



# *Abuse of Older Adults*

3<sup>rd</sup> Edition

Frequently  
Asked  
Questions

[www.law-faqs.org/elder](http://www.law-faqs.org/elder)

Legal Resource Centre



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3rd Edition

## Frequently Asked Questions

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These FAQs are also available online:

<http://www.law-faqs.org/elder>

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The contents are intended as general legal information only and should not form the basis for legal advice of any kind.



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# *Contents*

.....

General Information .....	2
Physical Abuse .....	4
Sexual Abuse.....	5
Emotional Abuse .....	6
Financial Abuse .....	7
Neglect and Self-Neglect.....	9
Reporting Abuse.....	11
Abuse as a Crime .....	13
Going to Court.....	16
Rights of Victims .....	17
Protective Orders .....	18
Restraining Orders.....	21
Peace Bonds.....	25
Planning for Future Personal Care .....	27
Planning for Future Personal Asset Management .....	30
When There is No Plan: Losing Decision-Making Power ..	33
Wills.....	36
Consumer Fraud.....	40
Abuse in Institutions.....	42

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## *General Information*

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### **What is elder abuse?**

Elder abuse, or the abuse of older adults, has been defined as any deliberate action or lack of action that causes harm to an older adult. Neglecting an older adult by not doing something can be just as abusive as actually striking the older adult physically. Under- or over-medicating a person might also constitute abuse. Violating the civil rights of a person, for example, by not allowing him or her to have visitors or to go out, can also constitute abuse.

The harm caused by abuse can be physical, emotional, sexual, or financial.

### **Is there any identifiable reason why abuse of older adults occurs?**

There are many different reasons. Every case is unique, with different facts. Some factors that have been identified include

- ▶ a history of abuse between family members. For example, spousal abuse becomes elder abuse, or abused children become abusive caregivers to elderly parents
- ▶ dependency: for example, the elderly person becomes dependent on family members, or someone is dependent upon the elderly person for money or housing
- ▶ stress might be caused by a number of factors such as mental or physical illness, financial pressures, lack of support systems, lack of choice for accommodation for an elderly person, or fear of one's own aging
- ▶ alcohol or drug use
- ▶ greed

- ▶ lack of knowledge about the degree of care and needs of an elderly person
- ▶ lack of respect given to elderly people in a society that values youth, self-reliance, and energy
- ▶ lack of professional awareness about the problem of elder abuse, so that it might continue undetected

### **Is abuse of older adults easy to detect?**

Not necessarily. An elderly person can be isolated and hidden from view, unlike a child who has to appear in school every day. There are, however, some signs that might indicate that an older adult is being abused in some way. Some of these signs might be: physical injuries, depression, or lack of money.

It is also important to distinguish between abuse by others and self-neglect by older adults themselves.

**I live with my daughter and her husband. My son-in-law works very hard, so he is often tired and moody. Lately he has been doing things like pulling my hair and leaving me in my room all day without food when my daughter is out. He even punched me once. I think it must be because he is tired, but is this normal?**

No. There is no justification for your son-in-law to treat you this way and you do not have to put up with it. In these circumstances, it's normal to feel violated and harmed. It is important for you to stop his behaviour or remove yourself from the situation. There are agencies that can help you decide how to handle this situation.

## Where can I get more information about abuse of older adults?

You can find more information on the National Clearinghouse on Family Violence website at <http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/> or by telephone at 1-800-267-1291. You can also access information on the Oak-Net website at <http://www.oak-net.org>.

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## *Physical Abuse*

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**My mother lives with my brother and his wife. Last time I visited, I noticed that my sister-in-law was very rude to my mother and my mother had a large burn on her arm. Her explanation seemed unlikely. I am worried she is being abused. What kinds of actions constitute physical abuse?**

Physical abuse is caused by inflicting physical harm upon an older adult. For example, hitting, pushing, slapping, or injuring an older adult in any way would be considered physical abuse.

Physical abuse also covers behaviours such as

- ▶ sedating a person through over-medication
- ▶ under-medicating a person when drugs are needed for a medical problem
- ▶ deliberately exposing a person to severe weather
- ▶ physically confining the person for long periods of time, whether it be to a chair, a room, a bed, or a house

## How can I tell if my mother might be physically abused?

Signs that a person might be experiencing physical abuse can include

- ▶ marks of physical injuries that cannot be explained (or where the explanation seems unlikely), for example, bruises, welts, cuts, burns, or head injuries
- ▶ confusion or tiredness from over-medication
- ▶ continued suffering from a medical condition as a result of under-medication
- ▶ loss of mobility as a result of being restrained

There may also be indications of abuse where the older adult lives, for example,

- ▶ locks on the doors
- ▶ locks in areas where food is kept
- ▶ unusual marks on furniture where restraints might have been used

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## *Sexual Abuse*

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## What sorts of actions constitute sexual abuse?

Sexual abuse can include any forced sexual activity or inappropriate touching.

## How can I tell if someone might be sexually abused?

Sexual abuse can be indicated by

- ▶ pain, bleeding, or bruising in the genital area
- ▶ depression or signs of fear, withdrawal, anxiety, or passivity

## *Emotional Abuse*

**Last year my elderly neighbour's nephew moved in with her while he was attending university. Since then, she has become very withdrawn and I hardly see her anymore. I worry that her nephew is not treating her appropriately. What sorts of actions constitute emotional abuse?**

Emotional or psychological abuse can include:

- ▶ making threats to do something to the older adult or to something or someone the person cares about
- ▶ humiliation
- ▶ forced socialization or isolation
- ▶ treating the older person like a child
- ▶ not allowing the older person to make decisions for him- or herself

### **How can I tell if someone might be emotionally abused?**

Signs that someone might be experiencing emotional or psychological abuse include

- ▶ showing fear of certain family members, friends, or caregivers
- ▶ withdrawal, apathy, or depression without any apparent reason
- ▶ physical signs of isolation being imposed, for example, locks on doors, or having no access to phone, radio, or television
- ▶ the older person being largely ignored, treated passively, or treated like a child by a caregiver

Emotional or psychological abuse can be hard to detect, but may be an indication that other forms of abuse are also taking place.

