



## SENIORS FOR SOCIAL ACTION (ONTARIO)

### EDITORIAL

## HUMAN RIGHTS WITH NO EXPIRY DATE

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Older adults are devalued in the eyes of a society that focuses primarily on their deficits. Labels like “high acuity” are used repeatedly in describing elders. Seldom do we hear of the many contributions older adults make, and have made to Canadian society.

This is in stark contrast to the way that others who require personal support are viewed. When speaking of younger people with disabilities we often hear of their “strengths” and “gifts”- a discourse rightly focused on their value to society. A deficit focus is considered to be detrimental. Rights to inclusion and full citizenship are foundational principles in the disability rights movement.

Contrast this with how elders are viewed – as burdens, their wisdom, years of experience, and many contributions to society given short shrift. In light of this should we be surprised that institutions are seen as inappropriate for younger people with disabilities, but are still considered a necessity for older people with disabilities?

Underscoring this is a belief that rights for persons with disabilities come with an expiry date. After a certain age value to society appears to decrease and the prospect of segregation, exclusion, and institutionalization increase. If we want this to change there needs to be a paradigm shift to a rights focus.

This article outlines why this shift is critical to introducing positive change for older adults.

### EUROPE CHANGES DIRECTION

In 2018, the European Union Agency for Fundamental Rights (EUAFR) introduced a paradigm shift in the way Europeans think about ageing. It stated:

***“All individuals have an inherent right to human dignity, which is inviolable and must be protected and respected. Fundamental rights, whether civil and political or social and economic, as enshrined in the Charter of Fundamental Rights of the European Union, and all other international human rights instruments, do not carry an expiry date. Rights do not change as we grow old, and their full respect on equal terms is an essential precondition for living a dignified life, defined by choice and control, autonomy and participation, whatever one’s age.”*** (European Agency for Fundamental Rights, 2018).

Society as a whole needs to shift its thinking to recognize accumulated wisdom and experience as assets. Elders need to stop being seen as burdens. It is time to see older adults as possessing strengths that are vital to the health of the larger society, and to give them the opportunity to contribute to society even as they are receiving personal support.

Europe is shifting its focus and Canada needs to do the same.

*“thinking about old age in terms of ‘deficits’ that create ‘needs’ to a more comprehensive one encompassing a ‘rights-based’ approach towards ageing. This gradually evolving paradigm shift strives to respect the fundamental right to equal treatment of all individuals, regardless of age – without neglecting protecting and providing support to those who need it. A human rights approach does not contradict the reality of age-specific needs; on the contrary, a rights-based approach enables one to better meet needs as required, while framing them in a human right-based narrative.”*

## **ACROSS THE BOARD DISCRIMINATION AGAINST ELDERS IN ONTARIO - IN-HOME AND COMMUNITY-BASED SUPPORT**

Unfortunately government policies in Canada and many provinces have reinforced, rather than challenged this negative view of older adults, also focusing on levels of acuity, deficits, and meeting needs of older adults rather than refocusing on their strengths, existing support systems, their many contributions to society, and their human rights.

Structurally embedded discrimination and ageism are so common in Canada that few even notice them, but these have a detrimental effect on older adults’ lives on a daily basis, undermining their sense of self-worth and negatively impacting their mental and physical health.

Few in Ontario recognize that a chaotic, unreliable, and inaccessible Home Care system is a human rights issue (Braedley, 2022). And the fact that there are almost no non-profit, staffed 24 hour residential programs in the community as alternatives to institutionalization is also a denial of older peoples’ rights to age in community.

## ***MASS INSTITUTIONALIZATION AS AN OBVIOUS EXAMPLE OF DISCRIMINATION***

One of the more blatant examples of age discrimination is found in the mass institutionalization of older adults in long-term care facilities. Institutionalization is not considered appropriate for younger people with disabilities, yet older adults with disabilities are considered candidates for institutions the moment their physical health or mental faculties begin to decline.

