The Duty (or Not) to Report: Options in Elder Abuse Response

Judith Wahl
Advocacy Centre for the Elderly
wahlj@lao.on.ca
www.acelaw.ca

Part 1 of 2
Advocacy Centre for The Elderly

- 2 Carlton Street, Suite 701
  Toronto, Ontario
  M5B 1J3
- Tel: 416–598–2656
- Fax: 416–598–7924
- Email wahlj@lao.on.ca
- Website www.acelaw.ca
- To subscribe to ACE Newsletter list (emailed twice a year), send an email to gillardt@lao.on.ca
Challenges for this presentation

- This is a challenging area on which to make a presentation or to have a general discussion as there are many variables in any fact situation.

- These materials should not be considered as legal advice or as a comprehensive checklist of what can or should or must be done in response to potential or actual abuse – these materials were prepared for educational purposes only and reflect the writer’s opinion and interpretation of the legislation and outline matters to be considered.

- Not all the law/all the possible remedies/approaches to a problem can be presented in this format. This is a summary. As well, legislation may change therefore this presentation is current as of May 2013.

- Persons needing legal advice on specific cases should seek assistance from their own legal counsel.
Legislation Slides

- This presentation includes slides that reproduce the FULL TEXT of sections in the legislation.
- This was done to provide the participants with the full information so that you can see what the law exactly states.
- In the oral presentation, these slides will be passed through quickly, however, were included so that all participants have the details available for future reference.
Overview

- Reporting is Abuse is NOT the only answer to elder abuse

- What is mandatory reporting?

- Ontario legislation that includes reporting obligations or options
  - *Long-Term Care Homes Act*
  - *Retirement Homes Act*
  - *Substitute Decisions Act*

- OTHER responses to abuse
  - Prevention and response
  - When senior is mentally capable
  - If senior may not be mentally capable
  - Why people may refuse help and possible options
Reporting of Abuse

- There are many different forms of elder abuse. There is no ONE appropriate response to every incident of elder abuse. There are many different ways of assisting people with elder abuse issues depending on the facts of the particular case.

- Reporting of abuse is NOT the only answer to abuse

- The fact that there is no general law in Ontario requiring mandatory reporting of elder abuse wherever it happens is not a deterrent to response to abuse

- There are other options to response depending on the facts of the particular situation – in this presentation we will provide an overview of types of responses both when the victim is mentally capable or may be mentally incapable to make choices/give directions
Reporting of Abuse

- Even if reporting is required, reporting in and of itself does not necessarily stop the abuse or solve the problems that lead to the abuse.

- Reporting is not a guarantee that the abuse will be confirmed, resolved, stopped.

- The obligations of the person making the report do not necessarily end when the report is made. The reporter may have other obligations after making a report, such as giving assistance to the alleged victim.
Even if there is no legislated duty, should/ may a person report abuse somewhere?

- May be in a contract for services (agreement to inform a third party)
- May be a policy that is part of your employment (for example, to report to a supervisor/to person internal to employer)
- May be a professional responsibility or in a code of ethics (for example – regulated health professionals required to report to professional College, sexual abuse by another regulated health professional; lawyers may breach confidentiality duty owed to client in limited circumstances if a crime has or may occur)
What is Mandatory Reporting of Elder Abuse?

- In general, mandatory reporting of abuse is a requirement, in particular legislation, to report any incident of abuse (as defined in that legislation) that you believe has occurred or may occur to an individual.

- That report is made to a particular third party (person, agency, organization) as specified in that legislation, to investigate the allegations/suspicions of abuse.

- The particular legislation may also put other obligations on the reporter and/or on the operator/administrator of the “institution” to also assist the senior (alleged victim) directly, at the same time the report is made.
What is Mandatory Reporting of Elder Abuse?

- May be penalties for failure to report when so obligated

- May include whistle blowing protection to protect those that do report in accordance with the legislated obligation

- Where there is a requirement for reporting, there is no breach of privacy legislation if the reports are made as required
What is Mandatory Reporting of Elder Abuse?

