

# Canadian Network for the Prevention of Elder Abuse

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## Réseau canadien pour la prévention des mauvais traitements envers les aîné(e)s



## Mandatory Reporting

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# Mandatory Reporting

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## 1. Should There Be Mandatory Reporting in Canada for Abuse of Seniors?

In many Canadian communities, when people first start to look at abuse and neglect situations involving older adults, they often ask themselves: "Should there be mandatory reporting like there is for child abuse?" Every person has a legal responsibility to report suspected abuse or neglect of a child.

It is an important question. It can be helpful to start by asking another question "Why do we have mandatory reporting for child abuse?"

Canada has mandatory reporting for child abuse because we believe our society has a social responsibility for the wellbeing of children. We also consider children

- are vulnerable because of their age,
- may not be mentally capable of making decisions about their own safety and wellbeing,
- may not be able to take care of themselves or remove themselves from an abusive situation, and
- are usually dependent on the person who is doing the abusing.

**However, older adults are not children.**

## 2. Arguments in Favour of and Against Mandatory Reporting

Many Canadians believe there is some degree of social responsibility for the wellbeing of adults. We respond by trying to make sure there are services available to women and men experiencing abuse to support them while they figure out what makes sense for themselves.

Unlike children who may not have the mental ability, most abused or neglected older adults are mentally capable of making decisions about their own welfare. Some may not be mentally capable, and laws need to help them. These laws already exist.

Sometimes people favour mandatory reporting laws because they are frustrated with their lack of response by services in their community or by the lack of resources. So they hope that mandatory reporting will mean more resources will be available to help abused older persons. However, even among provinces that

have mandatory reporting and adult protection laws, the resources often are very limited.

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#### a. Other Arguments In Favour of Mandatory Reporting

People in favour of mandatory reporting of senior abuse in the community emphasize that it is important to demonstrate to society that abuse of seniors is important.

They also feel that mandatory reporting may be necessary so that all people have equal protection of the law. For example, Prince Edward Island's "Adult Protection Act" notes as one of its guiding principles that:

"society has an obligation to afford its members, regardless of individual abilities or conditions, the opportunity to have security and the necessities of life".

Some people feel that services providers may be reluctant to get involved and mandatory reporting will move more service providers to action. Some point to mandatory reporting for child abuse to show that today, the public is much less willing to "turn a blind eye to abuse" than it was 30 years ago.

It is much more common to have mandatory reporting for abuse or neglect in institutions than for abuse or neglect in the community. This reflects the greater isolation, as well as the vulnerability of people living in institutional settings.

Indeed, the arguments for mandatory reporting of abuse in institutions tend to be somewhat different than in the community. They focus on the fact that the resident living there

- is highly dependent on the staff and others in the facility to give care, and as a result there is a power imbalance because others in effect control the resident's day to day wellbeing;
- is much more likely to have physical or mental conditions that make it difficult if not impossible to seek help on his or her own;
- is much more likely to have mental impairments that affect the person's ability to recognize abuse, make decisions and carry out those decisions;
- often feels as if (and may be treated as if) he or she has no rights ("my rights are left at the door"). A person cannot act on rights unless they know these rights exist.

The other important aspect of abuse in institutional settings is that the operators of the facilities have specific legal and contractual responsibilities to provide adequate care to people living there. Mandatory reporting is a reflection of that responsibility.

#### b. Other Arguments against Mandatory Reporting

People who argue against mandatory reporting of senior abuse in the community also emphasize the importance of demonstrating that abuse of seniors is a serious social issue. However, they feel it can be effectively addressed by assuring that the public is aware of what abuse is, know how to help, and know there are appropriate resources in the community.

It is pointed out that people have the right to live their lives the way they want as *long as they are mentally capable of doing so*. Mandating that people report abuse would be a violation of the mentally capable person's autonomy. There are already criminal, substitute decision making, guardianship and mental health laws available for the protection of people who are not mentally capable of protecting themselves.

Abused older adults are not children, and older adults (like younger adults) have the right to control and make decisions about their lives, as long as they are mentally capable of doing so.

The arguments against mandatory reporting tend to focus on four key issues:

1. respecting mental capable people's rights to make decisions about their own lives (mandatory reporting violates their autonomy),
2. similar treatment (there is no mandatory reporting for abused capable younger adults),
3. the potential breach of confidentiality (being required to report can potentially undermine trust in the relationship between the service provider and the older adult), and
4. the cost of a mandatory reporting system.

The people against mandatory reporting point out that systems with mandatory reporting tend to be under-resourced. They emphasize it may be more important to make sure there are appropriate resources in the community for responding abuse, along with people who are able to recognize abuse, and who are supportive of older adults who are being harmed. Mandatory reporting may limit responses rather than broaden them.

**In other words, while having mandatory reporting may make the public feel something has been accomplished, if the appropriate resources and community responses aren't there, the abused person is no better off, and may actually be in a worse off situation.**

It has also been pointed out the reporting agency usually does not provide services to help victims and usually ends up referring victims back for help from the same services that reported the abuse. <sup>(3)</sup>

It has been suggested that requiring reporting to a social agency may result in a two tiered approach to investigation- initially by civil authority and then by police later. This can be an impediment to police investigation and cause a loss of evidence. <sup>(3)</sup>

Research indicates that reporting (voluntary or mandatory) is substantially less effective than public and professional awareness. <sup>(2)</sup>

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### 3. Do Any Provinces or Territories Have Mandatory Reporting?

