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BY E-MAIL (dvs@lao.on.ca)

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20 Dundas Street West, Suite 201
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Re: Consultation on Development of a Domestic Violence Strategy

We write this letter as a response to the Legal Aid Ontario (LAO) consultation paper: "Development of a Domestic Violence Strategy". We thank you for the opportunity to provide our submissions in this regard.

The Advocacy Centre for the Elderly (ACE) is a specialty community legal clinic funded by LAO that was established to provide a range of legal services to low income older adults in Ontario. The legal services include individual and group client advice and representation, public legal education, community development, and law reform activities. ACE has been operating since 1984 in Toronto, and is the first and oldest legal clinic in Canada with expertise in legal issues of the older population.

The individual client services are in areas of law that have a particular impact on older adults. These include, but are not limited to: elder abuse; capacity, substitute decision-making and health care consent; patients' rights in hospitals and long-term care homes; supportive housing and retirement home tenancies; and end-of-life care. ACE also publishes widely on these issues and has been consulted by many levels of government as well as private sector entities.

Given ACE's experience over the years of working on legal and policy issues that impact older adults in Ontario and across Canada, we trust that our submissions concerning the LAO's Domestic Violence Strategy will be of assistance.

We have reviewed the LAO consultation paper: "Development of a Domestic Violence Strategy" (Paper). We understand that the Paper focuses on intimate partner violence rather than family violence more broadly. If LAO's Domestic Violence Strategy envisions addressing family violence, a category which would include abuse of older adults by adult children, for example, ACE would appreciate the opportunity to provide further submissions.

ACE has endeavoured to respond to some of the issues outlined in the Paper as they relate to older adults. Specifically, ACE seeks to respond to the following question:

In criminal cases, mental health concerns must be taken into consideration, especially in cases of elder abuse. What are the impacts and proper responses if an abuser's actions are a result of a mental health issue such as dementia?

Many of ACE's clients have experienced or provide care to someone who has cognitive deficits which may result in behavioural issues or aggression. Any domestic violence strategy must take into account the needs of this marginalized population.

Our submissions in relation to the Paper and the LAO Domestic Violence Strategy will primarily address the following:

1. The interdisciplinary needs of older victims of domestic violence; and,
2. The problems faced by older adults with dementia or other mental health illnesses accused of domestic violence.

Background

Although intimate partner violence tends to decrease as age increases,¹ older adults who experience this form of violence have significant vulnerabilities. For example, the lack of resources which often prevents victims of intimate partner violence from leaving the home is exacerbated in the case of older adults by a fixed income. Further, ACE's experience has been that these individuals may not know where to turn for help. Further, there is some evidence that although the nature of violent incidents experienced by older Canadians is similar to those experienced by younger Canadians, adults 55 and older more often reported experiencing emotional effects of violence.² Therefore, emotional support, in addition to other supports from outside agencies, would be vital for this group.

Speaking more broadly of family violence, fewer than half (46%) of all violent incidents against older adults are reported to police.³ Older adult victims of spousal violence were found to be less likely to report having been victimized than those aged 15 to 54.⁴ The most common reasons for not reporting these incidents to police included, "having dealt with the incident in another way, feeling that the police couldn't do anything about it, feeling that the incident wasn't important enough or that it was a personal matter."⁵

In respect of older adults accused of committing crimes, ACE has been advised by Crown Attorneys that there is an increased prevalence of dementia-related cases in the criminal

¹ Statistics Canada, "Family Violence in Canada: A statistical profile, 2013" *Juristat* (Ottawa: StatCan, January 15, 2015) at 23, online: <<http://www.statcan.gc.ca/pub/85-002-x/2014001/article/14114-eng.pdf>>

² Brennan, S. 2012. "Victimization of older Canadians, 2009". *Juristat*, (Ottawa: StatCan), at 16 online: <<http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11627-eng.htm>>

³ *Ibid.*

⁴ *Ibid.*, at 9

⁵ *Ibid.* at 15

justice system. Owing to mandatory charging policies around domestic violence and mandatory reporting in long-term care and retirement home settings, the dementia-related cases of domestic violence are being filtered through the criminal justice system. The system, however, has very few suitable resources to address the needs of these accused.

For example, these accused are often held in jail for extended periods of time owing to the fact that there is nowhere available to safely house them. They may not be able to return to their homes where they have allegedly assaulted their spouses for safety concerns about their spouse. At the same time, it may have been the spouse who was the primary caregiver and who continues to be the accused's decision-maker for health related purposes. It may take significant periods of time to place them in a long-term care home or hospital that can accommodate their health needs.

The present wait times for long-term care homes can range from one month to several years. In particular, where the accused has behavioural problems, the accused will be more difficult to place in long-term care even if the accused has been designated a crisis (priority) placement by a community care access centre. ACE has had clients who have been refused by long-term care homes after they are accused of assault, claiming that the home does not have the nursing expertise to deal with the person's needs. In that instance, the accused may have nowhere to stay if they are not acutely ill enough to go to a hospital or a psychiatric facility.