Older adults and prisoners are now the only people considered to be candidates to be institutionalized, but older adults have committed no crime except to have lived a long time.

The Dalhousie Legal Clinic successfully challenged the systemic discrimination inherent in forcing younger people with disabilities to live in institutions while community accommodations were denied them (Pooranlaw, 2021). It established that the government of Nova Scotia had systemically discriminated against them by failing to provide adequate supports for them to continue to live in the community.

The situation is exactly the same in Ontario for older adults. The absence of appropriate levels of in-home assistance, and community-based residential support, the problems with access to direct funding programs that tie funding to the person not the service provider, and the lack of paid caregiver programs is forcing elders into institutions in large numbers. Yet no lawyer or legal clinic in Ontario has shown any interest in taking up this issue on their behalf.

## **THE ONTARIO HUMAN RIGHTS COMMISSION DECLINES A PUBLIC INQUIRY**

Ageism continues to be an acceptable form of discrimination. Even the Ontario Human Rights Commission informed SSAO that it lacked the resources to conduct a public inquiry into the unjustifiable mass institutionalization of older adults in Ontario.

Correspondence in May, 2021 showed that the Commission agreed that the information in SSAO's submission on the institutionalization of older adults and "lack of effective community care options raises important human rights concerns about the adverse effects experienced by older persons, especially during the COVID-19 pandemic". But the "OHRC is limited by the availability of resources" to conduct a public inquiry (OHRC, 2021).

Older adults have rights on paper, but the Commission charged with enforcing those rights lacks the resources to do so. And no lawyer in the private bar or legal clinic has, to date, been willing to take up this important issue, even though it represents a major form of age discrimination.

## **FAMILY-MANAGED HOME CARE IS DEFICIT-BASED**

To access Family-Managed Home Care in Ontario, elders must have "extraordinary circumstances" as assessed by Home and Community Care Support Services (HCCSS). Substitute-decision makers for older adults must also be assessed by HCCSS to determine whether they "meet the eligibility requirements to take on the required responsibilities under the program, including managing and coordinating the client's care and managing and reporting on funding." (HCCSS North East, 2022) To be considered to be in "extraordinary circumstances" a person must require care of "an extraordinary nature,

frequency, and intensity”; have unique scheduling issues, language or communication barriers, cultural considerations, or live in a rural or remote location (HCCSS Central, 2022).

This funding is readily available to children with complex medical needs, individuals with acquired brain injury, eligible home-schooled children, and patients in extraordinary circumstances.

There is no mention of individuals living with dementia – who are most at risk of institutionalization, or older individuals with arthritis, or other conditions like Huntington’s Disease or Parkinson’s who are also at higher risk of institutionalization. Anyone in this situation is more likely to have to deal with the chaotic, unreliable, and rationed Home Care program.

Family managed care uses a deficit-based assessment model where individuals living with dementia and their families are often unable to access it unless they portray their loved ones as having needs so complex that they are “extraordinary”.

## **UNEQUAL PROTECTION UNDER THE LAW**

Another example of discrimination can be found in the failure of police departments to address alleged criminal acts in long-term care facilities. Families of residents living in long-term care facilities have repeatedly called on the police to investigate allegations of criminal conduct in these facilities, yet no police investigations have been publicly reported (Wallace & Kennedy, 2020; Smith Cross, 2021).

In 2021 the Leader of the Opposition wrote to the OPP Commissioner calling on the OPP to investigate deaths related to neglect in long-term care institutions (CityNews, May 10, 2021). To date there has been no public reporting of a systemic OPP investigation.

In 2020 the head of SEIU Healthcare called for criminal negligence investigations by Toronto and Peel Regional police at an undisclosed number of long-term care facilities. Again there has been no public reporting of follow-up in spite of Premier Ford having said the government was “pulling out all the stops”(Pelley, 2020).