# *Financial Abuse*

## **What sorts of actions constitute financial abuse?**

Financial or material abuse includes

- ▶ theft of money, belongings, or pension cheques
- ▶ forcing an older person to change a Will
- ▶ forgery of signature on personal cheques or legal documents
- ▶ withholding money that the older person needs
- ▶ forcing or tricking an older adult to sell a home or possessions, or to pay for unnecessary services
- ▶ pressuring an older person to provide services for free, for example, babysitting or sharing his or her house
- ▶ abusing Power of Attorney, guardianship, or trusteeship responsibilities

**My elderly aunt lives alone and her neighbours have been very good to her. I am becoming concerned, however, that they might be taking advantage of her financially. They shop for her and cash her cheques, but when I last saw her, she seemed to be very short of money and food. How can I tell if they are stealing from her?**

Financial abuse can be difficult to detect because it will often occur over a period of time. If you have suspicions, however, it is a good idea to check them out. You can ask your aunt about her finances and who controls them, and about her relationship with her neighbours. If your aunt is reluctant to tell you, you may just have to keep monitoring the situation. Maybe other neighbours have noticed a problem and they might be able to help you find out what is going on.

You could also talk to your aunt about managing her affairs in a different way, perhaps by asking for assistance from a regular authorized caregiver or by encouraging her to arrange to give a trusted person a Power of Attorney over her finances. You can also give her information about financial abuse and support services. In having these discussions with your aunt, it is important to respect her wishes and confidentiality, and to get her consent before you do anything.

### **Are there other ways my aunt can keep tighter control of her financial affairs?**

Other ways of helping your aunt to keep tighter control of her financial affairs include encouraging her to

- ▶ be fully informed about her property, bank account, and possessions
- ▶ keep her money in a bank or other financial institution, rather than at home
- ▶ set up the paperwork to ensure pension cheques go directly into a bank account
- ▶ discuss any loan she intends to make with a trusted third party and be sure there is an agreed schedule of repayment
- ▶ review her Will periodically
- ▶ have a trusted third party check any documents she is asked to sign

Your aunt should also be encouraged to maintain her network of friends and acquaintances so that she does not become isolated and fully dependent upon anyone who might be abusing her.

## *Neglect and Self-Neglect*

**My friend lives with her children and I am concerned about her health. She rarely has clean clothes to wear, she can only go out when her daughter feels it is convenient, and she isn't receiving her insulin shots on a regular basis. What constitutes neglect of an older person?**

Neglect might include

- ▶ withholding clothes, food, medication, personal care, hygiene, or medical care
- ▶ leaving the elder person in an unsafe or isolated place
- ▶ leaving an older adult tied to a bed or chair

Neglect can be intentional or unintentional. Unintentional neglect can occur when a caregiver does not provide necessities because of a lack of skill, information, or interest.

It is also important to distinguish between neglect caused by someone else and self-neglect caused by the older person not taking care of him- or herself.

### **What are signs of neglect?**

Signs of neglect can include

- ▶ physical signs of malnourishment such as dry lips, pallor, or excessive weight loss
- ▶ dirty or inappropriate clothing for the weather
- ▶ shivering, a blue tinge to the skin, or low body temperature, which might indicate hypothermia
- ▶ lack of needed dentures, hearing aid, or glasses
- ▶ infrequent bathing
- ▶ incontinence
- ▶ physical or mental deterioration with no medical reason
- ▶ confinement
- ▶ wandering aimlessly

- ▶ lack of groceries
- ▶ inadequate or over-medication
- ▶ cooking or housekeeping standards that could lead to accident or illness

**My elderly uncle is very independent. He lives by himself and has no help. Lately his kitchen and bathroom have been very dirty. His vision is failing and he doesn't appear to be eating very well. I am worried about him becoming ill or having an accident because he isn't looking after himself. What can I do to help him?**

It can be difficult to help someone who is mentally competent and who has made a decision to live in a situation of self-neglect. In very general terms, people have a right to live as they choose as long as they are not committing a crime or posing a risk to others.

Some provinces have laws that set out rights and processes to be followed when it is believed that someone is at risk from self-neglect. If there is such a law in your province, it may help you deal with your uncle. Your provincial or territorial office for social services or for seniors will be able to direct you to the services available in your area.

**I'm afraid I might offend my uncle if I suggest something too drastic. How can I be helpful but gentle at the same time?**

Other ways in which you can assist your uncle while maintaining his dignity are to

- ▶ empower him to find some solutions himself
- ▶ keep in contact with him
- ▶ make suggestions about options to help him
- ▶ establish a connection with formal care services such as:
  - medical home care services and governmental social services
- ▶ find ways to reduce his isolation

## *Reporting Abuse*

**My aunt lives with her son and his family. I suspect that she's being abused. She acts nervous when her son is in the room, her bedroom has a lock on the door, and she has bruises on her arm. When I asked her about the situation she seemed very confused. Why isn't she reporting this abuse?**

There are many reasons why people might not report abuse. They include

- ▶ shame that a family member treats them badly and a need to keep it in the family
- ▶ fear of more abuse
- ▶ fear of being placed in an institution
- ▶ fear of losing a caregiver or contact with a family member
- ▶ a belief that they are getting what they deserve, for example, if they feel they were not a good parent
- ▶ a belief that police or social services cannot help them
- ▶ a belief that they cannot prove the abuse is happening

**If my aunt is not reporting the abuse she appears to be suffering, should I report it for her?**

If there is any possibility of immediate danger of physical harm, then you should consider notifying the police or social services immediately. Otherwise, it is important to deal with cases of suspected abuse with a degree of care, particularly because the abuser might retaliate against the elderly person. It is also important to respect the dignity of the elderly person who might choose to accept or reject help.

