



# Canadian Human Rights Commission

**Submission to the UN Open-ended Working Group on Ageing on the identification of possible gaps in the protection of the human rights of older persons and how best to address them.**

**November 2023**

# Introduction

The Canadian Human Rights Commission (CHRC) is Canada’s national human rights institution. It has been accredited “A-status” by the Global Alliance of National Human Rights Institutions, first in 1999 and again in 2006, 2011, 2016 and 2023.

The CHRC was established by Parliament through the Canadian Human Rights Act (CHRA) in 1977.<sup>1</sup> It has a broad mandate to promote and protect human rights. The Constitution of Canada divides jurisdiction for human rights matters between the federal and provincial or territorial governments. The CHRC, pursuant to the CHRA, has jurisdiction over federal government departments and agencies, Crown corporations, First Nations governments and federally-regulated private sector organizations.

The CHRC’s efforts to promote and protect human rights include screening and, where possible, mediating discrimination complaints, representing the public interest in the litigation of complaints, and conducting research in consultation with rights holders and stakeholders, issuing public statements, and tabling special reports in Parliament. The CHRC is committed to working with the Government of Canada as well as domestic and international partners and stakeholders to ensure continued progress in the protection of human rights, including Canada’s implementation of the rights and obligations enshrined in the human rights treaties to which Canada is a party.

The CHRC also has a mandate under the Employment Equity Act and supports the Accessibility Commissioner and the Pay Equity Commissioner in carrying out their mandates under the Accessible Canada Act and the Pay Equity Act, respectively. It also provides support to the Federal Housing Advocate as legislated by the National Housing Strategy Act. The CHRC is also designated as a body responsible for monitoring the Government of Canada’s implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), in accordance with article 33.2 of the Convention.

In Canada, and across the world, older people face unique barriers to accessing and enjoying their human rights. Canada must do more to realize the human rights of older people.

The CHRC welcomes the work of the UN Open-Ended Working Group on Ageing, and supports efforts to ensure that human rights law evolves so that everyone enjoys a better future. While older people face many barriers, the CHRC’s submission will focus on the issue of elder abuse, also referred to as the mistreatment of older persons,<sup>2</sup> as a means of highlighting the gaps in human rights protections for older people in Canada.

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<sup>1</sup> Available at: [laws-lois.justice.gc.ca/PDF/H-6.pdf](https://laws-lois.justice.gc.ca/PDF/H-6.pdf). Although Canada’s human rights laws are not part of the Constitution, they are considered “quasi-constitutional” in nature, meaning that all other laws must be interpreted in a manner consistent with human rights law.

<sup>2</sup> See: Federal Policy Definition on the Mistreatment of Older Persons, Employment and Social Development Canada, Government of Canada (2023), <https://www.canada.ca/en/employment-social-development/corporate/reports/seniors-aging/mistreatment-older-persons.html>

# Part 1: Addressing the gaps

## Equality and non-discrimination

Across Canada, concerns surrounding the various barriers to ensuring equality and non-discrimination for older people continue to be raised. The CHRC echoes these concerns, particularly around ageism, an attitudinal barrier that results in negative attitudes and stereotypes about aging.<sup>3</sup> Ageism provides the foundation for both individual acts of discrimination and systemic barriers faced by older people. In addition, ageism enables prejudicial bias against older people—including the perception that older people are “seen as less important and often ignored compared to younger generations”<sup>4</sup>—and results in the deprioritization of their needs.

The CHRC highlights that in Canada, certain groups of older people face additional barriers based on their intersecting identities. While this is not an exhaustive list, some of the equity-deserving groups that we note are older people with disabilities, who identify as women or being part of the 2SLGBTQIA+ community, Indigenous, Black or racialized, newcomers, and those living in rural and northern communities.

