

Standing Committee on Justice and Human Rights - Bill C-36, An Act to Amend the Criminal Code (Elder Abuse)

CARP Submission



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Elder abuse is a notoriously difficult crime to prevent or solve. Elder abuse can be psychological, physical, emotional, sexual or financialⁱ and many victims of elder abuse suffer multiple types of abuse simultaneously,ⁱⁱ often at the hands of loved ones, which makes it difficult to detect, report, investigate or prosecute. There is no single solution to ending elder abuse.

In March 2011, prompted by media reports of a grandmother forced to live in the family's garage through a Toronto winter, CARP called on then Minister for Seniors, Julian Fantino to do more to end the scourge of elder abuse and specifically asked for the increased sentencing for elder abuse convictions that was featured in the government's 2011 election platform.

Bill C-36, *An Act to Amend the Criminal Code (Elder Abuse)* was introduced in April 2012 as a part of the federal government's commitment to combating elder abuse. On its own, Bill C-36 cannot end elder abuse, but it is an important tool in deterring and prosecuting criminal cases of elder abuse. CARP expects elder abuse to remain a priority for the federal government and encourages the expedited passage of Bill C-36.

Multiple levels of government and broad sections of society must all play roles in preventing, detecting, investigating, and prosecuting elder abuse. The federal government, for its part, is in the sole position of being able to exacerbate sentencing of elder abuse crimes after conviction, adding measures of justice and deterrence to the fight against elder abuse.

CARP Recommendations

CARP is calling for a comprehensive approach to punish the most egregious manifestations of elder abuse but also to prevent the abuse from occurring in the first place. In order to prevent, detect, investigate, prosecute, and end elder abuse, CARP recommends the following actions, including the amendment of the criminal code included in Bill C-36:

- 1. Elder Abuse Hot Line** – single point of first contact: 911 or a 1-800 line – widely known across the country, with the capacity to re-direct to local service agencies, and sensitive to diverse cultural and linguistic needs. 911 already has this capability but needs to be assigned this mandate and local service agencies must exist and be properly resourced.
- 2. Duty to Report** reflects social responsibility. Elder abuse is a public crime, not just a personal matter, as with spouse abuse reporting protocols. There must be clear guidelines for action and intervention, protection and the professional investigative capacity to respond to such reporting.
- 3. Added Caregiver Support** – Greater support for the estimated 2.7 million Canadians now caring for loved ones at home by providing targeted financial support, especially to those providing heavy care, workplace protection, respite and work-leave and integrating support for informal caregivers with the formal health system, through training and clinical support.
- 4. Specialized Investigative Support** for existing criminal offenses.
- 5. Expedite passage of provision for Exacerbated Sentencing for hate crimes and breach of trust already in the Criminal Code, promised during the recent federal election.**
- 6. New Criminal Offence of Elder Abuse** – if warranted following a review.
- 7. Victim Support Services and elder shelter** – Ensure uniform and adequate access to specialized support across the country.



1. PREVALENCE OF ELDER ABUSE

CARP member polling shows that approximately 10 percent of older Canadians experience some form of abuse, which is consistent with academic and Statistics Canada research.ⁱⁱⁱ Just fewer than one-in-ten CARP members claim to have suffered elder abuse whereas almost 30 percent of CARP members know of someone who is or has been abused.^{iv}

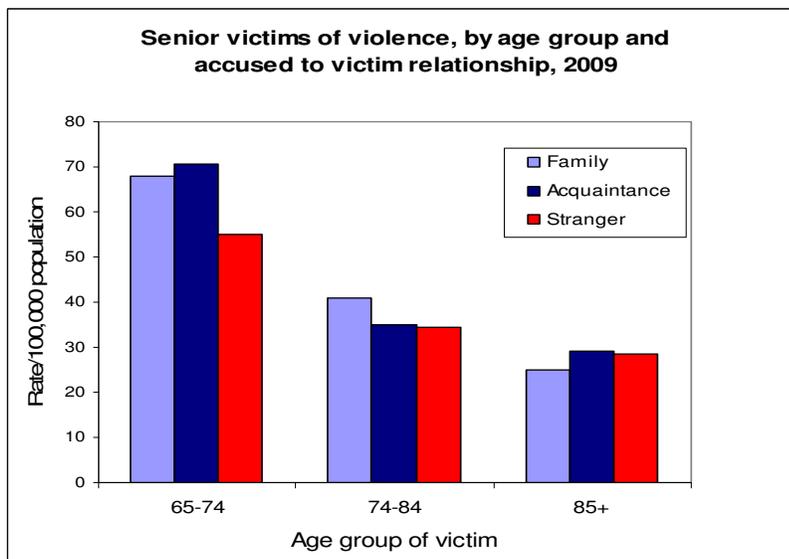
Based on the current population of nearly 5 million Canadians over 65, there are potentially 500,000 people confronting elder abuse in Canada.^v By 2036, it is estimated that the 65-plus population will grow to 10 million and if nothing is done to reduce the incidence of abuse, approximately 1 million seniors may become victims elder abuse.^{vi}