Agreement on the part of the elderly person to any subsequent actions is very important, unless the person is not mentally competent. For this reason, you should speak with your aunt

before taking any action and be sure that all possible outcomes of intervention are considered. In order to help her make her decision, you can bring to your aunt's attention many resources on elderly abuse and the names of agencies that can offer assistance.

### **What would be a good way to approach my aunt to ask her if she is being physically abused?**

Depending upon the individual, strategies that you might use include

- ▶ directly and respectfully asking your aunt if any abuse is occurring
- ▶ encouraging your aunt to contact others such as a doctor, lawyer, social worker, public health worker, or home care worker
- ▶ describing to your aunt the benefits she might be entitled to which could help her be more independent
- ▶ providing information about counselling services for the abused or the abuser
- ▶ helping to dispel myths about abuse, for example, that protecting the abuser's reputation will not help the abuser change, that there is no "perfect family", and that abuse can exist at any education or income level
- ▶ helping your aunt understand that nobody deserves to be abused
- ▶ encouraging her to get out and use community service programs, such as drop-in centres
- ▶ encouraging your aunt to get a thorough health assessment from her doctor or a health unit

## What kinds of agencies can I contact to get information about abuse?

Agencies and personnel differ in the various provinces and territories, but there are agencies that can lead you to information and to more specialized agencies in your location

- ▶ police
- ▶ health units
- ▶ social service agencies
- ▶ mental health clinics
- ▶ Public Health Agency of Canada (National Clearinghouse on Family Violence website at <http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/>)
- ▶ family doctors
- ▶ hospitals
- ▶ office of public trustee, public guardian, or public curator (Quebec), if victim is mentally incompetent
- ▶ Oak-Net: Abuse of Older Adults website at <http://www.oak-net.org>

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### *Abuse as a Crime*

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## I am sure that my neighbour is being abused by her son. Is abuse of the elderly a crime?

There is no specific criminal offence of elderly abuse. There are various criminal offences, however, that might apply to different forms of elder abuse. For example,

- ▶ physical abuse could be a form of **assault** or **sexual assault**;
- ▶ financial abuse could be an offence such as **theft**, **fraud**, or **extortion**; and
- ▶ neglect might be covered by the offence of **criminal neglect**.

The vast majority of the criminal law of Canada is set out in the *Criminal Code*, which applies to all provinces and territories in Canada. The Code can be seen online at <http://laws.justice.gc.ca/en/C-46/>. More information about specific types of abuse and which criminal offences might apply in each case can be found on the Oak-Net website at <http://www.oak-net.org/index/toc.html>.

### **If I think my brother-in-law is physically abusing my mother, can I report it to the police or does my mother have to report it?**

You can report a criminal matter to the police even if it does not directly involve yourself. If you want the police to investigate the possibility of charging your brother-in-law, you will have to **lay an information** at the police station. This is a written statement that describes what you believe your brother-in-law is doing. The police will then investigate the situation, which would likely involve interviewing your mother and your brother-in-law, and any other relevant witnesses. The police will then decide if they have enough evidence to charge your brother-in-law with a criminal offence.

This procedure would be the same if your brother-in-law were reported as carrying out any kind of abuse that might also be a criminal offence, for example, theft or neglect.

If the police considered your mother to be in immediate danger from physical harm, they might also be able to apply to court for an emergency protective order. This kind of order is not available in all provinces.

## Is emotional or psychological abuse a criminal offence?

The *Criminal Code* doesn't fully address the issue of emotional or psychological abuse of adults in terms of making it criminal behaviour. Some criminal offences are committed by making a threat to cause harm to someone, to someone close to that person, or to that person's property:

- ▶ **Assault** can be committed by attempting or threatening to apply force to another person if the other person believes that the abuser has the ability to carry out the act.
- ▶ The offence of **harassment** includes behaviour of threatening conduct directed at another person where that person then fears for her or his safety.
- ▶ The law defines the offence of **uttering threats** as follows: when someone knowingly utters, conveys, or causes anyone to receive a threat to kill or physically harm someone; to burn, destroy, or damage property; or to kill, poison, or injure an animal or bird belonging to the victim.

There may be legislation in your province or territory concerning the treatment of neglected adults. If emotional abuse is covered by that legislation, there may also be a criminal component that could involve a fine and/or possibly a short-term prison sentence. Your provincial government offices will know if such legislation exists in your area.

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## *Going to Court*

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### **My mother was the victim of an insurance scheme to defraud seniors. She was interviewed by the police and has received a subpoena to go to court. Does she have to go?**

Yes. It is a criminal offence not to comply with a subpoena. If she doesn't attend, a warrant can be issued for her arrest and she can be charged with contempt of court.

### **What can my mother expect at court when she goes to give evidence?**

When someone pleads not guilty to a criminal offence, there has to be a trial to determine if that person is guilty or innocent. The police or the prosecutors will try to establish the guilt of the accused person by calling witnesses, such as your mother, to give evidence about the events. The trial might be in Provincial Court or Court of Queen's Bench. The information about where to go will be on the subpoena. The purpose of the court proceeding will be to either establish that there is enough evidence for the accused person to stand trial, or it will be the trial itself.

At court, your mother will have to wait outside the courtroom until she is called in. She will then be asked to swear or affirm an oath that the evidence she gives will be the truth. The prosecutor will then question her about the events leading to the accused being charged. Following these questions, the lawyer defending the accused (or if there is no lawyer, the accused) will cross-examine your mother. If there are no further questions and no need for her to stay, the judge will release your mother and she will be free to leave. This is the general procedure for anyone attending court to give evidence in relation to any criminal case.

