on this topic. Some argue that Indigenous peoples experience the highest rates of elder abuse that is often underreported. Podnieks (2008) states that, “the research on violence and Aboriginal people indicates higher rates in comparison to the non-Aboriginal population of Canada” (p.141). This population has been directly affected by experiencing prominent levels of racism and colonization through the existing laws and policies that serves in the interests of non-Indigenous peoples without adequate consideration for the special circumstances of Indigenous peoples.

In Indigenous culture, elders are considered to be the most respected and sacred people, who pass down generations of teachings and stories to their families. Walsh., Sommerfeld and Danto (2020) highlight the importance of elders being “knowledgeable about tradition, family, spirituality, and the connection between language and these dimensions; knowledge is intimately tied to nature and therefore believed to be appropriately taught on the land” (p.863). Many of the stories, teachings, and sacred objects that Indigenous elders pass down have meaningful history that acknowledges and tells the story of how they are the first people to occupy the land that settlers live on today. When their stories, teachings, and sacred objects involved in the practice of their traditional spirituality are taken away from Indigenous elders, this allows colonization to



hinder the process of reconciliation between government, settlers, and Indigenous peoples.

Many Indigenous elders experience spiritual abuse when in a long term or in home care setting. Spiritual abuse is considered to be a form of emotional and psychological abuse where the perpetrator, who is a non-believer in Indigenous spirituality, imposes their ideologies upon the Indigenous persons against their will. Fernandez (2022) says that “spiritual abuse is a form of emotional and psychological abuse. It is characterized by systemic pattern of coercive and controlling behaviour in a religious context” (p.3).

Emotional manipulation can have detrimental effects on the individual's mental health.

This form of abuse discredits the past generational traumas that Indigenous elders and/or ancestors had and continue to face from the residential school systems, cultural genocide, racism, and colonization of their land. Gray., Carter and LaBore (2021) say that Indigenous peoples’ “experiences of colonization, forced acculturation in boarding schools, prohibition of spiritual practices, and establishment of the residential and treaty system resulted in losses of Indigenous language, spirituality, ceremonies, and traditional parenting practices” (p.205). When abuses towards spirituality go unrecognized, this hinders reconciliation between Indigenous persons and settlers.

There are three dimensions of spiritual abuse that Indigenous elders face in Canada: abuse from a trusted spiritual or religious leader; contamination of sacred objects; and limitations of access to sacred objects. These three dimensions of spiritual abuse can have disastrous effects on Indigenous elders and their families, as when teachings and sacred objects that were passed down to them over multiple generations go missing.

The first dimension of spiritual abuse may involve a trusted spiritual or religious leader, when this person has power over the Indigenous elder and forces them to believe and practice a religion that they do not wish to practice. Fernandez (2022) says that "spiritual abuse can occur when a leader uses his or her spiritual position to control or dominate another person. It often involves overriding the feelings and opinions of another, without regard to what will result in the other person's state of living, emotions, spiritual well-being" (p.2). This form of abuse denies Indigenous elders the freedom to practice their religion and beliefs. Instead, they are forced to practice a religion that goes against their beliefs, such as Catholicism.

The second dimension of abuse is the contamination of sacred objects. This form of abuse occurs when Indigenous elders' sacred objects become contaminated by someone who does not have authority to move or touch the object(s). Gray., LaBore and Carter., (2021) find that, "contamination of a sacred object can occur when individuals touch or use a sacred object without permission. This component constitutes spiritual abuse through degrading the sacred nature of an object or spiritual integrity of a practice" (p.208). Indigenous sacred objects used in spiritual ceremonies should never be touched without permission, since the energy from one person can transfer and disrupt the energy that it possesses.

The last dimension of spiritual abuse that Indigenous elders face involves having limited access to or being denied the use of their sacred objects during ceremonies, or being restricted from attending ceremonies to practice their spirituality. Gray., LaBore and Carter (2021) state that such abuse may occur,

“...when an individual prevents someone from utilizing a sacred object through neglect, intentionally disregarding requests to attend ceremonies or use sacred objects, or actively denying an individual access to a sacred object or ceremony” (p.207).

In addition, a form of financial abuse that is underreported by Indigenous elders involves sacred objects being sold for large sums of money without the knowledge and/or permission of the Indigenous elder. Selling sacred objects without the elder's knowledge or permission constitutes financial abuse that can be difficult to prove to court. Gray., LaBore and Carter., (2021) note that, “...sacred objects are priceless items passed down from generation to generation. Such objects may be passed on during times of hardship to find power and support. For example, a ceremonial pipe can be used for daily prayers” (p.208). When a sacred object has been sold and is no longer in the possession of its owner, the ceremonies, prayers, and blessings they perform are never the same. An elder unable to engage in traditional prayer or ceremonies due to their sacred objects wither being sold or stolen is likely to have experienced lasting life-long effects and is damaged to their elder's spiritual life and quality of life.