- Where there is reporting, there may be no requirement for the third party who received the report and who does the investigation to give details to the reporter about what happened as a result of the report having been given
Is there a legislated DUTY to report abuse in Ontario or Federal Law?

- Duty to report
  - *Child and Family Services Act* – if victim is a child in need of protection
  - *Long-Term Care Homes Act* – if victim is a resident and potential or suspected abuse/neglect as defined by that act
  - *Retirement Homes Act* – if the victim is a tenant/resident and potential abuse/neglect as defined by that act
  - *Criminal Code* – no specific duty to report however may voluntarily report crime/suspicion of crime
  - *Substitute Decisions Act* – voluntary reporting options exist in particular circumstances if victim is an adult that is not mentally capable
Things to Take Note about when there is a duty to Report

- When does this duty apply?
- What must be reported?
- Who has duty to report?
- To whom must the report be made?
- What else must be done besides making the report?
- What is the party reported to required to do?
- What are the protections for the person reporting?
Long Term Care Homes Act  
“LTCHA”  

To access full text of legislation go to  
http://www.e-laws.gov.on.ca
Long Term Care Homes
- System Snapshot

- LTC homes are licensed by MOHLTC to provide long-term care services to persons eligible for LT care
- LTC homes are operated both for profit and non-profit
- LTC homes are a type of health care facility
- LTC homes are regulated under LTCHA and are required to comply with provisions of legislation and regulations
- LTC homes are subject to inspection and requirements for compliance by MOHLTC
24. (1) A person who has reasonable grounds to suspect that any of the following has occurred or may occur shall immediately report the suspicion and the information upon which it is based to the Director:

1. Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident.

2. Abuse of a resident by anyone or neglect of a resident by the licensee or staff that resulted in harm or a risk of harm to the resident.

3. Unlawful conduct that resulted in harm or a risk of harm to a resident.

4. Misuse or misappropriation of a resident’s money.

5. Misuse or misappropriation of funding provided to a licensee under this Act or the Local Health System Integration Act, 2006.
When victims/ potential victims are residents in a LTC Home licensed by MOHLTC. See list of LTC Homes in Ministry of Health and LTC Homes Website at [http://publicreporting.ltchomes.net/](http://publicreporting.ltchomes.net/)

Also when there is actual or potential misuse or misappropriation of funding provided to a long term care home licensee under this Act or the *Local Health System Integration Act*. For this reporting this may not involve a particular resident of the home but may be an action of the administration/licensee, whatever activity by whomever that is at the root of the actual or potential misuse or misappropriation of funding etc. that is being reported

NOT only apply when residents are physically in the LTC home

FOR EXAMPLE – Applies if resident of LTC home has gone to hospital for treatment and the persons providing care at hospital have reasonable grounds to believe patient was victim of abuse/neglect at LTC home
LTCHA– What must be reported?

Report required of both actual or potential of any of the below:

1. Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident.

2. Abuse of a resident by anyone or neglect of a resident by the licensee or staff that resulted in harm or a risk of harm to the resident.

3. Unlawful conduct that resulted in harm or a risk of harm to a resident.

4. Misuse or misappropriation of a resident’s money.

5. Misuse or misappropriation of funding provided to a licensee under this Act or the *Local Health System Integration Act, 2006*. 
LTCH Act– What is “Abuse”

**LTCHA 2. (1)** In this Act, “abuse”, in relation to a resident, means physical, sexual, emotional, verbal or financial abuse, as defined in the regulations in each case;

**LTCHA REGULATION**
“Abuse” — definition
2. (1) For the purposes of the definition of “abuse” in subsection 2 (1) of the Act, “emotional abuse” means,
(a) any threatening, insulting, intimidating or humiliating gestures, actions, behaviour or remarks, including imposed social isolation, shunning, ignoring, lack of acknowledgement or infantilization that are performed by anyone other than a resident, or
(b) any threatening or intimidating gestures, actions, behaviour or remarks by a resident that causes alarm or fear to another resident where the resident performing the gestures, actions, behaviour or remarks understands and appreciates their consequences;