Yes. Nova Scotia and Newfoundland have *general* mandatory reporting requirements in their adult protection legislation (i.e. the laws say everyone has a duty to report suspected abuse or neglect). Newfoundland's law has been viewed as dealing with neglect, self neglect, and possibly physical abuse.

Nova Scotia's adult protection law covers physical and psychological abuse, but does not cover financial abuse. Also, Nova Scotia's adult protection law and its mandatory reporting requirement do not extend to nursing homes. [See endnote] It has been recommended for several years by academics reviewing Nova Scotia's system, that the province should move to a voluntary reporting system.<sup>(4)</sup>

A recent discussion paper on the Nova Scotia's *Adult Protection Act* notes that the province is recommending that the current provisions of the act be amended. Instead of mandatory reporting for everyone, certain professionals (e.g. physicians, police, social workers, clergy, physiotherapists, etc.) would be required to report suspected abuse or neglect, ("as these are the persons most likely to encounter or recognize problems "particularly as they relate to cognitive deficits"). However, all other reporting would be voluntary. <sup>(5)</sup>

Manitoba has mandatory reporting for members of the helping professions and other key individuals when dealing with abuse of persons with developmental disabilities. Some people with developmental disabilities will be older adults. If people in those professions suspect that abuse of a person with a developmental disability is occurring, they are required to report it.

The law in Prince Edward Island, New Brunswick, and British Columbia provides for voluntary reporting for specific forms of abuse and neglect of adults. In the remaining provinces and territories, the law may be silent on the matter.

**Protection for the reporter:** British Columbia also specifically provides legal protection for people who report suspected abuse or neglect to a "designated agency". They cannot be sued for damages, or be penalized in the workplace for making a report or assisting in an investigation, as long as the report is not made falsely and maliciously. This is essential to encourage reporting by staff and the public.

**Mandatory reporting in the case of death:** Canadian provinces and territories require people to report deaths to the local coroner or medical examiner where they believe the death occurred by violence, "suddenly, unexplainedly or unexpectedly", or through negligence. A public inquiry or inquest may be held. In some cases, there are penalties for not reporting. See the CNPEA information on death in community or institution.

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#### 4. What About Reporting Abuse or Neglect in Institutions?

Most provinces treat abuse or neglect of people who live in care facilities differently, and require people to report suspected abuse occurring in the facility.

Why is there this difference?

In part, these laws recognize

- the operators are under a legal responsibility to give care,
- the greater potential vulnerability of the people living there (many are over 85 years old and have disabling physical or mental conditions which make it difficult for them to assert their rights),
- the residents are often very dependent on others for their care, and
- the residents in the facilities tend to be away from community scrutiny (they are isolated and the harms can be hidden).

Alberta and Manitoba both have special laws specifically for the protection of persons in care. Alberta's "Protection for Persons in Care Act" applies to adults in facilities such as hospitals, nursing homes and other care settings and requires everyone who suspects abuse in these settings to report it to the proper authorities.<sup>(5)</sup> However, the Alberta law only applies to publicly funded facilities.

Manitoba's law covers all hospitals, personal care homes and other health facilities as determined by regulation.

In Ontario, under the Nursing Homes Act (s. 25 (1)), a person who has reasonable grounds to suspect that "a resident has suffered or may suffer harm as a result of unlawful conduct, improper or incompetent treatment or care or neglect" is required to immediately report their suspicion and the information upon which it was based to the Director of Nursing Homes.

For more information on mandatory reporting requirements in institutions in other provinces and territories, see CNPEA.

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## References and Resources

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(2) Silva, T. W. (April, 1992). Reporting elder abuse: should it be mandatory or voluntary? *HealthSpan*. 9 (4). 13-15.

(3) Wahl, J. (2004) "Abuse and Neglect of Older Persons- Awareness and Response". Advocacy Centre for the Elderly.

4) Harbison, J., Coughlan, S., Downe-Warneboldt, B., Elgie, R., Melanson, P. M., & Morrow, M. (1995a). *Mistreating Elderly People: Questioning the Legal Response to Elder Abuse and Neglect*. Volume One: Societal Frameworks and Responses to Elder Abuse and Neglect. Halifax, NS: Dalhousie University.

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(5) Alberta: [www.cd.gov.ab.ca/helping\\_albertans/persons\\_in\\_care/index.asp](http://www.cd.gov.ab.ca/helping_albertans/persons_in_care/index.asp)

(6) Adult Protection Act: Discussion Paper.  
[http://www.gov.ns.ca/health/ccs/discussion\\_paper.pdf](http://www.gov.ns.ca/health/ccs/discussion_paper.pdf), pages 12-13. Page 12 gives a table with arguments for and against mandatory reporting.

[End note: The regulations for Nova's Scotia's *Special Care Homes Act RSNS c. 203* require the operator to record any "unusual occurrences"]