

Access to Justice for the elderly/ Accessibilité à la justice pour les personnes âgées



Photo

: **Photo courtesy** the elderly have the right to legal resources and access to Justice

By Margherita M. Morsella, lawyer

During the pandemic, the entire world expressed its outrage and opposition to the abuse and suffering inflicted on older persons. United Nations offices also mobilized to address this issue and selected “Access to Justice for Older Persons” as the theme for 2021.

Indeed, access to justice is crucial for everyone, including older persons, when it becomes necessary to report abuse or a crime committed against them. If the wheels of the justice system turn too slowly, it becomes impossible to eliminate the serious harm inflicted on older persons.

Older persons must therefore not be excluded from the system, and their fundamental rights must prevail in order to prevent abuse and mistreatment. They must be made aware that they are entitled to the same judicial resources and recourses as others. It appears that, in the future, the United Nations intends to create a special Convention to protect and promote the rights of older persons.

However, today it is far from easy—both for older persons and for their families—to report abuse or obtain justice.

The current system does not facilitate access to justice and does not adequately protect older persons from abuse and mistreatment. Even before the pandemic, abuse and ill-treatment were already scandalous, but aside from the numerous and extensive reports produced by commissions, associations, and other organizations, nothing truly concrete has been done to eradicate this scourge.

Access to justice is an essential prerequisite for the protection and promotion of all other human rights and includes:

- the right to a fair trial;
- equal access to and equality before the courts;
- the ability to seek and obtain fair and timely remedies for violations of rights.

The lack of access to justice undermines the ability of older persons to fully exercise all other human rights, including the right to health, the right to adequate social protection, and the right to live with dignity.

Some barriers to access to justice

Older persons often lack access to information and are not aware of their rights. In addition, they are afraid to report those who abuse them, whether caregivers, family members, friends, or neighbors. Many are discouraged by the high cost of legal representation when considering legal action. They also know that judicial proceedings are lengthy, stressful, and complex, and that it often takes a long time before a case is heard in court.

Even when older persons have the courage and financial means to pursue legal action, they are frequently not believed, notably due to memory loss or cognitive decline.

In general, many older persons and their families feel that pursuing justice is not worth the effort and have little confidence in a system they perceive as unsuited to their needs. They would require a simpler system, appropriate guidance, and significantly greater support.

In theory, the Act respecting health services and social services recognizes the user's right:

- to be informed about their state of health and the care available;
- to receive personalized and adequate health and social services;
- to access their confidential health record;
- to be assisted or represented by a person of their choice;
- to be treated with courtesy, fairness, safety, and respect.

But what can an older person do?

Let us consider an example of abuse occurring in one of the many long-term care facilities (CHSLDs) in Quebec. As mentioned in the previous article entitled “*Is the Abuse of Older Persons Still a Taboo?*” (published in the July 8, 2021 edition of *Corriere Italiano*, page 4), 64% of staff admitted to having mistreated an older person in these facilities.

But what can an older person do in such a situation? If the person suffers from dementia or Alzheimer's disease, they may not remember the abusive acts and will be unable to identify those responsible for the mistreatment.

When an older person shows clear signs of abuse—such as injuries to the head, arms, legs, face, and so forth—family members or other concerned individuals may request explanations from the nurse or the facility manager. These individuals have a duty to file a report in order to determine what happened. However, relying solely on the accounts of caregivers or staff members, without being able to obtain the victim's version of events (due to dementia), severely limits the effectiveness of such interventions.

A complaint may be filed with the Local Complaints Commissioner, and if the decision—which must be rendered within 45 days—is unsatisfactory, the matter may be referred to the Protecteur du citoyen (Quebec Ombudsman) and Human Rights Commission.

There is also a Complaint Assistance and Support Centre which can assist to file complaints (CAAP) (<https://fcaap.ca/les-caap/>; tel.: 514-861-5998, located at 4900 Jean-Talon West, Suite 210, Montreal).

An online form allows individuals to file a complaint on their own behalf or on behalf of another person. It is essential to thoroughly document the abusive situation with photographs, recordings, and witness statements. If the decision of the Ombudsman/Protecteur du citoyen or Human Rights Commission remain unsatisfactory, the case may be brought before the Human Rights Tribunal and civil courts.

Several measures have been implemented by the provincial government, including:

- the Government Action Plan to Combat Abuse of Older Persons 2017–2022;
- the Act to Combat Maltreatment of Seniors and Other Persons of Full Age in Vulnerable Situations (L-6.3, 2017–2018);
- the adoption of an anti-maltreatment policy in public health and social services;
- mandatory reporting in certain situations of abuse;
- regulations concerning oversight and monitoring mechanisms in CHSLDs, in force since 2018;
- the housing policy and long-term care and services initiative launched in 2021.

