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The New Practical Guide to Elder Abuse and Neglect Law in Canada

Krista James



Today's presentation

1. Overview of the new Practical Guide
2. Comparative summary of elder abuse laws
3. Best practices for response



Disclaimers

- . Laws related to elder abuse are colonial constructs
- . I cannot give legal advice today
- . Please be mindful of people's confidentiality when you ask questions

About the CCEL

The CCEL conducts research, and develops **reports and educational tools** about legal and policy issues related to aging.

The CCEL is part of the BC Law Institute, BC's non-profit independent law reform agency

www.bcli.org/ccel

Our work = Law reform + Consultation
+ Research + Legal education



Current CCEL areas of research

Health care
decision-
making rights &
dementia

Consent to
participate in
research

Criminal court
witnesses with
capacity issues

Oversight of
health care
assistant
practice



Krista
James

Krista James is a lawyer.

She is the **National Director** of the **Canadian Centre for Elder Law**.

Her work addresses **legal** and **policy issues** linked to **aging**. She has a particular interest in how **aging, gender, and other aspects of identity intersect**.

Find her writing at www.bcli.org/ccel and on Twitter at [@KristaElan](https://twitter.com/KristaElan).



Part 1


The new
Practical
Guide

Practical Guide to Elder Abuse and Neglect Law in Canada

This resource covers abuse and neglect occurring anywhere in Canada. It discusses relevant laws in each province and territory.

Select a Province or Territory 

Search the Practical Guide 


What is Elder Abuse and Neglect? 

Guiding Principles for Best Practice 

Lenses for Inclusive Practice 

Federal Laws 

Laws on Reserves 

Glossary of Terms 

www.ccelderlaw.ca

Practical Guide to Elder Abuse and Neglect Law in Canada

- French-English bilingual website
 - Modules on the law in each province & territory*
 - Summary of key federal legislation
 - Lenses for inclusive practice
 - Guiding principles for best practice *
-

Provincial & territorial modules

1. Adult protection laws*
2. Laws applying to long-term care*
3. Family violence laws*
4. Employment laws—leave due to family violence
5. Privacy and confidentiality law and elder abuse
6. Financial substitute decision-maker law
7. Law regarding reporting abuse by a regulated health care professional
8. Policy re criminal prosecution of elder abuse
9. Policy re immigration sponsorship breakdown and income assistance
10. Key agencies for information or assistance

Lenses for inclusive practice

- Trauma-informed practice
- Cultural safety and humility
- Age, dementia, and disability-friendly practice
- Gender dynamics awareness
- Sexual orientation and gender identity inclusion

Thank you to our funders



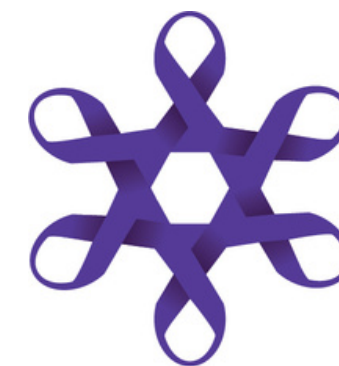
**Government
of Canada**

**Gouvernement
du Canada**



**BC ASSOCIATION OF
Community Response Networks**

Stopping Adult Abuse and Neglect ...Together.



**Elder Abuse
Prevention
Ontario**



Part 2

Provincial &
territorial
laws

Different kinds of laws I cover in this talk

1. Adult protection laws
2. Family violence laws
3. Long-term care laws

“Elder abuse” laws across Canada

- Each province and territory has taken a unique approach to:
 - Developing laws to address abuse of vulnerable adults and inter-personal violence
 - Creating public agencies to respond to abuse
 - Funding non-profit agencies to support seniors

= policy choice

Adult protection laws

- Apply broadly to vulnerable adults
- Designate agencies to respond to reports of abuse, neglect & self-neglect
- Define key terms
- Indicate what types of abuse are covered
- Create powers to respond

Adult protection laws

- NS [Adult Protection Act](#)
- PEI [Adult Protection Act](#)
- NL [Adult Protection Act](#)
- PQ [Act to combat maltreatment of seniors and other persons of full age in vulnerable situations](#)
- BC [Adult Guardianship Act](#) (Part 3)
- YK [Adult Protection and Decision-Making Act](#) (Part 4)
- NB [Family Services Act](#) (s 34-42)

Very broad powers

- Conduct investigations
- Access private information
- Enter premises & examine adult (court order)
- Make report to police or PGT
- Get a no contact order
- Develop a support and assistance plan
- Impose a support and assistance plan (court order)
- Remove the adult without a court order (in an emergency)

Mandatory response vs mandatory reporting

NS, NL

There is a public duty to report elder abuse and neglect

PEI, PQ

Mandatory reporting for certain individuals

BC, YK, NB, PEI

No general public duty to report elder abuse or neglect

Family violence legislation

- Defines family violence
 - Defines family member
 - Applies if family violence or risk
 - Allows courts to intervene by making a protection order
 - Indicates who can apply for an order
-

