

**Privacy Issues in Elder Abuse Investigations**  
**Detective Christina Wolf**  
**Ottawa Police Service**  
**Elder Abuse Section**

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[ottawapolice.ca](http://ottawapolice.ca)



**OTTAWA POLICE SERVICE**  
**SERVICE DE POLICE D'OTTAWA**

*Working together for a safer community*  
*La sécurité de notre communauté, un travail d'équipe*





# Introduction

- 2003; proposal and framework for Elder Abuse investigator position
- Launched January 2005
  
- **Complement**
- 2 investigators
- 1 supervisor (S/Sgt)
- Victim Crisis Unit (avl 24/7); 11 civilians w/background in counselling, social work and psychology.



## Statistics to Date (September 2009):

- 686 investigations
- 380 family/community related
- 142 within LTC
- 124 within private institutions
- 40 home support

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(tallied to June 2009)

- 69 arrested
- 660 charges laid



# 1<sup>st</sup> Mandate

- Investigate all allegations of abuse
- Existing/Pre-existing relationship of trust/dependence
- Between victim and abuser



## 2<sup>nd</sup> Mandate

- Educate front line workers
- Help to raise awareness in community



# Types of Abuse

- Physical (including sexual assault)
- Psychological/Emotional
- Financial
- Neglect (Active or Passive)



# Common Characteristics

- Abuser has power and control over an older person
- Abuser is usually a family member (stats)
- In some cases;
  - Drug/alcohol /gambling addiction
  - History of anti-social behaviour
  - Mental health problems
- Dependence on older person for \$\$ and/or shelter
- Victim often lucid BUT call to police usually generated by third party
- c. 70% of cases are financial abuse



# The Importance Of Reporting

- Tracking mechanism\*
- Flagging for Police Background Checks\*



# Some Barriers to Reporting

- VICTIM:
- Afraid of repercussion
- Completely under the control of the abuser and dependent on him/her for basic needs
- Fear of institutionalization
- Concern that abuser will be incarcerated/get criminal record
- Guilt/shame\*
- Misconception that police/social agencies cannot help\*
- Cultural/Ethnic values or beliefs



## Cont'd

- Family/Friends/Service Providers, etc.;
- Do not know who to tell
- Do not want to get involved
- Older person asks them not to report it
- Fear of repercussion for the older person/ themselves
- Confidentiality issues/Privacy Act\*



## Case Study: Mrs. B

- 70 year old widow
  - One child, “Natalie”, aged 32
  - According to Mrs B, Natalie has had psychological and behavioural issues all of her life.
  - Diagnosed with bi-polar disorder one year previous.
- 
- Natalie was evicted from her apartment shortly after the diagnosis, at which time she moved in with Mrs B
  - Took medical leave from work and had barely left the house since.



## May, 2009

- Mrs B attends her doctor's office for an annual visit.
- Mrs B discloses that Natalie has moved in with her since the last visit and things aren't going well;
  - Natalie has been assaulting her
- The doctor draws up form referring Mrs B to the medical centre social worker, who meets with Mrs B six days later.



and this is what happened in the interim...









- Further probing from the social worker revealed;
  - that Mrs B had been bitten, pinched, grabbed and had her hair pulled by Natalie on numerous occasions; all in a deliberate attempt to inflict pain on her.
  - that Natalie had a hair-trigger temper and would fly into a rage over the smallest thing such as her making too much noise when she turned a page of her book.
  - that Natalie had often told her she would “kill her” if she wasn’t so afraid of going to jail.



- The social worker discussed the prospect of contacting police with Mrs B.
- Mrs B did not hesitate.
- Patrol responded, generated a report for EAS and assisted Mrs B in taking up temporary residence with her own mother while the matter was investigated
- EAS followed up with Mrs B the same day and discussed options (“soft sell”).



- Natalie was arrested the same day and brought before a Justice of the Peace.
- She was ordered to undergo a psychiatric assessment, following which she was released on bail conditions, including;
  - to maintain visits with her psychiatrist and to take her prescribed medication.
  - find an alternate residence and have no communication with Mrs B, pending further development with her psychiatrist.



- Natalie was connected with a service agency who found her housing in the community.

AND,

- When the offer to re-connect with Natalie, with a third party present, was offered to Mrs B, she declined, stating that it was “too soon” and wished to have more time.