**The court proceedings sound overwhelming for my mother at her age. Since I don't live in the same city, is there someone who can go with her?**

There are agencies that will assist victims through the court process, such as the John Howard Society and the Elizabeth Fry Society. Her local police or court office will know if such a service is available in her area.

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*Rights of Victims*  
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**The people charged with defrauding a group of seniors at my mother's club have decided to plead guilty to the charges. My mother has been asked if she wants to register a victim impact statement with the court. What is this?**

A victim impact statement is a statement by someone who was the victim of a criminal act. The statement must be in writing and filed with the court. It can include details about how the offence has affected your mother emotionally and financially. The court will consider victim impact statements when it is sentencing the convicted person.

**Can my mother get any of her money back that she lost as a result of the fraud?**

When a person is sentenced for a criminal offence, the judge can consider a request for **restitution** or **compensation** from a victim. The restitution or compensation will relate to losses suffered as a result of the crime. It can include such losses as stolen property, lost wages, and moving costs. The request has to be made before a judge sentences the offender, so it is important that the prosecutor have all the necessary information before sentencing.

In addition, most provinces have a fund to compensate victims of crime. Often compensation is only payable for injuries or death rather than financial losses. Some statutes, however, set up schemes to compensate victims of financial crimes. Your provincial government office will know what options are available to your mother.

Another possible route is to sue a person for compensation in the civil courts. If an offender doesn't pay any money ordered by a court, whether as a result of criminal or civil proceedings, there are other court processes your mother can use to try to recover the money.

Taking any of these steps will not necessarily result in your mother getting any of her money back, but they may.

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## *Protective Orders*

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**I am really worried about my grandfather who lives with my uncle. I am sure my uncle is hurting him physically. Is there anything I can do to quickly get help for my grandfather?**

Some provinces have laws that deal with issues of family violence or violence against vulnerable or neglected adults. The laws may provide a way for the police or another authority to apply for **emergency orders** from the court to protect victims. In some provinces the laws are about family violence or domestic violence, and in other provinces the law may be about vulnerable or neglected persons or adults. The law in your grandfather's province might not cover the situation that he is in, particularly the laws that deal with domestic or family violence. For example, some laws require that the victim be living with the family member, which would not help in all situations of elder abuse.

An emergency order may allow for your grandfather to be removed from the house, or even for your uncle to be removed from the house. Often, there has to be a court hearing a few days after the emergency order to either confirm the order for a longer period or to discontinue it. Emergency measures such as these are often available 24 hours a day, so that they can be obtained during the night.

Police in your community will be able to tell you if emergency orders are available in your province.

### **How do I know if there is a law that covers my grandfather's situation? Is there something I can do if local laws don't cover his situation?**

The local social services or police will be able to tell you if a law exists in the area that applies to your grandfather's situation. Even if there is no specific law in his province, or the law does not apply to his situation, the abuse may still be a criminal offence that can be reported to the police or to other authorities. You can also talk to your grandfather (or any victim), and encourage and assist him to remove himself from the situation.

### **I would like to get my mother away from my sister's house because I think my brother-in-law is physically abusing her. So far she has only had minor bruises, so I don't feel I need to rush to the police. Is there anything else I can do?**

Some provinces have laws that deal with either issues of family or domestic violence or with the issue of neglected or vulnerable adults. As well as providing protection in emergency situations, the laws may also provide for someone to apply for a protective order for an adult in a non-emergency situation.

Alternatively, the law may provide for notification of neglect to an agency that will then investigate and take appropriate action.

Provincial government offices will be able to tell you if such a law exists in your mother's area. You must find out whether the law in the jurisdiction applies to the situation. For example, some provincial laws about family violence require that the victim be living with the family member, which would not help in all situations of elder abuse (but applies to your mother's situation). Even if there is no specific law in your mother's province, or the law does not apply to her situation, the abuse may still be a criminal offence that can be reported to the police or to other authorities. You can also talk to your mother, and encourage and assist her to remove herself from the situation.

### **My son is abusing me. Is there anything I can do to get my abusive son to stay away from me?**

Yes, there are a number of avenues you can explore

- ▶ Find out if your province has any legislation about family violence or adults at risk. If you fit within the terms of the law, you might be able to apply for a **protective order** to keep your son away.
- ▶ Apply for a **restraining order**.
- ▶ Apply for a **peace bond**.

# *Restraining Orders*

## **What is a restraining order?**

A restraining order is an order granted by a civil court that orders a person or persons to stay away from you. It prohibits the abuser from hurting or threatening to hurt those named in the order.

The order can include special terms that state how far away the person must stay from you and identify specific locations where the person must not attend or try to contact you, for example, your home or workplace. The order can also be extended to cover any children in your care. Please note that a court order provides some protection, but it is not a guarantee of your safety. You should continue to take steps to protect yourself and anyone else who might be at risk of abuse or violence.

The judge granting the order will decide in each case how long the order should remain in effect.

## **How do I get a restraining order?**

A restraining order is granted by the civil courts and can only be requested during normal court hours. When you apply for a restraining order, you are called the “applicant” and the person against whom the order is being sought is called the “respondent”.

In order to obtain a restraining order, you must make an application to a judge. If you are on a low income, you may be able to apply for Legal Aid for legal assistance in getting a restraining order. If you are in an emergency situation and require a restraining order very quickly, be sure to tell the staff at the Legal Aid office.

In a non-emergency situation, notice of the application for a restraining order must be given to the respondent. That person can then choose to attend the application and speak about the order being requested from his or her perspective.