In Indigenous culture there is a focus on healing relationships between the victim and offender in the case of a criminal or discriminatory act. Indigenous elders are the persons turned to when an offense has taken place. They are there to offer support, guidance and healing between the victim and offender in order to repair the relationship between them. Podnieks (2008) says the “Treatment of the offender may not be the preferred approach.

Instead, a holistic approach may be preferred, which focuses on treating and healing violence within the whole family” (p.141).

## Chapter 8

### **Conclusion: Canada's Lack of Effective Legislation on Elder Abuse**

Canada is known to be a free and democratic society with a high quality of life. It usually ranks toward the top of all serious and widely-cited rankings of such qualities. But Canada has its failings. One of these involves the conditions experienced by a significant portion of Canada's elderly population. The country's laws and policies, including the Criminal Code and the long-term care legislation, both federal and provincial, fail to sufficiently address issues such as elder abuse and neglect. A Government of Canada (2021) document on the issue of elder abuse states, "Canada lacks a robust infrastructure to support charging and conviction, and that there is a lack of policy direction and professional development for the police, Crown counsel, and the judiciary about elder abuse" (p.18). The current laws and policies provide inadequate direction to judges, lawyers, and law enforcement officials on how to properly address elder abuse cases in Ontario and throughout Canada. This begins with the fact that there is no solid definition of what constitutes elder abuse, leaving judges, lawyers, and law enforcement officials with insufficient guidance on these matters.

The Criminal Code of Canada is a piece of federal legislation that outlines the various offences that are deemed to be illegal and the punishments that individuals shall receive per offence committed. The Criminal Code can only be amended by the federal government. When amended, these changes apply nationally and cannot be changed by the provincial or municipal governments. The main reason why the Criminal Code, despite its applicability across all jurisdictions in Canada, is such an ineffective tool for

combatting elder abuse is because such abuse is considered to be mainly a civil rather than criminal matter. Civil cases of elder abuse arise where there is a lawsuit between both parties, the elderly individual typically suing their caregiver. Whaley (2016) explains that civil remedies are about restitution, where “...the perpetrator pays back the money with punitive result (the payment plus punitive payment of money that is called damages” (p.6). Most often, the abused victim is ordered by the courts to be placed back into the setting where they experienced the alleged abuse from their caregiver. Rarely is the alleged perpetrator of the abuse sentenced to prison or placed on probation. Watts and Sandhu write, “Canadians already do not view jail time as the most desirable outcome....” (2006, p.218). Instead, perpetrators of the abuse may be sentenced to a conditional sentence. A conditional sentence is when the perpetrator is to serve their sentence in the community instead of in a correctional facility.

Elders in Canada are often left largely unprotected by the Criminal Code. It fails to protect the most vulnerable and marginalized persons who turn to the legal system for assistance. As Watts and Sandhu argue, “older adults become, in effect, second-class citizens, not protected under the criminal law in the same way as their younger counterparts” (2006, p.217).

During the COVID-19 pandemic there was an increase in the incidence of negligence and abuse that resulted in a spike in deaths of elders in long-term care homes across Ontario. This has led many family members of residents to file lawsuits against the Provincial Government of Ontario and the privately run long-term care homes.

Novaković (2021) claims that "...[with] mounting lawsuits, the issue here specifically revolves around the insurability of private actors in the sector and the preservation of their solvency" (p.287). This led Premier Doug Ford's government to introduce Bill 218, *Supporting Ontario's Recovery and Municipal Elections Act, 2020*, preventing lawsuits from being filed against long-term care homes for negligence and abuse when the LTC facility acted in good faith to follow public health COVID guidelines. The Ontario Hospital Association supported the law, stating that the law "provides protections based on good faith efforts from legal action related to specific types of COVID-related claims;" (2020). Critics maintain that the law unfairly shields LTC facilities from negligence claims during Covid. "For those individuals that are unable to prove gross negligence," said lawyer Will Davidson, "there is no accountability, no responsibility," (CBC News article, 2020).

In conclusion, the law in Canada remains a grey area when dealing with cases regarding elder abuse and neglect. This is due to the definition of elder abuse being unclear and failing to acknowledge spiritual abuse that Indigenous elders may experience. Judges, lawyers, and other law enforcement officials are unable to define and properly charge perpetrators of elder abuse due to insufficient evidence provided to the courts. Both the provincial government of Ontario and the federal government of Canada fail to adequately provide support and resources for victims of elder abuse, contributing to the underreporting of such crimes. Addressing these serious and persistent problems will require more resources and stronger laws to assist the victims of elder abuse and neglect in all of the settings where this occurs.





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