A year later, in June, 2021, several police forces had been alerted to deaths in their jurisdictions that appeared to warrant criminal investigations, but no investigations had been launched (Smith Cross, 2021).

The repeated failure, over a period of decades, of inspections to result in sanctions against long-term care operators, irrespective of repeated failure to meet the requirements of the Act, is another area where older adults appear to have unequal rights under the law. In spite of a Residents’ Bill of Rights enshrined in the Long Term Care Homes Act, repeat violations of that Bill have gone unsanctioned for decades with most long-term care facilities remaining out of compliance with few to no consequences (Mancini, 2021).

It has become clear that long-term care residents can rely on neither the protection of the police nor the Ministry of Long-Term Care Inspection Branch.

## **NO FEDERAL INQUIRY**

Older adults died of starvation and dehydration in these facilities during the pandemic (Lieberman, 2021), yet no systemic investigations have taken place. Had it been toddlers in day care, there would have been a major public outcry. But when over 4500 older adults became infected and died in Ontario facilities there were immediate expressions of outrage, but nothing further. The widespread belief of “they’re old, they would have died anyway” ignores how they died, and that they died prematurely.

Canada had the highest death rate in the developed world in its long-term care facilities. “In Canada, LTC residents accounted for 3% of all COVID-19 cases and 43% of COVID-19 deaths” (Canadian Institute for Health Information, 2021), yet the Federal government continues not to call an inquiry into this tragedy, nor review funding policies that reinforce institutionalization.

One major failure is Canada’s lack of a national Home Care Program. With one of the highest rates of institutionalization in the developed world, it would seem reasonable that Canada should review its policy of failing to fund in-home and community-based alternatives to these institutions. “According to the 2016 Census, 6.8% of Canadians aged 65 years and older were living in an NH or residence for senior citizens (hereafter referred to as a seniors’ residence, SR): this proportion jumps to 30.0% among Canadians aged 85 years and older” (Garner et al, 2018) with individuals 85+ having a one in three chance of being institutionalized in Canada. Not so in countries like Denmark and Ireland where the share of public spending on in-patient care is much lower and spending on in-home care is much higher than Canada (OECD, 2020). “The Netherlands and Scandinavian countries (Denmark, Norway and Sweden) are by far the highest spenders on LTC (Figure 1), with around 3.5% of GDP or more dedicated to caring for people with LTC needs. The elevated levels of spending reflect the more developed formal LTC systems in these countries. A second group of high-income countries, including Switzerland, France, Belgium, Finland, the United Kingdom, Germany and Japan, allocate between 2-2.5% of their national wealth to LTC.” Canada spends less than 2.5% (OECD, 2020). Denmark has not built a new long-term care facility in decades.

## **A PANDEMIC OF AGE DISCRIMINATION**

Age discrimination has been identified as widely present in Canada, yet governments at all levels seem unconcerned about this and seem to have made few moves to address it. As early as 2012 there were public reports of widespread age discrimination in Canada (CTV News, 2012), yet there had been no action at the Federal or Provincial levels.

Ageism has also been detailed to detrimentally affect older adults in health care. The University of Ottawa Journal of Medicine suggests that ageism is prevalent in healthcare settings with healthcare professionals spending less time with older adults than any other age group. This problem is further exacerbated when they are also subject to blunders in treatment, including under or over treatment, ineffective communication, being patronized and other forms of discrimination (Mistry, 2021). Ageist attitudes among health care providers need to be addressed because, at present, older adults are not being treated equally in healthcare settings. But who will undertake to do this?

## **IN CONCLUSION**

At the present time in Canada, and especially in Ontario, human rights come with an expiry date for older adults with disabilities. Elders are simply not afforded the same rights as younger people and this represents a significant failure in Canadian society. It is time that all federally and provincially elected officials recognized this problem and addressed it.

Members of SSAO's Distribution List can help by bringing this problem to the attention of their MPs and MPPs.

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