A group for whom the impact of ageism is often overlooked are older people in prison. The proportion of older individuals in custody is growing, and prisons were never designed to respond to their needs. The findings of the CHRC and Office of the Correctional Investigator’s (OCI) 2019 joint investigation into this matter reveals that Canada is falling short of ensuring that correctional interventions and services meet its obligations to respect and protect the inherent dignity, characteristics, needs and rights of older individuals in federal custody.<sup>5</sup>

## Autonomy and independence

The human rights principles of dignity, autonomy, and ability of all persons to exercise independence are enshrined in international human rights law, such as in the CRPD<sup>6</sup> and the Universal Declaration.<sup>7</sup> Despite Canada’s obligations to ensure such rights, many older people

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<sup>3</sup> See: Ageism & age discrimination Fact Sheet, Ontario Human Rights Commission, <https://www.ohrc.on.ca/en/ageism-and-age-discrimination-fact-sheet>

<sup>4</sup> See: Pillar 1, Make addressing ageism, elder abuse, and social isolation a national priority, National Seniors Strategy by the National Institute on Aging, <https://nationalseniorsstrategy.ca/the-four-pillars/pillar-1/addressing-ageism-elder-abuse-and-social-isolation/>

<sup>5</sup> CHRC and OCI, Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody (February 2019), available at <https://www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/oth-aut20190228-eng.pdf>

<sup>6</sup> See: Article 3, UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

See: Preamble & Article 10, UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>;

<sup>7</sup> See: UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>;

face barriers in fully exercising their autonomy and independence—particularly, when accessing care and supportive housing.

In Canada, older people face barriers in exercising their autonomy and maintaining their independence, due to the lack of adequate options for independent, accessible, and community-based living.<sup>8</sup> As a result, many older people are unable to age in place,<sup>9</sup> and are forced to choose between receiving adequate housing and care or remaining in their communities. This is especially the case for Indigenous older people, and older people in Canada living in rural and northern communities. For example, many older Inuit adults from Nunavut leave their home communities to receive care in Ottawa due to the lack of in-territory care options for Inuit Elders, which often results in family separation.<sup>10</sup> Advocacy groups have raised concerns about the resulting lack of access to culturally appropriate programming and care services available for relocated older Inuit adults.<sup>11</sup> In order for all older people to exercise their autonomy and independence, Canada must take further action to ensure that adequate supports and services are available to its most vulnerable populations—particularly for rural, northern, and Indigenous communities.

Furthermore, older people, especially those with disabilities, are disproportionately vulnerable to institutionalization given the limited options for community and at-home care, and supportive housing.<sup>12</sup> This limits older people with disabilities' ability to exercise autonomy and independence, as many older people and their families must choose between receiving care and remaining in the community. Institutionalized older people are especially vulnerable to maltreatment, exploitation, and violence, given the limitations of autonomy and oversight within congregate care facilities.<sup>13</sup>

Overall, the barriers of older people's ability to exercise autonomy and independence results in

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See: UN Statement on International Day of Older Persons (2023): <https://www.un.org/en/observances/older-persons-day>

<sup>8</sup> See: Advancing Inclusion and Quality of Life for Seniors, Report of the Standing Committee on Human Resources, Skills, and Social Development and the Status of Persons with Disabilities (2018): <https://www.ourcommons.ca/DocumentViewer/en/42-1/HUMA/report-8/>

<sup>9</sup> See: Report by the National Institute on Aging, Ageing in the Right Place: Supporting Older Canadians to Live Where they Want (October, 2022): <https://www.niageing.ca/airp>

<sup>10</sup> See, Minister of Health responds to open letter on Elders Care, Department of Health, Government of Nunavut, (2022), <https://gov.nu.ca/health/news/minister-health-responds-open-letter-elders-care#:~:text=%E2%80%9COn%20March%203%2C%202022%2C,took%20these%20concerns%20very%20seriously.>

<sup>11</sup> See: Open Letter to the Hon. John Main, Minister of Health, Government of Nunavut, from Pairijit-Tigummiagtikkut group (March, 2022). <https://www.nunavutnews.com/wp-content/uploads/2022/03/07-MAR-22-Pairijit-Tigummiagtikkut-Care-Issues-EN.pdf>

<sup>12</sup> See: Home care use and unmet home care needs in Canada, Statistics Canada (2022): <https://www150.statcan.gc.ca/n1/daily-quotidien/220826/dq220826a-eng.htm>

<sup>13</sup> See: A Right to Housing for all: Ensuring a Human Rights Approach Inclusive of all Persons with Developmental Disabilities, (2018): <https://inclusioncanada.ca/housing/>;  
See; What we did and what we learned monitoring disability, Section 4.4(a), Canadian Human Rights Commission (2023): <https://www.chrc-ccdp.gc.ca/en/resources/publications/what-we-did-and-what-we-learned-monitoring-disability-rights>;

added vulnerability and exposure to elder abuse. The CHRC strongly advocates for the improved availability and accessibility of care and supportive housing, to ensure that older people may live with dignity in their communities, exercise their autonomy and independence, and as a result, reduce their vulnerability to elder abuse.

