



# Sudbury Elder Abuse Committee

The Ontario Network  
for the Prevention of Elder Abuse

Le Réseau ontarien  
de prévention des mauvais traitements  
envers les personnes âgées

**Protocol Guide for the  
City of Greater Sudbury and Area  
for those Dealing with  
Cases of Suspected Elder Abuse**

Developed by the Community Response Network  
of the Sudbury Elder Abuse Committee  
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## SECTION 1 – OVERVIEW

### Introduction/Purpose

*“Since 1989, our mandate has been...to engage in elder abuse prevention strategies, through education and awareness in the City of Greater Sudbury and area”*

Sudbury Elder Abuse Committee

The Community Response Network (CRN) of the Sudbury Elder Abuse Committee (SEAC) has worked to develop this **Protocol Guide for Agencies in the City of Greater Sudbury Dealing with Cases of Suspected Elder Abuse**. It is intended to be a resource and support for front-line workers. Our goal is to provide tools for identifying and responding to elder abuse through communication and cooperation between agencies and organizations in the City of Greater Sudbury and area. The purpose of this Protocol Guide is:

- To provide a resource to help in identification of those who may be at risk of abuse
- To provide direction when elder abuse is suspected, confirmed or witnessed

The overview section of this document provides background information to the Sudbury Elder Abuse Committee and the Community Response Network. It also provides the guiding principles for this protocol.

Section 2 is a compilation of resources to assist a worker in understanding types and indicators of abuse as well as profiles of victims and abusers. Because the rights of the individual are paramount it is often difficult to know when a worker should or should not take action, therefore, a guide as to what constitutes as emergency is provided. Additional resources include a suggested intake form as well as a comprehensive reference guide for assessing for and responding to elder abuse.

Section 3 provides information on elder abuse in relation to the justice system and health care system. In relation to the justice system, readers are advised when to contact the police in cases of suspected elder abuse, how a police investigation proceeds, how charges are laid, and how the court process works. This is followed by a telephone contact list for related police services and a list of offences in the Criminal Code that pertain to elder abuse. The Ministry of Health’s regulations for responding to cases of elder abuse in the community, through the CCACs, and in long term care facilities are explained. The regulations regarding Substitution Decision Makers, Health Care Consent, and Powers of Attorney are also discussed. Finally, a contact list of critical referral agencies in the Sudbury District, for cases of suspected elder abuse, is provided.

## History of the Sudbury Elder Abuse Committee

### 1988 – 2005

During a November 1988 conference that dealt with elder abuse in North America, the seed for the Sudbury Elder Abuse Committee was planted. In January 1989, the Committee first met with the mandate to raise awareness and initiate education on elder abuse. The committee consisted of seniors and representatives from agencies providing services to the elderly. The Sudbury and District Health Unit played a major role in establishing the committee.

In its first few years, the committee's efforts took two major fronts. First was education on elder abuse. This was accomplished through: peer education, presentations to local agencies serving seniors, and presentations to senior groups directly. The second effort was to enable communication amongst agencies and workers around elder abuse issues and particular problems; in other words, networking!

A Ministry of Health grant for the period of 1994-1997 enabled the establishment of an office, part time staff, resource library, promotional items, internet web site, and the purchase of presentation equipment. The Royal Bank of Canada served as the corporate sponsor and provided office space.

The presentations to the community also expanded to include larger workshops and conferences, bringing in specialists from outside of the committee's membership to meet the needs of seniors and professional groups serving seniors. Conferences hosted included presentations to seniors on legal issues, guardianship, telephone scams, and financial abuse. Special presentations were also provided to general practitioners, pharmacists and pharmacy technicians, dentists and dental assistants, and financial institution employees.

In the spring of 1997, a Committee retreat was held during which the constitution was reviewed and committee structures were re-evaluated. The course was set to meet in working groups on a monthly basis (public education, finance, membership) and then report to the monthly executive meetings. Full Elder Abuse Committee meetings would be held two to four times per year, as needed.

As well, in the spring of 1997, a three year Trillium Grant, \$25,000.00 per year, was approved with Meals on Wheels, as the partner agency. Public education and promotion of elder abuse issues were the focus for the expenditure of this grant. The Committee office moved to a room shared with the Alzheimer's Society in St. Stephen's on the Hill United Church.

The Committee's membership continued to shift throughout this project. Representation included: interested seniors, Sudbury and District Health Unit, Home Support Services, Victim Witness Assistance

Program, Victorian Order of Nurses, Area Police Services, Community Care Access Centre, Cambrian College, CNIB, Royal Bank of Canada, Canadian Mental Health Association, Alzheimer's Society, Chaplaincy: Long Term Care, Meals on Wheels, YWCA Geneva House, students in post-secondary institutions, hospitals, and nursing homes. Because of this shifting, orientation to the Committee's mandate and resources was necessary. The Committee resumed monthly meetings in 1998 with the intention of discussing elder abuse awareness, problems, and protocol. The Committee's Constitution was updated to reflect current Committee structures and practices.

During the period of 2000 until the end of 2002, the phone line was disconnected due to lack of funds. As for the SEAC committee, the members continued to meet regularly, on a monthly basis. The main focus of the committee was to secure funds, develop partnerships and public education. To target the education component, presentations were conducted to the public.

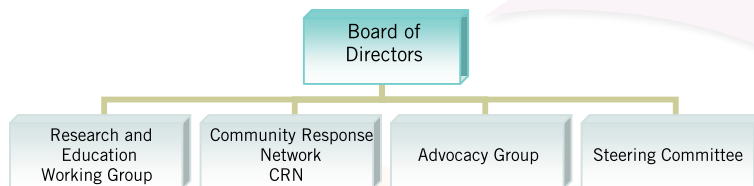
In late 2002, in partnership with the City of Greater Sudbury Police Services and the City of Greater Sudbury, the Committee secured office space and telephone service at 720 Bruce Street. Boxes were unpacked and the office was opened with great fanfare at a press conference.

In March 2003, funding was secured through the Community Mobilization Program of the federal Crime Prevention Strategy in order to conduct a needs assessment. The goals of the assessment were to identify

the gaps and barriers to services to seniors at risk of abuse and/or neglect; and, to facilitate the development of a Community Response Network. A project coordinator was hired to conduct the assessment. The Committee continued to meet to supervise the project, maintain the office, and work towards elder abuse awareness and education.

In the same year, a \$20,000 grant from Partners Against Crime (provincial) enabled SEAC, in conjunction with the Older Adult Centre in Sudbury, to sponsor three information sessions for seniors. The workshops were held in January 2004 at the Walden Seniors' Centre in Lively, the Elizabeth Centre in Val Caron, and the Older Adult Centre in Sudbury. Topics covered included: safeguarding the home against break and enters, protecting against victimization through telemarketing fraud, responding to pressure sales, understanding Power of Attorney, reporting elder abuse, protecting personal finances, finding community support services, and understanding last wills and testimonies.

In 2004, a proposal to the National Crime Prevention Centre was submitted but unsuccessful. The SEAC continues to operate without staff, providing educational resources and presentations upon request. In the spring, concern grew as the roles of Board Members and the existing strategic direction. A special meeting was called to do a selfassessment/ examination. As a result, a new structure was put in place for the Sudbury Elder Abuse Committee.



Each working group established their Terms of Reference and began their work and reporting to the new Board of Directors.

In 2005, the Advocacy Group began its Awareness Campaign, the Research and Education Working Group continued to provide presentations to the community and the Community Response Network started to work on the Protocol Guide for the community.

