

Elder Abuse

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- [What is abuse?](#)
- [Who abuses elders?](#)
- [What is neglect?](#)
- [What is elder abuse?](#)
- [Do elders experience abuse by a spouse or partner \(“domestic abuse”\)?](#)
- [What is Power of Attorney?](#)
- [What is the Adult Protection Act?](#)
- [What adults are in need of protection?](#)
- [Who enforces the Adult Protection Act?](#)
- [How does the Adult Protection Service find out that an adult is being abused or neglected?](#)
- [Who reports elder abuse?](#)
- [Will anyone find out who has reported the abuse?](#)
- [What happens when a report of abuse is made?](#)
- [What if the adult refuses services recommended by Adult Protection?](#)
- [Must the adult and the caregiver agree to an assessment by the Adult Protection Service?](#)
- [What happens if the adult lives in a home for special care?](#)
- [Does the Adult Protection Act protect against financial abuse?](#)
- [Who decides whether the adult is in need of protection?](#)
- [What happens at the court hearing in Adult Protection cases?](#)
- [What else can the judge do?](#)
- [Is the judge's decision final?](#)
- [How long does an Adult Protection court order last?](#)
- [Must the adult have a lawyer?](#)
- [How much will a lawyer cost?](#)
- [What type of services does the Adult Protection Service provide?](#)
- [Who pays for the services?](#)
- [Can the adult be removed from the home?](#)
- [What happens to the abuser under the Adult Protection Act?](#)
- [Will the police be involved in the investigation?](#)
- [What happens in court if the police lay charges?](#)
- [What happens to abusers convicted of a criminal offence?](#)
- [Is there a register of abusers?](#)
- [Where do I get more information for elders?](#)
- [Where do I get more information about domestic abuse?](#)

Q – What is abuse?

A – Abuse can be:

- **Physical**, such as punching, slapping, using physical restraints, and scalding with hot water;
- **Sexual**, including any form of sexual activity with a person without the consent of that person, such as sexual intercourse, fondling or kissing;
- **Psychological or mental**, such as treating the adult like a child, continually criticizing or belittling the adult, verbal abuse, locking the adult in a room, not allowing the adult to have visitors, and threatening to put the adult into an institution; or
- **Financial**, such as stealing the adult's pension cheque or savings, threatening not to visit or allow grandchildren to visit unless the adult gives money or gifts, and misusing a Power of Attorney.

[<Back to questions>](#)

Q – Who abuses elders?

A – The abuser may be a spouse or partner (“domestic abuse”), family member, friend or caregiver.

[<Back to questions>](#)

Q – What is neglect?

A – Neglect is the failure to provide adequate food, medical attention, shelter, or clothing to the adult.

Neglect might be by a spouse or partner (“domestic abuse”), family member, friend or caregiver. Also, there may be self-neglect, such as when adults live alone and cannot adequately care for themselves but refuse help.

[<Back to questions>](#)

Q – What is elder abuse?

A – Elder abuse is a general term for abusive behaviour towards an older person. The term includes physical assault, sexual assault, mental abuse, misuse of medication, financial exploitation and neglect.

[<Back to questions>](#)

Q – Do elders experience abuse by a spouse or partner (“domestic abuse”)?

A – Yes. Abuse by a spouse or partner (“domestic abuse”) can occur at any age or stage in a relationship. For more information on domestic abuse issues and resources see the other Family Violence FAQs in this section.

[<Back to questions>](#)

Q – What is Power of Attorney?

A – A Power of Attorney is a legal document that allows you to give another person power to act on your behalf. Before you give a Power of Attorney to anyone, it is wise to talk with a lawyer or other knowledgeable person about the type of Power that best suits your needs, the legal requirements and how to protect yourself from abuse of the Power.

For more information on Powers of Attorney see FAQs Wills and Estates

[<Back to questions>](#)

Q – What is the Adult Protection Act?

The Adult Protection Act is a provincial law that provides protection from abuse or neglect to adults in need of protection.

The Act offers protection from physical, sexual and mental abuse and neglect. It does not protect against financial abuse.