“financial abuse” means any misappropriation or misuse of a resident’s money or property;

“physical abuse” means, subject to subsection (2),
(a) the use of physical force by anyone other than a resident that causes physical injury or pain, (b) administering or withholding a drug for an inappropriate purpose, or (c) the use of physical force by a resident that causes physical injury to another resident;
LTCH Act– What is “Abuse”

LTCHA REGULATION S. 2(1)

“sexual abuse” means,
(a) subject to subsection (3), any consensual or non-consensual touching, behaviour or remarks of a sexual nature or sexual exploitation that is directed towards a resident by a licensee or staff member, or
(b) any non-consensual touching, behaviour or remarks of a sexual nature or sexual exploitation directed towards a resident by a person other than a licensee or staff member;

“verbal abuse” means,
(a) any form of verbal communication of a threatening or intimidating nature or any form of verbal communication of a belittling or degrading nature which diminishes a resident’s sense of well-being, dignity or self-worth, that is made by anyone other than a resident, or
(b) any form of verbal communication of a threatening or intimidating nature made by a resident that leads another resident to fear for his or her safety where the resident making the communication understands and appreciates its consequences.

(2) For the purposes of clause (a) of the definition of “physical abuse” in subsection (1), physical abuse does not include the use of force that is appropriate to the provision of care or assisting a resident with activities of daily living, unless the force used is excessive in the circumstances.

(3) For the purposes of the definition of “sexual abuse” in subsection (1), sexual abuse does not include,
(a) touching, behaviour or remarks of a clinical nature that are appropriate to the provision of care or assisting a resident with activities of daily living; or
(b) consensual touching, behaviour or remarks of a sexual nature between a resident and a licensee or staff member that is in the course of a sexual relationship that began before the resident was admitted to the long-term care home or before the licensee or staff member became a licensee or staff member.
LTCHA – Who has the duty to report?

- “A person who has reasonable grounds to suspect that any of the following (as listed on previous slide) has occurred or may occur”

- So its ANYONE and EVERYONE
  - Except residents
  - S. 24 (3) A resident may make a report..., but is not required to
Duty on practitioners and others

Even if the information on which a report may be based is confidential or privileged, subsection (1) also applies to a person mentioned in paragraph 1, 2 or 3, and no action or other proceeding for making the report shall be commenced against a person who acts in accordance with subsection (1) unless that person acts maliciously or without reasonable grounds for the suspicion:

1. A physician or any other person who is a member of a College as defined in subsection 1 (1) of the Regulated Health Professions Act, 1991.
2. A person who is registered as a drugless practitioner under the Drugless Practitioners Act.
3. A member of the Ontario College of Social Workers and Social Service Workers.
LTCHA – To whom must the report be made?

- **24. (1)** A person who has reasonable grounds to suspect that any of the following has occurred or may occur shall immediately report the suspicion and the information upon which it is based to the Director

- **DIRECTOR** is a person at the MOHLTC not the “director” or administrator of the LTCH
LTCHA – To whom must the report be made?
LTCHomes.net Information

- **Question:** With respect to mandatory reporting by all persons under section 24 of the *Long-Term Care Homes Act, 2007* (LTCHA) what is the contact information for the Director?

- **Answer:** To make a report to the Director under section 24 of the *LTCHA* the following options are available:
  - Call the confidential toll-free number: 1–866–434–0144 (7 days a week, 8:30 a.m. – 7:00 p.m.)
  - Write a letter to this address:
    Director, Ministry of Health and Long-Term Care Performance Improvement and Compliance Branch
    1075 Bay Street, 11th Floor
    Toronto, ON M5S 2B1
LTCHA – To whom must the report be made? What the legislation says

- **LTCHA, s.24(1)** A person who has reasonable grounds to suspect that any of the following has occurred or may occur shall immediately report the suspicion and the information upon which it is based to the Director.

