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

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RHA – Who has a Duty to Report

- **RHA, s.75(1)** A person who has reasonable grounds to suspect that any of the following (as described on previous slides) has occurred or may occur...

- So it’s ANYONE and EVERYONE,

EXCEPT residents:

- **RHA, s.75(2)** A resident is not required to make a report under subsection (1) but may do so.
RHA – Who has a Duty to Report

Duty on medical practitioners and others

(3) Even if the information on which a report may be based is confidential or privileged, subsection (1) 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 legally qualified medical practitioner 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.
RHA – To whom must the report be made?

- **RHA, s.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.

- The Registrar is a person at the Retirement Home Regulatory Authority (RHRA).
How to File a Report – Resident Care and Safety

If you see or suspect:

- Harm or risk of harm to a resident resulting from:
  - Improper or incompetent treatment or care
  - Abuse of a resident by anyone or neglect of a resident by staff of the retirement home
  - Unlawful conduct
- Misuse or misappropriation of a resident’s money

You must* report it to the Registrar of the RHRA, along with any other relevant information. To make a report, call: 1–800–ASK–RHRA (1–800–275–7472)

*Under the RHA, a person (including retirement home operators, managers, staff, professional health, social work and social service providers) who suspects or is aware of any harm or risk of harm to a retirement home resident must immediately report the suspicion and the information on which it is based to the Registrar of the RHRA.
Retirement Home Employment Agreements / Policies cannot override the legislation

- Retirement home employment agreements/policies cannot override these requirements by requiring reporting only internally to management or suppress or limit the reporting by a person, including staff, directly to the Registrar.

- Retirement home employment agreements/policies should include and support and reflect these requirements to directly report under the circumstances as set out in the legislation.
RHA – What Else Must be done besides making the Report?

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

RH Licensees will be required to 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 RH 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 Registrar.

**AFTER REPORTING** still a requirement to respond and do something
RHA – Duty of RH Licensee

67. (1) Every licensee of a retirement home shall protect residents of the home from abuse by anyone.

Same, neglect
(2) Every licensee of a retirement home shall ensure that the licensee and the staff of the home do not neglect the residents.

Resident absent from home
(3) The duties in subsections (1) and (2) do not apply if a resident is absent from the retirement home, unless the resident continues to receive care services from the licensee or the staff of the home.
RHA – Policy to promote zero tolerance

RHA s 67 (4) Without in any way restricting the generality of the duties described in subsections (1) and (2), the licensee shall ensure that there is a written policy to promote zero tolerance of abuse and neglect of residents and shall ensure that the policy is complied with.

Contents
(5) At a minimum, the policy to promote zero tolerance of abuse and neglect of residents shall,
(a) clearly set out what constitutes abuse and neglect;
(b) provide that abuse and neglect are not to be tolerated;
(c) provide for a program for preventing abuse and neglect;
(d) contain an explanation of the duty under section 75 to report to the Registrar the matters specified in that section;
(e) contain procedures for investigating and responding to alleged, suspected or witnessed abuse and neglect of residents;
(f) set out the consequences for those who abuse or neglect residents;
(g) comply with the prescribed requirements, if any, respecting the matters described in clauses (a) to (f); and
(h) deal with the additional matters, if any, that are prescribed.
RHA REGULATION, s.15 (1) The program for preventing abuse and neglect described in clause 67 (5) (c) of the Act shall entail training and retraining requirements for all staff of the retirement home, including,

(a) 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

(b) situations that may lead to abuse and neglect and how to avoid such situations.

(2) The procedures for investigating and responding to alleged, suspected or witnessed abuse and neglect of residents described in clause 67 (5) (e) of the Act shall include details outlining who will undertake the investigation and who will be informed of the investigation.
RHA – Policy to promote zero tolerance

(3) The policy to promote zero tolerance of abuse and neglect of residents described in subsection 67 (4) of the Act shall,

(a) contain procedures and interventions to assist and support residents who have been abused or neglected or allegedly abused or neglected;

(b) contain procedures and interventions to deal with persons who have abused or neglected or allegedly abused or neglected residents, as appropriate;

(c) identify measures and strategies to prevent abuse and neglect;

