

## **Violence Against Older Persons**

### **What is Violence?**

Violence is the improper treatment of an individual that results in a violation of the rights of that individual.

Violence is often a crime, and can take many forms, including physical, sexual, emotional/psychological, verbal, and spiritual.

There is no such thing as 'victim precipitated violence'. Victims are never to blame for violent behaviour.

### **What is Violence against Older Persons?**

A single or repeated act, or lack of appropriate action, occurring in any relationship where there is an expectation of trust that causes harm or distress to an older person.

Violence against older persons includes all forms of violence, as well as financial abuse and neglect. Often where one type of abuse is occurring, there is another.

### **Who Can Be A Victim?**

Anybody can be a victim. A victim is anybody who has suffered harm or loss as a result of abuse or neglect. Victimization happens across all socioeconomic situations, races, ages, levels of education, etc.

Victims of violence against older persons can be found throughout our community:

- In their home
- In relatives' homes
- In boarding homes
- In long-term care institutions
- In nursing homes
- In independent living cottages
- In chronic care hospitals
- In rest and retirement homes

## The Prevalence of Violence against Older Persons

It is estimated that between 4-10% of older adults are the victim of violence against older persons, but the real number is likely much higher. The true number is difficult to estimate because of underreporting, inconsistent/limited statistics, confusion about what constitutes abuse and lack of awareness about the issue.<sup>1</sup>

13% of Canada's population is over 65 years of age. Reported cases of violence against older persons increased 14% from 2004 to 2009.<sup>2</sup>

## Types of Abuse and Neglect

**Physical (including sexual) abuse** – Any act of violence causing injury or physical discomfort, including sexual abuse. May also include the inappropriate or unwarranted use of physical or chemical restraints (such as medication).

*Examples of physical abuse may include:*

- Striking, hitting, slapping
- Shoving, shaking
- Burning, scalding
- Unwanted sexual contact

*Indicators of physical abuse may include:*

- unexplained injuries (such as cuts and bruises), often in various stages of healing
- failure to seek medical treatment
- the refusal of community contact; sudden introversion
- medication abuse

---

<sup>1</sup> [www.seniorscouncil.gc.ca](http://www.seniorscouncil.gc.ca)

<sup>2</sup> Statistics Canada, via [www.victimsofviolence.on.ca](http://www.victimsofviolence.on.ca)

- history of 'accidents'
- changes in personal hygiene or grooming

**Emotional/psychological abuse** – the willful infliction of mental anguish or the provocation of fear of violence or isolation. This kind of abuse diminishes the identity, dignity and self-worth of the victim.

*Examples of emotional/psychological abuse may include:*

- threats to do harm
- unwanted/threatened institutionalization
- abandonment
- stopping a mentally capable senior from making his/her own decisions
- treating an adult like a child

*Indicators of emotional/psychological abuse may include:*

- difficulty sleeping/needing excessive sleep
- tearfulness
- feelings of helplessness/hopelessness
- caregiver speaking on behalf of the senior, not allowing privacy
- low self-esteem

**Financial abuse** – The theft or misuse of a senior's money, property, or assets.

*Examples of financial abuse may include:*

- theft of money or assets
- forging a senior's signature on cheques
- unduly influencing a senior to change their will
- theft or misuse of Power of Attorney

*Indicators of financial abuse may include:*

- unexplained/sudden inability to pay bills
- unexplained/sudden withdrawal of large amounts of money
- unexplained disappearance of seniors' possessions
- assets transferred to another person

**Neglect** – The failure to meet the needs of an older adult who cannot meet these needs on his/her own. Can be active (intentional), passive (unintentional) or self-neglect (by the senior him/herself).