In April 2006, the Sudbury Elder Abuse Committee received \$15,000 from the Ontario Seniors Secretariat in recognition of their ongoing contribution in combating elder abuse in the community. On June 15, 2006 the Sudbury Elder Abuse Committee members invited seniors to attend a free pancake brunch to mark the first “World Elder Abuse Awareness Day” Representatives on the Sudbury Elder Abuse Committee include agencies, organizations and other interested individuals:

- Société Alzheimer Society Sudbury-Manitoulin
- Community Volunteers including seniors
- Greater Sudbury Police Service
- Ontario Provincial Police

- Victim Witness Assistance Program
- Sudbury Regional Palliative Care Association
- VON
- Meals On Wheels (Sudbury)
- Huntington University
- For Seniors Only
- Royal Bank of Canada
- Ontario Network for the Prevention of Elder Abuse
- Sudbury-Manitoulin Community Care Access Centre
- Com-Care
- Canadian Red Cross Society

## Community Response Network

In 2004, the Sudbury Elder Abuse Committee (SEAC) formed a Community Response Network (CRN). The CRN was established as a result of a Needs Assessment Project that identified gaps in reporting cases of elder abuse within the City of Greater Sudbury. As well, subsequent workshops demonstrated both strengths and weaknesses in the community’s network of services dealing with elder abuse. It was clear that there was a need for a coordinated approach to responding to cases of elder abuse. Thus the development of a Community Response Network Protocol Guide for Agencies in the City of Greater Sudbury Dealing with Cases of Suspected Elder Abuse began.

## Guiding Principles

1. Each case of suspected elder abuse or neglect must be considered individually to achieve the appropriate balance of interests. The nature of the abuse, its severity and the implications to the person(s) involved will dictate the degree of intervention warranted.
2. In apparent cases of elder abuse, intervention should be:
  - Based on a skilled assessment of the person and their environment (identifying the type and degree of risk posed to the person)
  - Respectful of the older person's family's right to confidentiality and to give consent for further investigation
  - The least intrusive or restrictive intervention possible, appropriate to the circumstances and determined by the degree of risk assessed
  - Aimed at maximizing the older person's/family's choices
  - Based on the older person's/family's strengths and abilities for positive action
  - Undertaken with the voluntary and informed consent of the older person whenever and to whatever degree that is possible
  - Sensitive to and addressing the following areas: cultural diversity, language, religious beliefs, lifestyle choices, poverty, disabilities, and educational background

<sup>1</sup>Health Canada

3. Certain types of behaviour directed towards older persons can be considered criminal activity. Sexual and physical abuse, uttering threats to cause harm or to kill, theft, fraud and neglect are all examples of situations where the perpetrator of such activity can be charged criminally. In these cases, staff will recommend to the client that the police should be called to deal with complaints or instances of alleged criminal behaviour.
4. Ending elder abuse is everyone's responsibility. Social change must occur through education and action, and includes prevention.

## OLDER PERSONS' BILL OF RIGHTS<sup>1</sup>

Older persons have the right to:

- Have the basic requirements of life – food, clothing, shelter and social contact
- Live free from physical, emotional, financial, sexual and medication abuse, violation of civil/human rights and neglect
- Be informed about their civil and legal rights
- Self determination
- Live their lives as they wish, provided they do not infringe upon the rights and safety of others
- Participate in making decisions about themselves to the full extent that they are able to do so
- Refuse assistance and intervention

## SECTION 2 – RECOGNIZING ELDER ABUSE

### Definition:

“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.”

It can be of various forms: physical, psychological/emotional, sexual, financial or simply reflect intentional or unintentional neglect<sup>2</sup>.

### Categories of Abuse

<b>Physical/Sexual Abuse</b>	<ul style="list-style-type: none"> <li>• Any violent act(s) or rough treatment directed towards an older person whether or not actual physical injury results.</li> <li>• May include the use of restraints.</li> <li>• Any sexual behaviour directed towards an older person without that person’s consent, or where consent is obtained by taking advantage of the older person’s circumstances. Such behaviour would include sexual assault, sexual harassment, or any act designed to use the older person for the perpetrator’s sexual gratification.</li> </ul>
<b>Psychological/Emotional Abuse</b>	<ul style="list-style-type: none"> <li>• Any act, including social isolation, verbal assault, harassment, humiliation, intimidation, infantilization, or any treatment which may diminish the elder person’s sense of identity, dignity and self-worth.</li> </ul>
<b>Financial Abuse</b>	<ul style="list-style-type: none"> <li>• The misuse of an elderly person’s funds and assets including: theft, fraud and misappropriation of property</li> <li>• The misuse of funds through a Power of Attorney</li> <li>• The misuse of bank accounts</li> <li>• The use of coercion to obtain property or funds owned by another person without their informed consent.</li> </ul>

<sup>2</sup>World Health Organization

<b>Neglect</b>	<p><b>Active Neglect</b></p> <ul style="list-style-type: none"> <li>• The deliberate withholding of basic necessities and/or care</li> </ul> <p><b>Passive Neglect</b></p> <ul style="list-style-type: none"> <li>• The non-deliberate, non-malicious withholding of basic necessities and/or care. This may be due to a lack of experience, information or ability.</li> </ul> <p><b>Self Neglect</b></p> <ul style="list-style-type: none"> <li>• The person's inability to provide for their own essential needs due to physical infirmity or inability to make sound choices due to addiction, mental illness and/or cognitive impairment.</li> </ul>
<b>Institutional Abuse</b>	<ul style="list-style-type: none"> <li>• Any physical, sexual, psychological, financial abuse or neglect occurring within a care facility involving active victimization, withholding or denial of individual care needs, and/or failure to carry out reasonable requests.</li> </ul>
<b>Domestic Violence</b>	<ul style="list-style-type: none"> <li>• Actual or threatened physical, sexual, financial or psychological abuse of a person by someone with whom they have an intimate, familial or romantic relationship which aims to instill fear and/or to coercively control an individual whether it be a female, male or intimate partner.</li> </ul>
<b>Violation of Civil/ Human Rights</b>	<ul style="list-style-type: none"> <li>• Unlawful or unreasonable denial of fundamental rights and freedoms normally enjoyed by adults.</li> </ul> <p><i>This may include:</i></p> <ul style="list-style-type: none"> <li>• Denial of information, privacy, visitors, religious worship; denial of informed consent to medical treatment; interference of mail; restriction of liberty; unwarranted confinement in a hospital or institution.</li> </ul>

## Possible Indicators of Elder Abuse

Physical Abuse	
Form	Possible Indicators
<ul style="list-style-type: none"> <li>• Assault               <ul style="list-style-type: none"> <li>• e.g. slapping</li> <li>• pushing</li> <li>• burning</li> <li>• pulling hair</li> <li>• shaking</li> <li>• forced feeding</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Unexplained or explanation inconsistent with:               <ul style="list-style-type: none"> <li>• falls, abrasions</li> <li>• bruises</li> <li>• contusions</li> <li>• hematomas</li> <li>• grip marks</li> <li>• fractures</li> <li>• lacerations</li> <li>• restricted movement</li> <li>• ulcers</li> <li>• welts</li> <li>• tenderness</li> <li>• guarding injured area</li> </ul> </li> <li>• Delays in seeking medical treatment</li> <li>• Denial in view of obvious injury</li> <li>• Reports of similar injury</li> </ul>
<ul style="list-style-type: none"> <li>• Sexual assault</li> </ul>	<ul style="list-style-type: none"> <li>• Pain, bruising, bleeding in genital areas</li> <li>• See Indicators for Psychological Abuse</li> </ul>
<ul style="list-style-type: none"> <li>• Hypothermia</li> </ul>	<ul style="list-style-type: none"> <li>• Inappropriate clothing/bedding</li> <li>• Shivering</li> <li>• Cyanosis</li> <li>• Low body temperature</li> <li>• Lack of heat in home</li> </ul>

<ul style="list-style-type: none"> <li>• Hypothermia</li> </ul>	<ul style="list-style-type: none"> <li>• Inappropriate clothing/bedding</li> <li>• Shivering</li> <li>• Cyanosis</li> <li>• Low body temperature</li> <li>• Lack of heat in home</li> </ul>
<ul style="list-style-type: none"> <li>• Physical restraint</li> </ul>	<ul style="list-style-type: none"> <li>• Rope/restraint marks</li> <li>• Incontinence</li> </ul>

