



Resolution 4: Legislative reform and infrastructure development for mistreatment of older adults with dementia within the home context

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Conflict of Interest: No known conflict of interest

WHEREAS prevalence rates of mistreatment of older Canadians living at home without cognitive impairment have risen from 4% (Podnieks, Pillemer, Nicholson, Shillington & Frizzel, 1990) to 8.2% (McDonald, 2015) and studies have revealed alarmingly higher prevalence when older adults have dementia, ranging from 34.9% (Sasaki et al., 2007) to 62.3% (Yan & Kwok, 2011); and

WHEREAS in Ontario, practitioners from various disciplines (including nurses), who have access to these isolated at-risk older adults, have described the legislative barriers, lack of supports, and the burden of sole responsibility for these cases resulting in powerlessness to end the mistreatment, which frequently end in a crisis (Lindenbach, Larocque, Morgan, & Kristen, 2019); and

WHEREAS other Canadian and international jurisdictions have demonstrated effective legislative policies and practices which are designed to protect these at-risk adults;

THEREFORE BE IT RESOLVED that RNAO advocate the provincial government to institute legislative reform and infrastructure development to support professional intervention in cases of mistreatment of older adults with dementia by an informal caregiver within the home.

Background

Older adult mistreatment [OAM], commonly referred to as elder abuse, is defined as “actions and/or behaviours, or lack (thereof), that cause harm or risk of harm within a trusting relationship” (McDonald, 2015, p. 6). When the older adult also has dementia, numerous factors increase the risk of OAM (Alzheimer Society of Canada, 2010a). Prevalence rates are considered underestimations as more serious forms of mistreatment may not be reported and those most at-risk are probably not reached (Wiglesworth et al., 2010). This is of great concern as the prevalence of dementia is projected to rise several-fold (Alzheimer Society of Canada, 2010b).

OAM perpetrated by a family caregiver within the home reveals an uncomfortable paradox: a provincial home care system’s overreliance on informal caregivers (McMaster University, 2014),

when it is precisely these adult children or spouses who victimize older adults (Amstadter et al., 2011). When occurring behind closed doors, the OAM will possibly only be discovered by formal practitioners who visit the home (Carp, 2000). In the absence of intervention, negative outcomes such as increased OAM or death may result (Lachs, Williams, O'Brien, Pillemer, & Charlson, 1998).

The professional experience of encountering OAM in the home has been described as an assault on the senses (Anetzberger, 2005). A handful of studies have been conducted in socio-legal contexts similar to Ontario where there is no legislation: in Quebec, participants revealed tolerating risks in these challenging cases that they needed to “carry alone” (Beaulieu & Leclerc, 2006, p. 180). In a recent Northeastern Ontario study (Lindenbach, Larocque, Morgan, & Kristen, 2019), practitioners from various disciplines described a lack of professional agency in these cases, witnessing abuses of power in the home and constantly striving to maintain access to the older adult. They described intervening cautiously so as not to trigger the mistreating caregiver who, frequently the substitute decision-maker under the Substitute Decision Act, 1992, controlled access of home care services. Although provincial grey literature directs practitioners to contact police with their concerns, the latter explained their inability to enter the home based on practitioners’ concerns of risk, as is current practice with other at-risk populations such as children and intimate partner violence in Ontario. This was based on the differentiation between the legal thresholds of reasonable grounds versus reasonable suspicion (Skolnik, 2016). Without legislation, police lacked the probable cause required to enter a home or to remove mistreated incapable older adults from the home. Regulated practitioners described a lack of recognition of their evaluations of risk and lack of capacity by legal institutions, such as the Ontario Public Guardian and Trustee [PGT], who are mandated to address allegations of OAM in Ontario. However, the LCO (2017) has clarified that the mandate of investigation of the PGT is reserved for grave violations of statutory rights by substitute decision makers. Frequently, cases ended in crisis thus exposing the OAM to those outside the home such as hospitalisation, placement in long-term care, financial ruin, or death (Lindenbach et al., 2019).

Ontario does not have legislation or infrastructure to support practitioners when cases occur in the home. Although RNAO has developed best practice guidelines for elder abuse and neglect (RNAO, 2014), specifics related to mistreatment occurring within the home context, of the older adult who cannot autonomously accept to remain in a mistreatment situation, and of Ontario’s legal response are lacking. Legislation does exist in other Canadian provinces and “Comprehensive Adult Protection Regimes”, such as exists in British Columbia, (CCEL, 2011) are promising. This regime offers a specific law addressing mistreatment broadly, including all adults and in all contexts. It also provides, in addition to reporting duties, many potential responses to mistreatment such as powers of access to investigate allegations. Numerous stakeholders have recommended the development of adult protective legislation (CARP, 2018; Hall, 2009; WHO, 2014). Until such progress can occur in Ontario, practitioners, without specific legislation, must utilize a piecemeal of laws related to context, capacity, and privacy (Wahl, 2013), which fail to support intervention (Lindenbach et al., 2019).

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