*Examples of neglect may include:*

- withholding physical requirements (such as food, medicine, clothing, housing)
- withholding psychological requirements (such as social contact, emotional support, respect)

*Indicators of neglect may include:*

- malnourished, dehydrated, weight loss
- depression, withdrawal
- clothing threadbare, inappropriate or insufficient

### **What Causes Abuse?**

There are several theories of why abuse happens. Some contributing factors may include:

- Stressed caregiver syndrome
- History of family violence
- Alcohol/drug dependency on part of abuser
- Poor mental health/personality disorder
- Greed

## Violence against Older Persons and the Law

### The Criminal Code

There are a number of *Criminal Code* charges which can be laid as a result of violence against older persons. Some examples include:

- **Criminal Negligence** – doing/failing to do something which shows wanton or reckless disregard for the lives/safety of others.
- **Uttering Threats** – threats to cause bodily harm/death, to burn, destroy or damage property, or kill, poison or injure an animal
- **Harassing/Indecent Phone Calls** – calls meant to alarm, annoy or harass.
- **Criminal Harassment** – engaging in conduct to cause another person to fear for their safety, such as stalking.
- **Counselling or Aiding Suicide**
- **Assault** – the use of force to harm or threaten to harm an individual.
  - **Assault with a Weapon** – the actual or threatened use of a weapon during the commission of an assault.
  - **Aggravated Assault** – an assault that wounds, maims, disfigures or endangers the life of the victim.
- **Sexual Assault** - sexual contact with another person without that other person's consent.
  - **Sexual Assault with a Weapon** - the actual or threatened use of a weapon during the commission of a sexual assault.
  - **Aggravated Sexual Assault** - when a person is wounded, maimed, disfigured, or has his/her life endangered during a sexual assault.
- **Forcible Confinement** – unlawfully confining or imprisoning another person.
- **Murder** – intentionally causing death of a human being.
- **Manslaughter** – culpable homicide that is not murder or infanticide.

## **The Adult Protection Act**

An 'adult in need of protective intervention' is defined (in section 5) as an adult who lacks capacity and who:

- (a) is incapable of caring for himself or herself, or who refuses, delays or is unable to make provision for adequate care and attention for himself or herself; or
- (b) is abused or neglected.

Section 12 sets out the duty to report as follows: 'A person who reasonably believes that an adult may be an adult in need of protective intervention shall immediately give that information, together with the name and address of the adult, if known, to the provincial director, a director, a social worker or a peace officer'.

Failure to report is an offence, as set out in section 32: 'A person who contravenes this Act or the regulations is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year in default of payment or to both a fine and imprisonment'.

## **Why Does Abuse and Violence Go Unreported?**

Fear is a big factor contributing to underreporting of abuse and violence towards older persons.

The victim may fear:

- Reprisals from the person responsible and others.
- Losing contact with care giver or family.
- Being institutionalized.
- Guilt or shame.
- That police are unable to help, or their situation is too trivial for police intervention

The caregiver may fear:

- Loss of confidentiality.
- The abuser after making a complaint.
- They will be blamed (failure to identify warning signs).
- Getting involved in legal matters.
- Caregivers may investigate themselves, and draw the wrong conclusion.

### **Profile of Offender**

Many offenders may have a history of alcohol or drug abuse, financial dependency on victim or others, chronic unemployment, psychological problems, social isolation and other stresses.

An offender's age is generally within 20 years of the victim's age.

Many times the offender is a relative of the victim.

### **Police Response**

When police respond to situations of abuse they should:

- Stabilize the situation
- Ventilate (*allow victim to express their feelings*)
- Access the situation
- Explain (*court or investigative process may be confusing*)
- Investigate
- Make appropriate referrals

### **Police Investigative Response**

The victim of abuse will need:

- A prompt response from police
- For police to take charge of the situation
- The police to recognize the victim

Needs of the victim at the time of crisis are:

- The police should provide emotional support
- The police should protect the victim from the abuser

- For the police to assist with medical attention (if necessary)
- For police to arrange transportation
- For police to remain until a temporary resolution is reached
- The police should inform the victim of available services
- The police should advise the victim of the next steps
- The police should inform the victim of options that are available
- Make appropriate referrals