While 10 percent of all Canadians over 65 experience one or more type of abuse, evidence from the UK suggests that vulnerable seniors, defined as those who are dependant on others for care or those who suffer from some type of disability, suffer much higher rates of abuse. Twenty-five percent of such vulnerable seniors suffer abuse.^{vii}

Violent Crimes Against Seniors on the Rise

Data from a sub-set of police services in Canada show that the rate of family violence against seniors has increased by 14 percent since 2004. 7,900 seniors were victims of violent crime alone between 2009 and 2011, not counting other, but equally pernicious forms of abuse, such as financial, emotional, psychological, and neglect. And, of the 7,900 reported acts of violence, the perpetrators were likely to be family, friends, or a stranger (see chart).^{viii}

CARP member polling on elder abuse confirms the close relation between the abuser and the abused, which suggests that elder abuse is a significant social problem and not just a random or isolated occurrence.^{ix}



Financial Abuse

Financial abuse is the most prevalent type of elder abuse, as reported by CARP members in CARP polls. Nevertheless, financial abuse is often accompanied by other forms of pressure, threat, or manipulation, including physical and psychological.

Just under 10 percent of CARP members have been victims of financial abuse, but more than 40 percent know someone who has been victimized.^x In most cases, the abuse was a demand or pressure for an early bequest or an abuse of power of attorney, both of which were more likely to be caused by a family member than by a stranger.^{xi}

Recent polls show that CARP members think the most damaging forms of financial elder abuse are demands for money from family members (17%) and inappropriate financial advice to older investors from professional advisors (16.8%), followed closely by telephone solicitations for money (13.3%) and non-repayment of money by family and friends (10.1%).^{xii}

2. BARRIERS TO REPORTING ELDER ABUSE

A single case of elder abuse is one case too many. And as it is, almost half a million older Canadians report having suffered abuse. Elder abuse, however, is a seriously underreported crime with more unknown victims than known. In unreported cases, victims are locked in the abuse and suffer the effects in silence.

According to Statistics Canada, about 7 in 10 crimes against older Canadians are never reported to police because victims did not believe the incident was important enough to seek help or because they dealt with the issue personally.^{xiii} Studies of elder abuse in the US show that as many as 90 percent of all cases of elder abuse go unreported.^{xiv}

Reasons for Under Reporting

Under reporting happens for a number of reasons. Among older seniors, communicating abuse or neglect can be difficult; victims may be mentally or cognitively impaired, may have physical disabilities, or literacy and language problems that severely limit ability to understand or report the nature of the crime. Even in cases where obvious disability is not an issue, dependence on the abuser as a caregiver, friend, or family member can cause fear of retaliation from the abuser.^{xv} As a result, elder abuse is often unreported and crimes neither are investigated nor prosecuted.

The widespread and socially integrated elements of elder abuse may be another cause of under reporting. For one, elder abuse is still a newer category of reported crime that even experts are just beginning to unravel and understand. The high likelihood that victims and abusers are closely related complicates the social aspects of the crime, just as it has historically with spousal abuse.

Dependence is also a contributing factor of under reporting. Isolation and lack of social contact coupled with dependence on an abuser limits the options an abused individual has to seek help. Likewise, dependence on a single caretaker can raise the level of stress and frustrations within the caretaker dynamic, which can create an abusive situation.^{xvi} Dependency can also work the other way around. An individual may become or feel economically dependant on an older adult and thereby seek ways of committing financial fraud.