The purpose of the Adult Protection Act is to protect vulnerable adults, not to punish abusers (“offenders”). However, if the abuse involves a criminal offence, such as assault, sexual assault or fraud, the abuser may be

charged and, if found guilty, punished by the criminal court.

The Act offers protection to those who lack the physical or mental ability to care for themselves and places a duty on everyone to report the abuse or neglect of such an adult.

[<Back to questions>](#)

Q – What adults are in need of protection?

A – An adult in need of protection is a person who:

- is aged 16 or over
- has a physical disability or mental infirmity
- is abused or neglected in the premises where he or she resides
- is unable to protect him or herself from such abuse or neglect
- is refusing or delaying or unable to provide for his or her own care

[<Back to questions>](#)

Q – Who enforces the Adult Protection Act?

A – The Department of Health enforces the Act through its Adult Protection Service. The Adult Protection Service investigates reports of abuse and neglect. Cases under the Act are dealt with in Family Court or, in the Halifax Regional Municipality or Cape Breton, the Supreme Court (Family Division).

The Court may make an order to allow the Adult Protection Service to enter an adult's home.

[<Back to questions>](#)

Q – How does the Adult Protection Service find out that an adult is being abused or neglected?

A – Everyone must report abuse and neglect to the Adult Protection Service or to the police.

Reports often come from community agencies who have contact with the adult, the police, health care professionals, relatives, neighbours and friends of the adult.

We are all required to report information that an adult is being abused or neglected and is in need of protection.

[<Back to questions>](#)

Q – Who reports elder abuse?

A - We are all required to report information if we believe that an adult is being abused or neglected and is in need of protection.

For example, Jack's neighbour is Dora, an elderly woman with a physical disability. Dora lives with her husband Joe. Jack notices that Dora often has bruises and cuts on her face. Dora explains that the injuries are caused by her accidentally falling or walking into doors. If Jack believes that Dora is being abused and is unable to protect herself, he must report it.

While the person who reports abuse or neglect does not have to be absolutely certain that abuse or neglect is

taking place, he or she must have good reason to believe that the adult is in need of protection.

The person making the report is protected by the Adult Protection Act so that no court action can be taken against him or her unless the report was made maliciously or without reasonable cause.

It is an offence not to report abuse and neglect of an adult in need of protection. You can be fined up to \$1,000 and get up to one year in prison or both. Charges must be laid within one year of the offence.

Even if the information about abuse or neglect is received confidentially or is privileged, it has to be reported. For example, a doctor must report information he or she receives about abuse or neglect of an adult in need of protection.

[<Back to questions>](#)

Q - Will anyone find out who has reported the abuse?

A - The identity of the person making the report is kept confidential. However, if the case goes to court, the person may have to give evidence (“testify”) in court. His or her identity would then be known.

[<Back to questions>](#)

Q – What happens when a report of abuse is made?

A – If there are reasons to believe that the adult is in need of protection, the Adult Protection Service may investigate by visiting the adult’s home, talking with the adult, the adult’s spouse or partner, family, doctor, caregivers, neighbours, the person accused of abuse and the person who reported the abuse.

If the Adult Protection worker finds evidence that the adult is in need of protection, the worker may offer services to the adult. If the Adult Protection Worker believes there has been a criminal offence, such as assault, sexual assault, or fraud, he or she must report to the police.

[<Back to questions>](#)

Q – What if the adult refuses services recommended by Adult Protection?

A - If the adult refuses services recommended by Adult Protection, the worker may ask a doctor to assess the adult’s level of competency.

If the assessment shows that the adult is able to make competent decisions and that he or she is not refusing assistance because of threats, the Adult Protection Service will end its investigation.

They may suggest services that the adult can use, but they cannot force them on the adult.

For example, Mary shares her home with her daughter and son-in-law. They do not allow her to share meals with them or to have friends visit her. She accepts the situation and is glad that she can continue to live in her house. If Mary is competent to make decisions and is not under duress, Adult Protection can offer services, but cannot force her to accept them.