## **Preventing Violence against Older Persons**

Everyone has the right to a safe, secure, violence-free environment. Violence is rooted in inequality, it is a choice, it is preventable, and it is everyone's responsibility. The response to violence includes:

- Prevention
- Education
- Services
- Enforcement of the law

### **Risk Factors for Violence**

There are certain factors that may place an older person at increased risk of violence. These include:

- **Personal and health related risk factors:** age, gender, language barriers, isolation, health conditions which may hinder reporting.
- **Environmental risk factors:** hidden cash and valuables, no money to exit violent situations, social isolation (lack of transportation, telephone, no contact with others), living in rural areas, fewer formal support systems.
- **Relationship risk factors:** history of family violence, not reporting for fear of making matters worse, physical, financial, emotional or intellectual dependence.
- **Societal risk factors:** ignorance/denial of needs, societal values of older persons that create imbalances in power and control.

### **Protective Factors against Violence**

The same four factors may also provide protection from violence for older persons. A protective factor is anything that enhances a person's resiliency, increases resistance to risk, and strengthens against harm.

- **Personal and health related protective factors:** having good coping skills, knowing one's civil and human rights, having a safety plan in place.
- **Environmental protective factors:** accessible transportation, community facilities and housing, services available; monitoring in residential care, effective policies and procedures, and trained, capable staff.
- **Relationship protective factors:** caring families, a variety of relationships.
- **Societal protective factors:** positive images of older people, culture of respect.

### **Restoring power and control to the older person**

Violence removes power and control from an older person. Empowerment of an older person should be the focus of any intervention.

Empowerment through:

- *Information* – provide all available information to the older person.
- *Awareness of options* – restores decision-making and control to victims. This builds on older persons' strengths, skills and resourcefulness.
- *Awareness of choices* – give the older person information and help them learn about their rights and options, so they can make informed choices.
- *Involvement in safety planning* – involving older persons in planning for their safety helps them prepare for any encounters with the perpetrator.

### **Safety Planning**

Five strategies of safety planning:

- *Prevention* – preventing future violence (for example: going to a shelter, getting a peace bond, etc.)
- *Protection* – looking at ways the person can protect themselves during a violent incident (for example: having an escape route, having the person

seek shelter in a room where a door can be locked from inside with a working telephone, etc.)

- *Notification* – arranging ways to get help in a crisis (for example: cell phone, emergency numbers on hand, security system, etc.)
- *Referral* – finding services that can help (for example: Regional Health Authority, Victim Services, transition houses, etc.)
- *Emotional Support* – finding emotional support and ways to become less isolated (for example: hobbies, trusted friends and family, community groups, etc.)

### **The Continuum of Violence Prevention**

The prevention of violence is a complex social problem, requiring a holistic approach including education, awareness, development of social and life skills, and involvement of individuals, families and communities.

The continuum of violence prevention includes:

1. *Short-term and emergency relief strategies* (for example: shelters, police intervention, crisis counseling)
2. *Capacity-building strategies* (for example: safety planning, seniors support groups)
3. *Systems change strategies* (for example: Residents' Bill of Rights in residential care; provincial and national legislative changes)

Source: Respect Aging: Preventing Violence against Older Persons, Violence Prevention Initiative, Women's Policy Office, Government of NL

## **Emergency Protection Orders**

### **What is an Emergency Protection Order (EPO)?**

An EPO is a Court Order that offers immediate protection measures in family violence cases. A Judge may issue it at the time of the violence or the threat of violence if it is an emergency. This Order may be in place for up to 90 days. The Judge may order conditions to make sure no more harm comes to the applicant and/or their property. An EPO cannot be renewed or extended. For example, when a 40 day EPO ends, it is over. However, if there is a different/new emergency with the respondent, the applicant can apply for the new Order.