**My aunt does not fit within the definition of victim in our province's laws on family violence. I am worried about her being abused by her son and I want to help her quickly get a court order to keep him away from her. Is there anything I can help her do?**

In an emergency situation, an application can be made for a restraining order without giving the other person notice, so that the order may even be available that same day. This is called an “*ex parte*” application. If an order is granted on an *ex parte* application, the court will give a future date when it will review the order. In the meantime, the order will be effective as long as a copy of the order is served on the respondent, in your aunt’s case, her son.

**Should my aunt seek the help of a lawyer to apply for a restraining order?**

She can apply for a restraining order without a lawyer. In some areas, the courts provide kits to help people prepare an application for a restraining order. A social service agency may be available to help your aunt. The court office should be able to tell her if such an agency exists in her area.

On the other hand, it can be helpful to retain a lawyer, especially if your aunt wants to ask for an *ex parte* restraining order and the forms need to be completed quickly.

## **What kinds of terms can be included in a restraining order?**

The court will not automatically set specific terms of an order. You must be sure to ask the court for the particular terms that are going to apply in your circumstances and that are going to help keep you safe. If you have a lawyer working for you, you must tell the lawyer all relevant information so that he or she can make the right request on your behalf. It is very important to include a term that gives the police the power to arrest the respondent if the order is broken.

Before you serve the respondent with a copy of any order obtained in his or her absence, you must first file your order with the court. The procedure in each province may vary, but generally you will take the original order and a number of copies to the court. The court will then stamp them as filed and they can be served on the other party.

## **My aunt is not very wealthy. Is there any financial assistance available to apply for a restraining order?**

Your aunt may be able to get assistance from Legal Aid. She will find her local Legal Aid office in the phone book.

Some larger centres may also have other agencies that can help. For example, there might be social agencies that offer legal assistance to those with low incomes or on student law associations. You may have to make some calls on her behalf to local social service offices, provincial law societies, provincial government offices, university law schools, or courthouses to find out what is available in her area. The provincial law society might also offer an introductory scheme by lawyers for preliminary legal advice.

If she decides to hire a lawyer privately, encourage her to discuss fees early. It might be possible to make an arrangement with a lawyer regarding a lump sum fee or an easy-to-manage fee schedule.

### **Would my aunt have to serve the restraining order herself?**

No, she should not serve the order herself. She should hire a **process server** to serve the order. A process server is someone who is authorized by law to deliver or serve court papers. After the order has been served, the process server will give her an Affidavit of Service, which is a sworn statement explaining when and how the order was served. The affidavit must then be filed with the court.

### **How will the restraining order protect my aunt against her abusive son?**

If the restraining order contains a police enforcement clause, then if her son should try to contact her or visit her in breach of the restraining order, she will be able to call the police to arrest him. Possession of the order, however, is not a guarantee of her safety and she should continue to exercise caution in her daily routine.

Once your aunt has obtained a restraining order, she must register it with the police. The police keep the order on their computer system, so that if the order is disobeyed they can act quickly. She should contact her local police to see if there are any particular requirements to register the order with them. For example, there might be a requirement to file a Statement of Description of the person named in the restraining order together with a photo or a requirement to file a copy of the filed Affidavit of Service. Even if she has a lawyer obtain her

restraining order for her, she must make sure that it has been filed with the police, either by the lawyer or by herself.

Encourage your aunt to carry a copy of the restraining order with her at all times. If a person breaches the terms of a restraining order, the person can be arrested. If she carries a copy of the order, she will be able to show it to any authority, such as the police, who can then take the necessary action in arresting the offender.

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## *Peace Bonds*

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### **What is a peace bond?**

A peace bond is an order from a criminal court which requires someone to keep the peace and obey any other conditions that the court puts in the order.

A peace bond can be used as a form of punishment when someone has committed a minor criminal offence. The offender can be bound over to keep the peace for up to one year, which means that he or she has to stay out of trouble and not be charged with any criminal offences.

A peace bond can also be used in the situation where a person fears for his or her safety, children, or property. This can be the situation where an older adult is subjected to certain kinds of abuse. A peace bond cannot be used to protect from emotional or financial abuse. A court can grant a peace bond that requires the abuser to have no contact with the older adult and to stay away from specific locations.

## **I would like to help my aunt apply for a peace bond against her son. How do I do this?**

Your aunt does not need a lawyer to apply for a peace bond, so the process can be less expensive than applying for a restraining order. Her role in the process is as a “complainant”. Your aunt will have to make a formal complaint to those who work in the criminal justice system, and they then handle the matter. The process can take longer than applying for a restraining order. A peace bond can only be applied for during normal court hours.

Each jurisdiction may have a slightly different procedure for applying for a peace bond. The police or the local Provincial Court-Criminal Division will be able to tell you what to do in your aunt’s area.

## **My aunt lives in Edmonton, Alberta. Can you describe a likely course of action?**

In Edmonton, after your aunt has obtained a file number from the police, she needs to call the Provincial Court-Criminal Division and ask for an appointment with a Justice of the Peace. The Justice of the Peace will take details of your aunt’s complaint and forward it to the Crown Prosecutor’s Office, which will determine if there are grounds for a peace bond.

If there are grounds, a summons is issued for the abuser to appear in court. In a situation where the Justice of the Peace feels that someone may be in great danger, he or she can order the police to arrest the alleged abuser and bring that person to court right away. Your aunt must be prepared to appear in court and give evidence about why she is seeking a peace bond. If her abuser does not show up, the court may issue the peace bond if satisfied that there are grounds. Anyone found in breach of a peace bond could be charged and convicted of an offence.

## How long does a peace bond last?

A peace bond can be granted for a maximum of twelve months. As with a restraining order, you should always carry a copy with you so that, if necessary, a police officer knows that the police have authority to arrest a person in breach of the order. As with restraining orders, there are agencies that can assist with obtaining peace bonds. Your local police department will be able to tell you what assistance is available in your area.