### Psychological Abuse

Form	Possible Indicators
<ul style="list-style-type: none"> <li>• Threatening               <ul style="list-style-type: none"> <li>• e.g. abandonment</li> <li>• institutionalization</li> <li>• physical abuse</li> <li>• withdrawal of care</li> </ul> </li> <li>• Humiliation</li> <li>• Intimidation/ provoking fear</li> <li>• Shouting</li> <li>• Insulting</li> <li>• Scolding</li> <li>• Name calling</li> <li>• Imposed social isolation</li> <li>• Removal of older person's right to make decisions</li> <li>• Infantilization</li> </ul>	<ul style="list-style-type: none"> <li>• Shame</li> <li>• Invalid guilt</li> <li>• Passive</li> <li>• Withdrawn</li> <li>• Overly compliant or submissive</li> <li>• Older adult recoils from touch</li> <li>• Sad</li> <li>• Helpless</li> <li>• Hopeless/depressed</li> <li>• Loss of self-determination</li> <li>• Excluded from family gatherings</li> <li>• Not permitted to have friends or visitors</li> <li>• Not permitted to go to community outings (e.g. church)</li> <li>• Tearfulness</li> <li>• Significant weight loss</li> <li>• Caregiver speaks for older adult</li> <li>• Caregiver is excessively involved with the older adult</li> <li>• Caregiver ignores the rights of the elder/adult</li> </ul>

Psychological Abuse	
Form	Possible Indicators
	<ul style="list-style-type: none"> <li>• Older adult avoids eye contact</li> <li>• Inappropriate clothing or hairstyles e.g. childish ribbons in hair</li> <li>• Caregiver reluctant to leave older adult alone with service provider</li> </ul>

Financial Abuse	
Form	Possible Indicators
<ul style="list-style-type: none"> <li>• Fraud</li> <li>• Misuse of an elderly person's money/ property</li> <li>• Theft of an older person's money/ property</li> <li>• Withholding funds</li> <li>• Coercion</li> </ul>	<ul style="list-style-type: none"> <li>• Illegal use of an elderly person's possessions / property / investments / P.O.A. / will for profit or personal gain</li> <li>• Overcharging an elderly person for expenses such as home repairs</li> <li>• Older adult forced to change will or sell possessions (e.g. house)</li> <li>• Older adult has no food, clothes, money</li> <li>• Inadequate living environment</li> <li>• Older adult unable to afford social activities</li> <li>• Disappearance of possessions</li> <li>• Absence of required aids</li> <li>• Unexplained or sudden inability to pay bills</li> <li>• Unexplained or sudden withdrawal of money from bank accounts</li> </ul>

Neglect/Passive Abuse	
Form	Possible Indicators
<ul style="list-style-type: none"> <li>• Withholding required food/fluids</li> </ul>	<ul style="list-style-type: none"> <li>• Malnourishment</li> <li>• Emaciated</li> <li>• Mouth sores</li> <li>• Dehydration</li> <li>• Confusion</li> <li>• Ill-fitting or lack of dentures</li> </ul>

Neglect/Passive Abuse	
Form	Possible Indicators
<ul style="list-style-type: none"> <li>• Inadequate hygiene or personal care</li> </ul>	<ul style="list-style-type: none"> <li>• Decubitus ulcers (bed sores)</li> <li>• Poor skin hygiene</li> <li>• Soiled linens</li> <li>• Urine burns</li> <li>• Rashes</li> <li>• Unkempt appearance</li> <li>• Odours</li> </ul>
<ul style="list-style-type: none"> <li>• Inadequate clothing</li> </ul>	<ul style="list-style-type: none"> <li>• Clothes in poor repair</li> <li>• Inappropriate for season</li> </ul>
<ul style="list-style-type: none"> <li>• Over-medication               <ul style="list-style-type: none"> <li>• e.g. drugs, alcohol</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Over-sedation</li> <li>• Reduced physical / mental activity</li> <li>• falls</li> </ul>
<ul style="list-style-type: none"> <li>• Sensory deprivation</li> </ul>	<ul style="list-style-type: none"> <li>• No glasses / hearing aid</li> <li>• Lack of independent access to social activities</li> <li>• Lack of independent access to social stimulation</li> <li>• Isolation</li> <li>• Lack of personal belongings</li> </ul>
<ul style="list-style-type: none"> <li>• Lack of safety precautions</li> </ul>	<ul style="list-style-type: none"> <li>• Dangerous environment</li> <li>• Lack of aids to facilitate safety and independence</li> </ul>
<ul style="list-style-type: none"> <li>• Lack of supervision</li> </ul>	<ul style="list-style-type: none"> <li>• Unattended</li> <li>• Restraints</li> <li>• Incontinence</li> </ul>
<ul style="list-style-type: none"> <li>• Withholding medical services</li> </ul>	<ul style="list-style-type: none"> <li>• No regular visits to doctor, dentist, etc.</li> </ul>

Neglect/Passive Abuse	
Form	Possible Indicators
<ul style="list-style-type: none"> <li>• Unjustified use of restraints</li> </ul>	<ul style="list-style-type: none"> <li>• Contractures</li> <li>• Weakness</li> <li>• Immobility</li> <li>• Incontinence</li> <li>• Living in worse conditions than others in home</li> </ul>
<ul style="list-style-type: none"> <li>• Abandonment</li> </ul>	<ul style="list-style-type: none"> <li>• Financial or physical abandonment</li> </ul>
<ul style="list-style-type: none"> <li>• Forced entry into an institution</li> </ul>	

### Profile of a Victim

The following characteristics and behaviours are often exhibited in vulnerable older adults who have been abused. The presence or absence of any of these indicators must be considered as part of the total assessment and not in isolation.

- History of repeated incidents of unexplained accidents or injuries
- Medical history does not coincide with presenting injuries
- Seeks medical attention from a variety of doctors
- Postpones seeking medical attention
- Frequent use of Emergency Department
- Prolonged delay between time of injury and presentation for treatment
- Has physical/mental limitations affecting ability for self care
- Gives information reluctantly; waits for caregiver to answer
- Avoids physical, verbal, eye contact with caregiver or professional
- Clenched hands
- Rigid
- Rocking
- Suicidal thoughts or attempts
- Crying
- Complaints of insomnia
- Cringing, flinching
- A fear of being left alone with alleged abuser
- Drug/alcohol abuse or non-compliance

## Profile of an Abuser

The following characteristics and behaviours are often exhibited in abusive caregivers. The presence or absence of any of these indicators must be considered as part of the total assessment and not in isolation.

- Refuses to permit hospitalization/diagnostic tests for victim
- Ignores victim's hospitalization admission – doesn't visit
- May refuse to participate in discharge planning or may insist on taking adult home
- Impatient with victim/staff/procedures
- Appears fatigued
- Responds defensively when questioned
- Makes excuses
- Hostile, suspicious, irritable, demanding, angry and/or impatient
- Does not want victim interviewed alone
- Lack of remorse
- Appears depressed
- Has erratic difficulties
- Abuses substances
- Has employment difficulties
- Has ageist attitudes
- Feels excessively burdened by care giving role
- Has feelings of anger/frustration
- Denies that care has changed lifestyle in any way
- Has unrealistic expectations of victim's limits and abilities
- Lacks understanding of aging process
- Intimidates, threatens, insults, or is indifferent to victim
- Is reluctant to touch, make eye contact, face or speak directly to the victim
- Speaks for victim
- Is excessively involved with victim or not involved at all
- Ignores needs and rights of victim
- Makes decisions without consulting victim
- Treats victim like a child or non-person
- Blames victim for problems which are not within the victim's control
- Unwilling or reluctant to comply with service provider when planning for care
- Isolates the victim by denying access to friends, relatives, visitors, monitoring all social interactions

## Emergency vs. Non-emergency

Procedures for responding to emergency situations will vary depending on the nature of the emergency. In situations where abuse is witnessed, suspected to have just occurred and the individual is in immediate danger, strongly encourage him/her to call 911 or ask for the individual's consent to secure police protection. Early referral to the police is essential for an effective investigation.

There is no legal requirement in Ontario for the mandatory reporting of abuse perpetrated against older adults and disclosure of client information is prohibited. However, there are situations when the police should be called whether or not the individual has consented:

- When you have witnessed abuse which constitutes a criminal offence (i.e. theft, physical or sexual assault)
- When there is imminent danger to the older adult's life or others
- In emergency situations where the older adult's safety is in extreme jeopardy

### Emergency Situations:

Are defined as those in which there is an imminent threat to safety, or danger or irreparable harm to a person or property. Immediate action is required to avert the risk.