(d) provide that the licensee of the retirement home shall ensure that the resident’s substitute decision-makers, if any, and any other person specified by the resident,
   (i) are notified immediately upon the licensee becoming aware of an alleged, suspected or witnessed incident of abuse or neglect of a resident that has resulted in a physical injury or pain to a resident or that causes distress to a resident that could potentially be detrimental to a resident’s health or well-being, and
   (ii) are notified within 12 hours upon the licensee becoming aware of any other alleged, suspected or witnessed incident of abuse or neglect of a resident;
RHA – Policy to promote zero tolerance

(e) provide that the licensee of the retirement home shall ensure that the resident and the resident’s substitute decision-makers, if any, are notified of the results of an investigation described in clause 67 (5) (e) of the Act immediately upon the completion of the investigation;

(f) provide that the licensee of the retirement 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; and

(g) provide that the licensee of the retirement home shall ensure that,

(i) 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,
(ii) at least once in every calendar year, an evaluation is made to determine the effectiveness of the policy and what changes and improvements are required to prevent further occurrences of abuse and neglect of residents,
(iii) the results of the analysis undertaken under subclause (i) are considered in the evaluation mentioned in subclause (ii),
(iv) the changes and improvements mentioned in subclause (ii) are promptly implemented, and
(v) a written record of everything provided for in subclauses (ii) and (iv) 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.
RHA – Offences in respect to Abuse/ Neglect reporting

98. (1) A person is guilty of an offence if the person,

(b) includes in a report to the Registrar under subsection 75 (1) information that the person knows to be false and the person is not a resident who is incapable;

(c) fails to make a report required by subsection 75 (1) and the person is,

(i) the licensee of a retirement home or a person who manages a retirement home on behalf of a licensee,

(ii) if the licensee of a retirement home or person who manages the home is a corporation, an officer or director of the corporation,

(iii) a staff member of a retirement home,

(iv) any person who provides professional services to a resident in the areas of health, social work, social services work or finances, or

(v) any person who provides professional services to a licensee in the areas of health, social work or social services work;

(d) is a person described in subclause (c) (i), (ii) or (iii) and,

(i) coerces or intimidates a person not to make a report required by subsection 75 (1),

(ii) discourages a person from making a report required by subsection 75 (1), or

(iii) authorizes, permits or concurs in a contravention of the duty to make a report required by subsection 75 (1);

(e) contravenes a provision of the regulations that is prescribed for the purpose of this clause;

(h) fails to comply with an order made by the Registrar under this Act.
What is the party reported to (Registrar at RHRA) required to do?

- Require an inspector to conduct an investigation
- As a result of investigation, the *RHA* provides for various actions that the Registrar/RHRA may take to ensure compliance by Licensee with legislation
RHA – Requirement for Inspection

s.75 (5) If the Registrar receives a report indicating that any of the events described in subsection (1) may have occurred, the Registrar shall ensure that an inspector visits the retirement home immediately.

Powers of inspector
(6) Sections 77 to 79 apply with necessary modifications to an inspector acting under subsection (1).
RHA– What are the protections for the person reporting?

- Whistle-blowing protections to protect against retaliation
- Possible complaints to Ontario Labour Relations Board

- Protection against retaliation includes protections both for staff as well as for residents/tenants of retirement homes
RHA – Whistleblowing Protections

**RHA, s.115(1)** No person shall retaliate or threaten to retaliate against another person, whether by action or omission, because any person has disclosed anything to the Registrar or an inspector or has provided evidence that 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*.

**Interpretation, retaliate**

(2) Without limiting the meaning of “retaliate” in this section, the following constitute retaliation for the purpose of this section:

1. Dismissing, suspending or disciplining a member of the staff of a retirement home.
2. Evicting a resident from a retirement home.
3. Subjecting a resident of a retirement home to discriminatory treatment.
4. Imposing a penalty on any person.
5. Intimidating, coercing or harassing any person.

**Interpretation, discriminatory treatment**

(3) Without limiting the meaning of “discriminatory treatment” in subsection (2), discriminatory treatment for the purpose of that subsection includes any change in or discontinuation of any service or care provided to a resident. (3).
RHA – Whistleblowing Protections

Threats against resident made to others
(4) The prohibition in subsection (1) includes threatening a family member of a resident, substitute decision-maker of a resident, or person of importance to a resident with retaliation against the resident.

Malicious, etc., disclosure
(5) The prohibition in subsection (1) applies to retaliation or threatening retaliation against a resident, even if the disclosure to the Registrar or inspector was made maliciously or in bad faith.

