

13th SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING RIGHT TO HEALTH AND ACCESS TO HEALTH SERVICES

Response by Canada

1. What are the legal provisions and policy frameworks in your country that guarantee the right of older persons to the enjoyment of the highest attainable standard of physical and mental health, including access to promotive, preventive, curative, rehabilitative and palliative health facilities, goods and services?

There are several legal provisions and policy frameworks in Canada that guarantee the right of older persons to the enjoyment of the highest attainable standard of health. For example:

Domestic legal framework

Canada's domestic legal framework protects the right of older persons to the enjoyment of the highest attainable standard of physical and mental health. The Constitution Act, 1867, divides the legislative powers relevant to the regulation of the delivery of health products and services between the federal and 13 provincial and territorial governments. The federal government is responsible for regulating important aspects of various health industries or sectors, while provincial/territorial governments have comprehensive authority over the delivery of health care services.

Human rights framework

Canada's human rights framework protects everyone, including older persons, against discrimination in the provision of healthcare services. The *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act* and similar provincial and territorial anti-discrimination legislation provides protection against age-based discrimination in the provision of services.

Publicly funded health care system

Canada's publicly funded health care system is comprised of 13 provincial and territorial health care insurance plans. Under this system, all Canadian residents have reasonable access to medically necessary hospital and physician services without paying out-of-pocket.

Canada Health Act

The federal government is responsible for setting and administering national standards for the health care system through the *Canada Health Act*, providing funding support for provincial and territorial health care services, supporting the delivery for health care services to specific groups, such as First Nations people living on reserves and eligible veterans. Provincial and territorial health care insurance plans must meet the standards described in the *Canada Health Act*. These standards include public administration, comprehensiveness, universality, portability, accessibility.

Canada's National Dementia Strategy

Canada released in 2019 its first national dementia strategy, *A Dementia Strategy for Canada: Together we Aspire*, as a requirement of the *National Strategy for Alzheimer's Disease and Other Dementias Act*. The Dementia Strategy sets out three national objectives: prevent dementia; advance therapies and find a cure; and improve the quality of life of people living with dementia and their caregivers.

2. What steps have been taken to ensure that every older person has access to affordable and good quality health care and services in older age without discrimination?

The Government of Canada is committed to ensuring seniors get the care they deserve and is working collaboratively with provinces and territories to improve the quality and availability of care, and to strengthen key health care system components such as workforce and infrastructure. This commitment is reflected in initiatives such as targeted funding for home care and long-term care, and support for uptake of best practices.

For example, the federal government is providing \$6 billion over ten years – from 2017 to 2027 – to provinces and territories to improve access to home and community care services, including palliative care. As a result of the first five years of this investment, provinces and territories have implemented new initiatives to improve access, better coordinate and integrate care and support caregivers to help more Canadians receive the care and services they need so that they may remain at home longer. In addition, the federal government has made significant investments in long-term care since the pandemic began to help provinces and territories improve the standard of care in those facilities.

In addition, since October 2022, the Government of Canada has been implementing its first-ever Disability Inclusion Action Plan, a comprehensive, whole-of-government approach to disability inclusion, based on the principles of equality, anti-discrimination, participation, and inclusion.

Care services for Indigenous peoples

The Government of Canada funds and delivers primary care services, accessible at all times, serving approximately 111,000 First Nations clients of all ages in remote, semi-isolated and isolated First Nations communities across the provinces of Alberta, Manitoba, Ontario, and Quebec where access to provincial services is limited or non-existent. The Government actively recruits community health nurses to provide direct services in these communities and maintains contracts with nursing agencies and paramedic agencies to ensure adequate staffing is available to maintain quality services in these communities.

To better address the long-term and continuing care needs in First Nations and Inuit communities, the Government of Canada allocated significant funding to work with these communities on developing a new and more holistic long-term and continuing care framework to meet the growing priorities of their aging members and those with special needs. The funding would cover the full spectrum of services including support for people living with disabilities, aging in place approaches and improvements to facility-based care.

Canada's Non-insured Health Benefits Program provides clients (registered First Nations and recognized Inuit) with coverage for a range of health benefits, such as prescription drugs and over-the-counter medications, dental and vision care, medical supplies and equipment, mental health counselling, and transportation to access health services not available locally.

3. *What data and research are available regarding older persons' right to health and access to health care and services? Please indicate how national or sub-national data is disaggregated by sex, age and inequality dimensions, and what indicators are used to monitor the full realization of the right to health of older persons.*

The Government of Canada collects information on access to health care services for the household population through the annual Canadian Community Health Survey (CCHS), which covers the population aged 12+ on primary health care and home care services, with questions related to the quality of care and difficulties experienced in trying to get care. In select years, thematic content is included to assess other indicators related to health care, such as unmet care needs or contact with health care specifically related to mental health. The data for this survey are stratified to provide data regionally, and by sex and age group, including for the population aged 65+. In 2019 and 2020, the Canadian Health Survey on Seniors was included within the CCHS with focused content related to aging and specifically for those aged 65+. The content included related to access to dental care and access to various health care services (i.e., diagnosis appointments from medical specialists and non-emergency surgeries) as well as any problems experienced in getting these services.

