ELDER ABUSE & NEGLECT

A Guide for Police Officers

Elder Abuse/Neglect is any action or inaction, by a person in a position of trust, which causes harm to an older person.

The spectrum of scenarios that satisfy this definition is very broad, and appropriate intervention can range anywhere from relatively minimal to involvement of the criminal justice system.

In our role as first responders, we are likely to find ourselves interacting with older adults living in difficult circumstances that are not easily remedied via authorities we are most familiar with. When older adults are isolated, we may be the first, or only, point of contact they have with the 'outside world', and their only chance of getting help. The more efficient we are at recognizing Elder Abuse in its various forms, and the more informed we are as to potential solutions, the better equipped we will be to positively impact the lives of some of Toronto's most vulnerable citizens.

Elder Abuse is Under Reported

For a multitude of reasons, victims of Elder Abuse may not want to report, or even talk about their situation. Commonly, they'll be afraid of, or feel protective toward, the person who is acting abusively – very often a family member who may also be their care provider. In these instances, reducing the likelihood of further victimization means drastic lifestyle changes for the older person, which may include losing contact with a close family member, and/or having to leave their home and lose their independence. Many older adults will remain in unhealthy, dysfunctional, even violent relationships because they believe it's better than no relationship at all.

Other reasons seniors may be hesitant to report abuse to Police include:

shame / embarrassment

dependence on abuser/family member

guilt / self-blame

minimize / rationalize the abuse

denial of the abuse

don't recognize it as abuse

physically unable to report abuse

feelings that they won't be believed

In the absence of the **victim/witness statements and utterances** we often rely upon as evidence, officers investigating these situations will need to recognize the more subtle warning signs of abuse / mistreatment. A case may only become apparent as signs of abuse accumulate.

In the pages that follow, you will find a brief overview of the different types of Elder Abuse, including indicators for each.

Financial Abuse

Financial abuse refers to theft or exploitation of a person's money, property or assets. It is the most commonly reported form of Elder Abuse in Canada, and frequently is at the hands of the victim's son or daughter – upon whom the older person may be dependent.

Often, most or all of a victim's life savings have been misappropriated and squandered before a third party realizes anything is wrong. When financial abuse of older adults *is* reported, complexities such as family dynamics and uncertainty about the victim's mental capacity make these cases unique and challenging for law enforcement.

A common misconception among officers is that when this type of mistreatment is inflicted by a family member, there is no place for Police involvement. Too often, victims/witnesses make the difficult decision to report their nightmare scenario to Police, only to be told, in error, "its a civil matter".

While it is true that alternate courses of action may be available, the fact is there are several sections of the Criminal Code that are very well suited to remedy these situations - yet remain drastically under-utilized by front line officers and investigators alike.

One question that you might ask yourself when deciding how to proceed with an investigation is *"What would I do if the offender were a stranger? or indeed a co-worker?"*

Common scenarios …

Misuse of a Power of Attorney (POA) document (see pages 10-12)

Stolen money, pension cheques or possessions

Fraud, or Forgery

Use of bank/credit cards without the older person's consent/understanding

Transferring funds through joint accounts without the older person's consent/understanding

Using threats/intimidation to pressure a Senior to:

- **Sell property**
- **Withdraw money**
- **Make/Change a will**
- **Sign papers they don't understand (i.e. Real Estate Agreements)**
- **Give financial 'gifts' or buy gifts (including drugs and alcohol)**
- **Make a Power of Attorney**

It is important to document any indicators of financial abuse, as 'smoking gun' evidence will rarely present itself initially.

