

INTERNATIONAL LONGEVITY CENTRE (ILC) CANADA
GUIDING QUESTIONS FOR THE 13TH SESSION FOCUS AREA 1
RIGHT TO HEALTH AND ACCESS TO HEALTH SERVICES



Human Rights do not have a best before date
Support a U.N. Convention on the Rights of Older Person

National legal and policy framework

It is important to distinguish between a legal right to health care and the public's perception of the existence of that right.

Public opinion polls reveal that many Canadians believe they have a constitutional right to receive health care even though no such right is explicitly contained in the Canadian Charter of Rights and Freedoms (Charter).

The Charter prohibits age discrimination with an equality clause: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability".

Human rights legislation by the federal, provincial, and territorial governments also prohibit age discrimination.

The Canada Health Act (CHA) governs Canada's publicly funded health care **insurance plan**, which aims to "protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers."

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The CHA does not grant a **right** to health care and has not fully implemented Article 12 of the International Convention on Social, Economic and Cultural Rights, which confirms the fundamental human right of enjoyment “to the highest attainable standard of physical and mental health”.

Canada is a founding member of the Organization of American States but is **not** a signatory to its Inter-American Convention on the Protection of Rights of Older Persons which reaffirms the right to physical and mental health without discrimination of any kind.

Some recent positive measures have been taken in closing the gaps faced by older Canadians with respect to health care. Notably, a United Nations Declaration on the Rights of Indigenous Peoples Act and new LTC standards focusing on better governance, resident-centredness and quality of life, which are not compulsory, and need legislative enforcement for full impact. The UN Convention on the Rights of Persons with Disabilities and could inform how a similar legally binding international instrument could provide the necessary impetus for appropriate legislative action in Canada.

Equality and non-discrimination

Misleading phrases are promulgated intimating health care as a right, including “free health coverage” and “universal health”. Factually, judicially excluded rampant ageism exists within health care in Canada, with a dearth of enforcement, begging the need for vital legal reform through legislation and litigation.

Evidence of ageism based health care or lack of it, is abundantly clear. Age-based triage protocols and rationing of care, paternalism, and

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forced decisions are ubiquitous, within a chronically stressed, underfunded, understaffed, and under-regulated system of care in crisis. Long-term care homes, neglected for decades by successive governments, were easy targets for uncontrolled outbreaks and COVID-19 deaths. Shockingly, Canadian LTC residents accounted for 81% of deaths, the highest proportion compared to an average of 38% amongst all OECD countries.

A forum of federal, provincial, and territorial Ministers responsible for seniors produced “A case study on ageism during the COVID-19 pandemic”, with policy recommendations for reducing ageism in Canadian society, which urgently requires action.

Ontario’s “More Beds, Better Care Act”, ostensibly enacted to free up acute hospital beds, allows inpatients needing an “alternate level of care” to be relocated to any LTC facility with an available bed, appallingly with little or no input from patients or their families.

The crisis in community, home care, and LTC systems, has led to overfilled hospitals and emergency rooms, clogged with patients experiencing complex “social” problems. The principally ageist narrative around aging is focused on loss and negativity, rarely considering older persons’ voices, strengths, wisdom, and experiences. The impact of insidious and systemic ageism on the enjoyment of any right to health older persons may have in Canada is dreadful. Ratification of a UN Convention on the Rights of Older Persons would aid in overcoming this challenge.

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Accountability

In Canada, no express right to health care or the right to access to justice exists for anyone, including older persons. Implicit legal right to access to justice is created by Constitutional principles and confirmed by the Supreme Court of Canada. However, many Canadians may be prevented from exercising this right because of serious impediments to access to justice. Complaints before human rights tribunals based on age are extremely rare. Over the past 40 years, only 12 cases pertaining to age discrimination related to employment for older adults, and none for health care were heard by the Supreme Court of Canada. Data regarding number, type, and resolution complaints regarding health care for older people is not easily available, needing crucial action.

Ageism must now be combated through education, intergenerational interventions, and reforms of policy and law. A UN convention on the rights of older persons could improve access to justice through pathways tailored for older persons and when right to health is impeded.