

SUPPORT AND ASSISTANCE FOR ABUSED AND NEGLECTED ADULTS - ONTARIO

Advocacy Centre for the Elderly
February, 2001

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

1. Criminal Code

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

Physical Abuse -	Assault (s.265) Assault with a weapon or causing bodily harm (s.267) Unlawfully causing bodily harm (s. 269) Forcible Confinement (ss 279(1))
Sexual Abuse	Sexual assault (s.271)
Financial Abuse	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)
Neglect	Breach of Duty to Provide Necessaries (s.215)

ACE, February 2001
2 Carlton Street, Suite 701, Toronto, M5B 1J3
416-598-2656

Mental Abuse Intimidation (s.423)
 Threatening

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

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

- * a detailed signed statement from the victim,
- * statements from neighbours, other family member, or service providers who may have evidence
- * photographs of any injuries,
- * a medical report
- * statements from anyone who knows about previous abuse (for example hospital staff) or
- * any other evidence.

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

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

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

ACE, February 2001
2 Carlton Street, Suite 701, Toronto, M5B 1J3
416-598-2656

2. Community Care Access Centres and the *Long-Term Care Act*, s.26

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

- X service information and referral to all long-term care services, including volunteer-based community services
- X case management
- X determination of eligibility for services
- * co-ordinated service planning and monitoring, and
- * placement coordination services for long-term care facilities

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

3. Long-Term Care Facilities

There are three different types of long term care facilities in Ontario. These are:

1. Nursing Homes (subject to the *Nursing Homes Act*)
2. Homes for the Aged (subject to the *Homes for the Aged and Rest Homes Act*), and
3. Charitable Homes for the Aged (subject to the *Charitable Institutions Act*)

Nursing Homes are primarily for profit private facilities, although there are some non-

ACE, February 2001

2 Carlton Street, Suite 701, Toronto, M5B 1J3
416-598-2656

profit nursing homes. Many of the operators are parts of large chains (e.g. Extencicare, Diversicare etc.) Homes for the Aged are all non-profit facilities, operated by municipalities (or groups of municipalities) and by native bands. The *Homes for the Aged and Rest Homes Act* places a specific obligation on all municipalities to establish (or jointly establish) a home for the aged in its area. Charitable Homes for the Aged are non-profit facilities, operated by approved charitable organizations. Some charitable homes have a ethno-specific orientation and are directed at a particular community of people.

Ontario also has retirement homes (sometimes called "care homes" or "rest homes" or "residential facilities" etc). The proper name for all these types of "homes" are "care homes", as defined in the *Tenant Protection Act*. **Care homes are tenancies and are NOT long term care facilities. Care Homes are not affected by the legislation discussed in this section.** The three pieces of legislation that apply to nursing homes, homes for the aged and charitable homes are very similar, and are becoming more and more alike as time passes. The *Long Term Care Statute Law Amendment Act* (formerly Bill 101) that was passed in 1993 made significant amendments to all three long-term care facility acts to create a substantially similar regulatory scheme for all three types of facilities.

All three types of facilities are subject to terms and conditions in service agreements that each facility must enter into with the Ministry of Health. All three types of facilities must comply with common standards as set out in the *Long Term Care Facility Standards Manual* (hereafter referred to as the "*Standards Manual*").

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

Legislation - All three pieces of legislation contain a "Residents' Bill of Rights" that is also deemed to be part of the admission agreement between the operator and each resident. The Residents' Bill of Rights makes specific reference to a resident's right to be free from abuse while living in a facility.

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

ACE, February 2001

2 Carlton Street, Suite 701, Toronto, M5B 1J3
416-598-2656

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

Only the *Nursing Homes Act* contains a specific duty to report "harm" to a resident, as follows:

s. 25 (1) Reporting of harm to resident -

A person other than a resident who has reasonable grounds to suspect that a resident has suffered or may suffer harm as a result of unlawful conduct, improper or

incompetent treatment or care or neglect shall forthwith report the suspicion and the information on which it is based to the Director .

This section places a specific obligation on all nursing home staff, operators, licensees, as well as visitors (anyone other than a resident) to report, to the Ministry of Health, any harm or potential for harm to a resident of a long-term care facility. Although this requirement to report abuse is only in the *Nursing Homes Act*, by practice, and by application of the *Standards Manual*, this reporting requirement is applied to all three types of long-term care facilities. There should be little difference to how abuse is responded in all three types of facilities.