### Non-emergency Situations:

Are defined as those in which abuse or neglect is suspected but no immediate threat to the victim is apparent.

INTAKE / REFERRAL FORM			
Person Reporting		Agency	
Relationship to victim		Location of elder abuse taking place	
VICTIM INFORMATION			
Name of victim		D.O.B.	
Sex	Female	Male	Age
Frequency of abuse:		Ongoing	One time
<b>Living Conditions:</b>		<b>Type of Abuse:</b>	
Lives with the abuser: Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Resides alone: Apt.	<input type="checkbox"/>	House	<input type="checkbox"/>
Retirement facility	<input type="checkbox"/>		
Nursing Home	<input type="checkbox"/>		
Group Home	<input type="checkbox"/>		
Financial		<input type="checkbox"/>	Psychological
Physical		<input type="checkbox"/>	Neglect
Self-Neglect		<input type="checkbox"/>	Over Medicated
<b>NOTES / DETAILS:</b>			
REFERRAL INFORMATION			
Referral Agency		Referring Agent Name	Date of Referral
<b>NOTES / CONSULTATION:</b>			
<b>Followup Information</b>			

## Elder Abuse Assessment and Invention - Reference Guide

### ABUSE AND NEGLECT OF AN ELDERLY OR VULNERABLE PERSON

Any act that harms or threatens to harm the health or well-being of an older or vulnerable person

#### WHAT TO DO



#### CHECK FOR



<b>Acknowledge</b>	Suspicion of abuse may develop over time. Accumulate/document evidence.
<b>Barriers</b>	Fear of retaliation, withdrawal of caregiver support and breach of confidentiality.
<b>Urgency</b>	Assess immediate needs and potential risk of physical harm.
<b>Screen</b>	Assess person's physical, emotional, and mental capacity to help themselves.
<b>Empower</b>	Inform person of their rights, resources and assist with establishing a safety plan.
<b>Refer</b>	Offer support or consultation from other resources.

#### PHYSICAL ABUSE

Any act of violence causing injury or physical discomfort (e.g. slapping, pinching or other rough handling, forcible restraint or intentional over/under medication) including SEXUAL ASSAULT

Indicators - unexplained injuries in areas normally covered (bruises in various stages of healing, bumps or bites) loss of hair and bleeding scalp from hair pulling, untreated medical problems, history of "accidents", signs of over/under medication, sexual assault, wasting and/or dehydration.

#### PSYCHOLOGICAL ABUSE

Any action or comment causing emotional anguish, fear or diminished self-esteem or dignity (e.g. threats to do harm, unwanted institutionalization, harassment, abandonment, imposed isolation and/or removal of decision making choices).

Indicators - fear, anxiety, depression, withdrawal, cowering, reluctance to talk openly, fearful interaction with caregiver and/or caregiver speaking.

#### FINANCIAL ABUSE

Theft or exploitation of a person's money, property or assets (e.g. fraud, forgery, misuse of Power of Attorney).

Indicators - standard of living not in keeping with income or assets, theft of property noted, unusual/inappropriate activity in bank accounts, forged signatures on cheques, forcing a person to sign over property or execute a will, overcharging for services / products, overdue bills.

## Elder Abuse Assessment and Invention - Reference Guide cont'd



### NEGLECT

Inability to provide basic or personal care needs (e.g. food, water, required medications, shelter, hygiene, clothing, physical aids - hearing aids, eye glasses, dentures, exercise and social interaction, lack of attention, abandonment, undue confinement, inadequate supervision safety precautions and/or withholding medical services/treatment).

**ACTIVE NEGLECT** Intentional failure of a caregiver to fulfill their caregiving responsibility.

**PASSIVE NEGLECT** Unintentional failure of a caregiver to fulfill their care giving responsibilities because of lack of knowledge, skill, illness, infirmity or lack of awareness of community supports/resources.

**SELF NEGLECT** Although not a form of elder abuse, it is the person's inability to provide for their own essential needs because of physical infirmity or inability to make sound choices due to addiction, mental illness and/or cognitive impairment.



Indicator - Unkempt appearance, inappropriate or dirty clothing, signs of infrequent bathing, living conditions unhealthy, dangerous, and/or in disrepair, lack of social contact, no regular medical appointments.



### INSTITUTIONAL ABUSE

Any physical, sexual, psychological, financial abuse or neglect occurring within a facility involving active victimization withholding or denial of individual care needs, failure to respect individual's rights, overmedication, misuse of chemical or physical restraints and/or failure to carry-out reasonable requests.



### DOMESTIC ABUSE

Actual or threatened physical, sexual, financial or psychological abuse of a person by someone with whom they have an intimate or familial relationship which aims to instill fear and/or to coercively control an individual.

## Elder Abuse Assessment & Intervention - Reference Guide

### Adapted by The Sudbury Elder Abuse Committee

#### INTERVIEW STRATEGY

1. Develop trust and be sensitive to person's culture, religion, comfort level and timing in obtaining disclosure - Interview alone, listen, be patient, non-threatening and non-judgmental, validate feelings and offer emotional support, avoid premature assumptions and suggestions.
2. Note suspicious histories - Explanation vague, bizarre or incongruent with type or degree of injury, denial of obvious injury, long delay between injury and treatment, history of "doctor shopping".
3. Be alert to person's wishes, ability to understand - Assess competency, capability and capacity.
4. Identify what information is missing - Frequency, duration, urgency, need for physical examination.
5. Be aware of interdependent relationships/ power/ differences - be cautious of involvement of third party who may be the abuser; note conflicting histories. Where appropriate, interview family members but remember it's key to TALK TO THE SENIOR even if family are available.

#### POSSIBLE INTERVENTIONS

Consider impact on the person, their wishes, and their ability to recognize that they may be a victim of abuse. Note their understanding and appreciation of the consequences of their decisions. Understand that often before a person will seek or agree to accept help, they need to be able to trust you and know that you will follow through with the help you offer to give. Your role could be singular or part of a team of service providers that could support the person to be healthy and safe. Be aware of appropriate resources or know how to link with broader community. Follow your professional standards in obtaining client consent. If client does not consent, maintain contact to initiate an Education and/or a Safety Plan.  
(See Below)

#### POSSIBLE INTERVIEW QUESTIONS

- Is there something that you would like to share with me?
- Are you afraid of anyone at home?
- Has anyone at home ever hurt you?
- Has anyone ever forced you to do things you didn't want to do?
- Has anyone ever failed to help you take care of yourself when you needed help?
- Have you ever signed any documents that you didn't understand?
- Who makes decisions about your life, like how or where you should live?
- Would you like some help with ....?
- It must be hard for you to look after ....?

#### A. EDUCATION

Provide information and support according to the interests expressed by the person. Be aware of services outside the health care system which are specific to the needs of any older adult or specific to the needs of the older persons who are being victimized or are at risk, including social services, legal services, financial assistance, housing options and the faith community.

## Elder Abuse Assessment & Intervention - Reference Guide

### Adapted by The Sudbury Elder Abuse Committee cont'd

#### B. SAFETY PLAN

The plan may include a change to an element of their environment or their relationship which could result in the elimination of the role of the abuser or context of the abuse. Consider:

- Home visits, telephone contact, contact with other family and friends, regular appointments.
- Secure assets e.g. Hide emergency money (coins for pay phone) somewhere outside home.
- Give copies of important documents and keys to trusted friends or family members.
- Plan escape by packing a bag of extra clothing, medicine and personal aids (e.g. glasses, hearing aids).
- Keep phone numbers of friends, relatives, shelters or other trusted individuals handy.

#### C. COORDINATION AND CONSULTATION HELP NUMBERS

Some of these organizations will provide direct assistance and others will refer callers to local organizations to get information or assistance. This is not an exhaustive list. It is important to develop your own list of local contacts.