## **Violence, neglect, and abuse**

Violence against older people is a significant human rights issue in Canada. Based on findings from the Canadian Longitudinal Study on Aging (CLSA), the prevalence of elder abuse in Canada has increased from 4-8% to 10%, over the past 10 years.<sup>14</sup> However, these estimates often underrepresent the true prevalence of elder abuse, given the severe underreporting by victims—as further discussed in the Access to Justice section below. The CHRC echoes the concerns rights holders and human rights advocates across Canada have raised about the pressing issue of elder abuse.<sup>15</sup>

Elder abuse can take many forms that are often extensive and concurrent.<sup>16</sup> The CHRC welcomes the broad lens used in Canada to understand elder abuse, which includes various types of harm such as neglect, intimidation, and numerous forms of abuse/mistreatment including material, financial, psychological, physical, legal, sexual, and systemic. In Canada, financial and emotional abuse are the most prevalent forms of elder abuse, followed by neglect, and physical abuse.<sup>17</sup>

Moreover, the intersecting identities of older people in Canada can result in disproportionate experiences of elder abuse. Elder abuse has a gendered lens as older women are disproportionately impacted by family-based violence.<sup>18</sup> According to the Canadian Femicide Observatory for Justice and Accountability (CFOJA), between 2018-20, older women

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<sup>14</sup> See: One in ten adults aged 65 and over experience some form of elder abuse each year in Canada, University of Toronto Faculty of Social Work (2022), <https://socialwork.utoronto.ca/news/one-in-ten-adults-aged-65-and-over-experience-some-form-of-elder-abuse-each-year-in-canada/>

<sup>15</sup> See : Brief to the House of Commons' Standing Committee on Justice and Human Rights' Study on Elder Abuse, Canadian Association of Social Workers (2021): <https://www.casw-acts.ca/en/brief-house-commons-standing-committee-justice-and-human-rights-study-elder-abuse;>

See: Elder Abuse, Canadian Resource Centre for Victims of Crime (2022), [https://crcvc.ca/wp-content/uploads/2021/09/Elder-Abuse-Disclaimer-Revised-April-2022-FINAL-1.pdf;](https://crcvc.ca/wp-content/uploads/2021/09/Elder-Abuse-Disclaimer-Revised-April-2022-FINAL-1.pdf)

See: Statement on World Elder Abuse Awareness Day, Canadian Network for the Prevention of Elder Abuse (2023), <https://cnpea.ca/en/what-is-elder-abuse/world-elder-abuse-awareness-day>

<sup>16</sup> See: Mistreatment of Older Persons: Federal Policy Definition – Explanatory Document, Government of Canada, (2023), <https://www.canada.ca/en/employment-social-development/corporate/reports/seniors-aging/mistreatment-older-persons.html>

<sup>17</sup> See: Crime and Abuse Against Seniors: A Review of the Research Literature With Special Reference to the Canadian Situation (2021): <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/crim/summary.html#:~:text=Up%20to%20one%20percent%20of,mistreatment%20of%20abuse.>

<sup>18</sup> See: Elder Abuse in Canada: A Gender-Based Analysis, Public Health Agency of Canada, Government of Canada, (2012): [https://www.canada.ca/en/public-health/services/health-promotion/aging-seniors/publications/publications-professionals/elder-abuse-canada-a-gender-based-analysis-summary.html;](https://www.canada.ca/en/public-health/services/health-promotion/aging-seniors/publications/publications-professionals/elder-abuse-canada-a-gender-based-analysis-summary.html)

See: Femicide of older women in Canada, Office of the Federal Ombudsman for Victims of Crime, Department of Justice Canada (2021), <https://www.victimfirst.gc.ca/res/cor/FOW-FOW/index.html#Toc70424280>

represented one-third of all women and girls killed as a result of gender-based violence in Canada.<sup>19</sup> In addition, the findings from the CLSA highlight that older people identifying as Black, and living with disabilities—including physical, cognitive, and mental health disabilities—were at higher risk of elder abuse.<sup>20</sup>