Red Flags

Changes in Power of Attorney or Will

Changes in living arrangements, initiated by another person

Previously uninvolved relatives or 'friends' moving in, or suddenly becoming overly helpful

Senior being isolated from family and friends

Regular contact with family members/ friends who have addictions

Sudden inability to pay bills

Confusion about financial situation

Changes in well-established banking patterns

Poor living conditions where assets exist that should allow for a comfortable life

Financial decisions being made on behalf of a capable senior

Sections of the Criminal Code that might be applicable to these types of abuse include:

Section 322 - Theft

Section 336 - Criminal breach of trust

Section 366 - Forgery

Section 346 - Extortion

Section 386 - Fraudulent registration of title

Section 387 - Fraudulent sale of real property

Section 388 - Misleading receipt

Section 219 - Criminal Negligence

and

Section 331 – Theft by Person Holding Power of Attorney **

This may be the single most under-utilized section of the Criminal Code that is available to Elder Abuse investigators. The duties of a person acting under a Power of Attorney document are set out in the *Substitute Decisions Act,* 1992 ("SDA"). Some of the highlights of the SDA are listed here:

> A POA is a document through which a person (while mentally capable of doing so) grants another person, or persons, the legal authority

to make either health care or financial decisions on their behalf. A POA for Personal Care (health) and Power of Attorney for Property (finances) are 2 separate documents, which may well appoint 2 or more individuals.

Depending on the wording of the document, this authority may commence immediately upon the document being signed, or it may only become active when a certain 'triggering' condition (most often a person becoming legally incapable of making decisions) is met (see SDA s. 7(7)).

A person acting as attorney for another is not permitted to utilize that person's assets for any purpose other than that for which he/she was entrusted (i.e. the best interest of the grantor). This means that an attorney cannot spend money for their own purposes. Theft by Person Holding Power of Attorney may be the appropriate charge in such an instance.

A person acting as attorney for another has a duty to account for all expenditures of their assets.

A POA provides transactional authority, NOT transfer authority. This means if a person acting as attorney transfers funds from the older person's account to their own personal account, and the older person's name is not on that account, the offence of Theft by Power of Attorney has occurred.

The signing of a POA invalidates any previous POAs (see SDA s. 12(d)). There is no registry, official record, or any way to confirm who holds the most current, and therefore, valid POA document. This opens the door for exploitation.

A POA is immediately terminated upon the grantor passing away and should not be confused with a Will.

Proceeds of Crime – Criminal Code, Part XII.2 (sections 462.3 – 462.5)

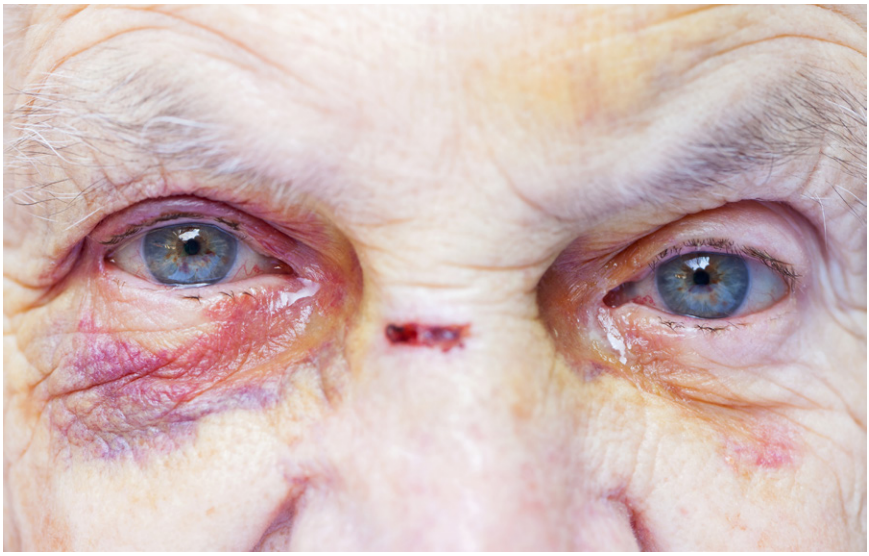
Frequently, the concept of 'proceeds of crime' is focused solely on illicit activity involving organized crime or drugs. However, the misuse of a Power of Attorney results in the financial exploitation of its victim, and should be considered a potential proceeds of crime offence.

'Proceeds of crime' is defined in s. 462.3(1) of the Criminal Code to include any property obtained or derived, directly or indirectly, as a result of the commission of a designated offence (meaning any offence that may be prosecuted as an indictable offence).