Social and cultural issues also account for underreporting and underestimation of the problem. It is an entrenched part of our culture, for example, to not interfere with other people's families. Family, friends, and authorities may often err on the side of privacy rather than action or investigation in suspected cases of elder abuse.

It is important that elder abuse be recognized as a public crime and not just a personal matter. Systemically, Canada's rapidly aging population, poorly coordinated home care services, historically low support for caregivers, and inadequate long-term care options may also add a layer to the causes of elder abuse and subsequent under reporting. Over crowded hospitals, inadequate long-term care beds, poorly coordinated at home services, and lack of uniform training for professional and informal caregivers are a recipe for both intentional and unintentional elder abuse.

Ageism is also a factor. Common terms such as 'bed blockers' used to refer to older hospital patients creates a culture of neglect and frustration. Ageism distorts the relationship between the elder receiving care and caregivers. Seniors can be made to feel expendable and valueless and therefore less likely to think they have rights that have been violated. Mistreatment and minor cases of neglect can grow to outright abuse.

Police, prosecutors, healthcare professionals and concerned family and friends may often have difficulty identifying and understanding the problem or knowing how to proceed, even where abuse is identified. It can be purposeful product of malice or circumstantial frustration or the unintended result of poor training and lack of gerontological care awareness. Elder abuse, therefore is mostly a hidden crime that is not readily understood.^{xvii} Currently, there is no cohesive strategy for dealing with elder abuse in Canada or bringing to light the pervasiveness of the problem.

3. ENDING ELDER ABUSE

Each case of elder abuse is one case too many and each case is impetus enough to act against elder abuse. CARP members expect leadership from the federal government in ending elder abuse and Bill C-36 is an important step in right direction.

Research and public awareness are important tools to highlighting the effects of abuse, but there is an urgent need for concrete action. CARP members want funding and leadership for increased investigative capacity, deterrent prosecution of abusers, and justice for the abused, which includes the exacerbated sentencing measures of Bill C-36.

CARP Member Polls

Research and awareness campaigns can certainly play a role in bringing elder abuse into public attention, but CARP members favour proactive investigation and prosecution as means to ending elder abuse. Almost 25 percent of members polled think that specialized investigation and prosecution teams working with police is the best solution while another 25 percent of CARP members want to see Elder Protection Agencies in every province, as there currently is in each US State.^{xviii}

Even when elder abuse cases are discovered, they are notoriously difficult to prosecute and often result in what many see as insufficient deterrence. The federal government's promise to amend the criminal code to add increased sentencing for convicted perpetrators of elder abuse is a substantial step in the right direction of deterrence and justice. The vast majority of CARP members (95%) believe that exacerbated sentencing is crucial to combating elder abuse. Forty-two percent of members think that increasing sentencing measures will raise awareness of elder abuse while 20 percent think that it will reduce incidence of abuse.^{xix}

Punishing Financial Abuse

Financial abuse is the most prevalent type of abuse reported by CARP members. When asked what is the most effective way of punishing financial elder abuse in particular, CARP members favour asset stripping and wage garnishing to repay investors (34%) as well as stiffer sentences than are currently imposed (17%). CARP members also think that mandatory jail time (16%) and high profile prosecution of offenders (14.2%) are effective measures for punishing perpetrators of financial abuse.

Self-Protective Measures

Elder abuse is a crime requiring government action. Still, CARP members think that there are ways that individuals can protect themselves from abuse. CARP members think that the best way an individual can guard against financial abuse is to never divulge personal information to strangers or over the phone (32.6%).

CARP members also think that the following are good ways of self-protecting against financial abuse: knowing more about investment risk tolerance and investment practices (19.5%), seeking third party advice when dealing with financial matters with family (13%), and performing due diligence before hiring caregivers and advisors (12.3%).

CARP RECOMMENDATIONS

Currently, there is no systemic or comprehensive approach to combating and ending elder abuse in Canada. The recent promise to amend the criminal code to add increased sentencing for convicted perpetrators signals the federal government's recognition of the problem. CARP is now calling on the federal government to provide continued leadership and funding to implement the full breadth of responses necessary to prevent, investigate and prosecute abusers.

1. Elder Abuse Hot Line – single point of first contact: 911 or a 1-800 line – widely known across the country, with the capacity to re-direct to local service agencies, and sensitive to diverse cultural and linguistic needs. 911 already has this capability but needs to be assigned this mandate and local service agencies must exist and be properly resourced.