[<Back to questions>](#)

Q – Must the adult and the caregiver agree to an assessment by the Adult Protection Service?

A – No, but if either obstruct the assessment the Adult Protection Service may ask a Family or Supreme Court (Family Division) judge for a court order authorizing entry into the adult's home.

Usually four days notice is given before an assessment is carried out. In an emergency a judge can allow entry without notice.

[<Back to questions>](#)

Q – What happens if the adult lives in a home for special care?

A – Reports of abuse or neglect of an adult who lives in a home for special care are investigated by Adult Protection staff located in various Continuing Care offices (formerly Home Care offices) of the Department of Health.

The police may be called in cases of assault, fraud or theft.

[<Back to questions>](#)

Q – Does the Adult Protection Act protect against financial abuse?

A – No. If you believe that an adult is being financially abused and is unable to look after his or her affairs, you should contact the Public Trustee or the police.

The Public Trustee is appointed by government. The Trustee may manage the financial affairs of persons who are unable to manage their own affairs. For further information see the Legal Information Society brochure on *The Public Trustee*.

Financial abuse may also be a criminal offence, for example, stealing, forging a signature, and misusing a Power of Attorney. An adult who is being financially abused should talk to the police and to a lawyer.

[<Back to questions>](#)

Q – Who decides whether the adult is in need of protection?

A – A judge decides. If there is evidence that an adult in need of protection is not competent to decide whether to accept assistance or is under duress, the Adult Protection Service may ask a Family Court or Supreme Court (Family Division) judge to make an order that the adult is in need of protection.

Before making an order the judge will hold a hearing. Ten days notice of the hearing must be given to the adult and other interested parties, such as the person accused of abuse.

When the Adult Protection worker believes that the adult is in immediate danger, he or she may take the adult into temporary care until the hearing before a judge.

[<Back to questions>](#)

Q – What happens at the court hearing in Adult Protection cases?

A – The judge hears both sides of the case before deciding whether the adult is in need of protection.

The adult may have a lawyer represent him or her at the hearing.

If the judge decides that the adult is not in need of protection, he or she will dismiss the case.

If the judge decides that the adult is in need of protection, he or she may allow the Department of Health to provide the adult with services.

Services provided should help the adult to care for him or herself and provide protection from abuse or neglect.

[<Back to questions>](#)

Q – What else can the judge do?

A – The judge may make a Protective Intervention Order. If the adult’s life or health is in danger from another person, that person may be ordered to:

- leave the adult’s home;
- have no contact or only limited contact with the adult, or;
- pay maintenance for the adult.

A Protective Intervention Order cannot exclude a person from the adult’s home if that person owns or rents the home. However, if the case involves spouse or partner abuse (“domestic abuse”), under a criminal court order the abuser may be ordered to stay away from the family home. See Family Violence FAQs on *Domestic Abuse*, *Peace Bonds*, and *Emergency Protection Orders*.

The judge may notify the Public Trustee if the adult in need of protection does not have a guardian or if the guardian or a person with Power of Attorney is not acting in the best interests of the adult.

[<Back to questions>](#)

Q – Is the judge’s decision final?

A – No. The decision may be appealed to the Supreme Court or the Nova Scotia Court of Appeal. Anyone wishing to appeal should talk with a lawyer before deciding what to do.

[<Back to questions>](#)

Q – How long does an Adult Protection court order last?

A – An order declaring an adult in need of protection lasts for six months. It will expire at that time unless, a further application is heard by the court.

A Protective Intervention Order also lasts for six months.

The Minister of Health, the adult or someone acting on his or her behalf, or the person against whom an order is made, may apply to the Family Court to renew, change, or end the order before the six months are up.

A renewal order lasts for six months. Then another hearing is held and the order may be renewed or ended.

[<Back to questions>](#)

Q – Must the adult have a lawyer?

A – No, but it is a good idea to have one in Adult Protection matters. At the hearing if the adult has not had a chance to talk with a lawyer but would like to, the judge may agree to delay the hearing until the adult talks with a lawyer.