- **LTCHA, s. 1** “Director” means the person appointed under section 175 as the Director and, where more than one person has been appointed, means the person who is the Director for the purposes of the provision in which the term appears;

- **LTCHA, s. 175(1)** The Minister may appoint one or more persons as the Director.
Employment/ facility Policies cannot override the legislation

- Facility/employment policies **cannot override** these requirements by requiring reporting only internally to management or cannot suppress or limit the reporting by a person, including staff, directly to the MOHLTC

- Facility/employment policies should be **developed** and should include and support and reflect these requirements to directly report under the circumstances as set out in the legislation
What else must be done besides making the report?

Licensee of LTCH have a duty to protect residents from abuse and must ensure residents are not neglected by staff or the licensee.

Licensees must have policies about Zero Tolerance of abuse that includes:
- A program, that complies with the regulations, for preventing abuse and neglect;
- Procedures for investigating and responding to alleged, suspected or witnessed abuse and neglect of residents;

Therefore internal to each LTC home there must be plans/procedures to guide staff (and others) as to what to do if abuse/neglect as defined in this act occurs or is suspected in addition to making the mandatory report to the MOHLTC.

AFTER REPORTING still a requirement to respond and do something...
LTCHA– Licensee Duty to Protect

19. (1) Every licensee of a long-term care home shall protect residents from abuse by anyone and shall ensure that residents are not neglected by the licensee or staff.

If absent from the home

(2) The duties in subsection (1) do not apply where the resident is absent from the home, unless the resident continues to receive care or services from the licensee, staff or volunteers of the home.
LTCH Act – Duty on Licensee to have written policy about abuse

Policy to promote zero tolerance

20. (1) Without in any way restricting the generality of the duty provided for in section 19, every licensee shall ensure that there is in place a written policy to promote zero tolerance of abuse and neglect of residents, and shall ensure that the policy is complied with.

Contents

(2) At a minimum, the policy to promote zero tolerance of abuse and neglect of residents, (a) shall provide that abuse and neglect are not to be tolerated;
(b) shall clearly set out what constitutes abuse and neglect;
(c) shall provide for a program, that complies with the regulations, for preventing abuse and neglect;
(d) shall contain an explanation of the duty under section 24 to make mandatory reports;
(e) shall contain procedures for investigating and responding to alleged, suspected or witnessed abuse and neglect of residents;
(f) shall set out the consequences for those who abuse or neglect residents;
(g) shall comply with any requirements respecting the matters provided for in clauses (a) through (f) that are provided for in the regulations; and
(h) shall deal with any additional matters as may be provided for in the regulations.

Communication of policy

(3) Every licensee shall ensure that the policy to promote zero tolerance of abuse and neglect of residents is communicated to all staff, residents and residents’ substitute decision-makers.
Policy to Promote Zero Tolerance

**LTCHA REGULATION, s. 96.**

Every licensee of a long-term care home shall ensure that the licensee’s written policy under section 20 of the Act to promote zero tolerance of abuse and neglect of residents,

(a) contains procedures and interventions to assist and support residents who have been abused or neglected or allegedly abused or neglected;
(b) contains procedures and interventions to deal with persons who have abused or neglected or allegedly abused or neglected residents, as appropriate;
(c) identifies measures and strategies to prevent abuse and neglect;
(d) identifies the manner in which allegations of abuse and neglect will be investigated, including who will undertake the investigation and who will be informed of the investigation; and
(e) identifies the training and retraining requirements for all staff, including,

(i) training on the relationship between power imbalances between staff and residents and the potential for abuse and neglect by those in a position of trust, power and responsibility for resident care, and
(ii) situations that may lead to abuse and neglect and how to avoid such situations. O. Reg. 79/10.
Notification of Resident’s SDM or other persons specified by Resident

Notification re incidents

LTCHA REGULATION s. 97. (1) Every licensee of a long-term care home shall ensure that the resident’s substitute decision-maker, if any, and any other person specified by the resident,

(a) are notified immediately upon the licensee becoming aware of an alleged, suspected or witnessed incident of abuse or neglect of the resident that has resulted in a physical injury or pain to the resident or that causes distress to the resident that could potentially be detrimental to the resident’s health or well-being; and
(b) are notified within 12 hours upon the licensee becoming aware of any other alleged, suspected or witnessed incident of abuse or neglect of the resident.