## *Planning for Future Personal Care*

**My elderly friend is in poor health and her children are quite overbearing. She is worried about what they may decide is best for her if she becomes unable to make decisions for herself.**

**How can she make sure her own wishes will be followed?**

All provinces have laws that allow people to create a legal document setting out their wishes relating to personal care at a time when they are no longer able to make those decisions for themselves. The legal documents are called by different names in different areas. For example, in Alberta, it is called a Personal Directive; in British Columbia, a Representation Agreement; in New Brunswick, a Power of Attorney for Personal Care; and in Quebec, a Mandate in Anticipation of Incapacity. In common language, these documents are sometimes called **Living Wills**.

Generally, the document will

- ▶ name someone (often called an “Agent”) to make decisions on your behalf
- ▶ name people who can determine that your own mental capacity is such that you can no longer make those decisions for yourself

- ▶ name those who are and who are not to be told about the document becoming effective and
- ▶ give instructions with regard to confidential information about you.

Each provincial law may have different requirements for creating a valid and legal document, so it is necessary to find out what the law in your area requires. Generally, the maker of such a document must be over a certain age, and the document should be signed and dated in the presence of a witness. There may be restrictions regarding who can witness the document, for example, the person designated in the document as the Agent may be restricted from being a witness. For more information, contact the local Legal Aid organization in your province.

### **How can my friend be sure that the person she appoints as her Agent to make personal decisions for her will follow her wishes?**

Your friend needs to consider local laws relating to the making of such a document to get a specific answer. Generally, the law provides safeguards making sure that the terms of the document are followed. Also, at the request of an interested party, such as a close relative, the law may allow for review of the conduct of the Agent.

Depending on the law, certain medical procedures, for example, psychosurgery, may only be carried out if your friend (the maker of the document) has specifically given her Agent the power to make that decision.

The law may allow for more than one Agent to be appointed so that accountability to each other is required. Some guidance about the conduct of those who are providing a service covered by the terms of the legal document may also be covered in the law. For example, it may be stated that service providers must follow the instructions of the document and/or the Agent.

## How can my friend feel confident that her children will not try to put the document into effect before she is truly unable to make her own decisions?

Again, your friend needs to consult the law in her area to determine exactly what requirements are needed to set the document into effect. The document is likely to say that it comes into effect when your friend becomes incapable of making certain decisions. She can specify the people who she wishes to make that decision, for example, two physicians.

The law may also define exactly when a person becomes incapable of making decisions. For example, the *Personal Directives Act* of Alberta describes capacity as the ability to understand information that is relevant to making a personal decision and the ability to appreciate the reasonable foreseeable consequences of the decision.

## What happens if an unforeseen situation arises that the document doesn't cover?

Local legal requirements may cover what will fall within the authority of an Agent. Generally, if the document is not specific enough in its terms, an Agent will have authority to make personal decisions on all personal matters related to the maker of the document. Where directions are not clear, the law may require the Agent to make decisions based upon

- ▶ what he or she thinks the wishes, beliefs, and values of the maker of the document would be, or
- ▶ what he or she thinks would be best for the maker of the document in the circumstances.

If it is really clear that the authority to make the decision is not within the terms of the document, it may be necessary to appoint someone else to make those decisions. All provinces also have laws to provide for the appointment of a **guardian** to look after the affairs of someone who can no longer make personal decisions.

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## *Planning for Future Personal Asset Management*

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**My friend has property and assets that she is worried about her children trying to control. Is there a way she can control the management of those things if she becomes unable to make decisions for herself?**

Yes. Your friend can make a legal document that gives another person authority to act for her in respect of property and other assets. In most provinces such a document is called a **Power of Attorney**. In Quebec, it is called a **Mandate Given in Anticipation of Incapacity**.

A Power of Attorney can be made at any time to give another person authority to act for you. If the Power of Attorney, however, is to last beyond a time when the maker of the document becomes incapable of making her or his own decisions, the document must explicitly state that fact. For example, if the Power of Attorney does not state that it will be effective at a time when your friend becomes incapable of making her own decisions, the document will become void at that time. In some provinces, powers of attorney will also become void when another decision-making authority is empowered under another law, such as mental health law.

A Power of Attorney that comes into effect on the incapacity of the maker of the document is sometimes called an **Enduring Power of Attorney**, or a **Springing Power of Attorney**.

## **Can my friend write the Power of Attorney herself?**

The laws about creating a Power of Attorney require that certain formalities are followed, otherwise the document will be void. Therefore, your friend might wish to seek advice from a lawyer, or perhaps a social agency, if she wants to make a Power of Attorney.

For example, the document must be dated and signed before a witness. There will likely be rules about who can be a witness to the document and so forth. Without knowing all the rules, one can easily end up with a document that is invalid.

## **Are there ways to review the conduct of the person who is given the Power of Attorney?**

While your province may have a particular law regarding powers of attorney, generally the attorney can be asked to produce an account of transactions made while using the Power of Attorney. If there is dissatisfaction with the report, interested parties can apply to have the attorney removed. It might also be possible for certain persons (who will be defined by each province's law) to simply apply to court for the Power of Attorney to be ended. The court would then consider the evidence and decide what is in the best interests of the person who gave the Power of Attorney.

## **How can my friend feel confident that her children will not try to put the document creating the enduring Power of Attorney into effect before she is truly unable to make her own decisions?**

The Power of Attorney should state clearly that it will take effect at a specific time or when a specific event occurs. This would include the mental incapacity or infirmity of the maker of the document (donor). The document can then go on to

specify when and how it will be determined that the event has occurred.

In the case of the mental incapacity or infirmity of the donor of the power, the document could provide that it would be determined when one or more named persons have made a written declaration to that effect, for example, two doctors. The document should name someone to be the person who will make the determination based on the written declaration from the doctors.