Advocacy Centre for the Elderly .....	1-416-598-2656
Association of Local Public Health Agencies .....	1-416-595-0006
Alzheimer Society of Ontario .....	1-416-967 -5900
Ministry of Government Services-Consumer Protection Branch .....	1-800-889-9768
Ministry of Health - Tele Health Line .....	1-866-797 -0000
Ministry of Health and Long Term Care-Complaints Line .....	1-866-434-0144
Office of the Public Guardian and Trustee .....	1-800-366-0335
Ontario Association of Community Care Access Centres .....	1-416-750-1720
Ontario Rental Housing Tribunal .....	1-888-332-3234
Ontario Senior's Secretariat Info Line .....	1-888-910-1999
Ontario Retirement Communities Association .....	1-800-361 -7254
Ontario Network for the Prevention of Elder Abuse .....	1-416-640-77 84
Phone Busters .....	1-888-495-8501
Senior Crime Stoppers .....	1-800-222-8477
Victim Support Line .....	1888-579-2888

## SECTION 3 – ACTION AND FOLLOW-UP

### When to Call the Police<sup>3</sup>

Generally speaking, although a criminal act may have taken place, elder abuse does not usually include the victimization of older adults by strangers. The self-neglect of an older person (such as the reclusive individual in need of medical attention who refuses all offers of assistance) is also not technically considered a form of elder abuse. Therefore, when situations of self-neglect are encountered there may be very little that service providers can do except to attempt to provide the older person with information which may assist him/her at a later date.

Service-providing agencies should have policies in place which advise their workers as to when and how the police should become involved in the situations with which they are confronted. Some people support the theory that the police would be called for all types of crime, including elder abuse, while others claim that criminal acts that occur without intent would not benefit by police involvement. In either situation, the police should always be called in every situation where the victim's life or immediate safety is in jeopardy.

An alternative to calling police is to call Crime Stoppers and report the incident anonymously.

<sup>3</sup>Elder Abuse Community Response Protocol Information and Guidelines

### The Police Investigation

The police officer sent to investigate the call will attempt to determine whether a criminal act has occurred. The police officer will file a report that outlines the events resulting in police involvement. The report will be filed with the local Police Service and they will appoint someone to conduct an investigation.

Possible offences under the Criminal Code of Canada which may apply to situations of elder abuse include: assault, sexual assault, forcible confinement, murder, manslaughter, theft, theft by a person holding Power of Attorney, fraud, extortion, forgery, stopping mail with intent, criminal negligence causing bodily harm or death, breach of duty to provide necessaries, intimidation, and uttering threats.

During the investigation the police may attempt to obtain:

- a detailed signed statement or video interview from the victim
- statements from neighbours, other family members or service providers who may have evidence of the suspected abuse
- photographs of any injuries
- a medical report
- other relevant evidence including: a description or photograph of the home which shows evidence of physical abuse or severe neglect; statement from anyone with knowledge of previous abuse; i.e. hospital personnel, etc.

Occasionally, the police may be denied access to the abused person as the caregiver may forbid entry. In these situations, when Service Providers fear an abused person may be prevented access to police services or protection, it is important for service providers to advise the abused person to indicate in some way, to the police, their desire for police intervention. This will allow police to enter the premises. Changes to legislation may alleviate this situation in the future.

Note: All service providers should be aware of their home agencies' policies and procedures around disclosure of client's health information under the Personal Health Information Protection Act, 2004 (PHIPA).

### The Laying of Charges

Police may have difficulty in establishing a case against an accused for criminal prosecution as their investigation is based on factual evidence which clearly indicates that a crime has been committed. This evidence may be presented in court. Due to the difficulty of establishing that coercion has taken place or that permission has not been granted to withdraw large sums of money from bank accounts by the person holding Power of Attorney, investigating elder abuse is sometimes a very difficult task for law enforcement personnel.

If the police have reasonable or probable grounds to believe a criminal act has taken place, based on the evidence gathered, charges will be laid against the alleged

abuser. Occasionally it will be necessary for the police to consult with the Crown Attorney to receive instruction regarding the laying of appropriate charges.

### The Court Process

The court process can be an extremely intimidating experience for victims of abuse. The following are steps abused older persons may experience when charges have been laid against their abuser. It is important for service providers to know this information so they can support older adults through the process.

- The accused may be arrested and held in custody until an Interim Release Hearing can be held. The Interim Release Hearing is commonly known as Bail Hearing.
- During the Bail Hearing the alleged abuser will be required to appear in court to hear the charges against him/her. It will be determined whether the accused is likely to appear in court at a later date to answer the charges against him/her. If the court has reason to believe the accused is not likely to appear he/she may be detained in custody. Often conditions will be placed on bail which the accused must follow. It is customary for the police to notify the victim or witness affected by the conditions of release of the outcome of the Bail Hearing.
- The victim of abuse may also appear before a Justice of the Peace to lay an "information" requesting that a peace bond or restraining order be issued. The Justice

may, if satisfied by the evidence that the informant, (the person laying the information) has reasonable grounds to fear personal injury to him/her, a spouse, or children, or to fear that damage to his/her property may occur, may order the abuser, (called the defendant), to keep the peace and be of good behaviour or risk penalty.

- When the case comes to trial, the Crown Attorney, who will be presenting the case in court, will ensure that the court hears all the facts of the case and that the rights of the accused are not violated. In order to present the facts, the victim may be ordered to appear as a witness for the Crown. A subpoena which tells the witness the details of when and where to appear will be delivered by the police, to the victim, prior to the trial date. Other witnesses to the alleged crime may also receive a subpoena.
- On the day of the trial, the investigating police officer will, in most cases, meet with the witness before the trial in order to review the testimony the witness is expected to give. If necessary, he/she will also arrange for the witness to meet the Crown Attorney to discuss the case further. The Crown Attorney is assigned the task of dealing only with the criminal charge laid against the accused and will not provide additional legal counsel to the abused person. If other legal matters need to be addressed the abused person is advised to speak with his/her own legal counsel.
- Following the trial, the victim should, depending on the situation, be notified of the outcome. If the accused is convicted of committing the crime, he/she will be ordered to obey a court order. If the victim is not notified, a follow-up call should be placed to the Crown Attorney's office.
- As noted, the court proceeding for any individual can be one that is extremely intimidating. To assist the clientele in his/her time of need with court proceedings, there is the Ministry of Attorney General – Victim Witness Assistance Program which can be contacted at (705) 564-7694. The mandate of the Victim/Witness Assistance Program (VWAP) is to provide information, assistance and support to victims and witnesses of crime throughout the criminal justice process in order to increase their understanding of, and participation in, the criminal justice process. VWAP services include crisis intervention, needs assessment, referrals to community agencies, emotional support, case specific information (court dates, bail conditions) and court preparation and orientation. VWAP services are available to adult and child victims and witnesses of crime, after charges have been laid. Closely associated with the domestic violence program, VWAP staff work extensively but not exclusively with victims/witnesses of partner assault, sexual assault and child abuse. Although available to all victims, services are provided on a priority basis to victims that have been most traumatized by crime.

## Police Contacts

**Greater Sudbury Police Service**

190 Brady Street  
Sudbury, Ontario  
P3E-1C7  
(705) 675-9171

**Ontario Provincial Police**

3767 Hwy. 69 South, Suite 1  
McFarlane Lake Complex  
Sudbury, Ontario  
P3G-1E3  
(705) 564-6900 or 1-888-310-1122

**Seniors Crime Stoppers**

Box 33, Station "B"  
Sudbury, Ontario  
P3E-4N3  
(705) 675-9171 Ext. 5690 or  
1-800-222-tips (8477)

**Phonebusters**

P.O. Box 686  
North Bay, Ontario  
P1B-8J8  
Toll Free: 1-888-495-8501

## Legislation

In Ontario, support and assistance for abused and neglected adults is reflected in a variety of pieces of legislation and may be provided by a wide range of services and community groups.