## Long-term care and palliative care

As COVID-19 ravaged through long-term care homes in Canada, it shone a spotlight on Canada's neglect of older people and amplified pre-existing inequalities and systemic issues within these institutions. As an example, the Canadian Armed Forces' (CAF) Reports on Long Term Care Facilities shed light on the disturbing conditions and harms suffered by older people in long-term care.<sup>21</sup>

While elder abuse occurs in all contexts, the CLSA's findings<sup>22</sup> highlight that older people in congregate living facilities are at the greatest risk for mistreatment and violence. As highlighted by the Government of Canada's Department of Justice, various factors—such as insufficient staffing, inadequate staff training, poor enforcement of standards, and work-related stress and staff burnout—all contribute to increased risk of elder abuse.<sup>23</sup> As such, the underfunding and understaffing of long-term care homes leaves older people particularly vulnerable to neglect, abuse, and having unmet care needs.

Moreover, a growing body of evidence suggests that such issues tend to be exacerbated at for-profit long-term care homes, where the profit motive may compromise quality of care. For-profit homes have been shown to perform more poorly than non-profit or publicly owned homes on multiple indicators, including hours of care, staffing levels, and rates of hospitalization.<sup>24</sup>

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<sup>19</sup> See: Femicide of older women in Canada, Office of the Federal Ombudsman for Victims of Crime, Department of Justice Canada (2021), [https://www.victimfirst.gc.ca/res/cor/FOW-FOW/index.html#\\_Toc70424280](https://www.victimfirst.gc.ca/res/cor/FOW-FOW/index.html#_Toc70424280)

<sup>20</sup> See: Elder abuse prevalence and risk factors: findings from the Canadian Longitudinal Study on Aging, Dr. David Burnes et al, (2022), <https://www.nature.com/articles/s43587-022-00280-2>

<sup>21</sup> See: Joint Task Force Central, Canadian Armed Forces, Observations in Long term Care facilities in Ontario (2020): <http://www.documentcloud.org/documents/6928480-OP-LASER-JTFC-Observations-in-LTCF-in-On.html>  
See: Reports on Long Term Care Facilities in Ontario & Quebec, Public Safety Canada, Government of Canada, (2020): <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20200831/069/index-en.aspx>

<sup>22</sup> See: Elder abuse prevalence and risk factors: findings from the Canadian Longitudinal Study on Aging, Dr. David Burnes et al, (2022), <https://www.nature.com/articles/s43587-022-00280-2>

<sup>23</sup> See: Crime and Abuse Against Seniors: A Review of the Research Literature with Special Reference to the Canadian Situation, Department of Justice, Government of Canada, (2021): <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/crim/sum-som.html>

<sup>24</sup> See: A Pan-Canadian Perspective on Institutional Long-Term Care, Whitney Berta et al, Health Policy 79, no. 2–3 (December 2006): 175–94, <https://doi.org/10.1016/j.healthpol.2005.12.006>;

See: Observations on Institutional Long-Term Care in Ontario: 1996–2002, Whitney Berta, Audrey Laporte, and Vivian Valdmanis, Canadian Journal on Aging / La Revue Canadienne Du Vieillissement 24, no. 1 (2005): 71–84, <https://doi.org/10.1353/cja.2005.0002>;

See: Quality of Care in For-Profit and Not-for-Profit Nursing Homes: Systematic Review and Meta-Analysis, V. R Comondore et al., BMJ 339 (August 4, 2009): b2732–b2732, <https://doi.org/10.1136/bmj.b2732>;

This crisis in long-term care is not new: while the COVID-19 pandemic necessitated new attention and urgency to resolving the inadequate state of long-term and palliative care facilities, this momentum must be continued post-pandemic. Many pre-existing inequalities and systemic issues within these institutions were amplified by the pandemic, including inadequate conditions, mistreatment, neglect and abuse, and poor levels of care, highlighting the need for increased oversight and better inspection processes, as well as lasting solutions that ensure the health, care and dignity of older people are protected.<sup>25</sup> In a series of engagements with disability rights holders and experts, conducted in Autumn 2022, the CHRC heard concerns regarding the lack of access to quality healthcare, dignity and autonomy experienced by residents in congregate care during the pandemic. For example, the CHRC heard that some building policies prohibited residents from either leaving the building themselves, or accepting visitors, citing health concerns. Meanwhile, building staff were permitted to come and go. Advocates and rights holders alike have highlighted the discriminatory nature of policies such as these, and the elevated risk of abuse and violence faced by residents due to limited contact with their family, advocates, and community.