(2) The licensee shall ensure that the resident and the resident’s substitute decision-maker, if any, are notified of the results of the investigation required under subsection 23 (1) of the Act, immediately upon the completion of the investigation.

(3) Despite subsections (1) and (2), a licensee is not required to, but may, notify a person of anything under this section if the licensee has reasonable grounds to believe that the person is responsible for the alleged, suspected or witnessed incident of abuse or neglect of the resident.
Police Notification

LTCHA REGULATION, s. 98. Every licensee of a long-term care home shall ensure that the appropriate police force is immediately notified of any alleged, suspected or witnessed incident of abuse or neglect of a resident that the licensee suspects may constitute a criminal offence.
Every licensee of a long-term care home shall ensure,

(a) that an analysis of every incident of abuse or neglect of a resident at the home is undertaken promptly after the licensee becomes aware of it;
(b) that at least once in every calendar year, an evaluation is made to determine the effectiveness of the licensee’s policy under section 20 of the Act to promote zero tolerance of abuse and neglect of residents, and what changes and improvements are required to prevent further occurrences;
(c) that the results of the analysis undertaken under clause (a) are considered in the evaluation;
(d) that the changes and improvements under clause (b) are promptly implemented; and
(e) that a written record of everything provided for in clauses (b) and (d) and the date of the evaluation, the names of the persons who participated in the evaluation and the date that the changes and improvements were implemented is promptly prepared.
Offence of failure to report

The following persons are guilty of an offence if they fail to make a report required by subsection (1):

1. The licensee of the long-term care home or a person who manages a long-term care home pursuant to a contract described in section 110.

2. If the licensee or person who manages the home is a corporation, an officer or director of the corporation.

3. In the case of a home approved under Part VIII, a member of the committee of management for the home under section 132 or of the board of management for the home under section 125 or 129.

4. A staff member.

5. Any person who provides professional services to a resident in the areas of health, social work or social services work.

6. Any person who provides professional services to a licensee in the areas of health, social work or social services work.
LTCHA – Offence If suppress Reports

Offences re suppressing reports

(6) Every person mentioned in paragraph 1, 2, 3 or 4 of subsection (5) is guilty of an offence if the person,

(a) coerces or intimidates a person not to make a report required by this section;
(b) discourages a person from making a report required by this section; or
(c) authorizes, permits or concurs in a contravention of the duty to make a report required by this section.
What is the party reported to (MOHLTC) required to do?

- Require an inspector to conduct an investigation
- As a result of investigation, *LTCHA* provides for **various actions that MOHLTC may take** to ensure compliance by Licensee with legislation
What Director at MOHLTC must do when he/she receives report

25. (1) The Director shall have an inspector conduct an inspection or make inquiries for the purpose of ensuring compliance with the requirements under this Act if the Director receives information from any source indicating that any of the following may have occurred:

1. Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident.
2. Abuse of a resident by anyone or neglect of a resident by the licensee or staff that resulted in harm or a risk of harm to the resident.
3. Unlawful conduct that resulted in harm or a risk of harm to a resident.
5. Misuse or misappropriation of a resident’s money.
6. Misuse or misappropriation of funding provided to a licensee under this Act or the Local Health System Integration Act, 2006.
7. A failure to comply with a requirement under this Act.
8. Any other matter provided for in the regulations.

Immediate visit to home

(2) The inspector acting under subsection (1) shall immediately visit the long-term care home concerned if the information indicates that any of the following may have occurred:

1. Anything described in paragraph 1, 2 or 3 of subsection (1) that resulted in serious harm or a risk of serious harm to a resident.
2. Anything described in paragraph 4 of subsection 1 of subsection (1).
3. Any other matter provided for in the regulations.
LTCHA – What are the protections for the person reporting?