### **Does an EPO replace a criminal charge?**

No – If the police have proof of a crime, they will lay a charge in family violence cases. If an EPO application suggests a crime has taken place, the police will look into it and decide if a charge will be laid. Sometimes an EPO will be granted and a criminal charge will be laid at the same time.

### **Does a charge have to be laid for the court to grant an EPO?**

No – A Judge can decide that family violence has taken place without a criminal charge being laid. A Judge can grant the Order if it is found that the victim is an emergency situation. An emergency means the Judge has proof that there is an immediate threat to the victim's safety or the safety of their property.

The *Family Violence Protection Act* offers one more option to victims of family violence in protective measures. However, family violence is a crime and a charge will be laid where there is evidence to support it.

### **How is family violence defined?**

The *Family Violence Protection Act* defines family violence as physical violence or the threat of violence, or actions that are threatening or abusive, such as withholding food, shelters, medical attention, etc. The Act is at [www.justice.gov.nl.ca](http://www.justice.gov.nl.ca). The Act defines family violence as:

- (a) An assault that consists of the intentional application of force that causes the applicant to fear for his or her safety but does not include an act committed in self-defense;
- (b) An intentional, reckless or threatened act or omission that causes bodily harm or damage to property;
- (c) An intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or damage to property;
- (d) Forcible physical confinement without lawful authority;
- (e) Sexual assault, sexual exploitation or sexual molestation or the threat of sexual assault, sexual exploitation or sexual molestation;
- (f) Conduct that causes the applicant to reasonably fear for his or her safety, including following, contacting, communicating with, observing or recording a person; and
- (g) The deprivation of food, clothing, medical attention, shelter, transportation or other necessities of life.

### **Who can apply?**

- A person who lives (or has lived) with the respondent in a partner relationship (married or unmarried).
- A person who has a least 1 child with the respondent even if they have not lived together.
- Police and/or lawyers on behalf of the victim, with the victim's consent.
- Same sex partners.

### **Is there someone who can help complete an application?**

Yes – Because of its emergency nature, the EPO application is normally made by the police. Victim Services, Transition House staff, Women's Centre staff, etc. are also available to help.

### **Will Child Protection be called if there are children in the family?**

The *Child Youth and Family Services Act* (Section 15) states that children under the age of 16 be referred to Child Youth and Family Services if there is violence in the family. An EPO can have conditions about custody, contact and/or communication with children. Children who usually, or at times, live with the respondent would

be covered through this Act. Children affected by violence in their homes have the right to protection from any harm. If family violence has taken place, or there is a threat, the law states that a referral is to be made.

### **How does a person apply?**

Application forms are to be given to the Provincial Court for review by a Judge. The Judge decides if there is enough information to make a decision right away or if more information is needed.

All applications have information that is sworn to, or stated to be true. The Judge or a person allowed by law to take oaths, will have the applicant swear to the information. It is a criminal offense to put false information in the application. When an applicant gives information under oath or promises it to be true, they may be questioned in any future related, or unrelated, court proceeding on that information.

### **Is there an application fee?**

No – However, if travel to attend court is needed, people must pay their own expenses.

### **Is there financial help for travel to/from Court for Hearings?**

Yes, if you qualify – Applicants and/or respondents needing financial aid for travel to/from Court, should contact the Department of Advanced Education and Skills (AES) to see if they qualify.

### **How long will it take for a decision to be made on an EPO?**

A decision will usually be made within 24 hours. If it cannot, for reasons beyond the Court's control, it will be processed as soon as possible.

### **Can an EPO be granted without telling the respondent?**

Yes – But if the Judge feels the respondent should know, the Judge may ask the police to tell the respondent the application has been made, before he/she makes a decision about the EPO.

### **Is a court appearance required?**

Not necessarily – If a Judge needs more information, the application may need to be changed. The Judge may ask the police to get more information, ask the applicant questions over the phone, or require the applicant to testify in court.