Family violence legislation

- AB [Protection Against Family Violence Act](#)
- SK [The Victims of Interpersonal Violence Act](#)
- MB [Domestic Violence and Stalking Act](#)
- NS [Domestic Violence Intervention Act](#)
- NB [Intimate Partner Violence Intervention Act](#)
- NL [Family Violence Protection Act](#)
- PEI [Victims of Family Violence Act](#)
- YK [Family Violence Protection Act](#)
- NWT [Protection Against Family Violence Act](#)
- NU [Family Abuse Intervention Act](#)

Family violence legislation

- BC [Family Law Act](#) (Part 9)
- ON [Family Law Act](#) (Part III)
- PQ [Code of Civil Procedure](#)

- [Family Homes on Reserves and Matrimonial Interests or Rights Act](#)
- Band council laws and policy?

Family member

Example from NWT.

The following people can apply for an order:

- Lived together in an intimate or family relationship,
 - Have a child with the abuser, or be the abuser's spouse or former spouse,
 - Be the parent or grandparent or someone experiencing violence
-

Family violence

Definition of “**family violence**” includes acts and omissions:

- (a) an intentional or reckless act or omission that causes bodily harm or damage to **property**;
 - (b) an intentional, reckless or threatened act or omission that
 - (i) causes the applicant to **fear** for his or her safety,
 - (ii) causes the applicant to fear for the safety of any child of the applicant or any child who is in the care of the applicant, or
 - (iii) causes any child of the applicant or any child who is in the care of the applicant to fear for his or her safety;
 - (c) **sexual abuse**;
 - (d) **forcible confinement**;
 - (e) **psychological abuse, emotional abuse or financial abuse** that causes harm or the fear of harm to the applicant, any child of the applicant or any child who is in the care of the applicant.
-

Protection orders

Possible protection order terms:

- No contact or communication with a person
 - Stay away from locations
 - Exclusive occupation of home
 - No possession of firearm or other object
 - Police must remove person from scene
 - Police accompaniment to remove belongings
 - Must get counselling
 - Any terms or conditions the court considers necessary to protect the safety and security of the at-risk family member
-

How to get an order?

- Apply to the court
 - Might be able to get legal aid to assist
 - Criminal charges are not necessary
-

Peace bonds & protection orders

	Criminal peace bond	Civil protection order
How to get one?	Call the police	Apply to a judge or justice of the peace
What are the criteria?	Fear for physical safety of you or another person, or for damage to or destruction of property	Varies. Can apply if family violence has occurred or there is a risk of family violence
Are there fees?	No	Yes but can be waived if low income
Who can it protect you from?	Anyone	A family member
Do I need a lawyer?	No	Recommended. Legal aid may assist.
Where is it valid?	Canada	Might need registration if the person moves

Responding to abuse of adults living in long-term care

2 types of legislation:

- Specific protection for persons in care
- Abuse provisions in broader statute applying to long term care or other seniors housing

Protection for Person in Care

- AB [Protection for Person in Care Act](#)
- SK [Personal Care Homes Act](#)
- MB [The Protection for Person in Care Act](#)
- NS [Protection for Person in Care Act](#)

Long-term care homes laws

- BC [*Community Care and Assisted Living Act*](#)
- ON [*Long Term Care Homes Act*](#)
- ON [*Retirement Homes Act*](#)

Responding to abuse of adults living in long term care

Mandatory reporting

- Creates a requirement for care facilities to respond to abuse occurring in the facility
 - Grounded in an understanding that people living in care facilities are particularly vulnerable
-



Part 3

Best

Practices

Guiding principles

1. Listen to the older person*
2. Respect personal values
3. Respect and support decision-making autonomy*
4. Seek consent or permission*
5. Respect confidentiality and privacy rights
6. Avoid ageist and ableist thinking
7. Recognize the value of independence and autonomy
8. Develop trauma-informed practices
9. Apply a holistic lens
10. Respect cultural values
11. Respect relationships that matter*
12. Consider Indigenous experiences

Guiding Principles

1- Listen to the older person

- Response should be grounded in the older person's understanding of a situation or relationship—not other people's views.
- Focus on actions and services the older person identifies as helpful, not invasive
- Build rapport and trust

Guiding Principles

3- Respect and support decision-making autonomy

All adults with decision-making capacity have the right to make decisions for themselves, regardless of age or disability, including decisions that other people might consider risky or unwise.

Make sure your practices support, not undermine, capacity.

Guiding Principles

4- Seek consent or permission

In most circumstances, you need consent from the older person before you take any action, including phone calls.

Check regularly that the older person is comfortable with how events are unfolding.

Guiding Principles

11. Respect relationships that matter

Be aware of the relationships that are important to the older person, and support the preservation of these relationships, while offering safety planning strategies if appropriate.



Part 4

Final

Thoughts

Legal Framework

- No single law applies
- Provincial & territorial laws dominate
- Criminal law applies

Is elder abuse a crime?