If the alleged assault took place in a long-term care home, bail conditions may be set that do not permit the accused to return to the home. These bail conditions can result in an accused losing their accommodation. The *Long-Term Care Homes Act* provides that a long-term care home shall discharge a resident if they are absent for more than 21 days, unless they are on a medical absence, in which case they can be absent for 30 days, or a psychiatric absence, in which case they can be absent for 60 days.⁶ At times, the bail conditions will provide that a long-term care home should supervise the accused person to ensure that the accused is kept away from the victim or vulnerable persons in the home. However, it is not appropriate to place the long-term care home in this position.

Where there has been a violent incident in a long-term care home, the home may seek to discharge the accused, claiming that the following conditions for a discharge under the legislation have been met, specifically, that "the resident's requirements for care have changed and that, as a result, the home cannot provide a sufficiently secure environment to ensure the safety of the resident or the safety of persons who come into contact with the resident".⁷ As noted above, if a person is discharged and loses his/her accommodation in a long-term care home, it can be very difficult to again place him/her.

Further, as indicated, bail conditions set on the accused which indicate that the accused is not to associate or live with his/her spouse may be problematic where the spouse is a primary caregiver or where the spouse is the attorney for personal care or property and is unable to consult the accused to make his/her financial or health care decisions. In some instances, the spouse of the accused may not want the person charged. The victim may

⁶ *Long-Term Care Homes Act*, O. Reg. 79/10, s. 146(4).

⁷ *Ibid.* s. 145(1).

have called the police to take accused to hospital for reasons of mental illness, but charges end up being laid owing to mandatory charging policies.

We detail recommendations to address these issues below.

The ‘Interdisciplinary’ Needs of Older Victims of Domestic Violence

Older victims often require a multiplicity of services. Whether they are reporting an incident of abuse and need help with safety planning, or are addressing housing issues that arise upon separation from a partner and need to know their options, the needs of older victims of violence extend far beyond family or criminal court.

It would be very useful for LAO to partner with organizations in Ontario who can assist with the continuum of needs that a person experiencing domestic violence might have. ACE has received inquiries from persons seeking to leave their homes because of abuse and it would be very helpful to have direct links to agencies (such as housing providers, counsellors, or social workers) that can assist callers in this regard, rather than providing referrals to several different agencies. However, it is vital that these organizations recognize the vulnerabilities of older adult victims and are equipped to address their specific housing and income support needs. These direct links must be followed up by calls to clients to ensure that their needs have been met.

It is important not to rely on technology when conducting outreach to victims or advising them of potential services. While online tools may improve accessibility of information for some, some of ACE’s clientele do not have access to computers, especially those who reside in congregate settings. It remains important to have information accessible in other formats, such as by telephone or in print.

Access to a competent lawyer, as indicated in the Paper, remains vital. At page 31 of the Paper, there is a discussion about an “advice lawyer”, who provides legal advice to a victim of domestic violence. In addition to family law or criminal law issues, it may be useful for the lawyer to discuss other legal issues, such as how to protect their property rights, how to seek restitution from the guilty party (whether civilly or criminally) and how to maximize income support in instances of involuntary separation. Further, ACE supports the recommendation in the Paper of maintaining a flexible and relaxed financial eligibility test for victims of domestic violence.

The Problems Faced by Older Adults with Dementia or Other Mental Health Illnesses Accused of Domestic Violence

Older adults with dementia or other mental health illnesses who are accused of domestic violence are particularly marginalized. LAO must continue to provide these persons with access to trained criminal counsel, including duty counsel. This counsel must be able to recognize the issues outlined above and be able to advocate in order to prevent their clients from languishing in jail because of a lack of appropriate housing or caregiving options. Further, counsel should be aware of various housing options and their

limitations. Counsel must be prepared to speak to relevant agencies, including the community care access centres, to assist in placing the accused. Such training should be a prerequisite to empanelment.

Further, these older adult accused require a model which promotes collaboration between those in the criminal justice system, the health care system and local community service organizations. Durham Region has piloted a project which seeks to enhance cooperation amongst the different parts of the criminal justice system (including the police, crown attorneys and the Victim Witness Assistance Program) and to improve access to existing community-based resources, for both older adult victims and accused. The Aged H.A.R.T. committee supports accused persons by using available community supports to assist in bail release options or to facilitate diversion of criminal charges where the underlying cause of the criminal behaviour is deterioration in mental health. Such a program serves as a great model for how LAO could support accused persons in similar circumstances in other jurisdictions.

Recommendations:

ACE makes the following recommendations in respect of the LAO Domestic Violence Strategy:

1. Establish relationships with agencies so that direct contact between LAO clients and the agencies can be made and contact LAO clients to ensure that their needs have been met by the agencies;
2. Access to “advice lawyers” who are aware of remedies for older adult victims of spousal abuse not merely limited to family law or criminal law proceedings;
3. Access by older adult accused to criminal lawyers who understand the needs of clients with dementia, including housing; and,
4. Using existing resources in the community and partnering with the criminal justice system to assist accused persons, similar to the Aged H.A.R.T. model in Durham Region.

We thank you for the opportunity to respond to the Paper and are available to discuss this letter if requested.

Yours very truly,

ADVOCACY CENTRE FOR THE ELDERLY

Per:

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