## Access to justice

The CHRC continues to advocate for improved access to justice for all.<sup>26</sup> Under international human rights law, Canada has obligations to ensure access to justice including as a State Party to the International Covenant on Civil and Political Rights,<sup>27</sup> and the CRPD.<sup>28</sup> Despite these international obligations, older people living in Canada face persistent and specific barriers in accessing justice.

Older people face various challenges in accessing justice such as the lack of awareness of their legal rights and existing legal mechanisms, the high cost of legal advice and representation, and the lack of and limited nature of financial aid.<sup>29</sup> In most instances, elder abuse is committed by

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See: Hospitalization and Mortality Rates in Long-Term Care Facilities: Does for-Profit Status Matter?, Peter Tanuseputro et al., *Journal of the American Medical Directors Association* 16, no. 10 (October 2015): 874–83, <https://doi.org/10.1016/j.jamda.2015.06.004>;

<sup>25</sup> See: Older persons living in long-term care homes and the right to adequate housing to Canada, Submission to the UN Independent Expert on the enjoyment of all human rights by older persons, by the Centre for Equality Rights in Accommodation Canada (2022), <https://www.ohchr.org/sites/default/files/documents/issues/olderpersons/2022-report-right-housing/ngos-csos/2022-08-03/submissions-older-persons-right-to-adequate-housing-CERA-en.pdf>

<sup>26</sup> See: Improving access to justice for all, Canadian Human Rights Commission (2017), <https://2017.chcreport.ca/what-we-did-improving-access.php>

<sup>27</sup> Articles 16, 17, and 26, UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>

<sup>28</sup> Article 13, UN General Assembly, *Convention on the Rights of Persons with Disabilities*: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

<sup>29</sup> See: Access to Justice, Canadian Network for the Prevention of Elder Abuse, <https://cnpea.ca/en/tagged/127-access-to-justice>;



the families and caregivers of older people in private settings such as personal homes and institutions.<sup>30</sup> As such, the dependency of victimized older people on their abusers creates unique barriers to reporting and accessing resources.<sup>31</sup> Furthermore, older people experiencing violence and/or mistreatment are often unwilling to report their abuse due to the social stigma, concern, and consequences of reporting, including fear of retaliation and institutionalization.<sup>32</sup>

The CHRC acknowledges that Canada's ratification to the CRPD included an interpretive declaration and conditional reservation with respect to Article 12, which broadly states that Canada reserves the right to continue to use substitute decision-making arrangements in appropriate circumstances.<sup>33</sup> Various parties have called on Canada to withdraw its reservation to Article 12, including disability rights holders and their representative organizations, as well as the United Nations Special Rapporteur on the rights of persons with disabilities during her April 2019 visit to Canada.<sup>34</sup> Across Canada, the use of substitute decision-making regimes, such as guardianship, is still the norm. Substitute decision-making can enable elder abuse, especially financial abuse, as older people are removed from decision-making capacities.<sup>35</sup>

In addition, older people face barriers due to the inaccessibility of the justice system. Older people may encounter barriers that include living in social isolation, an inability to contact or access services, and accessibility concerns when using transportation.<sup>36</sup> Furthermore, older people with disabilities may face barriers in reporting mistreatment and/or accessing supports and services, if they are reliant on their abuser for communication with others.

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See: OHCHR Presentation, Older Persons Access to Justice and Remedies (2019), <https://www.un.org/development/desa/family/wp-content/uploads/sites/23/2019/06/Presentation-document-Older-persons-access-to-justice-Hauser.pdf>

<sup>30</sup> See: Crime and Abuse Against Seniors: A Review of the Research Literature with Special Reference to the Canadian Situation, Department of Justice Canada, Government of Canada, (2021),

<https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/crim/sum-som.html>

<sup>31</sup> See : What is Elder Abuse and Neglect?, Canadian Centre for Elder Law (2022), <https://ccelderlaw.ca/what-is-elder-abuse-and-neglect/>

<sup>32</sup> See: Reporting, Elder Abuse Prevention Ontario (2020):

<https://eapon.ca/reporting/#:~:text=Afraid%20of%20the%20abuser%20and,deny%20the%20abuse%20is%20happening>.