Criminal and Non-Criminal Abuse & Neglect Wheel



Abuse tends to escalate and crimes often overlap and blend together.



Is it civil or criminal?

Ask instead: How can we respond to this unique situation?

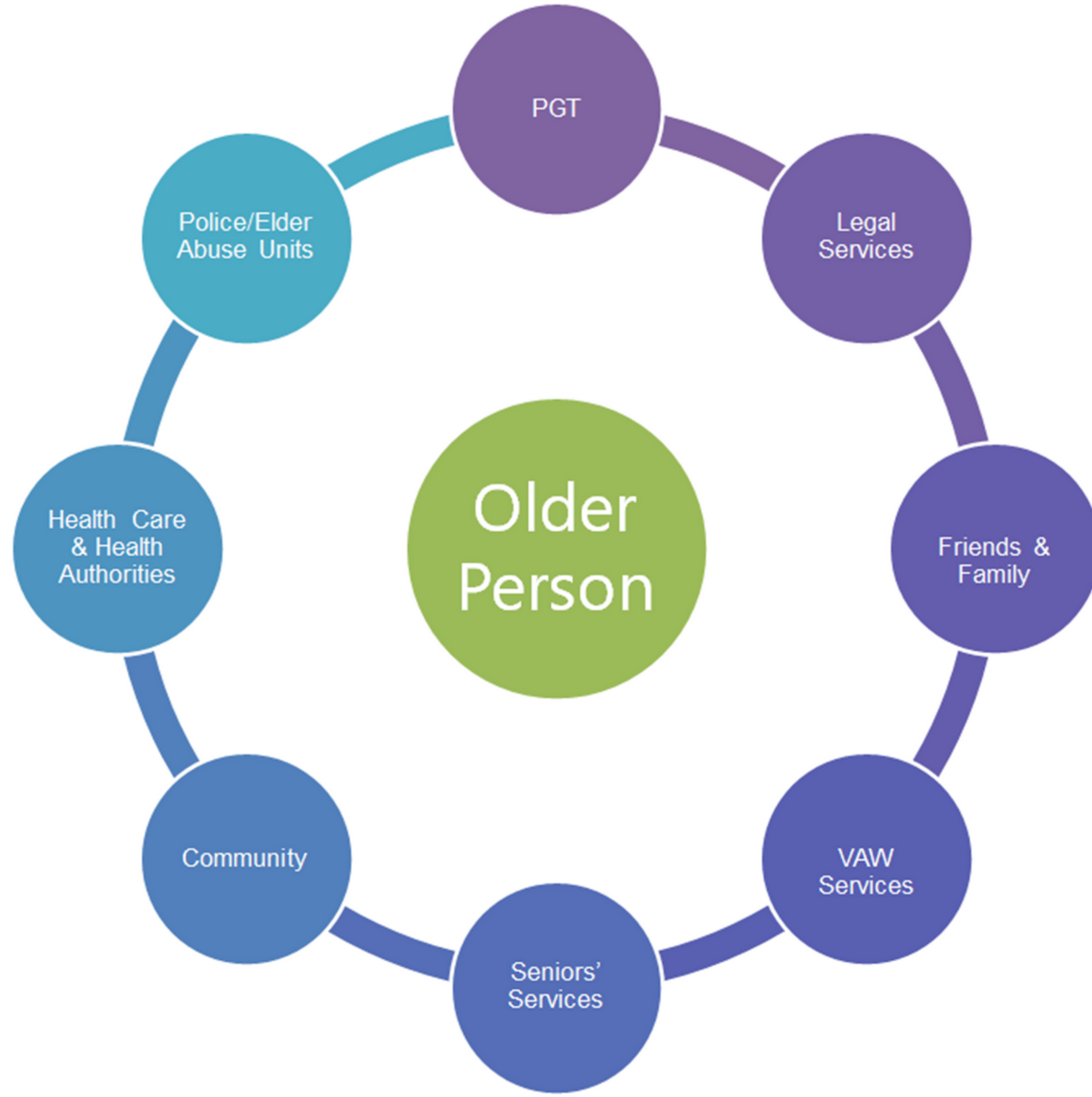
- Has a crime occurred?
- What does this older person want or need?
- Could a criminal justice system response help this person?
- Is there an urgent safety issue?
- How can we enhance the person's safety?




Is it civil or criminal?

Ask instead: How can we respond to this unique situation?


- Where did the abuse occur?
- Does this older person understand what is happening (Have capacity)
- How can we support capacity?
- Is there a need for urgent medical care?





A common term you may hear: complex needs.

What does it really mean for us in community work?
Are the needs so complex that we cannot assist in any way?



Reporting versus responding

- Crisis counselling
- Urgent medical care
- Safe housing
- Financial assistance
- Help developing a safety plan
- Help contacting family or friends
- Support for people they care for





We need your help.

Send us your **feedback** on the Practical Guide. Let us know what is missing.

Partner with us. We will need financial support to keep the website up to date.





Let's stay in touch!

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