### **If my friend has made a Will and a Power of Attorney, will they contradict each other when she has passed away?**

No. When your friend dies, her Power of Attorney ceases to have effect, and the person she appointed under that Power of Attorney ceases to have any power. Upon her death, the provisions of her Will begin to apply. At this point, the power over her property becomes the responsibility of the executor appointed under that Will.

### **Does this mean that if the person appointed under a Power of Attorney and the person appointed under a Will are different, they need never have contact or even know each other?**

Not necessarily. In fact, if you do appoint different people, you may want to encourage them to have contact. For example: if in your Will, you leave a family heirloom to a family member, you may want to ensure that that heirloom is not sold to pay for your living expenses while you are still alive; if the person you appoint under the Power of Attorney does not know about that provision in your Will, the heirloom might accidentally be sold before you die.

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## *When There is No Plan: Losing Decision-Making Power*

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**My grandmother lives with my uncle and is worried that he is going to place her in a seniors' home against her wishes. She has told him that she does not want to go, but he says he is going to get the power to make those decisions for her. Can he do this?**

As long as your grandmother is fully capable of making her own decisions, she cannot be forced to live somewhere that she does not want to live.

When people become incapable of managing their own affairs, and they have not created documents planning for their future care and asset management, it is possible for others to apply to have the authority to make personal and financial decisions for them. Every province has a law that allows for such a process. The law may be called different names in different areas, for example, in Alberta, it is the *Dependant Adults Act*; in Ontario, it is the *Substitute Decisions Act*; in New Brunswick, it is the *Infirm Persons Act*; and in Quebec, it is included within the *Civil Code* as *Protective Supervision*. The persons appointed to make the decisions for the incapable person might be called guardians, trustees, curators, or a committee. The laws are not specific to seniors and can be applied to anyone.

The laws in each province will be different in their specific requirements, but generally no one will be given decision-making authority over another unless it is determined by medical opinion that the person is incapable of making his or her own decisions. The only situation in which this requirement might be waived is in an emergency situation where the medical report cannot be obtained quickly enough and there

is immediate danger to the physical or mental health of the person. Even in an emergency case, there would likely be a review once the immediate crisis was over.

### **Will the rest of the family know if my uncle applies to have decision-making authority over my grandmother's affairs?**

The law in your area will set out a list of people who have to be notified when an application is made for someone to have decision-making power over another. The list might include a relative of the person. For those with no one available or willing to act as their guardian or trustee, usually the list will also include the government official who can become the decision-making authority. This government official is often called the Public Guardian, or Public Trustee, or in Quebec, the Public Curator.

### **Who will decide that it is appropriate to appoint someone else to make decisions on my grandmother's behalf?**

Again, it will be necessary to check the process in your own area, but generally an application to be given decision-making authority over someone must be made to court. The legislation in your area will set out the process to be followed and may allow for anyone to object to the application as long as he or she acts within the given time limits. If no objections are received, the court may be able to appoint a guardian or trustee without a hearing.

## **If an order is made giving my uncle decision-making powers for my grandmother, what kinds of decisions will he be able to make for her?**

Some provinces have laws that distinguish between decision-making powers over personal matters and decision-making powers over financial matters. The law may set out specific powers that the decision-maker has or leave the power open. When granting an application for another person to have decision-making powers for another, the court will ultimately determine what powers should apply.

Typical decision-making powers with regard to personal matters would include where a person lives, who the person lives with, what social activities the person can engage in, where the person might work, what health care is appropriate, and normal day-to-day decisions about dress and diet.

Typical decision-making powers regarding financial matters would include investing money in authorized investments; consenting to the transfer or assignment of a lease; drawing, accepting, or endorsing some financial instruments; carrying on a trade or business; and disposing of property.

## **My grandmother is worried that if my uncle gets the power to make decisions for her, she will be placed somewhere more like a mental health hospital than a seniors' residence. Could this happen?**

It could happen, however, any effort to place an individual in a mental health facility is subject to very strict requirements in each province. Medical, social, and psychological opinions are required in order to place a person in mental health facilities. In addition, there are rights of appeal and review, and the obligation to notify other relatives and specified interested people and agencies.

**My elderly friend is being bothered by her children fighting about her property. She has asked me about making a Will. What do all the legal terms mean?**

A Will is a legal document that sets out your wishes concerning the distribution of your property and possessions when you die.

- ▶ The maker of a Will is called a “testator”.
- ▶ If you die without leaving a Will, you are said to have died “intestate”. If you die intestate, the law then deals with the way your assets and possessions will be distributed. Generally, the rules set out an exhaustive list of alternative scenarios that deal with a surviving spouse and children and possibly a surviving adult interdependent partner. If there is no spouse, no children, and no adult interdependent partner, the estate goes (in order) to surviving parents, siblings, nephews and nieces, and next of kin.
- ▶ The property and possessions that you leave when you die are described as your “estate”.
- ▶ When you make a Will, you can appoint one or more persons to look after your estate. This person is called an “executor”.

**My friend is wondering whether it's worth the bother to make a Will. What can I tell her?**

There are many good reasons for making a Will:

- ▶ When you die without a Will, your property and possessions are distributed in accordance with the laws on intestacy rather than in accordance with your wishes.

- ▶ You can formally decide who receives specific property and possessions rather than have your family fight about them after your death.
- ▶ If you do not make a Will, any property that you own cannot be distributed until an administrator has been appointed.
- ▶ If you are responsible for children under the age of majority or children who are incapacitated, you can provide for their future care by appointing guardians in your Will.

### **I have seen stationery kits and computer programs for making Wills. Can I tell my friend to use one of these to make a Will?**

While it is possible to purchase these and make your own Will, it may be worthwhile to consult a lawyer. There are strict rules about making a Will that are very important to ensure that the Will is valid. In addition, a lawyer may be able to design a Will that takes into account possibilities that a standard form cannot. Many lawyers charge a set fee for making a fairly simple Will.