- Whistle-blowing protections to protect against retaliation
- Possible complaints to Ontario Labour Relations Board if anything done in retaliation for reporting
Whistle-blowing protection

Whistle-blowing protection

26. (1) No person shall retaliate against another person, whether by action or omission, or threaten to do so because,
   (a) anything has been disclosed to an inspector;
   (b) anything has been disclosed to the Director including, without limiting the generality of the foregoing,
   (i) a report has been made under section 24, or the Director has otherwise been advised of anything mentioned in paragraphs 1 to 5 of subsection 24 (1),
   (ii) the Director has been advised of a breach of a requirement under this Act, or
   (iii) the Director has been advised of any other matter concerning the care of a resident or the operation of a long-term care home that the person advising believes ought to be reported to the Director; or
   (c) evidence has been or may be given in a proceeding, including a proceeding in respect of the enforcement of this Act or the regulations, or in an inquest under the Coroners Act.
What Retaliation means

**Interpretation, retaliate**

(2) Without in any way restricting the meaning of the word “retaliate”, the following constitute retaliation for the purposes of subsection (1):
1. Dismissing a staff member.
2. Disciplining or suspending a staff member.
3. Imposing a penalty upon any person.
4. Intimidating, coercing or harassing any person.

**No retaliation against residents**

(3) A resident shall not be discharged from a long-term care home, threatened with discharge, or in any way be subjected to discriminatory treatment because of anything mentioned in subsection (1), even if the resident or another person acted maliciously or in bad faith, and no family member of a resident, substitute decision-maker of a resident, or person of importance to a resident shall be threatened with the possibility of any of those being done to the resident.

**Interpretation, discriminatory treatment**

(4) Without in any way restricting the meaning of the term “discriminatory treatment”, discriminatory treatment for the purposes of subsection (3) includes any change or discontinuation of any service to or care of a resident or the threat of any such change or discontinuation.
27. (1) Where a staff member complains that an employer or person acting on behalf of an employer has contravened subsection 26 (1), the staff member may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Board in which case any rules governing the practice and procedure of the Board apply with all necessary modifications to the complaint.

(4) On an inquiry by the Board into a complaint filed under subsection (1), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection 26 (1) lies upon the employer or the person acting on behalf of the employer. 2007, c. 8, s. 27 (4).
Retirement Homes Act
“RHA”

To access full text of the legislation go to
http://www.e-laws.gov.on.ca
Retirement Homes – Snapshot

- Retirement homes are residential accommodations, NOT regulated health care facilities or “private” nursing homes

- Retirement homes are tenancies – Retirement homes are regulated under BOTH the Residential Tenancies Act and the Retirement Homes Act

- The *RHA* is not yet completely in effect – the sections on Abuse reporting have been proclaimed and are in effect now
Retirement Homes – Snapshot

- After the act is proclaimed in effect, then retirement homes will require a license to operate, will be subject to inspection, and will need to meet the care standards and other requirements of the RHA.

- The licensing and regulatory oversight of retirement homes will be by the Retirement Home Regulatory Authority (RHRA), not an Ontario Government Ministry.

- The RHRA has a Registrar who is the senior management person who has various duties under the act including the requirement to receive the reports of abuse and neglect.
RHA – Reporting Certain Matters to the Registrar

RHA 75. (1) A person who has reasonable grounds to suspect that any of the following has occurred or may occur shall immediately report the suspicion and the information upon which it is based to the Registrar:

1. **Improper or incompetent treatment or care of a resident** that resulted in harm or a risk of harm to the resident.

2. Abuse of a resident by anyone or neglect of a resident by the licensee or the staff of the retirement home of the resident if it results in harm or a risk of harm to the resident.

3. **Unlawful conduct** that resulted in harm or a risk of harm to a resident.

4. **Misuse or misappropriation** of a resident’s money.
RHA– When does this Duty Apply?

- When victims/potential victims are residents/tenants in a “retirement home”

- What is a retirement home?

  S. 1 “retirement home” means a residential complex or the part of a residential complex,
  ◦ (a) that is occupied primarily by persons who are 65 years of age or older,
  ◦ (b) that is occupied or intended to be occupied by at least the prescribed number of persons who are not related to the operator of the home, and
  ◦ (c) where the operator of the home makes at least two care services available, directly or indirectly, to the residents,
  ◦ but does not include:..
  ◦ Prescribed number in (b) is SIX
RHA– When does this Duty Apply?

