
Appendix 1

Provincial and Federal Legislation Related to Elder Abuse

What's In This Chapter:

- **Legislation Related to Elder Abuse (with an important note on impending legislation)**
- **Neglected Adults Welfare Act: An Introduction**
- **Neglected Adults Welfare Act: The Legislation**
- **Mental Health Act**
- **The Criminal Code**

PLEASE READ THIS IMPORTANT NOTE on impending legislation before reading the rest of this section

At the time of this manual's reprinting (Fall 2013), there is an impending piece of legislation that will replace the Neglected Adults Welfare Act and therefore affect much of the content in this section. An Adult Protection Act was assented to in May 2011 and is expected to be proclaimed in the near future. **This act directly addresses elder abuse, so it is important that a service provider acting on a suspected case of elder abuse know which legislation is in force at the time of their involvement.**

A copy of the Adult Protection Act can be found at <http://assembly.nl.ca/Legislation/sr/statutes/a04-01.htm>

Please call the Department of Health and Community Services if you are unsure which Act is in affect.

LEGISLATION RELATED TO ELDER ABUSE

At the of this manual's printing, there is no federal or provincial (Newfoundland and Labrador) legislation that deals specifically with elder abuse. However, there are three pieces of legislation that may apply in certain cases where a senior has been abused: The Neglected Adults Welfare Act, The Mental Health Act, and The Criminal Code.

In all cases, a person reporting an offence under one of these pieces of legislation is free from liability as long as the report is not done maliciously or without reasonable cause.

Is Reporting Elder Abuse Mandatory?

There are no federal laws that make the reporting of elder abuse mandatory. However, some provinces have Adult Protection Legislation that does make reporting of elder abuse mandatory.

In Newfoundland and Labrador, the Neglected Adults Welfare Act is the only piece of provincial Adult Protection Legislation. This Act does not make any specific reference to “elder abuse”. However, under this Act, it is mandatory to report the “neglect” (or self-neglect) of an adult *only* if the person in question is physically or mentally infirm and meets certain other criteria. Failure to report neglect under these circumstances carries a \$200 fine. (Please see below for more details.)

NEGLECTED ADULTS WELFARE ACT (PROVINCIAL): AN INTRODUCTION

This Act was designed to protect vulnerable adults who are victims of neglect and is the only Adult Protection Legislation in Newfoundland and Labrador. As its name suggests, this legislation focuses on neglect and does not specifically refer to seniors or “elder abuse”. However, this Act can be applied in some cases of elder abuse (particularly physical abuse), as it is arguable that an abused senior is not receiving “proper care and attention” and therefore is a victim of neglect.

Criteria for Using the Neglected Adults Welfare Act

It is important to know that the Neglected Adults Welfare Act can only be invoked in cases where an individual meets all of the following criteria:

- (i) is incapable of caring properly for himself or herself because of physical or mental infirmity,

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- (ii) is not suitable to be in a treatment facility under the Mental Health Act,
 - (iii) is not receiving proper care and attention, and
 - (iv) refuses, delays or is unable to make provision for proper care and attention for himself or herself.

Thus, it can NOT be used to help an abused senior who is mentally competent and physically healthy. (In those situations, service providers must work with other community resources.)

It is mandatory to report a suspected case of neglect (or self-neglect) if an adult meets the criteria above. Reports should be made to your regional health authority (see Appendix 2 for more information).

How the Act Is Used

In practice this Act is not often used. There are several reasons for this, including:

- 1) It is an extreme measure. If a senior is officially declared a “neglected adult”, he/she may lose all of his/her decision-making powers and become, for all intents and purposes, a ward of the state.
- 2) It can be a lengthy process to enact this legislation and often it is a quicker and better option to help the senior obtain supports through the Continuing Care/Community Support division of their regional health authority. (For instance, a Continuing Care/Community Support social worker may be able to help an abused senior find a place in a long-term care facility, link to community resources for seniors, etc.)

When a suspected case of neglect or self-neglect is reported under the Act, it is investigated by a caseworker from the regional health authority. The caseworker will work with the individual in question (and his/her family where relevant) to determine, and where possible, resolve the issues necessitating the referral.