### **What are the rules that apply to making a Will?**

All provinces and territories have laws that set out the rules for making a Will. Be sure you know what is required in the area where you live. Here are examples of some of the rules that might apply:

- ▶ A Will must be in writing to be valid.
- ▶ Generally, a Will must be signed at the end by the testator in the presence of two witnesses. Then the two witnesses must each sign in the presence of the testator.
- ▶ In some provinces, it is possible to make a valid Will without witnesses if the Will is made entirely in your own handwriting (for example, Alberta and Saskatchewan).

This is called a holograph Will. It is generally not advisable to rely upon making a holograph Will (except in extreme circumstances).

- ▶ A person must be over 18 years of age to make a valid Will unless he or she has been married, is a certain member of the Canadian Forces, or is a mariner or seaman.
- ▶ A person (and his or her spouse) who is receiving a gift under a Will cannot witness the Will.
- ▶ An executor can witness the Will unless he or she is a spouse of a beneficiary.
- ▶ Marriage revokes a Will unless the Will specifically says that it is made in contemplation of the marriage.
- ▶ Divorce does not invalidate a Will.

**My friend does not want to leave anything in her Will to one of her sons who has received a lot of money from her already. Someone told her that if she does not leave anything to him, he could challenge the Will after she has passed away. Is this true?**

Every province and territory has a law that allows for certain people to apply for support from the estate of a deceased person. For example, if they were left nothing at all or if they were not left enough. The laws in each jurisdiction are slightly different and have different names. For example, in Alberta, it is the *Dependants Relief Act*; in British Columbia, it is the *Wills Variation Act*; in Nunavut, it is the *Dependants Relief Act*; and in Quebec, it is contained within the *Civil Code* as Survival of Support Obligation After Death.

Generally, the laws allow for someone who was a dependant of the deceased to apply for more funds from the estate. Who qualifies as a dependant differs in each area. For example, in Alberta any child who does not have a disability must be under

18 years of age, but in Saskatchewan children over 18 might be considered if they fall within a set of criteria set out in the law.

Your friend should try to find out what the law is in her province and then make a decision based upon that information. For example, if it is likely that her son could challenge the Will, she might want to say in the Will that she has already provided for him and that is why she is not leaving him anything in the Will.

**My friend says she has decided not to write a Will. She believes her children will be given their share based upon the rules relating to intestacy and her son will have the same share as everyone else. Is that right?**

It will be necessary to consider the law in your friend's area. It may be that the law allows someone who comes within the law's definition of dependant to apply to court for more of the estate than would be given under the rules relating to intestacy. If your friend writes a Will she may be able to save her other children from the stress and cost of going to court.

**What happens if my friend does not make a Will?**

When a person dies without a Will, there is provincial legislation to dictate who will get what. In addition, a court may need to appoint someone to complete the job of distributing your friend's property.

## Consumer Fraud

**My uncle was excited because he got a phone call telling him he had won a car. In order to collect it, he had to pay some kind of a gift fee. He paid the fee but never received the car. What can I tell him to do in the future so he does not get caught by another scam?**

Under federal law, all telemarketers must state at the beginning of a call why they are calling, the name of the company or person they are representing, and the type of product or business being promoted. If your uncle does not get this information when he asks for it or he is suspicious, he should hang up the phone. He should never pay any fee of any kind in order to recover a prize, or give out his credit card details.

The Competition Bureau (website at <http://www.competitionbureau.gc.ca>) investigates complaints of telemarketing fraud and will prosecute offenders. You can report a suspected crime of this nature by calling 1-800-348-5358. There is also an agency called PhoneBusters (website at <http://www.phonebusters.com>) to help people victimized by telemarketing fraud. There is a service within PhoneBusters specifically for seniors. PhoneBusters can be reached at 1-888-495-8501. In your uncle's province, there is likely also consumer legislation that allows for the reporting and investigating of such incidents. His provincial government office will be able to tell you what options exist.

**My elderly aunt had a man come to her door and offer to do some house repairs. He got her to sign a contract and pay an advance fee. He then left to get materials and she never saw him again. What can I tell her to do in the future so she does not get caught by a scam again?**

It is good advice never to hire a person who just arrives on your doorstep. If you need work done, get advice and recommendations from family and friends. Even then it's a good idea to get several estimates before you decide whom to use.

Your aunt can check out a contractor's qualifications by calling her local Better Business Bureau, or the consumer services branch of her provincial government. There might be rules about the way contracts are concluded outside of a business place and who can make such contracts. It would not be unusual, for example, that the contractor should be licensed and bonded in order to do business in this way.

Consumer protection legislation in your aunt's province likely allows for the reporting and investigating of such incidents. Her local provincial office will be able to tell you what options exist.

## *Abuse in Institutions*

**My friend lives in a seniors' residence. I am concerned about the standard of care she is receiving there. Last week she had a bruise on her arm and told me one of the nurses had hit her. Should I make a complaint about this treatment? To whom do I complain?**

Initially, you might only have to complain to the manager or owner of the residence for the matter to be investigated and dealt with. If that doesn't help, you may have to look at other options.

Some provinces have laws that require anyone to report any suspected abuse of adults living in institutions and seniors' lodges to specified authorities. Other provinces have laws that allow for reporting of suspected abuse, but do not make it compulsory. In both cases, there is normally also a statement in the law that no action can be taken against the person who made the complaint.

**What if I complain to the management of the residence and nothing improves?**

It is always possible to go to the police if you suspect that someone is being harmed or mistreated. Also, there will likely be some kind of licensing body in the province with regard to operating seniors' residences, together with detailed rules about how the residences must be operated. You might consider making a complaint to the licensing body.



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