# P.H.I.P.A (Personal Health Information Protection Act)

- Sec 3- Definition of **Health Information Custodian**:
- Health care practitioner
- LTC service provider
- CCAC
- Hospitals, psych facilities
- Charitable Homes, Homes for the Aged, Rest Homes
- Pharmacies, laboratories
- Ambulance service
- Centre, program or service for community health or mental health whose primary purpose is the provision of health care



## S. 40(1) P.H.I.P.A

- Sec 40 (1)- **Disclosures Related to Risks**
- “ A health information custodian may disclose personal health information about an individual **if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons.**”



# P.H.I.P.A

- **Sec 71(1) Immunity**
- “No action or other proceeding for damages may be instituted against a health information custodian or any other person for,
  - a) anything done, reported or said, both in good faith and reasonably in the circumstances, in the exercise or intended exercise of any of their powers or duties under this Act



## Case Study: “R.C”



- 29 years old
- Personal Support Worker
- Between February 2003 and April 2005;
- -10 different places of employment
- -21 separate **known** victims
- -9 separate reports filed with O.P.S



- mid-March 2005, file is assigned to Elder Abuse:
- Suspicions that an employee (RC) staged a break-in to a retirement home to divert attention away from herself.
- This was done on the heels of 9 separate internal reports of theft being filed with the Administrator of that home, all occurring within the time frame that RC was in their employ (3 ½ weeks)



- The Administrator was interviewed at length and revealed that RC had since resigned from her position and taken up the same work with an agency contracted out through CCAC.
- Of notable interest, the Administrator pointed out that the fire alarm had been pulled one night during RC's shift.



- Consequently, the building was evacuated in the middle of the night and, coincidentally, several items were reported stolen in the ensuing days.
- query of RC on in-house records revealed 3 previous reports had been made listing her as a suspect of thefts while acting as a PSW in other workplaces.
- An interview with the administrator in one such workplace revealed that the fire alarm had been pulled and the building evacuated during RC's shift.



- While the investigation was still ongoing, a fourth report was filed in relation to three small fires being set in one night at an out-patient psych facility;
- In each case, the fire alarm had been pulled, the building had been evacuated, and guess what?
- The complainant was the night employee, RC.



- Investigative strategy; obtain the names of RC's list of clients through her new employer.
- Canvas for additional victims
- get permission from one of the victims to install a hidden video surveillance device in their home.
- Call was initiated to the agency, requesting names of the new clients assigned to RC.
- And..... the "Privacy Hand" goes up...



'Information sharing' - you tell me everything about yourself and I'll tell you when to stop.





# Police Services Act;

- Ontario Regulation 265/98; **Disclosure of Personal Information:**
- S. 5(1) A chief of police (c.o.p) or his or her designate (meaning a sworn police officer) may disclose **any** personal information about an individual **if the individual is under investigation of**, is charged with or is convicted or found guilty of **an offence under the Criminal Code of Canada**, the Controlled Drugs and Substances Act or any other federal or provincial Act to,
  - (a) any police force in Canada



## P.S.A Reg 265/ 98 continued

- (b) any correctional or parole authority in Canada; or
- (c) **any person or agency engaged in the protection of the public, the administration of justice or the enforcement of or compliance with any federal or provincial Act, regulation or government program.**



## P.S.A Reg 265/98 cont'd

- S. 5 (2) Subsection (1) applies if the individual is under investigation of, charged with or is convicted or found guilty of an offence under the C.C, CDSA, ...**and if the circumstances are such that the disclosure is required for the protection of the public, the administration of justice or the enforcement or compliance with any federal or provincial Act, regulation or government program.**



# Once More: S. 40(1) P.H.I.P.A (just to be redundant...)

- Sec 40 (1)- **Disclosures Related to Risks**
- “ A health information custodian may disclose personal health information about an individual if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons.”



## Back to RC;

- CCAC provided a current list of RC's clients through 3 different agencies.
- 19 victims were identified
- Of the 19, 2 had their credit cards stolen
- Merchants were contacted and provided sales receipts for the bulk of the purchases.
- A search warrant was executed on RC's home, in search of the merchandise and the property reported stolen from the victims.



