



May 21, 2021

Via email: just@parl.gc.ca

Iqra Khalid, M.P.
Chair, Committee on Justice and Human Rights
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Ms. Khalid:

Re: Elder Abuse

The Elder Law and Criminal Justice Sections of the Canadian Bar Association (CBA Sections) welcome the opportunity to participate in the Standing Committee on Justice and Human Rights' study of elder abuse.

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The Elder Law Section represents lawyers across Canada who deal with laws affecting seniors. It promotes professionalism in the field and offers a forum to discuss legal matters affecting older adults. The Criminal Justice Section consists of a balance of Crown and defence counsel from every part of Canada, lawyers who appear in criminal courts daily.

Introduction

The World Health Organization has found that one in six older adults will be subject to financial, emotional, physical, sexual or institutional abuse.¹ The COVID-19 pandemic is exacerbating the problem as older adults are increasingly confined at home, often with abusers such as family members, and cut off from the resources and supports they rely on. Frauds and scams targeting older adults have sharply risen as well.

Neglect and abuse in long-term care homes has been highlighted by myriad reports in the past year, including reports by provincial and federal governments and the Canadian military.² The COVID-19 pandemic's disproportionate and tragic impact on the lives of seniors in long-term care facilities in Canada has resulted in the deaths of thousands of Canadians.

¹ Yon Y, Ramiro-Gonzalez M, Mikton C, Huber M, Sethi D. *The prevalence of elder abuse in institutional settings: a systematic review and meta-analysis*, European Journal of Public Health Feb 2019, Vol 29(1), 58-67. See [online](#). WHO Factsheet, Elder Abuse, who.int/news-room/elder-abuse

² See [online](#)

Current Laws to Address Elder Abuse

The *Criminal Code* contains many offences that can address elder abuse.

In cases of **financial abuse**, offences include theft (sections 323, 328-332, 334), theft by person holding power of attorney (s. 331), unauthorized use of a credit card (s. 342), criminal breach of trust (s. 336), extortion (s. 346), forgery (s. 366), fraud (s. 380 (1)) and identity theft (s. 402.2).³

Applicable *Criminal Code* offences for **physical and sexual abuse** include failure to provide the necessities of life (s. 215), criminal negligence causing bodily harm or death (ss. 220-221), manslaughter (ss. 234-236), murder (ss. 229-231, 235), counselling suicide (s. 241), unlawfully in a dwelling (s. 349).⁴

Criminal Code offences applicable to **psychological abuse** include criminal harassment (s. 264), uttering threats (s. 264.1), participation in a forced marriage (s. 293.1), harassing telephone calls (s. 372 (2) and (3)) and intimidation (s. 423).

In addition, the physical, mental and financial vulnerability of elderly victims is addressed in the *Criminal Code*. Section 718.2 lists the following aggravating circumstances that a court must consider when imposing a sentence:

- offence was motivated by age, mental or physical disability,
- offender abused an intimate partner or a member of the victim or the offender's family,
- offender abused a position of trust or authority in relation to the victim,
- offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation.

The CBA has cautioned against adding offences in the *Criminal Code*.⁵ This approach may be counter-productive because it can increase the complexity of the legislation without changing society's response to the acts in question.

Need for Enhanced Framework

We commend the federal government's support for older Canadians in the 2021 federal budget. This support comes on the heels of the CBA's recent calls for improvement of long-term care, including the creation of a Pan-Canadian Elder Abuse Strategy.⁶

Elder abuse and neglect are often cited as being where domestic violence was 20 years ago – where policy was undeveloped and Crown counsel and the judiciary did not always have sufficient education, tools or clear direction to address the power and control dynamics within the victim-abuser dyad. As a greater understanding of domestic violence evolved, wrap around victims' services and mandated training for prosecutors and judges were developed.

In our view, a Pan-Canadian Elder Abuse Strategy offers an excellent opportunity to shore up the existing framework to combat elder abuse. This strategy should include the following:

³ Other offences include obtaining or executing valuable security by fraud (s. 363), drawing document without authority (s. 374), obtaining based upon false document (s. 375), fraudulent registration of title (s. 386) and personation (s. 403).

⁴ Other offences include unlawfully causing bodily harm (s.269), assault (ss.265-268), sexual assault (ss.271-273), forcible confinement (s.279 (2)) and breaking and entering (s.348).

⁵ [CBA Resolution 11-10-A, Response to Elder Abuse](#)

⁶ [CBA Resolution 21-03-A, Improvement of Long-Term Care and Support for Older Canadians.](#)

Corporate criminality: An essential component of an elder abuse strategy should emphasize criminal enforcement against corporate actors who fail to prevent elder abuse in their facilities. To this end, the *Criminal Code* contains enforcement tools for corporate actors. Sections 22.1 and 22.2 provide that, in addition to the individuals charged, the organizations employing these individuals may be held accountable for the same offences.⁷

Legislated universal minimum standards for long-term care facilities: Minimum standards for long-term care facilities (including appropriate staffing) would help denounce and deter those who harm the elderly and would ultimately increase the safety of the elderly. Clear minimum standards would encourage facilities to meet these standards and give clear evidence in cases of a prosecution where a facility failed to meet the standards.

Criminal offence, not a private matter: Law enforcement should view elder abuse as a criminal offence, not a private matter between families or individuals.

Legal system: We recommend special training for prosecutors, and training for judges that respects judicial independence. An appropriate case management system, including the usefulness of “no-drop” policies, should also be considered.

Increase resources for education and community support: Legal aid resources and specialized clinics are extremely limited across Canada – with only two permanent clinics: SeniorsFirst BC in Vancouver and the Advocacy Centre for the Elderly in Toronto.

Cognitive impairment: We are concerned for vulnerable older adults who suffer from cognitive impairment and how they may be treated by the criminal justice system – either as aging victims or offenders. The National Dementia Strategy should include a better understanding of the principles and supports required to improve the interface between persons with dementia and the criminal justice system, and foster respect for human rights and civil liberties.

Conclusion

The CBA Sections urge all levels of government to work with community experts and other stakeholders to strengthen the framework for the prevention of and appropriate responses to elder abuse and neglect.

We hope these observations will be helpful.

Yours truly,

(original letter signed by Marc-Andre O'Rourke for Jody Berkes and Jessica Lyle)

Jody Berkes
Chair, CBA Criminal Justice Section

Jessica Lyle
Chair, CBA Elder Law Section

⁷ In *R. v. Metron Construction* 2012 ONCJ 506, a construction company was found guilty because a sub-contractor hired as a site supervisor was determined to be a “senior officer” of the company and failed in his safety duties. The Ontario Court of Appeal upheld corporate liability based on the finding that the person responsible was a “senior officer.” *R. v. Metron Construction* 2013 ONCA 541 (OCA).