Disclosure not to be discouraged
(6) None of the following persons shall do anything that discourages, is aimed at discouraging or has the effect of discouraging a person from making a disclosure to the Registrar or an inspector:
1. The licensee of a retirement home.
2. A member of the staff of a retirement home.
3. If the member mentioned in paragraph 2 is a corporation, a director or officer of the corporation.

Protection from legal action
(7) No action or other proceeding shall be instituted against any person for making a disclosure to the Registrar or an inspector, unless the person acted maliciously or in bad faith.
RHA - Whistleblowing Protections

RHA REGULATION, s. 116. (1) In this section, “Board” means the Ontario Labour Relations Board; (“Commission”) “employer”, in relation to a member of the staff of a retirement home, means,
(a) the licensee of the home, if the member works at the home as an employee of the licensee or pursuant to a contract or agreement with the licensee, or
(b) if the member works at the home pursuant to a contract or agreement between the licensee of the home and an employment agency or other third party, the employment agency or third party.

Arbitration or complaint
(2) A member of the staff of a retirement home who complains that the employer or a person acting on behalf of the employer has contravened section 115 may either have the matter dealt with by final and binding settlement by arbitration under the collective agreement, if any, that applies to the member and his or her employer or file a complaint with the Board, in which case the rules governing the practice and procedure of the Board apply with necessary modifications to the complaint.

Inquiry by Board
(3) The Board may inquire into any complaint filed under subsection (2) and, if the Board does so, subsections 96 (1), (2), (3), (4), (6), (7) and (8) and sections 110, 111, 114 and 116 of the Labour Relations Act, 1995 apply with necessary modifications.

Onus of proof
(4) On an inquiry under subsection (3), the onus is on the employer or the person acting on behalf of the employer to prove that the employer or person, as the case may be, did not contravene section 115

Board may substitute penalty
(5) If, on an inquiry under subsection (3), the Board determines that an employer has dismissed, suspended or disciplined a member of the staff of a retirement home for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the reason for the dismissal, suspension or discipline, the Board may substitute any other penalty that it considers just and reasonable in the circumstances in the place of the dismissal, suspension or discipline.
Substitute Decisions Act “SDA”

To access full text of the legislation, go to http://www.e-laws.gov.on.ca
Substitute Decision Act is one of two acts (Health Care Consent Act being the other) that details the law on mental capacity, powers of attorney, guardianship and substitute decision making.

SDA includes voluntary reporting to the OPGT that a person who is believed to be mentally incapable and is experiencing or at risk of serious harm, either to their property or their person.

OPGT then may investigate and may take steps to become that person’s guardian or take other steps to assist the person.
SDA – Voluntary Reporting re: “serious adverse effects” to property

27. (1) Loss of a significant part of a person’s property, or a person’s failure to provide necessities of life for himself or herself or for dependants, are serious adverse effects for the purposes of this section.

Duty to investigate
(2) The Public Guardian and Trustee shall investigate any allegation that a person is incapable of managing property and that serious adverse effects are occurring or may occur as a result.

Extent of investigation
(3) In conducting an investigation under subsection (2), the Public Guardian and Trustee is not required to take any steps that, in his or her opinion, are unnecessary for the purpose of determining whether an application to the court is required under subsection (3.1).

Application for temporary guardianship
(3.1) If, as a result of the investigation, the Public Guardian and Trustee has reasonable grounds to believe that a person is incapable of managing property and that the prompt appointment of a temporary guardian of property is required to prevent serious adverse effects, the Public Guardian and Trustee shall apply to the court for an order appointing him or her as temporary guardian of property.
62. (1) Serious illness or injury, or deprivation of liberty or personal security, are serious adverse effects for the purposes of this section.

Duty to investigate
(2) The Public Guardian and Trustee shall investigate any allegation that a person is incapable of personal care and that serious adverse effects are occurring or may occur as a result.

Extent of investigation
(3) In conducting an investigation under subsection (2), the Public Guardian and Trustee is not required to take any steps that, in his or her opinion, are unnecessary for the purpose of determining whether an application to the court is required under subsection (3.1).

Application for temporary guardianship
(3.1) If, as a result of the investigation, the Public Guardian and Trustee has reasonable grounds to believe that a person is incapable of personal care and that the prompt appointment of a temporary guardian of the person is required to prevent serious adverse effects, the Public Guardian and Trustee shall apply to the court for an order appointing him or her as the incapable person’s temporary guardian of the person.
What YOU need to give information about for the OPGT to investigate

The Public Guardian and Trustee shall investigate any allegation that a person is incapable of managing property (or personal care) and that serious adverse effects are occurring or may occur as a result.

