

CANADA'S RESPONSE TO MR. MARTIN GARCIA MORITAN, CHAIR-DESIGNATED OF THE UNITED NATIONS OPEN-ENDED WORKING GROUP ON AGEING

In advance of the Eighth Working Session of the United Nations (UN) Open-ended Working Group on Ageing (OEWGA), the following provides the Government of Canada's responses on the call for input on the two issues "**Equality and non-discrimination**" and "**Neglect, violence and abuse**" to be discussed at the upcoming meeting to be held from July 5 to 6, 2017, in New York.

I. EQUALITY AND NON-DISCRIMINATION

1) Does your country's constitution and/or legislation

(a) guarantee equality explicitly for older persons or people of all ages and

The Canadian Charter of Rights and Freedoms, which forms part of Canada's constitution, guarantees equality before and under the law, and the right to the equal benefit and protection of the law without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

(b) forbid discrimination explicitly on the basis of age? If so, how is the right to equality and non-discrimination defined?

All governments in Canada—federal, provincial and territorial—have adopted legislation that provides protection against discrimination by individuals in the private sector, as well as by governments, and which prohibits discrimination on various grounds, including age, in regard to employment matters, the provision of goods, services and facilities customarily available to the public, and accommodation. Employers and service-providers have a duty to make reasonable accommodation for the needs of those protected by the law requiring employers and service-providers to make a genuine effort, except where it would cause undue hardship, to accommodate the special needs of members of protected groups, even if doing so may cause minor inconvenience to others.

Human rights legislation permits distinctions on the basis of prohibited grounds of discrimination including age in the employment area, if they are based on bona fide and reasonable occupational qualifications or requirements, and in the provision of services, facilities and accommodation, if the distinctions have a bona fide and reasonable justification.

Canadian courts and tribunals have found that a number of mandatory retirement policies discriminate on the basis of age under the Charter or under human rights legislation. A mandatory retirement policy will generally only be considered non-discriminatory if the employer can establish a bona fide occupational requirement, and demonstrate that they would incur undue hardship in accommodating older employees. Mandatory retirement policies have been upheld for example, for commercial airline pilots, firefighters and police officers.

2) Does your country produce information about discrimination against older persons in the following or other areas (employment, access to goods and services, social protection, health care, social care, justice, inheritance, decision making and autonomy, living environment, etc.)? If so, what are the main findings?

Canada is gathering evidence to better understand discrimination against older persons, including older workers (through the General Social Survey 2016 – Canadians at work), and the implications of age discrimination on this population to inform actions to address this issue.

Canada is also gathering evidence to find ways to help Canadians live long and live well. This is being done through the Canadian Longitudinal Study on Aging (CLSA): a large, national, long-term study of more than 50,000 men and women who were between the ages of 45 and 85 when recruited and will be followed until 2033 or death.

3) Is there information available about inequality of opportunities or outcomes experienced by older persons in the following areas? (Availability of, access to and quality of health care services and Financial services)

Canada provides universal access to health care services without discrimination. Provinces/Territories are responsible for the design, administration and delivery of these services to their residents. The aim of the *Canada Health Act* is to ensure that all eligible residents of Canadian provinces and territories have reasonable access to medically necessary hospital and physician services unprecluded or unimpeded, either directly or indirectly, by charges (extra-billing or user charges) or other means (e.g., discrimination on the basis of age, health status or financial circumstances).

4) Are there any areas where differential treatment based on old age is explicitly justified?

The information below is in addition to the information provided under question 1) b).

Canadians can only contribute to their Registered Retirement Savings Plan (RRSP), a government approved tax shelter sold by financial institutions, until they reach age 71. The age limit is justified by the fact that RRSPs are expressly designed to encourage Canadians, means of taxation deferment, to save for their retirement. This limit has evolved over time: in recognition of the life expectancy gains enjoyed by Canadians, the age limit for RRSP conversion was changed from 69 to 71 in 2007.

The Government of Canada ensures older persons receive a minimum income and contributes to their income replacement in retirement through the Old Age Security (OAS) program. This program includes the OAS pension (for those 65 and over), the income-tested Guaranteed Income Supplement (GIS) (for low-income OAS pensioners) and the income-tested allowances (for 60–64 year-old individuals who are the spouses or common-law partners of GIS recipients, or who are widows or widowers). The fact that the OAS program is limited to older persons is justified due to the difficult circumstances faced by low-income seniors and those facing financial difficulties following the death of their spouse or common-law partner, and who remain unattached. The OAS pension is available as early as age 65 but can be deferred to as late as age 70 in exchange for higher benefits.

While it is subject to age restrictions in terms of eligibility, the Canada Pension Plan (CPP) is not an age-based program. It is a mandatory, contributory social insurance program that provides partial income replacement to workers in Canada and their families in the case of the death, disability or retirement of a contributor. Individuals can collect a permanently reduced pension as early as age 60, or receive permanent increases by deferring their pension up to age 70. However, the value of all CPP benefits (save those provided to children) are earnings-related, and determined by the contributions made over the individual's work history, and only modified by their age.