As can be seen, there is a genuine willingness to assist people in vulnerable situations. However, it is essential to move from theory to practice. The public must be informed about existing laws and available remedies and must not be afraid to report abuse, in order to ensure that no one is left behind or left without protection.

Resources —

- Service Quality and complaints Commissioner, Ciuss/Ciuss
- Complaint Assistance and Support Centre (CAAP): 514-861-5998 <https://fcaap.ca/les-caap/>; tel.: 514-861-5998, located at 4900 Jean-Talon West, Suite 210, Montreal).
- Protecteur du citoyen (Québec Ombudsman): 1-800-463-5070
- Seniors’ Help Line: 1-888-489-2287 (On the website <https://www.aideabusaines.ca/communautés-culturelles/>.)
- Ligne Tel-aînés 514-353-2463
- Commission des droits de la Personne 514-405-4228, 1-800-361-6477 cdpdj.qc.ca
- Tribunal des droits de la Personne 514-393-6274, tribunal.personne@judex.qc.ca
- Juripop: 514-705-1637
- Educaloi, educaloi.qc.ca
- Info- Social 811 and 211
- Caregiver Support 1-855-852-7784
- Cavac, Crime Victims Assistance Center cavac.qc.ca

-Public Curator 1-800-363-9020, 514-873-4074 quebec.ca

-Autorités Des Marchés financiers 800, rue du Square-Victoria, bureau 2200 Montréal (Québec)
H3C 0B4 Téléphone : 514 395-0337 Télécopieur : 514 873-3090

-Centre antifraude du Canada/Canadian anti fraud center 1-888-495-8501;

-Sûreté du Québec 514-598-4141;

-Info-crime Montreal 514-393-1133

-SPVM senior zone spvm.qc.ca

This section was added on January 21st 2026

Important Laws:

C-12 - Quebec Charter of human rights and freedoms article 10, 48, 49

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, **age** except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such act.

48. Every aged person and every handicapped person has a right to protection against any form of exploitation.

Such a person also has a right to the protection and security that must be provided to him by his family or the persons acting in their stead.



49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

Act to Combat Maltreatment of Seniors and Other Persons of Full Age in Vulnerable Situations (L-6.3, 2017–2018);

Article 2(3)

maltreatment” : means a single or repeated act, or a lack of appropriate action, that occurs in a relationship where there is an **expectation of trust**, and that intentionally or unintentionally causes harm or distress to a person;

“person in a vulnerable situation” : means a person of full age whose ability to request or obtain assistance is temporarily or permanently limited because of factors such as a restraint, limitation, illness, disease, injury, impairment or handicap, which may be physical, cognitive or psychological in nature, such as a physical or intellectual disability or an autism spectrum disorder;

An Act respecting health and social services (LSSSS) G-1.021& S-4.2

The foundational legislation for Quebec's integrated health and social care system, aiming to ensure universal access and well-being, with recent updates like [Law 5](#) focusing on health data protection.

In Québec, the law governing health and social services is primarily the Act respecting health services and social services (ARHSSS) (S-4.2). It establishes users’ rights—such as the right to information, consent, choice, and access to their records—and sets out the organization of the system. It is complemented by recent reforms, including the Act respecting governance and legislation on information management (Act 5), which modernize the system.

Government Action Plans to Combat Abuse of Older Persons

Developed multi-year action plans (e.g., 2010-2015, 2017-2022, 2022-2027) with 52 measures, focusing on financial/psychological abuse and fostering a culture of well-treatment.

Material or financial mistreatment

Material or financial abuse refers to the fraudulent, illegal, unauthorized or dishonest appropriation or use of an older adult’s property or legal documents, along with the lack of information or misinformation about financial or legal matters, such as:

- Exerting pressure to change their will
- Unauthorized bank transactions (use of their bank card, online transactions)

- Misappropriation of funds or property
- Overcharging for services
- Contract or insurance transactions achieved through deception or coercion
- Identity theft
- Signing a lease under pressure
- Failure to manage the person's assets in their best interests or refusing or neglecting to provide the necessary goods, failure to manage the person's assets in their best interests or refusing or neglecting to provide the necessary goods
- Failure to assess the person's cognitive abilities, understanding or financial literacy

Older adults who are dependent on others, whether physically, emotionally, socially or financially, are more vulnerable to this type of abuse. Beyond the financial or material aspect, this type of abuse can affect the older adult's physical or psychological health by interfering with their ability to fulfill their responsibilities or to meet their needs.

Civil code of Quebec articles 1406 and 1457 action in civil responsibility

Article 1406 of the Quebec Civil Code defines [lesion](#) as serious disproportion in contract prestations, creating a presumption of exploitation, particularly for minors or protected persons where excessive obligations are also considered lesion.

Article 1457 of the [Civil Code of Québec](#) (CCQ) establishes the fundamental principle of civil liability: every person must conduct themselves reasonably to avoid harming others; if they have reason and fail in this duty, causing injury (bodily, moral, or material), they are liable to make reparation, forming the basis of fault-based liability in Quebec law.