1. Evidence that the victim is incapable of managing property or personal care.
   NOTE: This evidence does not need to be a capacity assessment by a capacity assessor or other detailed assessments. May be observations of behaviours, from your interaction with person. May be observations and evidence of other people.
What YOU need to give information about for the OPGT to investigate

2. Evidence that “serious adverse effects” are occurring or may occur as a result.

What are “serious adverse effects”? 

27. (1) Loss of a significant part of a person’s property, or a person’s failure to provide necessities of life for himself or herself or for dependants, are serious adverse effects for the purposes of this section.

62. (1) Serious illness or injury, or deprivation of liberty or personal security, are serious adverse effects for the purposes of this section.

What evidence/information you can provide to the OPGT, oral and/or written to show this? Note that the losses/harms may be POTENTIAL, as well as actually occurring.
Privacy

- There are MANY misunderstandings about privacy law
- YOU need to understand the requirements for privacy both from legislation and from professional codes of practice
- A full discussion of privacy law is beyond this presentation however the basic principles are that
  - You must get consent for the collection, use and disclosure of private information,
  - A person may give or refuse consent about their own information,
  - If a person is not capable the SDM as defined in the applicable privacy legislation may give or refuse consent and
  - The legislation may provide for exceptions to consent when consent is not required to release of information
Privacy Legislation – Examples of sections that permit disclosure

*Personal Health Information Protection Act 2004*

43. (1) A health information custodian may disclose personal health information about an individual, (a) for the purpose of determining, assessing or confirming capacity under the *Health Care Consent Act, 1996*, the *Substitute Decisions Act, 1992* or this Act;…. (e) to the Public Guardian and Trustee, ..so that they can carry out their statutory functions;
Privacy Legislation – Examples of sections that permit disclosure

*Personal Health Information Protection Act 2004*

40. (1) A health information custodian may disclose personal health information about an individual if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons.
OTHER responses to abuse

- Reporting to a third party agency/person is NOT the only way of assisting a person you think is or may be the victim of abuse
How to Respond to Elder Abuse

- Appropriate response to abuse situations depend on many factors including:
  - Who is the victim and his or her particular personal circumstances (mental capacity, physical needs/limitations, financial circumstances, available personal supports such as family and friends, place of residence etc)
  - The victim’s own understanding of the abuse, does the victim see the identified activity as abuse, and what are his or her concerns/ wishes/directions in respect to different options/ interventions to respond to the abuse
  - **START BY TALKING TO THE SENIOR!**
How to Respond to Elder Abuse

- Appropriate response to abuse situations depend on many factors including:
  - Availability of services/supports
  - The immediate, short term, and long term needs of the victim
    - safety,
    - financial
    - shelter,
    - health care,
    - social services assistance,
    - legal assistance
  - Help for a victim of abuse may require a number of different people and services because elder abuse is not one “type” of action/behaviour etc
  - Think about what YOU are able to do and whether you know the other services and systems that you can help the senior access for other help
What options family members (that are not the abuser) may have such as:

- Helping support the capable victim emotionally to take steps to address abuse
- Assisting capable victim to seek recovery of money that was taken from them through abuse
- Providing temporary or long term accommodation or temporary or long term care supports to reduce or eliminate dependency of victim on abuser if any
- Taking steps to challenge authority of abuser that is SDM of incapable victim whether that is through a court proceeding or by some other means
Mental Capacity of the Alleged Victim

- Capable people have the right to control their own lives (to a point)
- Capable people may need information as to options available as they may think that nothing and nobody can help them
  - May need help accessing help
  - May need help seeking legal assistance
  - May need help getting alternative care supports if abuser is the caregiver
  - May need help to revoke POA if abuser is person named as attorney in POA
  - May need help enforcing own rights and also addressing misunderstandings by service providers of seniors rights and ways of addressing the abuse
Incapable victim

- If the alleged victim lacks decisional capacity, there may be additional options as to what action is appropriate
  - Reporting to OPGT
  - Involving family who can take steps to replace SDM
  - Seeking direction from the SDM (if SDM is not the alleged abuser)
  - Challenging authority of the SDM – just because someone is an attorney for personal care or property they can’t just do “anything” – the scope of their authority is limited by the law
  - Example – SDM for personal care gets no authority to make decisions until the senior is not capable for a particular decision – so are YOU getting the decision from the right person or actually contributing to abuse by taking direction from the SDM?
Scope of Authority of SDMs