### **What conditions can be included in an EPO?**

- Private, temporary use of the home for applicant
- Removal of respondent by the police
- Police may go with the applicant or respondent while personal belongings are removed
- Temporary ownership or control of personal property for applicant (i.e. car, medical cards, I.D. Documents, pets)
- Police seizure of respondent's guns/weapons
- Temporary custody of child(ren) to applicant or another person
- Restrain respondent from further acts of violence
- Mortgage/rent payments by respondent
- Restrain respondent from cutting off utilities
- Any other condition the Court feels is needed to protect the applicant or their property.

For a Judge to grant an EPO he/she has to feel that: (1) family violence has taken place and (2) the matter is urgent and an immediate Court Order is needed to stop further harm to a person, their family, or property.

### **How is the respondent told about an Order?**

Within 48 hours the police must give the respondent a copy of the Order and all information given by the applicant. If the police cannot serve the Order within 48 hours, the Court will decide how the police will tell the respondent.

**When does an EPO take effect?**

An EPO takes effect as soon as the Judge grants it. However, a respondent cannot be bound by an EPO until they are aware of it. For example an applicant may be able to remove personal belongings from their home immediately, even if the respondent does not know about the EPO. A respondent cannot be charged for breaking a condition if he/she does not know about the Order. For example, a charge cannot be laid for breaking a “no contact” condition if the respondent did not know they were not allowed to have contact.

**Can a respondent have a decision changed?**

Maybe – A respondent has a right to review of the EPO. The respondent must apply to the Court within 10 days of becoming aware of the EPO. You can get a form to review or change an order (Form 7) from Court or [www.court.nl.ca/provincial/EPO.htm](http://www.court.nl.ca/provincial/EPO.htm). A date would be set for a Hearing. The respondent would give reasons why he/she thinks the EPO should be set aside/changed. The Judge can decide to set the Order aside, end the Order, keep it, or change any or all conditions.

**Can an EPO be changed while in place?**

Yes – An applicant or a respondent may apply to the Court to change a condition or cancel an EPO if the situation has changed. If both people agree to the change(s), the Judge can accept agreed statements from both people and approve the change, or ask for more information at a Hearing. For information, go to [www.court.nl.ca/provincial/EPO.htm](http://www.court.nl.ca/provincial/EPO.htm) or any Provincial Court Office.

**Is legal assistance available?**

Maybe – Applicants/respondents do not need to have lawyers however, if either person wishes, they may hire a lawyer. If they cannot afford to hire a lawyer, they can ask Legal Aid Services for help. To receive Legal Aid Services financial requirements have to be met.

However, if the matter is urgent (and during business hours) Legal Aid may be contacted. Legal Aid provides a lawyer in emergencies however, later they will

assess the applicant/respondent for financial eligibility. Note: Respondent who represent themselves in court, may question the applicants.

### **What happens if an EPO condition is broken?**

The applicant may call the police. It is an offense to break an Order and the respondent may be charged. For a first offense a respondent may be fined up to \$2000, go to jail for up to 6 months, or a combined fine and jail term. For another offense, the respondent may be fined up to \$5000, go to jail for up to 12 months, or a combined fine and jail term.

### **Will an EPO result in a criminal record?**

No – An EPO falls under provincial legislation. It is not a criminal conviction and will not result in a criminal record.

### **What happens afterwards?**

An EPO is a short-term response to a crisis. It offers immediate protection for victims in high risk situations. Once an EPO is in place it allows time for long-term plans to be made. Victim Services may be able to point out community resources to help the applicant develop long-term plans. Victim Services may also help develop safety plans for future protection.

*Copied from [www.gov.nl.ca/just](http://www.gov.nl.ca/just)*

## What Victims Can Expect from the Justice System

### People in the Justice System

**Crown Attorney** – The Crown is the government lawyer working on behalf of all members of society (in Canada, crimes are seen as being a wrong committed against society). The Crown is required to prosecute cases fairly and treat all parties in the case (including the accused) in a fair manner.

Once the police lay a charge, the Crown Attorney is the person that decides whether the charge will proceed to court, and is the only person who can decide to drop or withdraw charges.