If the situation cannot be remedied at this early stage and the senior appears to meet all of the criteria of the Neglected Adults Welfare Act (see previous page), the Director of Neglected Adults in the Department of Health and Community Services may then determine that the alleged “neglected” senior must undergo a medical assessment. If the assessment determines the senior is mentally or physically infirm, the Director of Neglected Adults may take the case before the Court to have the senior formally declared a “Neglected Adult”. Applying for a declaration is considered to be a last resort.

It is useful to be aware of the Neglected Adults Welfare Act because in some cases it may be the only way to gain access to a neglected senior who is living with someone who refuses entry into their home. The Director of Neglected Adults can apply to a judge for a warrant to enter a home where an alleged neglected adult is living in order to carry out an investigation. In addition, if the senior is declared a “neglected adult” by the Court, the Director has the authority to remove the senior from their place of residence where merited and place them where proper care will be provided.

NEGLECTED ADULTS WELFARE ACT: THE LEGISLATION (PROVINCIAL)

AN ACT RESPECTING THE WELFARE OF NEGLECTED ADULTS (CHAPTER N-3)

Amended: 1995 cA-4.1 s26; 1998 cC-12.1 s80

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Short title

1. This Act may be cited as the Neglected Adults Welfare Act.

Definitions

2. In this Act

- (a) “adult” means a person who is not a child within the meaning of the Child, Youth and Family Services Act;
- (b) “court”, unless otherwise specified, means the Provincial Court of Newfoundland and Labrador;
- (c) “department” means the Department of Social Services;
- (d) “director” means the Director of Neglected Adults;
- (e) “home” means a private dwelling occupied by persons who live as a household;
- (f) “institution” means a public or private institution established for the aged or infirm or both;
- (g) “judge”, unless otherwise specified, means a provincial court judge;
- (h) “minister” means the Minister of Social Services;
- (i) “neglected adult” means an adult
 - (i) who is incapable of caring properly for himself or herself because of physical or mental infirmity,
 - (ii) who is not suitable to be in a treatment facility under the Mental Health Act,
 - (iii) who is not receiving proper care and attention, and

(iv) who refuses, delays or is unable to make provision for proper care and attention for himself or herself; and

(j) “social worker” means a social worker of the department.

Director of Neglected Adults

3. The Lieutenant-Governor in Council may appoint a Director of Neglected Adults who shall administer and enforce this Act under the control and direction of the minister.

Reporting of ill-treatment

4. (1) A person who has information which leads him or her to believe that an adult is a neglected adult shall give the information, together with the name and address of the adult, to the director or to a social worker who shall report the matter to the director.

(2) Subsection (1) applies notwithstanding that the information is confidential or privileged, and an action does not lie against the informant unless the giving of the information is done maliciously or without reasonable cause.

(3) A person who contravenes this section is guilty of an offence.

Investigation

5. (1) Upon receipt of information in respect of an adult believed to be a neglected adult, the director shall make an investigation and, where the director considers it advisable, shall as part of the investigation have a medical practitioner examine and report on the physical and mental condition of the adult and the care and attention he or she is receiving.

(2) Where the adult or a person having custody or control of the adult refuses to co-operate with the director in having an adequate investigation made, the

director, a social worker or a person authorized by the director may apply to a judge who, after making an inquiry, may where satisfied

(a) that it is reasonable and proper that the investigation requested in the application be made; and

(b) that the adult or some person having custody and control of the adult has refused or will refuse to permit the investigation,

grant a warrant for the investigation and the warrant shall be sufficient authority for a peace officer, social worker or other person that may be designated in the warrant to enter, by force where necessary, a building or other place in order to carry out the investigation.

Application for declaration of neglect

6. (1) Where the director is satisfied, upon completion of the investigation referred to in section 5, that the adult is a neglected adult the director, a social worker or other person authorized by the director in writing, may apply to a judge for a declaration that the adult is a neglected adult.

(2) At least 10 days before the date set for the hearing of the application the director, the social worker or other person authorized to make the application shall notify the adult in respect of whom the application is made or some person having custody or control of him or her

(a) that an application has been made to a judge for an order that the person be declared a neglected adult within the meaning of this Act; and

(b) of the time and place of hearing of the application.