The Adult Protection Service tries to ensure that the adult is represented by a lawyer. The adult will be referred to Legal Aid if he or she cannot afford a lawyer.

If the police lay charges against the abuser and there is a criminal trial, the adult victim will not need a lawyer because a Crown Attorney will handle the case on behalf of the Crown (government).

[<Back to questions>](#)

Q – How much will a lawyer cost?

A – This depends on the lawyer, how difficult the case is and how long the lawyer spends on the case. You should ask the lawyer about costs before you decide to hire him or her.

If you have a low income or are receiving social assistance you may qualify for Legal Aid.

If the application to have an adult declared in need of protection is dismissed, costs may be awarded against the Department of Health. Costs may include all or part of your lawyer's fees.

[<Back to questions>](#)

Q – What type of services does the Adult Protection Service provide?

A – Adults who are in need of protection are provided with services that will protect them from abuse or neglect.

Services provided will depend on what is available in the area where the adult lives. Services will be provided in the home where possible.

The Adult Protection Service does not provide services directly. It refers the adult or the adult's family to the services that they may need and which are available in the community.

For example, the Adult Protection worker may contact the adult's relatives and community agencies, such as homemaker services, to tell them about the adult's situation and to make arrangements for services to be provided to the adult.

Services might include arranging for home help or meals-on-wheels, or discussing with the adult alternative living arrangements, such as shared housing, seniors' apartments, and homes for special care.

[<Back to questions>](#)

Q – Who pays for the services?

A – The adult is expected to pay for the services if he or she can afford to. Some privately-run services, such as meals-on-wheels, charge sliding-scale fees so that users pay what they can afford.

There may also be volunteer services that are provided free of charge.

If the adult cannot afford to pay for services, the province will pay for them.

[<Back to questions>](#)

Q – Can the adult be removed from the home?

A – Yes. The Adult Protection Service may temporarily remove the adult from the home if there is evidence that:

- the adult's life is in danger;
- the adult is in need of protection;
- the adult is unable to decide whether to accept assistance or is being pressured not to accept assistance.

Within five days of removal from the home, the Minister of Health must either:

- return the adult to the home, or
- apply to Family Court or Supreme Court (Family Division) for an order declaring that the adult is in need of protection

If a judge says that the adult is in need of protection, one of the options open to the Department of Health is to place the adult in a home for special care.

The Public Trustee may be asked to intervene to manage the adult's property if there is a danger that the property will be lost, wasted or damaged while the adult is in care.

[<Back to questions>](#)

Q – What happens to the abuser under the Adult Protection Act?

A – The main purpose of the Adult Protection Act is to protect the adult, not to punish the offender.

An investigation by the Adult Protection Service, while it does not punish the offender, may be enough to stop further abuse.

There may be counseling for persons involved in abusive situations either as victims or abusers.

An abuser may be removed from the adult's home under a Protective Intervention Order.

The Adult Protection Act says that anyone who breaks a Protective Intervention Order may be fined up to \$1,000 or get up to one year in prison or both.

Also, the adult may get a peace bond, or, in urgent cases involving domestic abuse, an emergency protection order, to stop the abuser contacting him or her. The adult can call the police if the abuser breaks the peace bond or emergency protection order.

For more information see the Family Violence FAQ on *Peace Bonds* and *Emergency Protection Orders*.

Criminal charges may be laid against the abuser in some situations.

[<Back to questions>](#)

Q – Will the police be involved in the investigation?

A – The police may become involved where there is evidence that the abuse may involve a criminal offence, for

example, physical assault, sexual assault, theft or fraud. Neglect may also be a criminal offence if a person who has a duty to provide for the adult fails to do so.

The adult, a family member, an Adult Protection worker, a neighbour or a friend may contact the police.

The police will investigate the situation and decide whether to lay criminal charges against the person accused of abuse or neglect.

Usually, criminal charges are laid against the abuser only if there is enough evidence to get a conviction. Often, an adult is reluctant to report the abuse or to give evidence because of fear of the abuser, regard for the abuser, or embarrassment or shame about the abuse.

[<Back to questions>](#)

Q – What happens in court if the police lay charges?