II. NEGLECT, VIOLENCE AND ABUSE

1) In your country, are there specific studies or surveys (from governmental, nongovernmental or academic sources) on violence, abuse and neglect experienced by older persons?

The Government of Canada funds studies specific to physical, psychological, sexual elder abuse and neglect as well as intimate partner violence and childhood maltreatment experienced by older adults. The Canadian Longitudinal Study on Aging (CLSA) is a large, national, long-term study of more than 50,000 men and women who are between the ages of 45 and 85 when recruited and will be followed until 2033 or death. Within this study, specific data is collected from CLSA participants related to elder abuse and childhood maltreatment.

The Canadian General Social Survey on Victimization also collects self-reported data about the incidence and nature of crimes, including violence and abuse against older adults.

Additional information is available from the National Initiative for the Care of the Elderly (non-governmental organization) who conducted a National Survey on the mistreatment of older Canadians to provide data on the prevalence, risk factors, and causes of mistreatment of older Canadians in the general population. The study was carried out between 2012 and 2015.

Data from the Uniform Crime Reporting Survey is also available and reveals the extent to which Canadian seniors were victims of police-reported violent crime.

2) (a) What forms of violence, abuse and neglect (e.g. physical, psychological, sexual, financial, or other) are registered? What is the setting in which they occur (i.e. residential and non-residential)? Is there information about the type of perpetrators?

According to available research, physical, psychological, sexual and financial elder abuse and neglect, as well as intimate partner violence in an older population, have all been recorded in Canada at varying prevalence rates. Abuse occurs both in community and residential care locations. Perpetrators are identified by respondents in all surveys assessing prevalence, as well as in police reports. Those most likely to commit this type of crime are family members, close friends and care providers.

(b) Does violence, abuse and neglect particularly affect specific groups of older persons? If so, which groups and how?

Canadian research shows that some seniors may be more likely to experience abuse or neglect, such as those who are frail, dependent or isolated, or those with a cognitive impairment or a physical disability. Research also indicates that those who have suffered other forms of abuse earlier in the life course, such as childhood maltreatment or intimate partner violence, are at higher risk of elder abuse and neglect.

3) Does your country's legislation explicitly address issues of violence, abuse and neglect against older persons? If not, what legislation applies to such issues in the context of older persons? Does this legislation sufficiently address the full range of violence against older persons?

Older adults are protected by all the provisions of the *Criminal Code* that address crime, including assault, sexual assault, intimidation, uttering threats, criminal negligence causing bodily harm and fraud. However, where crimes are committed against an elderly victim wholly or partially because

of their age—or disability-based bias, prejudice or hate—the *Criminal Code* expressly recognizes this as an aggravating circumstance for sentencing, as is the case where the offender abused a position of trust or authority in relation to the victim. Specifically, paragraph 718.2(a) of the *Criminal Code* provides that where an offence had a significant impact on the victim due to their age and other personal circumstances, including their health or financial situation, it shall be considered an aggravating factor for sentencing purposes. Explicitly stating this aggravating factor in the *Criminal Code* recognizes that the impact of a crime on an elderly victim is not always or primarily tied to the chronological age of the victim and often associated with the combined unique characteristics of that older victim, such as their health or financial situation that when viewed together, reflect all the determinants of the impact of that offence on the “older” victim.

In addition, Section 215(3) of the *Criminal Code* provides that anyone who does not provide the necessities of life when they have a legal duty to do so is “guilty of an indictable offence and liable to imprisonment for a term not exceeding five years”. This provision applies to individuals who have a duty to care for persons under their charge who are unable to care for themselves by reason of age or illness among other factors.

The Federal Victims Strategy (FVS) is a horizontal initiative that consolidates all federal government work related to victims and survivors of crime. The FVS aims to improve access to justice for victims and survivors of crime in the criminal justice system and is relevant to older adult victims of crime. The Victims Fund, which is part of the FVS, is available to provincial and territorial governments and non-governmental organizations to support projects that address the needs of victims and survivors of crime in the criminal justice system, including older adult victims. Through the Victims Fund and the Family Violence Fund, Canada has funded a number of projects in relation to elder abuse.

4) What legislation exists to protect older persons specifically against financial abuse, including inheritance abuse?

While there is no specific offence of family violence in the *Criminal Code*, most acts of family violence are crimes in Canada. Offences in the *Criminal Code* related to financial abuse within the family could include: theft; theft by person holding power of attorney; misappropriation of money held under direction; theft of, forgery of credit card; extortion; forgery; and fraud.

Canada produces a number of public legal education and information products designed to raise awareness of the risks of violence and fraud against older people, including *Elder Abuse is Wrong*, a booklet for older adults who may be suffering from abuse by someone they trust but also for everyone who wants to assist and encourage an older adult to get help, *Credit Card Fraud*, *Door-to-Door Sales Fraud*, *Investment Fraud* and *Lottery Fraud*.