- **How do you know if a place is a retirement home?**
  - Eventually there will be a Registry for retirement homes maintained by the RHRA. But this registry will take a long time to be established since the Act has not yet been proclaimed and the retirement homes will not be given a period of time to obtain the license after proclamation. Need to look at the definition of retirement home and also at what places are NOT included (such as supportive housing) and determine if the particular place meets the definition.

- **Duty to report also applies when retirement home resident/tenant is outside the retirement home**

- **FOR EXAMPLE –** Applies if resident/tenant of a retirement home has gone to hospital/physician/is attending a program at a seniors centre and the persons interacting with retirement home resident/tenant have reasonable grounds to believe he/she is a victim of abuse/neglect at the retirement home then duty to report applies.
RHA– What Must be Reported

Report required of both actual or potential of any of the below:

1. Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident.

2. Abuse of a resident by anyone or neglect of a resident by the licensee or the staff of the retirement home of the resident if it results in harm or a risk of harm to the resident.

3. Unlawful conduct that resulted in harm or a risk of harm to a resident.

4. Misuse or misappropriation of a resident’s money.
RHA – What is Abuse/Neglect

2. (1) In this Act, “abuse”, in relation to a resident, means physical abuse, sexual abuse, emotional abuse, verbal abuse or financial abuse, as may be defined in the regulations in each case;

“neglect”, in relation to residents, means the failure to provide a resident with the care and assistance required for his or her health, safety or well-being and includes inaction or a pattern of inaction that jeopardizes the health or safety of one or more residents;
1. (1) For the purposes of the definition of “abuse” in subsection 2 (1) of the Act, “emotional abuse” means,
(a) any threatening, insulting, intimidating or humiliating gestures, actions, behaviour or remarks, including imposed social isolation, shunning, ignoring, lack of acknowledgement or infantilization that are performed by anyone other than a resident, or
(b) any threatening or intimidating gestures, actions, behaviour or remarks by a resident that causes alarm or fear to another resident if the resident performing the gestures, actions, behaviour or remarks understands and appreciates their consequences;

“financial abuse” means any misappropriation or misuse of a resident’s money or property;

“physical abuse” means, subject to subsection (2),
(a) the use of physical force by anyone other than a resident that causes physical injury or pain,
(b) administering or withholding a drug for an inappropriate purpose, or
(c) the use of physical force by a resident that causes physical injury to another resident;
RHA – What is Abuse/Neglect

“sexual abuse” means,
(a) subject to subsection (3), any consensual or non-consensual touching, behaviour or remarks of a sexual nature or sexual exploitation that is directed towards a resident by a licensee or staff member, or
(b) any non-consensual touching, behaviour or remarks of a sexual nature or sexual exploitation directed towards a resident by a person other than a licensee or staff member;

“verbal abuse” means,
(a) any form of verbal communication of a threatening or intimidating nature or any form of verbal communication of a belittling or degrading nature that diminishes a resident’s sense of well-being, dignity or self-worth, if the communication is made by anyone other than a resident, or
(b) any form of verbal communication of a threatening or intimidating nature made by a resident that leads another resident to fear for his or her safety if the resident making the communication understands and appreciates its consequences.
RHA – What is Abuse/Neglect

RHA REGULATIONS
s.1(2) For the purposes of clause (a) of the definition of “physical abuse” in subsection (1), physical abuse does not include the use of force that is appropriate to the provision of care or assisting a resident with activities of daily living, unless the force used is excessive in the circumstances.

(3) For the purposes of the definition of “sexual abuse” in subsection (1), sexual abuse does not include,
(a) touching, behaviour or remarks of a clinical nature that are appropriate to the provision of care or assisting a resident with activities of daily living; or
(b) consensual touching, behaviour or remarks of a sexual nature between a resident and a licensee or staff member that is in the course of a sexual relationship that began before the resident commenced residency in the retirement home or before the licensee or staff member became a licensee or staff member.