<sup>33</sup> See: [Submission to the Committee on the Rights of Persons with Disabilities in Advance of the Committee's Development of the List of Issues Prior to the Reporting for Canada's 2nd Periodic Review](https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-15.en.pdf) <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-15.en.pdf>.

<sup>34</sup> In her end of mission statement, the Special Rapporteur recognized Canada's fundamental contribution to the notion of supported decision-making in the earlier drafting process of the CRPD, and reiterated both her recommendation to withdraw Canada's reservation to this article and to speed up the process to eliminate all forms of substitute decision-making across the country. See:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24481&LangID=E>.

<sup>35</sup> See: The Problem of Abuse and Misuse in Substitute Decision-Making Powers, Law Commission of Ontario (2017): <https://www.lco-cdo.org/en/our-current-projects/legal-capacity-decision-making-and-guardianship/legal-capacity-decision-making-and-guardianship-discussion-paper-2/i-the-problem-of-abuse-and-misuse-of-substitute-decision-making-powers/>

<sup>36</sup> See: Violence Against Women Who are Older, Centre for Research & Education on Violence Against Women & Children, Western University, [https://gbvlearningnetwork.ca/our-work/issuebased\\_newsletters/issue-18/index.html](https://gbvlearningnetwork.ca/our-work/issuebased_newsletters/issue-18/index.html)



As highlighted by the Canadian Centre for Elder Law, there are significant gaps in the capacity of legal and healthcare professionals, and other service providers, in addressing and supporting older people experiencing abuse.<sup>37</sup> There are substantial stigmas associated with aging as well as its intersections with disability including dementia, which may cause service-related barriers. Professionals and service providers may lack recognition on the issue of elder abuse and as a result may fail to recognize the signs of elder abuse by falsely attributing the signs of abuse to aging and dismissing older people seeking help due to ageist beliefs that associate aging with confusion and memory loss.<sup>38</sup>

Furthermore, given Canada's federalist model, jurisdiction poses significant barriers in accessing justice. The federal Criminal Code does not currently include specific provisions on any form of family violence, including elder abuse. Instead, current jurisprudence addresses elder abuse through existing statutes on harm, assault, theft, and fraud.<sup>39</sup> Provinces and territories<sup>40</sup> each employ their own definitions and legal mechanisms to address elder abuse.<sup>41</sup> This can prevent redress for certain forms of abuse, given the diversity of definitions and scope across the country. The CHRC amplifies and echoes the calls of advocates, such as the International Longevity Centre, to harmonize protections for older people across Canada.<sup>42</sup>

## **Protection and social security; economic security**

Older people in Canada remain one of the most financially vulnerable populations—especially, those who live alone.<sup>43</sup> As highlighted by the findings from the CLSA, older people reporting financial need are at heightened risk of experiencing abuse, violence, and/or mistreatment.<sup>44</sup> Advocacy organizations have raised concerns regarding the gaps and inadequacy in the social

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<sup>37</sup>See: Supporting Vulnerable Victims and Witnesses, Canadian Centre for Elder Law (2023):

<https://www.bcli.org/project/supporting-vulnerable-victims-and-witnesses/>

<sup>38</sup> See: Violence Against Women Who are Older, Centre for Research & Education on Violence Against Women & Children, Western University (2016): <https://gbvlearningnetwork.ca/our-work/issuebased-newsletters/issue-18/index.html>

<sup>39</sup> See: Crime and Abuse against Seniors: A review of the Research Literature with Special Reference to the Canadian Situation, Department of Justice Canada, Government of Canada (2021),

<https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/crim/sum-som.html#:~:text=Up%20to%20one%20percent%20of,most%20prevalent%20forms%20of%20abuse.>

<sup>40</sup> With the exception of Nunavut, who does not currently have a definition or means of explicitly addressing elder under territorial statutes. <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/elder-aines/def/p23.html>

<sup>41</sup> <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/elder-aines/def/p23.html>

<sup>42</sup> See: Report on violence, abuse, and neglect of older persons: Input to the report of the UN Independent Expert on the enjoyment of all human rights of older persons to the 54<sup>th</sup> session of the UN Human Rights Council, International Longevity Centre Canada, Canadian Network for the Prevention of Elder Abuse, Elder Abuse Prevention Ontario (2023), <https://eapon.ca/wp-content/uploads/2023/04/FinalReportonViolence%5EJabuseandneglectUNIEontheHumanRightsofOlderPersons.pdf>

