

FEDERAL/PROVINCIAL/TERRITORIAL (FPT) MEETING OF DEPUTY MINISTERS RESPONSIBLE FOR JUSTICE

Iqaluit, Nunavut
June 20-22, 2011

AGENDA TOPIC: Elder Abuse

ISSUE: Deputy Ministers will be asked to direct CCSO to consider how the Criminal Code may be improved to address victimization of the elderly.

MINISTRY'S SUGGESTED RESPONSE:

- BC is making it a priority to prevent elder abuse and to improve how the justice system responds to crimes against the elderly.
- BC supports undertaking analysis to determine how to improve the *Criminal Code* to better address victimization of the elderly.
- s.13, s.16

BACKGROUND:

The term 'elder abuse' has been used to refer to a number of acts against older persons, including physical, emotional, financial and sexual abuse. It may refer to adults over 65, or to younger adults, particularly if the adult has reduced capacity or competence related to aging. The context for the abuse is that it often occurs between people in a relationship of trust, such as a family or caregiver relationship.

The *Criminal Code* does not specifically address elder abuse. However, many of the forms of elder abuse, such as sexual abuse, physical violence, and financial fraud are criminal offences. While remedies under the *Criminal Code* are available, not all older adults want to engage with the legal system, particularly if it might result in criminal penalties for a family member or other trusted person.

Awareness and prevention strategies are available in many provinces and territories, as are non-criminal interventions to deal with a range of financial, health care, physical and emotional aspects of an older person's life. These include support and assistance for abused or neglected adults, powers of attorney, guardianship, health care decision making, protection of persons in care, mental health, and mental disabilities.

BC has made it a priority to prevent and effectively address elder abuse. The Liberal government's February 2011 election platform stated that prevention materials are being developed and will be available to seniors, families, caregivers and professionals. The platform also indicated that BC will be lobbying the Federal Government to amend

the *Criminal Code* to make it an aggravating factor in any offence if a victim is particularly vulnerable due to age. This is consistent with the government of Canada's election platform, which promised to "amend section 718.2 of the *Criminal Code* to add vulnerability due to age to the list of aggravating factors to be considered by courts when sentencing criminals who commit offences against seniors."

BC and other provinces and territories are also concerned with victimization of the elderly that does not involve a relationship of trust. For example, media reports of elderly people being robbed, or becoming victims of fraud by individuals with whom they are not in a trusting relationship, seems to generate a lot of public interest.

s.16, s.13

BC asked for Elder Abuse to be placed on the June 20-22, 2011 agenda of the Western Premiers meeting. Western Premiers will be asked to consider asking Western Ministers Responsible for Justice to examine how the *Criminal Code* might be strengthened so that it more effectively responds to victimization of the elderly.

POSITIONS OF OTHER JURISDICTIONS:

The position of other jurisdictions is unknown.

IMPLICATIONS FOR BC:

s.13, s.16

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Date: June 13, 2011

FPT DEPUTY MINISTERS RESPONSIBLE FOR JUSTICE

June 20 – 21 20011

Submitted by British Columbia

DECISION REQUEST:

Deputy Ministers are requested to direct officials to undertake a review of the *Criminal Code* to determine how it may be improved to better address the victimization of elderly Canadians.

INTRODUCTION

The abuse of the elderly is a significant problem of increasing concern to governments and the public. This phenomenon is partially addressed through a broad range of provincial/territorial initiatives as well as through some offences in the *Criminal Code*. While general sentencing provisions as codified in section 718.2 of the *Code* also address aspects of this conduct, there is no explicit sentencing provision specifically referencing to this.

An analysis of the various legislative responses to this phenomenon will provide an essential foundation for any recommended changes in this area.

BACKGROUND

Provinces and territories across Canada estimate that between 4% - 10% of all seniors experience some form of abuse, including financial, physical, sexual, and psychological abuse. Furthermore, many of these cases go unreported. With an aging demographic, the incidence of elder abuse is expected to increase.¹

BC has made the growing problem of elder abuse a priority. It is developing prevention materials that will be available to seniors, families, caregivers and professionals. It is also asking that the criminal victimization of adults who are vulnerable due to age be better addressed in the *Criminal Code*.

BC's position is consistent with that of the government of Canada, which promised, in its election platform, to "help protect elderly Canadians and to ensure criminals who prey on them are punished appropriately". The platform specifically promised to "amend section 718.2 of the *Criminal Code* to add vulnerability due to age to the list of aggravating factors to be considered by courts when sentencing criminals who commit offences against seniors."

¹ See for example, Ontario's public awareness materials on elder abuse, which note that 4-10% of Ontario seniors experience some kind of abuse, and that this level is likely to increase with an aging demographic: <http://www.seniors.gov.on.ca/en/elderabuse/docs/needtoknow.pdf>; A report from Newfoundland and Labrador indicates that between 4% - 6% of calls to its toll free provincial information line concern elder abuse. Retrieved at <http://www.seniorsresource.ca/docs/StrategicPlan.pdf>. Manitoba's information resources on elder abuse note that 4 - 10% of Canadian seniors are reported as abused but that the actual prevalence is much higher, as only 1 in 5 of these cases are actually reported. See http://www.gov.mb.ca/shas/elder_abuse/index.html.