A – For more information on what happens in court, who is present in the courtroom, how to give evidence (“testify”), Victim Impact Statements, what to do if you are frightened or if you have been threatened, and other court-related issues, please refer to the Family Violence FAQs on *Domestic Abuse* and *Being a Witness* on this website.

[<Back to questions>](#)

Q – What happens to abusers convicted of a criminal offence?

A - If the abuser (the “offender”) is found guilty of a criminal offence, such as assault, sexual assault, or fraud, he or she will be sentenced. The sentence will depend on the seriousness of the offence. Types of sentences include a fine, a jail term, restitution, a discharge or probation. The judge may choose one or more of these penalties. For example, the judge may fine the offender and place him or her on probation. The offender may get a criminal record. For more information see Criminal Law FAQs *Sentencing*. For more information about abuse by a spouse or partner (“domestic abuse”), see the Family Violence FAQs *Domestic Abuse, Being a Witness, Peace Bonds, and Emergency Protection Orders*.

[<Back to questions>](#)

Q – Is there a register of abusers?

A – No. Reports of abuse in private homes and in institutions are kept on file by the Adult Protection Service. The files are not generally available to the public. However, family members may apply under the Freedom of Information Act.

Abusers who are convicted of a criminal offence, such as assault will have a criminal record.

[<Back to questions>](#)

Q – Where do I get more information for elders?

The Department of Health has offices throughout the Province. Call toll free at 1-800-225-7225.

The Public Trustee
PO Box 685

5151 Terminal Road, Suite 201
Halifax, NS B3J 2T3
Tel: 424-7760

Senior Citizens Secretariat (provides assistance and information to seniors)

Tel: 424-4737

1-800-670-0065 (toll free)

Website: www.gov.ns.ca/scs/elderabucce.asp

Finding a lawyer

Lawyers are listed in the Yellow Pages of the phone book. You can also call the LISNS Legal Information Line and Lawyer Referral Service at 455 – 3135 or toll free in NS at 1-800-665-9779

Legal Aid

Nova Scotia Legal Aid has offices across the province. They are listed in the White Pages of the phone book.

Dalhousie Legal Aid serves the Halifax area. The number is (902) 423-8105.

[<Back to questions>](#)

Q – Where do I get more information about domestic abuse?

Victims' Services supports victims of crime by providing information, support and assistance as a case moves through the criminal justice system.

Head Office: 1-888-470-0773

Dartmouth: 902-424-3307

Kentville 1-800-565-1805

New Glasgow 1-800-565-7912

Sydney 1-800-565-0071

RCMP Seniors Safety Program Some RCMP detachments have a seniors safety program. The Seniors Safety Coordinator will visit with seniors to discuss safety and crime prevention. You can contact your local RCMP detachment to see if they provide this service.

Transition Houses provide residential and outreach services to abused women and their children. For more information, or for details about the Transition House nearest you, you can call the Transition House Association of Nova Scotia (THANS) at (902) 429-7287 or visit the THANS website: www.thans.ca.

Women's Centres provide a variety of services, such as advocacy, accompaniment, referrals and information. There are eight Women's Centres in Nova Scotia: Tri-County, Yarmouth (902-742-0085); Antigonish Women's Resource Centre (902-863-6221); Every Woman's Centre, Sydney (902-567-1212); Lea Place, Sheet Harbour (902-855-2668); Pictou County Women's Centre, New Glasgow (902-755-4647); Second Story Women's Centre, Lunenburg (902-543-1315); The Women's Place Resource Centre, Cornwallis (902-584-7195); and the Central Nova Women's Centre, Truro (902-895-4295).

Making Changes: A Book for Women in Abusive Relationships For an overview of issues and resources for abused women, see the guidebook *Making Changes: A Book for Women in Abusive Relationships*, which is available online at the Nova Scotia Advisory Council on the Status of Women:

www.gov.ns.ca/staw/pubs2006_07/MakingChanges4rev_2006.pdf. You can order a hardcopy by calling the Advisory Council toll free at 1-800-565-8662.

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