The Survey on Access to Health Care and Pharmaceuticals During the Pandemic, an additional source of data collected between March 2020 and May 2021, covers persons 18+ and included topics related to access to health care services and pharmaceuticals, health care inequity and barriers, impacts of delayed health care, barriers to receiving health care and general health status. The data for this survey are stratified by province, sex, gender and age group.

6. *What are the challenges faced by older persons in their enjoyment of the right to health, including the impact of intersectional discrimination and inequality based on age, gender, disability and other grounds?*

Older persons are not a homogenous group, and the challenges they face in the protection or enjoyment of their human rights, including the right to health, vary greatly.

Below are examples of challenges faced by older persons living with dementia.

Findings from consultations held to inform the development of the National Dementia Strategy, revealed that people living with dementia and their friends/family caregivers faced physical, financial, and emotional challenges. These included: being excluded from medical and care conversations once a diagnosis is given; institutional settings that were not always tailored to people living with dementia; a palliative approach to care that was not well integrated into dementia care; financial stresses that can lead to poorer health outcomes; care workers that are often undervalued, underpaid, and over-worked, with few opportunities to learn and advance their knowledge, who commonly experience burnout and workplace injury; limited spaces in long-term care facilities; frequent transitions in care, which can be stressful, disruptive, complex,

and costly; dementia-related stigma that can contribute to fear in seeking diagnosis, resulting in late or missed diagnoses, social isolation and diminished quality of life; and persistent knowledge gaps related to dementia.

Research conducted by the Government of Canada in 2020 also revealed that respondents living with dementia: have had difficulty communicating their needs to others; have been excluded from decisions about health care or finances that affect them, encountered people who focused on things they can no longer do instead of the things they can, and had difficulty navigating a public space; and have heard people make negative comments about their ability to do things, experienced a transition in care, or been unable to go where they needed to or wanted due to accessibility issues.

7. What measures have been taken to eliminate ageism and discrimination based on age, including discriminatory laws, policies, practices, social norms and stereotypes that perpetuate health inequalities among older persons and prevent older persons from enjoying their right to health?

Canada's domestic human rights framework protects against all forms of discrimination, including against ageism. This legal framework includes human rights protections for older persons in Canada's Constitution under the *Canadian Charter of Rights and Freedoms* (*Charter*), and the *Canadian Human Rights Act* and similar provincial and territorial anti-discrimination legislation. Section 15(1) of the Charter guarantees the right to equality before and under the law, the right to equal benefit and protection of the law without discrimination on several grounds – including age – or those analogous to them. The Charter also protects against discrimination based on an intersection of grounds, such as age and disability or age and sex. The rights in the Charter are subject only to such reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society. The protections in the Charter apply to legislation and actions of the Government of Canada, provincial, territorial and municipal governments, and extend to a full range of governmental entities and activities, such as the provision of public services and public benefits.

Provincial, territorial, and federal anti-discrimination legislation also prohibit discrimination on various grounds, such as age, for example regarding the provision of goods, services and facilities customarily available to the public, which can include health services.

8. What measures have been taken to ensure that older persons are able to exercise their legal capacity on an equal basis with others, including making an informed consent, decisions and choices about their treatment and care?

Examples include:

The Supreme Court of Canada has made clear that physicians have an ethical and legal obligation to take reasonable steps, at minimum, to ensure patients understand the information provided to them. The duty rests with physicians and what reasonable steps will discharge the duty depends on the particular circumstances of each case. Many provinces have also adopted specific laws to protect informed consent in the medical field.

Further, older persons have been encouraged to participate in the long-term and continuing care engagement work at a regional and national level. Their voices will be instrumental in influencing the necessary changes to the current way in which they receive long-term and continuing care programs and services.

In line with the *Convention on the Rights of Persons with Disabilities* principles of equality, anti-discrimination, participation and inclusion, the federal government engaged with persons with disability and disability organization to inform the Disability Inclusion Action Plan. Policy decision-making will continue to evolve in response to ongoing engagement with the disability community to continue to reflect the realities of persons with disabilities, among which many Seniors, in an ever-changing world.

9. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for the denial of their right to health?

Various modes of redress exist in the context of the right to health, depending on the nature of the infringement and the form of remedy sought. The primary means of enforcing human rights codes and legislation is through human rights commissions or tribunals established under the relevant legislation. Decisions of commissions or tribunals are subject to judicial review by the courts. The courts (provincial and federal) have jurisdiction to determine whether there have been violations of the Charter.

Depending on the province or territory, patients may file complaints against a medical professional or against a medical institution in the case of a wrongdoing.

10. What mechanisms are in place to ensure the effective and meaningful participation of older persons living in different geographic areas of the country in the planning, design, implementation and evaluation of health laws, policies, programmes and services that affect them?

Examples include:

The Government of Canada has been encouraging older persons to participate in the long-term and continuing care engagement work, both at a regional and national level, through virtual workshops, focus groups, in-person interviews, community assessments, establishing a local advisory committee, reviewing existing materials, etc.

Further, the principle “Respect Human Rights” within the National Dementia Strategy is a reminder to actively include and consult those living with dementia on matters that affect their quality of life. The Government of Canada requires funding recipients to include the perspectives of people living with dementia and caregivers in the design, development and implementation of projects it funds.