ADDRESSING ELDER ABUSE

The term 'elder abuse' has been used to refer to a number of acts against older persons, including physical, emotional, financial and sexual abuse. The definition of 'older' is often not defined. It may refer to adults over 65, however, most elder abuse policies note that this term may be used for younger adults, particularly if the adult has reduced capacity or competence related to aging. The context for the abuse is that it often occurs between people in a relationship of trust, such as a family or caregiver relationship.²

Acts such as sexual abuse, physical violence, and financial fraud are considered within the realm of elder abuse, but they are also crimes. Professionals familiar with the abuse of the elderly have indicated that, while remedies under the *Criminal Code* are available, not all older adults want to engage with the legal system, particularly if there is a potential for a family member or other trusted person receiving criminal penalties.

A number of provincial and territorial awareness and prevention strategies are available, as are legislative frameworks that can allow intervention whether or not an actual crime has been perpetrated and which can assist authorities in stopping certain types of abuse. Non-criminal intervention is possible to deal with a range of financial, health care, physical and emotional aspects of an older person's life, including support and assistance for abused or neglected adults, powers of attorney, guardianship, health care decision making, protection of persons in care, mental health, and mental disabilities. Legislation can permit adults to clarify their wishes around finances and health care decisions, and establish reporting requirements and clear steps for addressing abuse.³

Measures to prevent elder abuse are important in society's response to the vulnerable older person. However, prevention may not be sufficient; in cases where the abuse or neglect takes the form of criminal activity, consideration may be given to remedies available under the *Criminal Code*.

Options under the *Criminal Code*: Offences and Sentencing

The *Criminal Code* does not specifically address elder abuse. However, many of the forms of elder abuse are offences under the *Criminal Code*. The following list illustrates some of the actions that would be considered both criminal offences and elder abuse, when committed against an aging adult within a relationship of trust.⁴

² World Health Organization. (2008). *A global response to elder abuse and neglect: Building primary health care capacity to deal with the problem worldwide: Main report*. Geneva: WHO. Retrieved from:

http://www.who.int/ageing/publications/ELDER_DocAugust08.pdf.

³ See, for example, K.S. Roger & J. Ursel. *Legislative Framework and Service Provision Regarding Abuse and/or Neglect of Older Adults in Manitoba*. RESOLVE, University of Manitoba, April, 2007. Retrieved from <http://www.umanitoba.ca/resolve/publications/Full%20Manitoba%20Elder%20Abuse%20Report%202007.pdf>.

⁴ The offences listed, except for robbery and duty of persons to provide necessities, were compiled by the Ontario Network for the Prevention of Elder Abuse. See *About Elder Abuse* at: <http://www.onpea.org/english/elderabuse/criminalcodeoffences.html>.

Financial Abuse

- [Theft](#) (Sec. 322 C.C.)
- [Theft by holding Power of Attorney](#) (Sec. 331 C.C.)
- [Stopping Mail with Intent](#) (Sec. 345 C.C.)
- [Extortion](#) (Sec. 346 C.C.)
- [Forgery](#) (Sec. 366 C.C.)
- [Fraud](#) (Sec. 380 C.C.)

Physical Abuse

- [Assault](#) (Sec 265 C.C.)
- [Assault With A Weapon or causing bodily harm](#) (Sec. 267 C.C.)
- [Aggravated Assault](#) (Sec. 268 C.C.)
- [Sexual Assault with a weapon, threats to a third party or causing bodily harm](#) (Sec. 272 C.C.)
- [Aggravated Sexual Assault](#) (Sec. 273 C.C.)
- [Forcible Confinement](#) (Sec. 279 C.C.)
- [Murder](#) (Sec. 229 C.C.)
- [Manslaughter](#) (Sec 234 C.C.)
- Robbery (Sec. 343 C.C.)

Psychological (Emotional) Abuse

- [Intimidation](#) (Sec 423 C.C.)
- [Uttering Threats](#) (Sec 264.1 C.C.)
- [Harassing Telephone Calls](#) (Sec. 372.3 C.C.)

Active Neglect

- Duty of persons to provide necessities (Sec. 215 C.C.)
- [Criminal negligence causing bodily harm or death](#) (Sec. 220, 21 C.C.)
- [Breach of Duty to provide necessities](#) (Sec. 215 C.C.)

Sentencing

The purpose and principles of sentencing are set out in s. 718 to s. 718.2 of the *Criminal Code*.

Age is addressed in s. 718.2, making it an aggravating factor in sentencing if there is:

- "Evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin.....age, mental or physical disability (etc.)..." (s. 718.2(a)(i)); or
- "Evidence that the offender, in committing the offence, abused a person under the age of eighteen years." (s.. 718.2(a)(ii1).

Neither of these sections directly addresses the vulnerability of the victim due to old age. While age is a consideration in s. 718.2(a)(i), the section only applies if the offence was motivated by bias, prejudice or hate due to age. The literature on elder abuse does not generally consider it to be hate-motivated behaviour.

As noted earlier, 'elder abuse' generally is used to refer to abuse within a relationship of trust, such as between family members or by caretakers. The sentencing principles, under s. 718.2(iii), note the following as a factor to be considered:

- "Evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim".

While this principle will capture some of the instances of elder abuse, it can not be said that those who have an abusive relationship with the elderly victim necessarily are in a position of trust.

THE WAY FORWARD

s.13, s.16

RECOMMENDATION:

FPT Deputy Ministers should ask CCSO (Criminal) to consider changes to the *Criminal Code* to better address victimization of the elderly.

Request to Add an Agenda Item

s.16

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