(3) The judge shall immediately hear the application and may compel the attendance of witnesses at the hearing.

(4) Where the judge finds upon the hearing of the application that the adult is a neglected adult, the judge may so declare and may, where it appears to him or her in the best interest of the adult declared to be a neglected adult, make an order

(a) that the adult remain where the adult is living in the care and custody of the person in whose care he or she may be, subject to supervision by the director;

(b) that the adult be removed to the home of some suitable person and committed to the care and custody of that person, subject to supervision by the director; or

(c) that the adult be committed to the care and custody of the director, who in his or her discretion may make health care decisions on behalf of the adult or may order that the adult be placed in an institution or a home which has been approved by the minister.

(5) Where an adult is, by order under subsection (4), committed to the care and custody of

(a) a person under paragraph(4)(b); or

(b) the director under paragraph (4)(c),

the court may, by order declare the neglected adult to be a dependant and Part III of the Family Law Act applies to permit either the person under paragraph (4)(b) or the director to apply for an order for support of the neglected adult.

(6) The order under subsection (5) shall be for the benefit of the Crown or the dependant or person under paragraph (4)(b) on the terms and conditions and for the period that the court considers appropriate.

(7) A judge making an order for maintenance under this section may, in a case where there is a pension or income payable to the adult in respect of whom the order is made or payable to a person responsible for the maintenance of that adult and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, order that the part that the judge may consider appropriate of the pension or income be attached and be paid to the person that the judge may direct.

(8) The order under subsection (7) is authority to the person by whom the pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a sufficient discharge to the person by whom the pension or other income is payable.

(9) A judge or the director shall not order the removal of a neglected adult to a home or institution unless he or she is of the opinion adequate care and attention cannot be provided in the premises in which the adult is living.

(10) Where the medical evidence at the hearing discloses that the neglected adult requires treatment in a hospital, the judge may include in the orders mentioned in paragraphs (4)(a), (b) and (c) an order for hospitalization.

Order to recite facts

7. An order made under subsection 6(4) shall recite the facts ascertained at the hearing and the judge shall deliver a certified copy of the order to the director.

Temporary custody

8. At any time pending the final determination of an application the judge may order the removal of the adult to a hospital or other place without delay if a medical practitioner certifies that in his or her opinion it is necessary to do so in the interest of the adult.

Order may be varied or rescinded

9. (1) At any time after the expiration of 4 weeks from the making of an order under subsection 6(4) an application may be made to the judge by the director or by or on behalf of the adult in respect of whom the order was made to have the order varied or rescinded, and the judge may, where in the circumstances it appears expedient to do so, vary or rescind the order.

(2) Where an application is made under subsection (1) by a person other than the director, 7 days' notice of the application shall be given to the director.

Protection of property

10. (1) Where an adult is removed from the premises in which he or she is living to another place and it appears to the director that there is danger of loss of, or damage to, movable property of the adult because of the adult's temporary or permanent inability to deal with his or her property, and that no other suitable arrangements have been or are being made for the purpose, it is the director's duty to take reasonable steps to prevent or mitigate the loss or damage.

(2) The director has power at reasonable times to enter premises which immediately before the adult's removal were the adult's place of residence or usual place of residence, and to deal with movable property of the adult in a way which is reasonably necessary to prevent or mitigate loss or damage.

(3) The director may recover from the adult, or from a person liable to maintain him or her, reasonable expenses incurred by the director under subsection (2).

Ill-treatment of neglected adult

11. A person who wilfully commits or omits an act which results in a person being or becoming a neglected person or contributing to that result is guilty of an offence and liable on summary conviction to a fine not exceeding \$200 or, in default of payment, to imprisonment not exceeding 2 months, or to both a fine and imprisonment.

Visits to neglected adult

12. A person entrusted with the care of a neglected adult shall permit that person to be visited and allow a place where the neglected adult may be or lives to be inspected by the director or a social worker.