<sup>43</sup> See, Statistics Canada (2019). Canadian Income Survey, 2017. Available at:

<https://www150.statcan.gc.ca/n1/daily-quotidien/190226/dq190226b-eng.htm>

<sup>44</sup> See: Elder abuse prevalence and risk factors: findings from the Canadian Longitudinal Study on Aging, Dr. David Burnes et al, (2022), <https://www.nature.com/articles/s43587-022-00280-2>

supports for older people in Canada. In particular, advocates have highlighted the failure of the Old Age Security (OAS) and Guaranteed Income Supplement (GIS) programs to account for inflation and increased cost of living.<sup>45</sup> Moreover, pension insecurity faced by older people has been highlighted by the National Institute on Ageing, a Canadian civil society organization, in their National Seniors Strategy.<sup>46</sup> The CHRC echoes the calls of advocates who wish to see increased pension security so that all older people may retire with dignity.

Older people with disabilities face particular barriers to living with dignity in the community. During a recent series of engagements, conducted in Autumn 2022 by the CHRC, people with disabilities highlighted how they are often discouraged from marrying or seeking civil-law partnerships, as much of their social support depends on their single status. Canada must do more to eliminate the disproportionate levels of poverty faced by all older people, including those with disabilities.

### **Participation in public life and in decision-making processes; social inclusion**

As Canada moves to address and eliminate elder abuse, older people must be included in decision-making processes. Ensuring participation for all rights holders in the decision-making process is a fundamental part of any rights-based approach and Canada must ensure that older people can fully realize this right. Furthermore, participation in social life is integral and ensures that older people can maintain independence and inclusion in their communities.<sup>47</sup> Social inclusion prevents isolation – which especially affects those who are most vulnerable to exploitation.<sup>48</sup>

## **Part 2) Options on how best to address the gaps**

**Please state how your Government/organization has engaged with international and regional human rights mechanisms (for example: universal periodic review (UPR) treaty bodies, special procedures, regional mechanisms), specifically with regard to older persons.**

The CHRC has spoken on the challenges faced by older people through various submissions to UN treaty bodies and special procedures mechanisms. For example, in April 2023, the CHRC provided a submission to the Human Rights Council on the occasion of its review of Canada

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<sup>45</sup> See: Protecting the human rights of older persons: Challenges to the human rights of older people during and after COVID-19 (2022), <https://www.ilc-alliance.org/wp-content/uploads/2022/01/ILC-GA-Protecting-the-human-rights-of-older-persons.pdf>

<sup>46</sup> See: Pillar 1, Ensure that older Canadians do not live in poverty by improving their income security, National Seniors Strategy by the National Institute on Aging [https://nationalseniorsstrategy.ca/the-four-pillars/pillar-1/older-canadians-and-poverty/#\\_edn2](https://nationalseniorsstrategy.ca/the-four-pillars/pillar-1/older-canadians-and-poverty/#_edn2)

<sup>47</sup> See: Social participation and the health and well-being of Canadian seniors, Statistics Canada, Government of Canada, (2012) <https://www150.statcan.gc.ca/n1/pub/82-003-x/2012004/article/11720-eng.htm>

<sup>48</sup> See: Social isolation of seniors: A focus on LGBTQ seniors in Canada, Employment and Social Development Canada, Government of Canada (2022), <https://www.canada.ca/en/employment-social-development/corporate/seniors/forum/social-isolation-lgbtq.html>

during the 4th cycle of the Universal Periodic Review.<sup>49</sup> In its submission, the CHRC spoke to the issue of institutionalization and its disproportionate impacts on older people. In 2022, the CHRC also provided a submission to the Committee on the Rights of Persons with Disabilities on the Draft Guidelines on Deinstitutionalization.<sup>50</sup> The CHRC's submission highlighted the impacts of institutionalization on older people with disabilities in Canada and the need to improve access to accessible housing in order to deinstitutionalize people with disabilities.