### 1. Criminal Code<sup>4</sup>

Many incidents of abuse may be offences under the Criminal Code. If abuse is a criminal offence, the police and the criminal justice system have authority and responsibility to respond and intervene. Some examples of abuses that are Criminal Code offences include:

- Counselling Suicide (s.241)
- Assault and Assault with a Weapon or Causing Bodily Harm (ss.265-268)
- Sexual Assault (ss.271-273)
- Forcible Confinement (s.279 (2))
- Breaking & Entering (s.348)
- Unlawfully in a Dwelling (s.349)

### Psychological Abuse:

- Criminal Harassment (s.264)
- Uttering Threats (s.264.1)
- Harassing Telephone Calls (s.372 (2) & (3))
- Intimidation (s.423)

### Financial Abuse:

- Theft (ss.323, 328-332, 334)
- Criminal Breach of Trust (s.336)
- Extortion (s.346)
- Forgery (s.366)
- Fraud (s.380 (1))

### Physical & Sexual Abuse:

- Failure to Provide the Necessaries of Life (s.215)
- Criminal Negligence Causing Bodily Harm or Death (ss.220-221)
- Unlawfully Causing Bodily Harm (s.269)
- Manslaughter (ss.234, 236)
- Murder (ss.229-231, 235)

The *Criminal Code* also includes a provision (s.718.2) that requires the court to take into account for the purpose of sentencing as aggravating factors evidence that the offence was motivated by age- or disability-based bias, prejudice or hate.

In addition, recent amendments to the Canada Evidence Act and the Criminal Code removed some of the barriers that prevent people with disabilities from fully participating in the justice system.

<sup>4</sup>[www.canada.justice.gc.ca/en/ps/fm/adultsfs.html](http://www.canada.justice.gc.ca/en/ps/fm/adultsfs.html)

These measures include:

- Permitting the use of assistive learning devices, real-time captioning, oral or sign language interpreters, and the use of visual or other sensory methods of identifying accused (Bill S-5, S.C., c.9, 1998)
- Making sexual exploitation of persons with a disability by persons in a position of trust or authorizing a new offence (s.153.1 of the Criminal Code)
- Including persons with physical disabilities on juries
- Making changes related to the use of videotaped evidence and adoption of that evidence (s.715.2)

#### **Neglect:**

- Breach of Duty to Provide Necessaries (s.215)

When the police are called, the dispatcher will take as much information as necessary to be able to send a police officer. If a person calls the police to report suspected abuse of a criminal nature, his/her identity can remain anonymous, no one will be told who the person was that called the police, including the victim of abuse or the person who is suspected of being an abuser. The police may ask for the caller's name and telephone number in order to be able to get more information from the caller in the future or to check some facts.

The police can then investigate the report of the abuse. The investigation may include:

- A detailed signed statement from the victim

- Photographs of any injuries
- Statements from neighbours, family members, or service providers who may have evidence
- A medical report
- Statements from anyone who knows about previous abuse (for example: hospital staff)
- Any other evidence

If the police have grounds to believe that a criminal offence has been committed, they may lay charges. The police are encouraged to lay charges instead of advising victims to go through the steps alone. Some victims of elder abuse may not be physically or mentally capable of taking the initiative to charge their abuser. Some victims are more likely to support a prosecution of an abuser if they are not personally responsible for the abuser's arrest.

Many victims of abuse are concerned about what will happen to the abuser. Victims should ask police for information on the criminal justice system and police should be prepared to answer such questions because this may make the victim more willing to cooperate with the police.

Some victims of abuse may need to testify in court. If so, they may be able to get assistance from a lawyer or from the Victim/Witness Assistance Program run by the court. The police should be able to assist the victim to contact the Victim/Witness Assistance Program if one is available in their area.

## 2. Community Care Access Centres & Long-Term Care Act, s26<sup>5</sup>

A Community Care Access Centre (CCAC) is a non-profit corporation that has been given the authority by the provincial Ministry of Health to provide a simple and single access to many types of community long-term care services. There are 43 CCACs located across the province. CCAC is responsible for:

- Service information and referral to all long-term care services, including volunteer-based community services
- Case management
- Determination of eligibility for services
- Co-ordinated service planning and monitoring, and
- Placement coordination service for long-term care facilities

s.26 of the Long-Term Care Act requires all CCACs to have a plan to deal with abuse. Community agencies that provide services through the CCACs are also required to have a plan. The plan must involve preventing, recognizing, and addressing physical, mental and financial abuse of persons who receive these services. The plan must also include the education and training of both staff and volunteers. This legislation has the effect of mandating all CCACs and most community services to address abuse issues within their own community, whether or not they have previously been defined as “abuse services”. It can be interpreted as requiring these services and agencies to provide support and assistance, both direct assistance

<sup>5</sup>[www.cleo.on.ca/english/pub/onpub/PDF/health/hc-bor.pdf](http://www.cleo.on.ca/english/pub/onpub/PDF/health/hc-bor.pdf)

within their service mandate and referral to other agencies for other types of assistance, for persons affected by abuse and neglect.

## 3. Long-Term Care Homes

Nursing Homes are primarily for-profit private facilities, although there are some non-profit nursing homes. Many of the operators are part of large chains (e.g. Extendicare, Diversicare, etc.)

Ontario also has retirement homes (sometimes called “care homes” or “rest homes” or “residential facilities” etc). The proper name for all these types of “homes” are “care homes”, as defined in the Tenant Protection Act. Care homes are tenancies and are NOT long term care facilities. Care homes are not affected by the legislation discussed in this section.

Long-term care homes are subject to terms and conditions in service agreements that each facility must enter into with the Ministry of Health. They must comply with common standards as set out in the Long Term Care Facility Standards Manual (hereafter referred to as the “Standards Manual”).

There are provisions in respect to “abuse” in all three acts and related regulations as well as in the Standards Manual.

Legislation - All three pieces of legislation contain a Residents’ Bill of Rights that is also deemed to be part of the admissions agreement between the operator and

each resident. The Residents' Bill of Rights makes specific reference to a resident's right to be free from abuse while living in a facility.

1. Every resident has the right to be treated with courtesy and respect and in a way that fully recognizes the resident's dignity and individuality and to be free from mental and physical abuse. (Nursing Homes Act S.2 (2); Charitable Institutions Act S.3.1. (2); Homes for the Aged and Rest Homes Act S.1.1.(2)).

The operator therefore has a duty to ensure that residents are free from abuse as described. Failure to do so makes the operator liable for a breach of the legislation, which may be pursued by the Ministry of Health, as well as subject to potential action in the civil courts by the resident.

The Nursing Home Act contains a specific duty to report "harm" to a resident, as follows:

S.25 (1) Reporting of harm to resident – A person other than a resident 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 shall forthwith report the suspicion and the information on which it is based to the Director.

This section places a specific obligation on all nursing home staff, operators, licenses, as well as visitors (anyone other than a resident) to report, to the Ministry of Health,

any harm or potential for harm to a resident of a longterm care facility.

Although the reporting is to the Director (Ministry of Health staff), and the responsibility of investigation of the complaint is in the Ministry of Health, the Director will call in other appropriate persons, such as the police, to investigate, to help address the problem within the facility, and to help the resident who is the subject of abuse, if necessary and appropriate.

In the regulations of the long term care facility act, operators of the facility are required to report certain types of incidents of the Director at the Ministry of Health. Some of these incidents may be the result of abuse. The regulations are as follows:

**(1)** A licensee of a nursing home (the municipality, municipalities or board maintaining and operating a home) ( an approved corporation maintaining and operating an approved charitable home for the aged) shall report to the Director in full detail each of the following occurrences in the home:

1. A fire
2. An assault
3. An injury in respect of which a person is taken to hospital
4. A communicable disease outbreak
5. A death resulting from an accident or an undetermined cause

**(2)** The licensee (municipality, municipalities or board) (approved corporation) shall make the report promptly after the occurrence in the form provided by the Minister.

The Ministry may further investigate these incidents and may bring in other parties (police, coroner, etc) to also investigate and take action.