- 15 items were seized, linking RC to both credit cards as well as 3 additional victims.
- She was arrested and charged
- A media release was broadcasted
- 2 more victims came forward
- 33 charges laid in total
- Pleaded guilty to 8 charges
- 20 month conditional sentence (electronic monitoring)



## Back to P.H.I.P.A...

- **Disclosures related to this or other Acts**
- 43. (1) A health information custodian may disclose personal health information about an individual,
  - **(g)** subject to the requirements and restrictions, if any, that are prescribed, **to a person carrying out an inspection, investigation or similar procedure that is authorized by a warrant or by or under this Act or any other Act of Ontario or an Act of Canada for the purpose of facilitating the inspection, investigation or similar procedure**



# P.I.P.E.D.A. (Personal Information Protection and Electronic Documents Act)

- **S. 7(3) Disclosure Without Knowledge or Consent;**
- For the purpose of clause 4.3 of Schedule 1\*, and despite the note that accompanies that clause, an **organization may disclose personal information without the knowledge or consent** of the individual only **if** the disclosure is;
- (c.1)made to a government institution or part of a government institution that has made a request for the information, identified it's lawful authority to obtain ...and indicated that



## P.I.P.E.D.A. cont'd

- (ii) the disclosure is requested for the purpose of **enforcing any law of Canada....carrying out an investigation relating to the enforcement of any such law, or gathering intelligence** for the purpose of enforcing any such law.
- **Organization** means an association, a partnership, a person and a trade union



## P.I.P.E.D.A.; Schedule 1, clause 4.3

- “In **certain circumstances** personal **information** can be collected, used or **disclosed without the knowledge or consent** of the individual. For example, **legal...reasons** may make it impossible or impractical to seek consent. **When information is being collected for the detection and prevention of fraud or for law enforcement, seeking the consent of the individual might defeat the purpose of collecting the information.** Seeking consent may be impossible or inappropriate when the individual is...**seriously ill or mentally incapacitated.**”



# Disclaimer



## Comparisons

- **Nursing Homes Act of Ontario;**
- **Sec 25-Duty to report for LTC homes**
- **Protection for Persons in Care Act of Manitoba;**
- **Sec 3(1)-Duty to report for “Health Facilities”**



## Comparisons ; (P.H.I.A of Manitoba)

- **P.H.I.A (Personal Health Information Act) of Manitoba**; Speaks to “Trustees”
- Section 1(1) Definition of "**trustee** "; means a health professional, health care facility, public body, or health services agency that collects or maintains personal health information.
- “**health services agency**” means an organization that provides health care such as community or home-based health care pursuant to an agreement with another trustee.



## Comparisons; (P.H.I.A of Manitoba)

- 22(2) A trustee may disclose personal health information without the consent of the individual the information is about if the disclosure is;
  - (b) **to any person** if the trustee reasonably believes that the disclosure is necessary to prevent or lessen a serious and immediate threat to
    - (i) the health or safety of the individual the information is about or another individual, or
    - (ii) public health or public safety;



## Comparisons (P.H.I.A of Manitoba)

- **personal health information"** means recorded information about an identifiable individual that relates to
  - (a) the individual's health, or health care history, including genetic information about the individual,
  - (b) the provision of health care to the individual and includes
  - e) any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care



## Comparisons (P.H.I.A of Manitoba)

- Protection from liability

**62 No action lies and no proceeding may be brought against the government or a trustee or any person acting for or under the direction of the government or a trustee for damages resulting from the use or disclosure of personal health information in circumstances where the government or the trustee or other person reasonably believed that the use or disclosure was authorized under this Act.**



# F.I.P.P.A (Freedom of Information and Protection of Privacy Act)

- Speaks to “Public Bodies”
- Sec 44(1)
  - A public body may disclose personal information only;
    - (l) where necessary to protect the mental or physical health or the safety of any individual or group of individuals
    - (r) for law enforcement purposes or crime prevention



# P.I.P.E.D.A

- For the private sector in Manitoba



## **\*\*Crime Stoppers\*\***

- (204) 786-8477



# Fundamental Considerations

- Victim has the right to self determination
- What are the victims wishes throughout the investigation and possible judicial process? If not capable, what is in their best interests?
- What services will the victim need throughout and following the investigation?



## Best Practices

- Ask the senior for his/her consent
  - if incapable and/or at risk and resistant;
- Consult with legal representation for your organization to ascertain what legislation applies to you
- You may report all information on both victim and suspect through Crime Stoppers





- *“The prevention of abuse and neglect of older adults is a **community challenge** which will not be resolved quickly by one person or one approach. It will require a **community effort** to create an environment which reaffirms the rights of older adults to self-determination, respect and dignity.”*

*Teresa Lukawiecki*

**Thank You**  
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