- Need to understand what SDMs may or may not do by law (scope of authority)

- SDMs powers are not unlimited – eg., SDMs do not have the right to restrict visitors to LTCH resident unless there is a risk of safety

- SDMs cannot use the incapable seniors money for their own purposes (breach of fiduciary duty)

- SDMs must make health care decisions for the incapable resident in accordance with the residents wishes/best interest and care providers may challenge the SDM authority before the Consent and Capacity Board if they are not acting so accordingly
Type of Abuse

- Is the abuse a *Criminal Code* Offence?
  - No requirement generally to report a crime other than in two pieces of legislation mentioned earlier but ethically/by professional codes of ethics may be possible/appropriate/justifiable to do something
Abuses that may be Crimes
Criminal Code

- Assault, s. 265
- Assault with a weapon or causing bodily harm, s. 267
- Forcible confinement, s. 279(1)
- Sexual assault, s. 271
- Breach of duty to provide necessaries, s. 215
- Intimidation, s. 423
- Uttering threats, s. 264.1
- Theft, s. 322
- Theft by a person holding a power of attorney, s. 331
- Fraud, s. 380
- Extortion, s. 346
- Stopping mail with intent, s. 345
- Forgery, s. 366
Examples of Possible Responses
Possible Financial Abuse – Capable Victim

- TALK to the person - what does he or she want to do?

- Is he or she even aware that abuse has occurred?

- Is it actually abuse or does it appear to be abuse when it’s not (i.e. money removed from bank account with the agreement of the person with full consent and not with undue influence)?

- The person needs information on options open for him or her to pursue before he or she can make decision of whether to take action or not and what action to take.
Financial Abuse – Capable Victim

- The person may need to speak to a lawyer or others to determine the options available.

- Who are the best people to provide information on the options available?

- The person may need help from a variety of sources simultaneously to address the abuse – ie. talk to a lawyer to seek legal options, get counselling to assist person in supporting self esteem and in having confidence to pursue remedies, get ongoing assistance from various services to prevent a reoccurrence of the abuse.
Examples of Possible Responses
Possible Financial Abuse – Capable Victim

Some ideas:
 a) If abuse by an attorney named in the person’s continuing power of attorney for property

Help senior get appropriate assistance to revoke the continuing power of attorney for property (this is done by signing a revocation of the CPOAP, tearing up the original CPOAP, get all copies if any of the CPOAP back, send notices of the revocation to all places (e.g., banks) where the attorney may have used the CPOAP and where the person has assets

Senior may take legal action if necessary against the attorney for an accounting and for the return of any assets misappropriated
Financial abuse – Capable Victim

Senior may want to create a new CPOAP naming another person as attorney that the grantor can trust to properly manage his/her finances

Senior may want/be advised to report to police for investigation as to whether criminal offence committed (Abuse of Power of Attorney? Theft? Fraud?)

If abuse of pension cheques (ie. theft of cheques)

Help senior get direct deposit of pension cheques into the person’s own bank account not accessible by the abuser
Senior may need assistance to take legal action against the abuser to recover misappropriated funds.

Senior may also report to police for possible criminal charges against abuser.

Return of property placed in name of abuser (i.e., on promise to provide care, etc.)

Senior may need legal help to take action against the abuser for return of property if undue influence, unjust enrichment, fraudulent transfer, etc.
Examples of Possible Responses
Possible Financial Abuse – Incapable Victim

- **Can you talk to this person?** Although incapable for financial decision making are they still capable to participate in decision making as to a remedy?

- Is the substitute the abuser? If not, can you talk with the substitute decision maker as to the possible options? Would the substitute be the person who would need to pursue the options?
Examples of Possible Responses
Possible Financial Abuse – Incapable Victim

Some ideas:

a) person incapable in respect to property but still capable to revoke a continuing power of attorney for property if the abuse is by the attorney named in the CPOAP - revoke CPOAP - same as in a) above

b) person incapable and at risk of serious harm or serious harm is occurring to their property - contact OPGT under s.27 of SDA for investigation.

c) contact to the police - what can you say or not say? issues related to confidentiality and rules of professional conduct. The person contacting the police may want to get legal advice before releasing information as to appropriate action.
Financial Abuse—Incapable Victim

d) substitute decision maker (if not the abuser) may be able to take action for recovery of funds, take steps to protect property as appropriate to the situation.

e) if no attorney, someone may apply to become trustee to manage OAS and CPP cheques of the financially incapable person so that senior will still have access to income fro own support and a person managing that for them.
Personal Abuse of a person mentally capable of personal care decisions

- What does the person who has been abused want to do?
- Does he or she know of the options available?
- Is the person at personal risk if no steps are taken to address the abuse?
- Is the person dependent on the abuser for care?
Personal Abuse – Capable Victim

- Is abuse taking place or is the caregiver not providing good care unintentionally or doesn’t know how to provide the care needed?