Long-term care homes must comply with the facility service agreement that they must enter into with the Ministry of Health. This service agreement obliges the operators to comply with the Standards Manual. The Standards Manual places an obligation on all facilities to have policies for the following:

- Promotion of residents rights
- What constitutes resident abuse
- How to prevent abuse
- Actions to be taken in all instances of alleged abuse including notification of the family/Substitute Decision maker, police and Ministry of Health.
- Where abuse has been confirmed, resources available to assist the abused resident and the person responsible for the abuse (LTC Facilities Standards Manual – Standards: Resident Care-0902-01)

This obligation to have policies in respect to abuse applies to every facility in the Province. For further information or contact with the Ministry of Health & Long Term Care they can be reached at 1-866-999-7612.

#### **4. Substitute Decisions Act and Health Care Consent Act**

These acts permit adults, while capable, to pre-plan for potential incapacity and to name a person or persons that they trust to act as substitute decision makers, These acts also provide for various applications and court proceedings that may be taken to name other substitute decision makers in the event that a person has not executed a power of attorney when capable to do so or in the event that an incapable person is being abused by an attorney or a family member. In respect to abuse, the applications and proceedings in these acts, other than the powers of attorney, are used primarily to provide assistance and support to people who are not mentally capable and are, or potentially may, be abused or neglected.

These two pieces of legislation confirm that every adult has the right to make decisions for him or herself, both in respect of his or her property and personal care, as long as he or she is mentally capable to do so. Property decisions include decisions that arise in day to day financial management, banking, purchase and sale of real estate, leasing, mortgages, and contracts. Personal care decisions include all decisions that relate to nutrition, clothing, safety, shelter, hygiene, and health care.

A person is presumed to be capable to make decisions in respect of property and personal care, and others may rely on this presumption, unless there are reasonable grounds to believe that the person is not capable.

“Capacity” in respect to property and personal care is a legal definition, defined in these acts, and is not a clinical assessment or medical diagnosis. Capacity is “issue specific” and relates to a particular task at hand. The fact that a person has been formally “assessed” as incapable for some purpose does not necessarily mean that that person is not capable for other purposes. For example, a person may be incapable of handling his or her finances but be capable of making decisions about health services or treatment.

The Substitute Decisions Act permits adults, while capable, to prepare Continuing Powers of Attorney for Property and Powers of Attorney for Personal Care. By using these documents, a person may appoint a second person as his or her “attorney” either for property or for personal care or both. As well, these documents may be used to give instructions or to express wishes to guide the attorney in making decisions for the grantor of the document when the grantor is incapable of managing property or personal care.

As the Continuing Power of Attorney for Property may come into effect at the time the document is signed, when the grantor is still mentally capable of managing property, a person may choose to prepare such a document in order to get immediate assistance in managing finances. This may be helpful to avoid abuse from other parties. However, it must be emphasized that Continuing Powers of Attorney are **VERY POWERFUL** documents and **do not, in and of themselves, protect a person from abuse of his or her finances**. In fact,

the authority given to an attorney by such a document may place the attorney in a position to financially abuse the grantor.

**Whether this document may be considered to be a “protection” against abuse and a support to an abused or neglected adult depends on whether the named attorney can be trusted and is willing to comply with and honour the obligations and duties of that position. (See also pamphlet on Continuing Powers of Attorney for Property by ACE/CLEO – to get copies contact CLEO at [www.cleo.on.ca](http://www.cleo.on.ca)**

The Power of Attorney for Personal Care does not come into effect until the grantor is not mentally capable of making a particular personal care decision. It may be useful in situations of abuse to help a person, while capable, to name a person that he or she trusts to make personal care decisions for him or her in the event of incapacity. By naming a person in advance for this purpose, the grantor may avoid having a person, particularly a close family member who may be abusing them, be treated as his or her substitute decision maker in the future. The attorney named in the Power of Attorney for Personal Care will have priority over other family members of the grantor as personal care decision maker, and in particular as decision maker under the Health Care consent Act, in respect to treatment, admission to a long-term care facility and personal assistance services in a long-term care facility. Only a court-ordered Guardian

of the Person takes priority as decision maker over an attorney named in a Power of Attorney for Personal Care.

**Whether this document may be considered to be a “protection” against abuse and a support to abused or neglected adults depends on whether the names attorney can be trusted and is willing to comply with and honour the obligations and duties of that position. (See also pamphlet on Powers of Attorney for Personal Care by ACE/CLEO)**

If a person is not mentally capable either in respect to Property or Personal Care or both, and the court is satisfied that the need of the person for decisions to be made cannot be met by an alternative course of action that does not require the court to find that the person is mentally incapable, and is less restrictive of the person’s decision making rights than the appointment of a Guardian, then the Court may make an order appointing another person as Guardian of Property and/or Guardian of the Person of the incapable person. A guardian may need to be appointed in order that appropriate decisions be made in respect of property and/or personal care for a person who is mentally incapable and who is abused or neglected or may become abused or neglected unless such decisions are made on his or her behalf.

The Health Care Consent Act also provides for an application to the Consent and Capacity Board for the appointment of a “Representative” for a person who is incapable of decisions in respect to treatment, admission

to long-term care, or personal assistance services in a long-term care facility.

This application may be made by any person, including friends of the incapable person, if a family member, who otherwise would be decision maker for the person, is abusive to that person in respect to these types of decisions. The Representative takes priority as substitute decision maker for these purposes over all other potential substitute decision makers for that person except an attorney in a Power of Attorney for Personal Care and a Guardian of the Person.

#### **5. Substitute Decisions Act, Section 27 and 62**

These sections of this Act have been separately highlighted as they give the Ontario Public Guardian and Trustee special authority to investigate and take action in instances of abuse of a person who is mentally incapable. The Ontario Public Guardian and Trustee has the authority and obligation to investigate any reports that a person is mentally incapable, is suffering or may suffer “serious adverse effects” either to their property or to their person, and needs assistance. “Serious adverse effects” in respect to property is defined as “loss of a significant part of a person’s property, or a person’s failure to provide necessities of life for him or herself”. “Serious adverse effects” in respect to personal care is defined as “serious illness or injury, or deprivation of liberty or personal security”.



The obligation to investigate applies whether the harm is occurring or has occurred in the community, in a long-term care facility or in another type of health facility.

If on investigation, the Public Guardian and Trustee is of the opinion that the person is mentally capable but at risk, the Public Guardian and Trustee may help that person connect to the appropriate services and resources that may be of assistance, such as the police, legal assistance, health or social services or other community resources. If a Community Response Network exists in a community, this may be an appropriate referral.

If the Public Guardian and Trustee believe that the person is mentally incapable and at risk of serious harm or is experiencing serious harm, the Public Guardian and Trustee may apply to the court to become the abused person's Guardian of Property or Guardian of the Person in order to arrange the appropriate assistance for that person. The Court will only make an Order of Guardianship of either type if there is sufficient evidence that the person is not mentally capable and that there are no less restrictive options available to help the person, other than making a finding of incapacity and an order of Guardianship.

To report allegations of serious harm to the Office of the Public Guardian and Trustee, contact the Guardianship Investigation unit Toll-free at 1-800-891-0503, or Telephone (705) 564-3185, Fax (705) 564-3193.

To report allegations of serious harm to the Office of the Public Guardian and Trustee, contact the Guardianship Investigation unit Toll-free at 1-800-891-0503, or Telephone (705) 564-3185, Fax (705) 564-3193.

## 6. Substitute Decision Makers<sup>6</sup>

With the exception of certain emergency situations, all health care treatment requires informed, capable, voluntary consent. There is a common law principle that people must consent to any medical treatment and that any person has the right to refuse treatment. If capable, an individual makes his/her own treatment decisions. However, if an individual is not capable, by reason of a mental, intellectual or physical condition, decisions must be made on his or her behalf by a substitute decision-maker.

No automatic right exists under the law for a doctor or relative to make a substitute decision when a person is unable to give consent. Once someone becomes unable to give consent, self-determination and autonomy are lost and the rights of such incapacitated persons are protected by guardianship laws. Guardianship is a legal appointment of a substitute decision-maker. A relative or friend may be appointed guardian if a person is unable to give consent. The guardian is then the only person entitled to make a substitute decision. The Health Care Consent Act provides a list of potential substitute decision-makers.

