



Elder Abuse: Failing to Provide the Necessaries of Life to Older Adults is a Crime

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This article was originally published in the Advocacy Centre for the Elderly's Fall 2009 Newsletter which can be found at www.ancelaw.ca

Section 215 of the *Criminal Code of Canada* says an offence is committed if an individual fails to provide necessaries of life to a person under his or her charge if that person is "unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and is unable to provide himself with the necessaries of life."

This means it is a crime if you do not provide necessaries of life to someone in your care that cannot leave your care due to their age, illness or other impairment. Necessaries of life refer to those things necessary to preserve life, such as food, shelter, medical attention and protection from harm.

Under Canadian criminal law, there are two types of offences: summary conviction and indictable offences. Generally, indictable offences are more serious than summary conviction offences and have harsher sentences. A person found guilty of a summary conviction offence for failing to provide the necessaries of life could be sentenced to imprisonment for a maximum of 18 months while a person found guilty of an indictable offence could be sentenced for up to five years of imprisonment.

This article will briefly review the five reported cases where individuals were convicted of failing to provide the necessaries of life to older adults.

R. v. Chartrand¹

Earlier this year, a paid caregiver by the name of Daniel Chartrand was sentenced to 12 months in jail after endangering the life of the older adult, Harry Matthews, under his care. Although the caregiver was paid very generously, he squandered much of Mr. Matthew's assets. Mr. Chartrand also failed to look after Mr. Matthews on a daily basis despite his declining health. The paramedics arrived at Mr. Matthew's apartment after receiving a call from a neighbour to find him on his back lying in his own urine and feces. Mr. Matthews was not suffering any physical injuries but the emergency room doctor testified that the senior was living in a life threatening situation. The judge ruled that Mr. Chartrand blatantly neglected and disregarded Mr. Matthew's needs. As Mr. Chartrand was keenly aware of the senior's needs, he

¹ 2009 CanLII 20709 (ON S.C.).

knew or should have known that he was not meeting those needs and he was found guilty of failing to provide the necessities of life.

R. v. Grant²

Margaret Grant called 911 and reported that her 78-year-old mother, Kathleen Grant, was not feeling well. Paramedics found Mrs. Grant malnourished, dirty and seated in a chair covered in urine and feces. She had been sitting in the chair for such a long period of time that the chair had taken the form of her body. She was suffering from multiple ulcers, profound malnutrition, sepsis, extensive gangrene and dehydration. Four days after being admitted to hospital, Mrs. Grant died. The daughter pleaded guilty and was sentenced to four years incarceration. The court found that the daughter seriously abused her position of trust in relation to her mother, in addition to benefiting financially from keeping her mother with her. Even though the daughter had limited mental capabilities, she knew or ought to have known that her mother required medical attention and the failure to provide her mother with the necessities of life contributed to her death.

R. v. Nanfo³

Mary Nanfo always lived with and relied on her parents. After the death of her father, she became the primary caregiver for her mother, Maria Nanfo. Mrs. Nanfo was obese, almost blind, incontinent, suffered heart attacks and had been diagnosed with dementia. Especially towards the end of Mrs. Nanfo's life, her daughter provided little care of any kind. The house was unsanitary: human feces covered the floor, walls and bedding while garbage was piled high. Despite her serious medical conditions, Mrs. Nanfo had not seen a doctor for years. The daughter frequently left the home for long periods of time, leaving her mother home alone. When Mrs. Nanfo eventually died of a heart attack, her daughter waited more than 24 hours after her death to call the police because she wanted to try to clean up the house. The court sentenced Ms. Nanfo to imprisonment for one year to be served as a conditional sentence in the community. The court arrived at this sentence because it felt Ms. Nanfo loved her mother "in her own way." The court found that Ms. Nanfo had a lifelong dependence on her parents which resulted in her being only marginally capable of looking after herself and unable to care for a senior with great care needs. As the situation grew worse, it had become harder for her to handle and the situation may have been aggravated by depression.

² 2009 NBPC 17 (CanLII).

³ 2008 ONCJ 313 (CanLII).

R. v. Noseworthy⁴

Donald Noseworthy lived with his 78-year-old mother in her home. She developed rapid onset Alzheimer's disease and became incontinent and progressively cognitively impaired. Mr. Noseworthy admitted to assaulting his mother due to her lack of communication skills and because she would soil herself. He also permitted his mother to live in filth and with horrible personal hygiene. The floor of almost every room in the house (except the one belonging to Mr. Noseworthy) was covered in urine and feces. He would not help her to eat although she ate little and required assistance. In the days before her death, he left her lying motionless and did not call 911 for fear that his abuse of his mother would be discovered. Mr. Noseworthy was convicted and sentenced to seven years imprisonment for manslaughter and two years imprisonment for failing to provide the necessaries of life (to be served concurrently).

R. v. Peterson⁵

Dennis Peterson, his sister and 84-year-old father resided in the same building but the doors between the apartments were locked. Mr. Peterson lived on the second floor, the sister stayed on the third floor while the father stayed in the basement. The father's apartment and living conditions were not sanitary: he did not have a working kitchen or toilet; the apartment was full of cockroaches; the dirt floor was covered in dog feces; and both his clothes and person were unwashed. Police found the father lost on the street and advised his son about community agencies that could help look after his father but none were contacted. Two days after being released from the hospital because he collapsed, a gas company employee found Mr. Peterson and a dead dog in the house. Mr. Peterson was then admitted to a long-term care home. The court found that Mr. Peterson controlled his father's living conditions and personal care. He kept his father in an unsafe environment and chose not to make decisions that would ensure that his father would be provided with the necessaries of life. Mr. Peterson was sentenced to six months imprisonment, two years probation and 100 hours of community service.

Conclusion

Section 215 of the *Criminal Code* has been underutilized in the past to prosecute elder abuse. However, these recent cases indicate that this offence will be used more frequently in the future as police and Crown attorneys become more familiar with it. Educational programs will hopefully increase awareness of the crime, as well as the responsibilities that individuals and families have towards their elderly parents. ACE would also like to see the courts make sentences which truly reflect the seriousness of this crime.

⁴ 2007 CarswellOnt 9604 (Ont. S.C.J.).

⁵ 2005 CanLII 37972 (ON C.A.).