Canadian Criminal Code

While the Criminal Code of Canada does not contain a single, specific "elder abuse" crime, it includes several provisions that protect elderly individuals by addressing common forms of abuse and mandating harsher penalties for crimes against them.

Key articles and sentencing principles in the *Criminal Code* (R.S.C., 1985, c. C-46) that protect the elderly include:

- **Sentencing - Aggravating Circumstances (Section 718.2):** This is the primary mechanism for protecting seniors. It requires courts to treat evidence that a victim's age, health, or financial situation made them particularly vulnerable as an aggravating factor, resulting in a harsher sentence for the offender.
- **Abuse of Trust (Section 718.2(a)(iii)):** If an offender abuses a position of trust or authority (e.g., a caregiver, family member, or power of attorney) to commit a crime against a senior, this is considered an aggravating circumstance during sentencing.
- **Failure to Provide Necessaries of Life (Section 215):** This section creates a legal duty for individuals to provide "necessaries of life" (food, shelter, medical attention) to dependents. It is used to prosecute neglect when a senior is under someone's care and unable to provide for themselves. ###
- **Theft by Power of Attorney (Section 331):** Specifically addresses the theft of property or money by someone holding a power of attorney. ***
- **General Criminal Offences:** Other sections are frequently applied to elder abuse, including assault (s. 265), sexual assault (s. 271), uttering threats (s. 264.1), and fraud (s. 380).
- **Peace Bonds (Section 810):** A senior who fears for their safety or that their property will be damaged by someone can apply for a recognizance (peace bond), which acts as a protection order.
 - **Key Legislative Note**
- **Protecting Canada's Seniors Act (Bill C-36):** Passed in 2012, this Act amended the Criminal Code to explicitly recognize that the abuse of seniors should be taken into account during sentencing, reinforcing the importance of the age/vulnerability factor.
- **Sentencing Objectives (Section 718.04):** Directs that when a person is vulnerable due to their circumstances (such as age), the court must prioritize denunciation and deterrence.

Section 215 Criminal Code ###

under s.215(1)(c) a duty of care arises when one person is *under the charge*²⁴ of another and that person is unable to provide for himself/herself. The *Criminal Code* states:

Duty of persons to provide necessities

215. (1) Every one is under a legal duty

- (a) as a parent, foster parent, guardian or head of a family, to provide necessities of life for a child under the age of sixteen years;
- (b) to provide necessities of life to their spouse or common-law partner; and
- (c) to provide necessities of life to a person under his charge if that person
 - (i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and
 - (ii) is unable to provide himself with necessities of life.

Offence

(2) Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies on him, to perform that duty, if

- (a) with respect to a duty imposed by paragraph (1)(a) or (b),
 - (i) the person to whom the duty is owed is in destitute or necessitous circumstances, or
 - (ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or
- (b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

Although an explicit definition of elder abuse remains absent from the cases involving elderly victims, the analysis of sentencing and damages contained in the decisions suggests the following may be elements of the definition, were it stated directly. Elder abuse:

1. includes extreme neglect;
2. is broader, conceptually, than physical abuse;
3. amounts to an abuse of power;
4. is marked by vulnerability of the older victim;

5. may involve a violation of a trusting relationship;
6. may be made possible by the dependency of the victim;
7. may cause harms specific to older victims (loss of independence, worsening physical frailty);
8. may implicate more older victims than the direct target of an abusive action (a community or part of a community); and
9. may be evidenced by the targeting of older adults for victimization (by strangers, friends, family members, etc.)

Sections 331, 334 Canadian Criminal Code ***

331 Every one commits theft who, being entrusted, whether solely or jointly with another person, with a power of attorney for the sale, mortgage, pledge or other disposition of real or personal property, fraudulently sells, mortgages, pledges or otherwise disposes of the property or any part of it, or fraudulently converts the proceeds of a sale, mortgage, pledge or other disposition of the property, or any part of the proceeds, to a purpose other than that for which he was entrusted by the power of attorney.

- R.S., c. C-34, s. 291

334 Except where otherwise provided by law, every one who commits theft

- **(a)** if the property stolen is a testamentary instrument or the value of what is stolen is more than \$5,000, is guilty of
 - **(i)** an indictable offence and liable to imprisonment for a term of not more than 10 years, or
 - **(ii)** an offence punishable on summary conviction; or
- **(b)** if the value of what is stolen is not more than \$5,000, is guilty
 - **(i)** of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
 - **(ii)** of an offence punishable on summary conviction.
- R.S., 1985, c. C-46, s. 334
- R.S., 1985, c. 27 (1st Supp.), s. 43
- 1994, c. 44, s. 20
- [2019, c. 25, s. 122](#)