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

In the regulations to each of the three long term care facility acts, operators of facilities are required to report certain types of incidents to the Director at the Ministry of Health. Some of these incidents may be the result of abuse. The regulation is the same for all three types of facilities. It is as follows:

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

ACE, February 2001

2 Carlton Street, Suite 701, Toronto, M5B 1J3
416-598-2656

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

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

Nursing Homes Act - R.R.O. 1990, Regulation 832, as amended, s.96; Homes for the Aged and Rest Homes Act - R.R.O. 1990, Regulation 637, as amended, s. 25.1; Charitable Institutions Act - R.R.O. 1990, Regulation 69 as amended, s.31.1

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

Operators of all three types of facilities must comply with the facility service agreement that they must enter into with the Ministry of Health. This service agreement obliges the operators to comply with the *Standards Manual*. The *Standards Manual* places an obligation on all facilities to have policies for the following:

- * promotion of residents rights
 - * what constitutes resident abuse
 - * how to prevent abuse
 - * actions to be taken in all instances of alleged abuse including notification of the family/Substitute Decision maker, police and Ministry of Health
 - * where abuse has been confirmed, resources available to assist the abused resident and the person responsible for the abuse
- (LTC Facilities Standards Manual - Standards: Resident Care - 0902-01)*

This obligation to have policies in respect to abuse applies to every facility in the Province.

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

ACE, February 2001
 2 Carlton Street, Suite 701, Toronto, M5B 1J3
 416-598-2656

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

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

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

"Capacity" in respect to property and personal care is a **legal** definition, defined in these acts, and is not a clinical assessment or medical diagnosis.

Capacity is "issue specific" and relates to a particular task at hand. The fact that a person has been formally "assessed" as incapable for some purpose does not necessarily mean that that person is not capable for other purposes. For example, a person may be incapable of handling his or her finances but be capable of making decisions about health services or treatment.

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

grantor of the document when the grantor is incapable of managing property or personal care.

ACE, February 2001

2 Carlton Street, Suite 701, Toronto, M5B 1J3
416-598-2656

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

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

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

Just as in the case of Continuing Powers of Attorney for Property, the fact that a person has made a Power of Attorney for Personal Care does not mean that he or she will be protected from abuse in the future by other persons, or by even the attorney named in the Power of Attorney for Personal Care.

Whether this document may be considered to be a "protection" against abuse and a support to abused or neglected adults depends on whether the named attorney can be trusted and is willing to comply with and honour the obligations and duties of that position. (See also pamphlet on Powers of Attorney for

ACE, February 2001

2 Carlton Street, Suite 701, Toronto, M5B 1J3
416-598-2656

Personal Care by ACE/CLEO)

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

The *Health Care Consent Act* also provides for an application to the Consent and Capacity Board for the appointment of a "Representative" for a person who is incapable of decisions in respect to treatment, admission to long-term care, or personal assistance services in a long-term care facility.

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

5. *Substitute Decisions Act*, section 27 and 62

These sections of this Act have separately highlighted as they give the Ontario Public Guardian and Trustee special authority to investigate and take action in instances of abuse of persons who are mentally incapable. The Ontario Public Guardian and Trustee has the authority and obligation to investigate any reports that a person is mentally incapable, is suffering or may suffer "serious adverse effects" either to their property or to their person, and needs assistance.

"Serious adverse effects" in respect to property is defined as "loss of a significant part of a person's property, or a person's failure to provide necessities of life for himself or herself ". "Serious adverse effects" in respect to personal care is defined as "serious

ACE, February 2001

2 Carlton Street, Suite 701, Toronto, M5B 1J3
416-598-2656

illness or injury, or deprivation of liberty or personal security".

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

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

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

To report allegations of serious harm to the Office of the Public Guardian and Trustee, contact the Guardianship Investigation unit Toll-free at 1-800-366-0335 (Select 5 Intake), or Telephone (416) 327-6348, Fax (416) 314-2642.

(The original version of this Handout was developed by the Advocacy Centre for the Elderly as part of the Ontario version of the B.C. *Connecting* Modules.)

ACE, February 2001
2 Carlton Street, Suite 701, Toronto, M5B 1J3
416-598-2656