

# Beyond Zero-Tolerance

The Prevention of Abuse and Neglect  
in Ontario Long-Term Care Homes

# Ontario “Long-Term Care Homes”

- In Ontario, long-term care homes are Nursing Homes and Homes for the Aged that are health-care facilities funded and regulated by the Ministry of Health and Long-Term Care
- Long-term care homes are different from retirement homes and care homes, which are residential accommodation governed by the *Retirement Homes Act* and the *Residential Tenancies Act*

# *Long-Term Care Homes Act, 2007*

- The *Long-Term Care Homes Act, 2007*, came into force in July 2010
- The new *Act* continued some long-standing protections for long-term care residents, and created some new requirements that are intended to significantly improve the protection of long-term care residents from abuse and neglect

# Elder Abuse

- Elder abuse is harm caused by a more powerful abuser to a less powerful older adult where the power differential arises because of advanced age
- The opportunity for elder abuse depends upon the existence of power differentials that are exacerbated in a long-term care setting

# Power Imbalances

A resident of a long-term care home:

- Might not have the choice of when to rise in the morning or go to bed at night
- Probably needs assistance with some of the activities of daily living such as dressing, bathing, toileting, shaving, eating and ambulation
- Might need help transferring from bed to chair
- Might have little if any privacy
- Could be highly vulnerable to retaliatory abuse

# Forms of Elder Abuse

- Financial Abuse
- Emotional/Psychological Abuse
- Physical Abuse
- Sexual Abuse
- Neglect

# Incidence of Elder Abuse

- Financial Abuse is the most commonly reported form of elder abuse
- Multiple forms of abuse are frequently inflicted on an older adult by an abusive wrongdoer
- All forms of abuse take place in Ontario long-term care homes and in every other setting

## Danae Chambers

A world renowned portrait artist as a young woman.





## Danae Chambers

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TORONTO STAR





**By Moira Welsh and Jesse McLean, Staff Reporters  
Toronto Star, Nov 17 2011:**

“Seniors in Ontario nursing homes are being beaten, neglected and even raped by the people hired to care for them, a *Star* investigation has found.

“In one case, a helpless 71-year-old Toronto woman with advanced dementia was raped in her bed, allegedly by a male nurse identified months earlier by other staff at the home as someone who regularly disappeared on shift “without explanation.”

“A staff member discovered the male nurse in Danae Chambers’ room in the middle of the night. Chambers, a renowned portrait artist, lay sideways on her bed and the male nurse, pants dropped to his knees, stood against her bare buttocks, according to a provincial inspection report . . .”

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Canada

# The Nature of a Long-Term Care Home

A long-term care home is at once:

- A place of business
- A place of employment, or a workplace, for long-term care staff
- A home to its residents

In the context of the power dynamics at work for these three different functions, long-term care residents are the least powerful individuals and are very highly susceptible to abuse

# The Fundamental Principle

The Fundamental Principle of the *Long-Term Care Homes Act* is that

- A long-term care home is primarily the home of its residents . . . .
- and is to be operated so that it is a place where they may live with dignity and in security, safety and comfort and have their physical, psychological, social, spiritual and cultural needs adequately met

# *Residents' Bill of Rights*

Every resident has the right, *inter alia*:

- To be treated with courtesy and respect in a way that fully recognizes the resident's individuality and recognizes the resident's dignity
- To be protected from abuse
- Not to be neglected by the licensee or staff

The *Residents' Bill of Rights* is deemed to form part of every resident admission agreement, must be prominently posted, and protects a total of 27 separate rights

# Mission Statement

- Every long-term care home must have a Mission Statement that is consistent with the Fundamental Principle and the *Residents' Bill of Rights*
- The Mission Statement must be put into practice in the day-to-day operation of the long-term care home

# Zero Tolerance of Abuse and Neglect

- Every long-term care home must have a written policy of zero tolerance of abuse and neglect
- It must clearly state what forms abuse and neglect and that it will not be tolerated
- It must provide a program for preventing abuse and neglect
- Any alleged, suspected or witnessed incident of abuse that may form a criminal act must be reported to the police immediately

# Screening, Orientation and Training

- All long-term care staff and volunteers must be screened with a criminal reference check within six-months before hiring or volunteering
- All staff must be trained in zero-tolerance and other related areas before commencing work
- A long-term care home must offer orientation sessions on zero-tolerance to all volunteers



# Responsive Behaviours

- A “responsive behaviour” is a resident behaviour that indicates an unmet need or a response to circumstances that are frustrating, frightening or confusing
- A long-term care home must develop screening protocols, procedures and interventions to minimize the risk of altercations between residents because of responsive behaviours

# Specialized Units

- In June 2001, on the day he was admitted to a Toronto long-term care home, a violent and cognitively impaired man bludgeoned two other residents to death and attempted to kill a third resident
- As a result of recommendations from the coroners jury, specialized units are now in place with a separate waiting list for crisis admissions

# Mandatory Reporting

- Any person, save and except for a long-term care resident, who has reasonable grounds to suspect abuse or neglect of a long-term care resident is required to immediately report the information to the Director of Long-Term Care
- Reporting of false information is a quasi-criminal offence
- Health practitioners must report privileged and confidential information
- Solicitor-client privilege is preserved

# Penalties

- Quasi-criminal penalties for non-reporting apply to long-term care management, staff and persons providing professional services in the areas of health, social work or social services work
- The same persons could be penalized for coercion, intimidation or discouraging a report, or permitting non-reporting

# Non-Penalties for Non-Reporting

- There is no penalty for the failure to report by anyone other than long-term care management, staff and associate health, social-work and social-service professionals

# Whistle-Blower Protection

- No person shall retaliate against another person because of the reporting of abuse or neglect to the Director
- Retaliation includes discharge, the threat of discharge or discriminatory treatment of a resident
- Whistle-blower protection applies even if a resident acted maliciously or in bad faith

# Police Response

- Police forces and long-term care homes have had mixed responses to zero-tolerance policies
- It has been difficult to differentiate what forms a reportable and non-reportable incident, with widely varying results
- One outcome has been closer collaboration between police forces and long-term care staff

# Impact on Civil Claims

- Personal injury law firms in Ontario are now advertising representation in cases of nursing home abuse and neglect
- More stringent statutory and regulatory requirements for the prevention of abuse and neglect should raise the standard of care of a reasonably competent long-term care home in any negligence action
- Long-term care plaintiffs might also succeed in claims in contract for a refund of long-term care fees paid where the long-term care admission agreement was breached due to the failure of the licensee to protect the resident from abuse and neglect



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