**Defence Attorney/Legal Aid** – The defence lawyer represents the accused in a criminal trial. This lawyer represents the best interests of the accused and advocates on his/her behalf.

**Judge** – The judge is the person with the authority to hear and decide the guilt or innocence of an accused person in criminal cases. The judge is the person that decides which punishment (sentence) will be imposed, regardless of whether the person was found guilty by a judge or jury. People are sometimes unsure how to address a judge in court. In Provincial Court, the judge is called 'Your Honour'. In Supreme Court, the judge is called 'Justice' or 'My Lord' or 'My Lady'. However, it is just fine to refer to the judge as Sir or Madam – this is certainly not inappropriate or offensive.

**Court Clerk** – The court clerk is the staff member who announces when the judge appears in the courtroom. Before a person can testify, the court clerk will ask the witness' name, address, and ask the witness to take an oath to tell the truth. The clerk also checks to ensure the audio equipment is functioning, and may handle documents and evidence which are presented in court.

**Sheriff's Officer** – The sheriff's officer is the person responsible for escorting prisoners, as well as maintaining court security in some courts in NL. In some regions, the local police will escort prisoners instead.

**Witness/Victim** – A witness is a person who testifies in court because they have seen or have some information about a case. A witness is normally subpoenaed to court. If a victim testifies, s/he is also a witness.

**Victim Services** – These professionals will likely be seated next to the victim as a support person. The Victim Services program offers several different types of support to victims. In terms of court support, Victim Services can provide a

support person during the court process, can help explain and prepare for the court experience, and can help with preparing a victim impact statement.

### **What to Expect from the Police**

Police are responsible for investigating crimes and laying charges where appropriate.

The main interaction a victim will have with the police is to provide a statement.

They should also keep victims informed about the progress of their investigation, and send support to victims if a victim feels their safety is threatened by the person accused of the crime or someone else.

The police should also be expected to give victims information about other resources, including EPOs, peace bonds, and a referral to Victim Services.

Victims should be able to contact the officer in charge of investigating the case to ask questions or provide more information.

### **What to Expect from the Crown**

It is up to the Crown Attorney to drop the charges or proceed with the prosecution, not the person who made the complaint.

The Crown Attorney is not the victim's lawyer during a criminal proceeding. The Crown Attorney represents all of society, since everyone has an interest in making sure crimes are prosecuted and punished.

If called to testify in a trial, a victim will receive a subpoena from the court telling where and when to go to court. If for some reason he/she cannot go to court on that day and time, he/she should contact the Crown Attorney handling the case immediately.

If the case goes to trial, the victim will have the chance to meet briefly with the Crown Attorney in court before testifying. There can usually also be a Victim Services worker present as well as a support person if the victims wishes.

### **How to Act at Court**

It is normal to be nervous. Expert witnesses and lawyers often get nervous before court.

If a victim would like support, he/she can contact Victim Services, who can help explain the court process and attend court with the victim, if he/she wishes.

When attending court, people need to simply act mannerly and respectfully; be well-groomed; don't chew gum; shut cell phones off. It is ok to cry. There will likely be a box of tissues there.

If a victim does not understand the lawyer, he/she should let them know.

### **Withdrawing Charges**

A victim cannot withdraw charges. Only the Crown Attorney can do this.

If a victim would like charges dropped, they should let the Crown Attorney know. There is no guarantee that it will happen. Charges are rarely dropped in cases of domestic violence or child abuse.

### **Release of Offender**

There are workers called 'Victim Liaison Officers' who work within prisons and can provide victims of crime with information about offender release dates.

Local Victim Services office will have information on this program. The National Parole Board can provide similar information for offenders serving federal sentences (sentences of 2 years or more).

**Note:** The website [www.courtprep.ca](http://www.courtprep.ca) is a helpful resource for victims/witnesses who want to learn more about the court process or prepare for a court appearance.