Under s. 462.33, a judge may make a restraint order prohibiting any person from disposing of, or otherwise dealing with, any interest in the property where the judge is satisfied that there are grounds

to believe that an order of forfeiture may be made in respect of the property.

When a Police Officer has reasonable grounds to believe that an offence has occurred, an application under section 462.33 can be made to secure the assets.



Physical Abuse

To most, the term Elder Abuse will conjure up thoughts of physical abuse. For a Police Officer, these offences are more in line with the types of investigations we conduct routinely, and the indicators are more intuitive. They include:

Red Flags

Inadequately explained injuries

Bruising in different colours (i.e. various stages of healing)

Bruising in areas generally covered up by clothing

Frequent ‘falls’ and ‘accidents’

Untreated pressure sores (bed sores)

Broken frames & eyeglasses

Care provider’s refusal to allow visitors to see older adult or, see person alone

Sudden change in behaviour

Signs of over/under medication

Sections of the Criminal Code that might be applicable to these types of abuse include:

Section 266-268 - Assault

Section 271 - Sexual assault

Section 153.1(1) - Sexual exploitation of person with disability

Section 245 - Administering noxious thing

Section 279(2) - Forcible confinement

Psychological Abuse

Abusers often seek to establish or maintain 'control' over their victim. The relationship is not one of equals. They accomplish this by treating the older person in a way that diminishes their self-esteem and dignity – often intimidating and/or humiliating them. This leaves them feeling fearful of, or overly dependent upon, their abuser.

An abuser might threaten a victim with anything from physical harm, to abandonment, to institutionalization if they don't comply with their demands.

Red Flags

Depression

Anxiety

Withdrawal

Reluctance to talk openly

Caregiver not allowing officers to speak to the older person privately **

Caregiver always speaking on behalf of the older person **

These final two indicators (denoted by **) are suggestive that a caregiver has assumed too much control over the older person's life. These are two of the more easily detectable 'Red Flags' you may encounter. Regardless of the abuser's intent, the result is the harmful isolation of the Senior, and some level of intervention is likely required.

Sections of the Criminal Code that might be applicable to these types of abuse include:

Section 423 – Intimidation

Section 264.1 – Uttering threats

Section 372(3) – Harassing communications

Section 264 – Criminal harassment

Neglect

An individual having care or custody of an older adult has a ***legal*** obligation to provide for their basic needs - where the older person is unable to care for those needs themselves. These provisions include:

food, water,

shelter, and a safe environment,

access to medical care, services, medications,

medical aids – glasses, hearing aids, walking aids, etc,

appropriate clothing,

supervision where required.

There are instances where the failure of a caregiver to fulfill these responsibilities is unintentional. That is to say that, despite their best efforts, they may not be qualified to look out for the well-being of another due to their own lack of knowledge or capabilities. Appropriate intervention by first responders in such situations involves connecting the individuals with community supports.

More frequently, however, you will find that the people neglecting to provide needed assistance to older adults in their charge are doing so intentionally.

Often, while using the vulnerable senior's home, assets or resources for their own purposes at the same time. Officers investigating incidents like this should be aware of, and consider the following charges:

Section 215 - Fail to provide the necessaries of life

Section 220 - Causing death by criminal negligence

Section 221 - Causing bodily harm by criminal negligence

Additional Considerations

Capacity

It is impossible to produce a resource on the subject of elder abuse without addressing the legal concept of 'mental capacity'. An individual's decisional 'capacity' is the determining factor as to whether they are legally able to make decisions of their own behalf, or if they require a substitute decision maker to do so for them. One's 'capacity' can be functionally defined as their:

ability to understand the information needed to make a decision and,

ability to appreciate the consequences of making, or not making, a decision.

As Police officers, we are not legally qualified to assess an individual's mental capacity – there are professional 'capacity assessors' and healthcare providers who do that. We are however, often put in the difficult position of considering this factor as we decide how to proceed at the outset of an investigation. Talking directly to a Senior is the best way to determine if there may be a concern about their capacity. This may mean more than one visit. The following are some very general points to consider when capacity may be an issue in a scenario you are investigating:

A person can have the capacity to make one decision, while simultaneously lacking the capacity to make a separate, presumably more complicated decision.