Regulations

13. (1) The Lieutenant-Governor in Council may make regulations

- (a) prescribing the forms and procedure governing applications and proceedings under this Act;
- (b) prescribing records to be kept under this Act and returns to be made to the minister;
- (c) prescribing the duties under this Act of the director and social workers;
- (d) respecting homes and institutions suitable for neglected adults;
- (e) prescribing the documents or information which must accompany applications under this Act;
- (f) prescribing the rate to be paid in respect of board or clothing supplied to neglected persons; and
- (g) generally, to give effect to the purpose of this Act.

(2) A person who contravenes a regulation made under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$200 or, in default of payment, to imprisonment for a term not exceeding 2 months, or to both a fine and imprisonment.

Courts with jurisdiction under this Act

14. Except where otherwise provided in this or another Act, an information, suit or other proceeding under this Act may be laid, prosecuted or proceeded with before a provincial court.

Offence

15. (1) A person who wilfully disobeys or obstructs the execution of an order made under the authority of this Act or who contravenes this Act or the regulations made under this Act is guilty of an offence.

(2) Where a penalty is not provided for a breach of this Act or a regulation made under this Act, a person committing the breach is liable on summary conviction to a fine not exceeding \$200, or in default of payment, to imprisonment for a term not exceeding 2 months, or to both a fine and imprisonment.

Appeal to Court of Appeal

16. A person feeling aggrieved by an Act or order of the minister or the director or by an order, judgment or conviction of a court under this Act may appeal to the Court of Appeal within the time limited by and subject to the provisions, with the necessary changes, of the Small Claims Act respecting appeals from Provincial Court judges.

Act to be liberally construed

17. The care of adults coming within this Act shall approximate as nearly as possible that which should be given by dutiful children.

Payments

18. Payments required to be made in carrying out this Act or the regulations shall be paid by the Minister of Finance, on the request of the minister, out of the Consolidated Revenue Fund of the province.

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THE MENTAL HEALTH ACT (PROVINCIAL)

While not an Act that specifically deals with elder abuse, this piece of legislation is occasionally used to remove a senior from an abusive environment if a police officer “observes a person acting in a disorderly or dangerous manner” and appears to have a mental disorder “to a degree that the person requires hospitalization in the interests of his or her own safety, safety to others, or safety to property.”

The Act can also be used to remove an abuser with serious mental health problems from a home under certain circumstances.

As with the Neglected Adults Welfare Act, this legislation is an extreme measure, and is only used in cases where the individual is not mentally competent.

THE CRIMINAL CODE (FEDERAL)

Although “elder abuse” is not a specific crime under the federal Criminal Code, there are some criminal offences that apply to different forms of elder abuse. For instance, the chargeable crime of “assault” may be part of a senior’s physical abuse or “uttering threats” may be part of psychological abuse. The following are some Canadian Criminal Code Offenses that may apply to forms of elder abuse:¹

Physical Assault

- Assault (common assault, assault with a weapon or causing bodily harm, and aggravated assault)
- Sexual assault

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- Forcible confinement
 - Murder/manslaughter
 - Administering a noxious substance
 - Counselling suicide
 - Robbery

Financial Abuse

- Theft, including theft by a person holding power of attorney
- Theft with a credit card
- Fraud
- Fraud with a credit card
- Robbery
- Breaking and Entering
- Forgery
- Uttering (using) forged documents
- Extortion
- Stopping mail with intent
- Criminal breach of trust
- Conversion by trustee

Neglect

- Criminal negligence causing bodily harm
- Breach of duties to provide the necessities of life

Mental Cruelty

- Intimidation
- Uttering threats
- Harassing telephone calls
- Criminal harassment (eg., stalking)

If a senior, or someone witnessing elder abuse, wishes to report a criminal offence they should contact their local police office (see Appendix 2). In most cases, the victim (i.e. the senior) must be willing to press charges in order for a legal action to proceed. However, in some situations where there are other witnesses, sufficient evidence, etc., the police and/or the Crown may still proceed with charges.

Remember, when supporting a senior to choose a course of action, his/her right to decide whether or not to press charges should be respected.

Footnote:

1. Adapted from Canada. Mental Health Division, Health Canada. (1994). *Resource and Training Kit for Service Providers: Abuse and Neglect of Older Adults*. Ottawa: Health Canada, p. 64