In addition to engagements with international and regional human rights mechanisms, the CHRC has advocated for the rights of older people through domestic mechanisms. The Office of the Federal Housing Advocate at the CHRC, made a submission to the Government of Canada's recent consultation on the drafting of a federal Safe Long-Term Care Act. The submission focused on the need to ensure that long-term care legislation, policies, and funding comply with the government's commitments under the National Housing Strategy Act, the United Nations Declaration on the Rights of Indigenous Peoples Act, and the Convention of the Rights of People with Disabilities, as well as the importance of providing adequate support to non-profit and public long-term care homes to mitigate the consequences of for-profit ownership. In addition, in 2019, the CHRC published a report alongside the Office of the Correctional Investigator (OCI) which highlighted the challenges associated with older people in prison, including management of chronic health conditions, accessibility and accommodation of disability, institutionalization, end of life care and dying with dignity in prison.<sup>51</sup>

### **What other options can be considered to strengthen the protection of older persons? Please elaborate.**

The CHRC amplifies the calls of rights-holders and human rights advocates to enhance and protect the rights of older people to address the unique barriers they face. In addition, the CHRC advocates for the progressive realization of the human right to adequate housing, which includes increasing affordable housing supply, ensuring housing is accessible and that support services are available so that all older people may age in place.

The CHRC also amplifies the calls of disability rights holders and advocates to move towards full implementation of Article 12 of the CRPD by Canada. Full realization of Article 12 would allow older people to be more involved in decision-making processes, and help prevent financial abuse in situations where substitute decision-makers have full control and oversight of an older person's finances.

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<sup>49</sup> See: CHRC Submission to the United Nations Human rights council on the occasion of its review of Canada during the 4<sup>th</sup> cycle of the Universal Period Review (2023), <https://www.chrc-ccdp.gc.ca/en/resources/publications/submission-the-united-nations-human-rights-council>

<sup>50</sup> See: CHRC submission to the Committee on the Rights of Persons with Disabilities on the Draft Guidelines on Deinstitutionalization (2022), <https://www.ohchr.org/sites/default/files/documents/hrbodies/crpd/cfi-deinstitutionalization/submissions/2022-07-01/Canadian-HR-Commission-29-06-2022.docx>

<sup>51</sup> See: Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody, Canadian Human Rights Commission and Office of the Correctional Investigator (2019), <https://www.chrc-ccdp.gc.ca/en/resources/publications/aging-and-dying-prison-investigation-the-experiences-older-individuals>

The CHRC also reiterates its calls for Canada to ratify the Optional Protocol to the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The CHRC is of the view that having transparent and independent oversight and accountability mechanisms in all places of detention lessens the risk of abuse and ill-treatment, reduces corruption, and restores dignity and human rights for those in the most vulnerable circumstances. The CHRC believes that the ratification of the OPCAT and the subsequent designation of an appropriate National Preventive Mechanism (NPM) is an important and necessary step that Canada needs to take.<sup>52</sup> This could be an important tool to help prevent and reduce elder abuse within palliative and long-term care homes, as an NPM would include oversight of these spaces.

### **If applicable, what is your assessment on the protection of the human rights of older persons according to regional and international instruments?**

The CHRC welcomes the evolution of international human rights law, so that all rights holders, including older people, may access and enjoy their human rights. As highlighted by the Office of the High Commissioner for Human Rights (OHCHR), the international legal framework on the human rights of older people remains fragmented and incomplete, with evident gaps in protections.<sup>53</sup> The rights of older people are unrealized because of gaps in the existing international and regional instruments, including the lack of explicit recognition of all older people in international human rights law.

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<sup>52</sup> In May 2016, Canada announced its intention to ratify the OPCAT. Despite numerous calls for Canada to ratify the OPCAT, which have been made by the CHRC as well as oversight bodies including the Office of the Correctional Investigator, various stakeholders, and international human rights experts and mechanisms, at present the status of this commitment is unclear, and further details or updates have yet to be provided. The CHRC continues to call for an update on the status of Canada's ratification of the OPCAT in its various submissions to UN treaty bodies, including most recently in its submissions on the occasion of Canada's Universal Periodic Review, and to the Committee against Torture. See also the OCI 2020-2021 Annual Report, section 6, Canada's Ratification of the Optional Protocol to the Convention against Torture (OPCAT), available at: <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20202021-eng.aspx#s9>.

<sup>53</sup> See: Older Persons Access to Justice and Remedies, UN Office of the High Commissioner for Human Rights (2019), <https://www.un.org/development/desa/family/wp-content/uploads/sites/23/2019/06/Presentation-document-Older-persons-access-to-justice-Hauser.pdf>