<sup>6</sup>[www.thomsonrogers.com/library/abrvol3iss2.htm#substitute](http://www.thomsonrogers.com/library/abrvol3iss2.htm#substitute)

The list of potential substitute decision-makers includes:

- A guardian of the person (appointed either by Order of the Court or through application to the Office of the Public Guardian and Trustee)
- An attorney for personal care (appointed through a Power of Attorney prepared when the individual was capable)
- A representative appointed by the Consent and Capacity Review Board
- A spouse or partner (spouse includes common-law spouse. Partners must have lived together for at least one year and have a close personal relationship that is of primary importance in both of their lives)
- Children and parents (custodial parents rank ahead of non-custodial parents)
- Siblings
- Any other blood relative, relative by marriage or adoptive relative

The highest ranked person on the list, who is both capable and willing to act, is the substitute decision-maker for a particular decision, in an emergency situation. If there is no qualified person available or willing to act, or if there are two or more qualified substitute decision-makers of equal rank who disagree, the Office of the public Guardian and Trustee can be required to make treatment decisions.

A substitute decision-maker is bound to follow general rules and guidelines when making decisions. The

decision-makers must follow any previously expressed capable wishes that are reasonably applicable in the circumstances. Wishes may be expressed orally, or in a Power of Attorney, or in any other written form (commonly called an Advance Directive or Living Will).

If there are no prior capable wishes, a substitute decision-maker must act in the best interest of the incapable person and consider the effect of the proposed treatment, the risks and benefits of the proposed treatment, whether a less restrictive or less intrusive treatment would be effective, the values and beliefs of the incapable person and the preferences of the incapable person.

Substitute decision-makers can be replaced if they are not acting in the best interest of the incapable person.

Actions and decisions made by substitute decision-makers are reviewable by the Consent and Capacity Review Board – an independent government body that conducts hearings. Hearings can be conducted to review the capacity to consent to treatment, to appoint a substitute decision-maker and to review decisions made on behalf of an incapable person.

Applications for review are simply faxed to the Board and the parties will receive a notice from the Board with a time and place of the hearing. The hearing is supposed to take place within one week of the application. There is no charge for the hearing. Each party can attend and invite anyone they want to come. Each party may have a lawyer, call witnesses and bring documents. The Board then meets in private to make its decision and the decision is issued

within one day. Decisions can be appealed to the Court.

A substitute decision-maker's authority can also be challenged through the Court by the incapable individual or any other interested person.

In an effort to avoid the requirement for Court applications and to minimize the difficulties that most certainly arise whenever a person becomes incapable, we should all plan for incapacity. Very few families are prepared for situations when someone becomes incapable. The situation is further complicated when no one has the authority to make decisions.

## Referral Agencies

<b>Manitoulin-Sudbury Community Care Access Centre</b> 522-3461	<b>Seniors' Mental Health Outreach Program</b> 523-4988
<b>Sudbury Sexual Assault Crisis Centre</b> 675-8071 (business) 675-1323 24hr Crisis Line	<b>Greater Sudbury Police Services Senior Liaison Officer</b> 675-9171 (ext: 5690)
<b>Ontario Provincial Police</b> 564-6900	<b>Sudbury Crime Stoppers</b> 675-8477 (ext: 5690 or 5691)
<b>Legal Aid Ontario</b> 673-8182	<b>Sudbury Elder Abuse Committee (voice mail)</b> 524-5738
<b>Office of the Public Guardian and Trustee</b> 564-3185	<b>Centre Victoria pour femmes</b> 670-2517
<b>Ligne d'écoute Femaide</b> 677-0001 (24 hr) 670-0119 A.T.S.	<b>Centre de Santé Communautaire de Sudbury</b> 670-2274
<b>Sudbury and District Health Unit</b> 522-9200	<b>Service familial/Sudbury Family Services</b> 524-9629
<b>Sudbury Regional Palliative Care</b> 677-0077	<b>Société Alzheimer Society Sudbury-Manitoulin</b> 560-0603
<b>Services Ontario/Government Information Centre</b> 564-0060	<b>N'Swakamok Native Friendship Centre</b> 674-2128
<b>The Canadian Red Cross</b> 674-0737	<b>Sudbury Handi Transit</b> 670-2300
<b>The Canadian Hearing Society</b> 522-1020	<b>Salvation Army Family Services (Men)</b> 566-8151
<b>Crisis Intervention Program Sudbury Regional Hospital</b> 675-4760	<b>Ontario Network for the Prevention of Elder Abuse</b> 525-0077
<b>YWCA Sudbury Geneva House (Women)</b> 674-2210	<b>Sudbury Women's Centre</b> 673-1916
<b>CNIB</b> 675-2468	<b>VON Greater Sudbury – Adult Day Centre</b> 671-1575
<b>Victim Witness Assistance Program</b> 564-7696	

## SECTION 4 – RESOURCES

### References

1. Health Canada Resource and Training Kit for Service Providers “Abuse and Neglect of Older Adults, Aug. 1994
2. World Health Organization Elder Abuse Fact Sheet  
[www.who.int/ageing/projects/elder\\_abuse/en/](http://www.who.int/ageing/projects/elder_abuse/en/)
3. The Elder Abuse Sub-Committee Hastings and Prince Edward Council on Aging. Elder Abuse Community Response Protocol Information & Guidelines. September 1992. Belleville, Ontario.
4. (Reprinted with permission from the Department of Justice Canada: Family Violence). “ABUSE OF OLDER ADULTS: A FACT SHEET FROM THE DEPARTMENT OF JUSTICE CANADA”. [www.justice.gc.ca/eng/pi/fv-vf/facts-info/old-age/old4-age4.html](http://www.justice.gc.ca/eng/pi/fv-vf/facts-info/old-age/old4-age4.html)
5. (Reprinted with permission from Judith Wahl, Support and Assistance for Abused and Neglected Adults) – Ontario Community Training Manual – 3rd Edition – December 2002 Toronto: Advocacy Centre for the Elderly and Community Legal Education Ontario, 2002. [www.advocacycentreelderly.org/elder\\_abuse\\_-\\_publications.php](http://www.advocacycentreelderly.org/elder_abuse_-_publications.php)
6. (Reprinted with the permission from Craig Brown). Partner of Thomson & Rogers Law Firm – Accident Benefit Report – Volume 3 Issue 2 – 2000 Toronto, Ontario. [www.thompsonrogers.com/library/abrvol3iss2.htm#substitute](http://www.thompsonrogers.com/library/abrvol3iss2.htm#substitute)

### Bibliography

#### **Abuse and Neglect of the Elderly -**

Minister of National Health and Welfare

National Clearing House on Family Violence (1986)

**A Report on Elder Abuse** - Ontario Advisory Council on Senior Citizens. (February 1986)

**A Shared Concern** - Canada. Minister of National Health and Welfare, (1992)

#### **Elder Abuse. A Practical Handbook for Service Providers -**

Basu, Ranjy (1992)

Ontario Association of Professional Social Workers

#### **Abuse/Neglect Protocols** - Prince Edward Island:

Government of Prince Edward Island - Department of Health and Social Services Division of Home Care and Support, (1987)

#### **Elder Abuse Community Response Protocol Information and Guidelines** - Hastings and Prince Edward Council on Aging, Belleville, Ontario, (1992)

#### **Principles, Procedures and Protocols for Elder Abuse -**

Interministry Committee on Elder Abuse and Continuing Care Division - Ministry of Health and Ministry Responsible for Seniors, - British Columbia, Government of British Columbia, (1991)

#### **National Survey of the Elderly in Canada -**

The Ryerson Study - Podnieks, E., Pillemer, K., Nicholson, J.P., Shillington, T., Frizzel, A., (1990)

**Elder Abuse: The Hidden Crime -**

Wahl, J., Advocacy Centre for the Elderly, (1991)

**Elder Abuse: Major Issues from a National Perspective -**

Wigdor, B.T., (1991)

**A Guide for Community Agencies In Cases of Suspected Abuse of the Vulnerable Adult & the Elderly -**

Sault Ste. Marie & Algoma Interagency Risk Management Committee, (1993)

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