



Physical Abuse of Older Adults

Can the law help me?

Introduction

Any deliberate action or lack of action that causes harm to an older adult is elder abuse. The harm could be physical, emotional, financial or some combination and is often caused by a close friend or relative. It is not your fault. It is controlling behaviour.

This publication deals with Physical Abuse.

Some Examples of Physical Abuse

- pushing, shoving, hitting, slapping, poking
- pulling hair, biting, pinching, tickling
- threatening to apply force e.g. shaking a fist, displaying a weapon
- confining you to one place or room
- failing to provide proper food, clean clothing, health care, personal hygiene, or denying social contact (neglect)
- forcing you to take too much medication or withholding required medication
- forced sexual activity or inappropriate touching (sexual abuse)



Legal
Resource
Centre
of Alberta

Phone: 780 451-8764
201, 10350 -124 ST
Edmonton, AB T5N 3V9
www.legalresourcecentre.ca

Legal Options and Strategies for Dealing with Physical Abuse

Abuse does not stop on its own. If it is ignored, it will continue, and may even get worse. You can take actions on your own and with the help of others to end the abuse. The following are some possible options you can choose from.

Plan for your Safety



No one deserves to be hurt. One way to take care of your safety is to make a safety plan that suits your situation. This can include knowing how to get out of the house safely, arranging somewhere to go or someone who you can call, or having emergency numbers handy.

You can learn more about this at:

www.oaknet.ca/plan

Keep a Record



Another helpful step is to write down what you remember about what has happened. Then continue to keep a record of incidents, noting what happened, who was there and the date and time. Your notes can be useful if you decide to tell others about what is going on. If you decide to take further action, a written record can help with providing evidence.

Take Steps to Keep the Abuser Away



You can apply for a court order which tells the person to stay away from you. There are different orders for different situations. Alberta has the *Protection Against Family Violence Act* which provides Emergency Protection Orders for immediate protection and Queen's Bench Protection Orders for non-emergency situations. A Restraining Order, available through the civil court, can order a person to stay away from you and prohibit him or her from hurting or threatening to hurt you. A Peace Bond comes from a criminal court; it can require the person to have no contact with you, to stay away from certain locations and to obey any other conditions that the court puts in the order.

Learn more about these orders and how to apply for them at: www.oaknet.ca/orders

Get a Support Order



To ensure you are not being neglected by someone who is liable to provide you with care, you can apply for a Support Order under the *Family Law Act*. Those who are liable to provide support to an older adult are a spouse or adult interdependent partner. Support includes food, clothing, medical aid, and lodging.

Learn more about this at:
www.oaknet.ca/neglect#SupportOrders

Arrange for a Different Person to Assist You



Under the Alberta *Adult Guardianship and Trusteeship Act*, there are a variety of options for support in decision-making. For example, for non-financial decisions, as long as you still have mental capacity, you can arrange for either of the following:

- ***A Supported-Decision-Making Authorization.*** This is a form that you can complete yourself (there is no need to go to court). It allows an older adult to appoint a “Supporter” to help make decisions.
- ***A Co-Decision-Making Order.*** This is for older adults whose capacity is somewhat impaired, but who can still make decisions with assistance. It takes the form of a court order.

Neither of these documents is designed to address abuse, and they cannot directly be used to stop the abuse. However, they are possible tools for dealing with abuse, as they appoint someone to help you and they provide that person with some legal power. This, in turn, may take power away from the abuser.

Learn more about these options at:

www.oaknet.ca/agta

Get the Police Involved



When you are in danger, you can call the police for help. This is an important way of protecting yourself and one way of preventing future occurrences of abuse.

What will the police do?

- The police should respond to and investigate all complaints of abuse.
- The police may interview family members, caregivers, and neighbours who may have evidence about the incident.
- The police officer must tell you what help is available in your community.
- The police may lay charges against the abuser.

What might you have to do?

- You may have to make a detailed statement and sign a written form of your statement.
- You may have to have photographs taken of your injuries.
- You may have to go to a hospital for a physical examination if the abuse is physical or sexual.
- You will have to identify the abuser.
- You may have to testify in court if charges are laid.

Make a Criminal Complaint



Although abuse is always wrong, sometimes it is also criminal behaviour as described in Canada's *Criminal Code*. Here are some examples of criminal offences that may apply to different forms of physical abuse.

Assault

Assault occurs when one person intentionally applies force to another person without that person's consent. Assault can also occur if the individual merely threatens to apply force and the other person reasonably believes that he or she has the ability to carry out the threat. Over-medicating someone could also be an assault.

Criminal negligence

If an individual has a legal duty, he or she must perform that duty in a way that does not endanger the lives or safety of others. If a person performs that duty incorrectly or fails to do it at all, that person could be considered negligent. If the person is negligent in a way that shows complete disregard for another person's life or safety, it could be criminal negligence. An example of a legal duty that might lead to a charge of criminal negligence would be the duty to provide the necessities of life. It is not necessary to show that the accused intended to be negligent; it is enough to show he or she was indifferent as to what happened. Over-medication or under-medication could be criminal negligence.

Failure to provide necessities of life

The term "necessities of life" means those things necessary to preserve life. For example: food, shelter, heat, and medical assistance. Individuals have a positive legal obligation to provide their dependents with such

necessities of life. A person is guilty of this offence if his or her failure to provide the necessities of life endangers the life or health of the dependent. Withholding medication could be a failure to provide necessities of life.

Sexual assault

An assault committed in circumstances of a sexual nature.

Unlawfully causing bodily harm

Bodily harm is any hurt or injury that interferes with a person's health or quality of life. There is a distinction between lawfully and unlawfully causing bodily harm because many medical procedures cause bodily harm but these procedures are lawful and may be for the overall benefit of the patient.

You can read more about these and other offences at:
www.oaknet.ca/crime-phys

The first step to having criminal proceedings taken against someone is to make a report to the police. In order to charge someone with a criminal offence, the police have to be reasonably sure that a crime has been committed and that there is sufficient evidence of the crime. The police will investigate the matter. This will require talking to you. If the person is charged with an offence you will have to give evidence in court, unless the accused pleads guilty.

Learn more about the criminal process and going to court at: www.oaknet.ca/complaint

Remember ...

You may feel the need to protect your children, spouse or other family members, even if they are treating you badly. But abusive behaviour is not healthy for you or for your abuser. It's okay to reach out for help.

Resources

OakNet

More information about abuse of older adults, including links to the websites below, can be found on OakNet.

www.oaknet.ca/abuse

Canadian Legal FAQs: Abuse of Older Adults

Using a question and answer format, this website teaches how to recognize and respond to elder abuse.

www.law-faqs.org/wiki/index.php/Abuse_of_Older_Adults

LawNet Canada

LawNet Canada is a collection of links to law-related information and organizations. Search results can be sorted by jurisdiction, so you can find organizations in your province that may be able to provide help.

www.lawnetcanada.ca search keyword elder abuse

National Clearing House on Family Violence (NCFV)

NCFV is a source for information on violence and abuse within the family. Their publications are available free of charge.

www.phac-aspc.gc.ca/ncfv-cnivf/age-eng.php