2. Duty to Report reflects social responsibility. Elder abuse is a public crime, not just a personal matter, as with spouse abuse reporting protocols. There must be clear guidelines for action and intervention, protection and the professional investigative capacity to respond to such reporting.

3. Added Caregiver Support – greater support of the estimated 2.7 million Canadians now caring for loved ones at home by providing targeted financial support, especially to those providing heavy care, workplace protection, respite, and work-leave and integrating support for informal caregivers with the formal health system, through training and clinical support.

4. Specialized Investigative Support – for existing criminal offenses.

5. Expedite passage of provision for Exacerbated Sentencing – for hate crimes and breach of trust already in the Criminal Code, promised during the recent federal election.

6. New Criminal Offence of Elder Abuse – if warranted following a review.

7. Victim Support Services and elder shelter – ensure uniform and adequate access to specialized support across the country.

Bill C-36, *An Act to Amend the Criminal Code (Elder Abuse)* is one important contribution to the fight against elder abuse. The federal government has taken a concrete step forward in fighting elder abuse, after the crime has been detected, investigated and prosecuted. Multiple levels of government and broad sections of society must all play roles in combating elder abuse at other levels of intervention, from prevention, detection, investigation, and prosecution of elder abuse.

References

- ⁱ Definition developed by Action on Elder Abuse in the United Kingdom and cited in *World Report on Violence and Health, World Health Organization, (2002).*
- ⁱⁱ Sev'er, Aysan. "More than wife abuse that has gone old: A conceptual model for violence against the aged in Canada and the US." University of Toronto Department of Sociology, 2008. Archived at https://tspace.library.utoronto.ca/bitstream/1807/17675/1/morethan_wifeabuse.pdf
- ⁱⁱⁱ Ibid. and *Family Violence in Canada: A Statistical Profile 2000* No. 85-224 (Ottawa: Statistics Canada; Cat. No. 85-224, 2000): 6, 27-28. Note: The General Social Survey (GSS) is a telephone survey and therefore may not reach individuals who do not have a telephone, are infirm, have hearing difficulties, or are isolated in other ways.
- ^{iv} CARP Member Polls, archived at <http://www.carp.ca/2011/07/15/elder-abuse-poll-report/> and <http://www.carp.ca/2009/06/15/carp-poll-uncovers-high-rate-of-elder-abuse-those-with-caregivers-most-at-risk/>
- ^v <http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-311-x/98-311-x2011001-eng.cfm#n3>
- ^{vi} <http://www.statcan.gc.ca/daily-quotidien/100526/dq100526b-eng.htm>
- ^{vii} Cooper, Claudia et al. "The Prevalence of Elder Abuse and Neglect: A Systematic Review." *Age and Aging*, 2008; 37: 151-160.
- ^{viii} Statistics Canada, "Family Violence in Canada: A Statistical Profile." 2009. Archived at <http://www.statcan.gc.ca/pub/85-224-x/85-224-x2010000-eng.pdf>
- ^{ix} CARP Member Poll, archived at <http://www.carp.ca/2011/07/15/elder-abuse-poll-report/>
- ^x CARP Member Poll, archived at http://www.imakenews.com/carp/index000568065.cfm&XXDESXXshow_votes=T&XXDESXXuser=carp
- ^{xi} CARP Member Poll, archived at <http://www.carp.ca/2011/12/21/end-of-lifeelder-abuse-poll-report/>
- ^{xii} CARP Member Poll, archived at http://www.imakenews.com/carp/index000568065.cfm&XXDESXXshow_votes=T&XXDESXXuser=carp
- ^{xiii} Statistics Canada, "Family Violence in Canada: A Statistical Profile." 2009.
- ^{xiv} Sev'er, Aysan. "More than wife abuse that has gone old". University of Toronto Department of Sociology, 2008.
- ^{xv} Ibid.
- ^{xvi} Ibid.
- ^{xvii} Statistics Canada, "Family Violence in Canada: A Statistical Profile." 2009
- ^{xviii} CARP Member Poll, archived at http://www.imakenews.com/carp/index000568065.cfm&XXDESXXshow_votes=T&XXDESXXuser=carp
- ^{xix} CARP Member Poll, archived at http://www.imakenews.com/carp/index000568065.cfm&XXDESXXshow_votes=T&XXDESXXuser=carp