For example, the decision as to whom an individual would like to receive as a guest at a nursing home requires considerably less 'understanding of circumstances' than does the decision of how one's money should be invested.

A substitute decision maker should only be stepping in where truly required. Dictating every detail of a person's life would be over-reaching.

At law, there is a presumption of capacity unless evidence exists to prove otherwise.

Victim Vulnerability as a Consideration in Sentencing

Criminal Code (Section 718.2) states that the courts shall consider the following to be aggravating circumstances when sentencing:

> **evidence that the offence was motivated by bias, prejudice or hate based on … age, mental or physical disability, or any similar factor,**
>
> **evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,**
>
> **evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation.**

Each of these factors may come into play in elder abuse investigations. Investigators should consider making notations on briefs where this provision might be relevant.

Community Referrals

Every Police Officer has felt the helplessness and frustration that comes with not being able to 'fix' a situation, which is seemingly unjust, because the circumstances don't meet the threshold required for us to act under our authorities. In the realm of elder mistreatment, you will certainly find this to be the case.

With the many complexities and potential family dynamics inherent to these scenarios, appropriate intervention will seldom seem obvious. When no laws have been broken, you may feel that little can be done to alleviate the troublesome conditions in which an older person is living. Fortunately, Toronto has a great wealth of social services that are ready to step in and help.

On the following pages you'll find information on some well-established community resources whose practical expertise is very much focused on bettering the lives of Seniors in a wide variety of difficult circumstances.

Please consider taking the time to place a call to one or more of the following should you encounter a vulnerable or isolated older adult living in a precarious situation.

Toronto Seniors Helpline - 416 217 2077

A single point of access (i.e. one stop shopping) to a multitude of non-medical services for seniors in varying levels of crisis, including :

elder abuse concerns, age-related cognitive challenges (including dementia), mental health and/or addictions crisis, depression, chronic health concerns.

Seniors Helpline provides :

in person crisis response, short term case management, advocacy, support, resources appropriate to the needs of seniors AND their caregivers (meals on wheels, social programs, housing support etc).

Partners and affiliations include :

Woodgreen Community Services, Reconnect Community Health Services, LOFT Community Services, COSS, Toronto Central LHIN Home and Community Care (formerly Community Care Access Centre).

By calling Seniors Helpline, you have effectively called all of these agencies.

Serves the entire city of Toronto (i.e. any postal code starting with 'M').

Call can be placed by anyone concerned about a senior's wellbeing (social worker, family, friend, first responder, the senior themselves).

Service focus is persons 65+ yrs, some exceptions 55-64 on a case by case basis if they have 'geriatric issues'.

Not a 24 hr service … missed calls will be returned.

Interpretation in 100+ languages.

Seniors Safety Line - 1 866 299 1011

A 24/7 confidential line.

Information and resources in over 150 languages for seniors experiencing abuse.

Provides referral to local agencies across the province that can assist in cases of elder abuse.

Trained counsellors also provide safety planning and supportive counseling for older adults who are being abused or at-risk of abuse.

Family members and service providers can also call for information about community services.

Advocacy Centre for the Elderly – 416 598 2656

Provides direct legal services to low income seniors.

A community based Legal Aid clinic.

Specialists in areas of law of special importance to the seniors' population.

They very much prefer to speak to the senior directly, so consider this a resource an officer can suggest to a senior.

Officers may call for general legal advice.

Office of the Public Guardian and Trustee: Guardianship Investigations Unit - 416 327 6348

Will conduct an investigation when it receives information that:

an individual may be incapable, and,

at risk of suffering serious financial or personal harm.

This is not an immediate, emergency crisis response service.

An investigation may result in the OPGT asking the court for authority to make decisions on the person's behalf on a temporary basis.

Anyone with concern may call, but the OPGT consider themselves to be a 'last resort' intervention, 'after everything else has been attempted'.

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