- Are there alternative options for the care and other ways of reducing or eliminating the dependency on the abuser?

- Does the person live with the abuser?
Personal abuse of a person mentally capable for personal care decisions

- Can the abuser be removed from the household?
- Does the victim want to move to alternative accommodation?
- Does the victim have control over his or her own money (This may extend the options available).
- Who is the abuser? A family member, a service provider, a paid caregiver, a health care professional? There will be different options depending on who is the abuser and the type of abuse committed.
- Depending on the abuse that was committed, this may change create special obligations on some persons who become aware of the abuse - ie. obligation on health professionals to report sexual abuse has been committed by another health professional.
Personal Abuse of a person mentally capable of personal care decisions

Some ideas:

a) assisting the person to make a complaint to a professional College

b) assisting the person to make a complaint to the Ministry of Health if abuse in a long-term care home/complaint to Registrar under RHA if retirement home

c) helping senior access a lawyer to discuss possible action for damages for harm suffered
Personal Abuse of a person mentally capable for personal care decisions

d) eviction of abuser who is living with the victim from household by action under the *Residential Tenancies Act*

e) application to the Criminal Injuries Compensation Fund for compensation for victims of crime

f) assisting the victim to find alternative care providers (alternative to the abuser), to find alternative accommodation, to get counselling and support

g) assisting the person to report the abuse to the police if the abuse was a criminal act
Personal Abuse of a person not mentally capable of personal care decisions

- Can this person still participate in decision making about options to address the abuse? The person may lack some capacity and yet still be capable to give some directions.

- Is the substitute decision maker the abuser?

- How much at risk is the person? How quickly does this person need assistance?
Personal Abuse of person not mentally capable for personal care decisions

- If the abuser is not the substitute, is the substitute aware of the abuse?
- Can the substitute take steps to address the abuse?
- Who does the victim and his/her substitute need to get advice from to address the abuse?
Personal Abuse of a person not mentally capable of personal care decisions

Some ideas:

- Report to OPGT to do investigation under s. 62 of the SDA - incapable person at risk of serious harm/experiencing serious harm to his or her person.

- Report to the police of criminal offence

- Report to professional College of professional’s misconduct
Personal Abuse of a person not mentally capable of Personal Care Decisions

a) If no Guardian of the Person and no attorney named in a power of attorney for personal care, application to Consent and Capacity Board to be appointed as representative for the Person (the new substitute decision-maker) if abuse related to existing substitute’s failure to act as appropriate substitute for treatment, admission, or personal assistance services

b) Application by health practitioner (if treatment) or by CCAC (if admission) to Consent and Capacity Board to determine compliance of substitute with the legislation if abuse related to substitute’s failure to act as an appropriate SDM.
Why do people refuse help

1. They may not understand the options available to them.

2. They may think that they are no other options except to put up with the abuse.

3. They may not trust the person who is seeking to help them.

4. The person seeking to help may not know all the options or may be trying to impose a particular option on them that they don’t want to pursue.
Why do people refuse help

5. The person seeking to help may be setting up barriers unknowingly that prevents the person from agreeing to the help offered.

6. The person may need time to consider the options and may be willing to take help but at their own pace, a pace that is different than the person offering the help.

7. The person offering the help may have done things that cause the person needing help to distrust them - ie. taking direction from an abusing caregiver instead of the victim or disclosing information to the abuser that the victim did not want to be disclosed.
Final Points to remember:
Archived Webcast: available on the ONPEA, Sunnybrook and ACE websites after the event. Download Webcast

* Judith’s PPT will be available also on the ONPEA and ACE website

Registration: If you have not yet registered we would encourage you to still go to the ONPEA Website to sign up.
* ONPEA can inform you of upcoming events, webcasts, regional conferences, etc. On-line evaluation: sent in a few days to obtain your feedback.
* Allows us to determine if we should proceed in hosting future events
* Provides an opportunity for you to share your ideas for future topics of interest.