ANNOTATED BIBLIOGRAPHY

PRIMARY MATERIALS: LEGISLATION

- *Adult Guardianship and Trusteeship Act,* SA 2008 c A-4.2

- *Alberta Human Rights Act* (AHRA), RSA 2000 c A-25.5

- *Alberta Hospitals Act,* RSA 2000 c H-12

- *Alberta Housing Act,* RSA 2000 c A-25

- *Criminal Code of Canada,* RSC 1985 c C-46

- *Family Law Act,* SA 2003 c F-4.5

- *Freedom of Information and Protection of Privacy Act* (FOIPPA), RSA 2000 c F-25

- *Health Information Act,* RSA 2000 c H-5

- *Health Professions Act,* RSA 2000 c H-7

- *Mental Health Act,* RSA 2000 c M-13

- *Nursing Homes Act,* RSA 2000 c N-7

- *Persons with Developmental Disabilities Committee Governance Act*, RSA 2000 c P-8

- *Personal Directives Act,* RSA 2000 c P-6

- *Personal Information Protection Act* (PIPA), RSA 2003 c P-6.5

- *Powers of Attorney Act,* RSA 2000 c P-20

- *Protection of Persons in Care Act*, RSA 2000 c P-29.1 & its Regulations 97/2010 & 104/2010

- *Protection Against Family Violence Act,* RSA 2000 c P-27

- *Social Care Facilities Review Committee Act,* RSA 2000 c S-11

- *Supportive Living Accommodation Licensing Act,* SOA 2009 c S-23.5

SECONDARY MATERIALS: BOOKS

Edwards, Peggy, *Elder Abuse in Canada: A Gender-Based Analysis* (Ottawa, ON, CAN: Public Health Agency of Canada, 2012) E-book: Retrieved from ProQuest ebrary on 19 February 2016.

This report was prepared by the author for the Division of Aging and Seniors, Public Health Agency of Canada, under the Federal Elder Abuse Initiative. The purpose of this paper is to provide a contextual gender-based analysis (GBA) related to elder abuse in Canada by exploring and documenting what is known and not known about the gender dimensions of elder abuse. It provides information and guidelines for creating bias-free, gender and culturally relevant research, policies and practices in elder abuse. Finally, it describes the relevance and application of the findings to public health research, policies, programs and practices, including gender-based indicators for incorporation into the evaluation of the Federal Elder Abuse Initiative.

Edwards distinguishes various aspects that were not part of previous studies on elder abuse, such as: under reporting, exclusions of a major groups of people from the survey (old methods of sampling), limited amount of information on important variables like health, gender, disability, race, ethnicity, and socio-economic status, gender neutrality and discrepancies in language and definitions, and gender roles while providing care support.

The author then explains Gender-Based Analysis as a tool for understanding social process in light of the key concepts of elder abuse. The author then further examines the incidence and prevalence of elder abuse from a gender perspective. She acknowledges the factors of access, inclusion and benefits to be considered while examining policies and programs through a gender-based analysis process.

The paper further critically examines the implications of the gender-based analysis process, stating that it would help in better understanding the issue. More culturally-relevant research that addresses the age and gender dimensions of oppression and vulnerability in older age becomes very relevant. The paper concludes by evaluating the Federal Elder Abuse Initiative.

McDonald, P Lynn et al, *Elder Abuse and Neglect in Canada* (Toronto: Butterworths Canada Ltd, 1991).

Employing a critical socio-legal perspective, the authors stress the need to protect the legal and human rights of older adults from potentially abusive and / or self-neglect situations. In this monograph, the authors maintain that the harmful experiences of older adults are mainly the result of inappropriate policies and programs that are based on invalid or incomplete theory and research.

In Chapter 1, the authors critically examine the taxonomy of elder abuse, the meaning of various forms of abuse and neglect, characteristics of the abused and the abuser and the prevalence of

reported abuse. The authors argue that the so-called prevalence studies fail to distinguish between the incidence (a new occurrence within a specific time frame) and the prevalence (lifetime occurrence) of elder abuse. By bringing out the drawbacks in the methodologies of previous studies, this chapter concludes that there is lack of reliable knowledge about the incidence and prevalence of elder abuse.

Chapter 2 of the book reviews theoretical perspectives that were used to explain elder abuse and neglect. Considering three family violence approaches and eight factors associated with elder abuse and neglect, not surprisingly, the authors conclude that no single theoretical perspective accounts for the occurrence or outcome of various events identified as elder abuse.

The authors in chapter 3 and 4 conduct an analysis of the existing legal and social interventions designed for the protection of vulnerable adults. The authors conclude that existing laws are of limited use in responding to the problem of elder abuse and neglect. They appeal to the future laws to address rights of due process, privacy rights and the freedoms enshrined in the *Charter*.

In Chapter 5 and 6, the authors focus on reviewing the application of existing policies, programs, and services. They stress that since much of the literature on elder abuse and neglect is theoretically and empirically clouded with doubt and uncertainty, a too-ready adoption of new devices or protocols may be potentially harmful for the recipients of such an intervention. They acknowledge the need for immediate research.

In conclusion, they maintain that elder abuse and neglect is not a concern of one profession or individual; it would need a collective effort of all older adults, practitioners and policy makers in the political, legal, health and social welfare domains and the research community to solve it. They end the book by stating that there are challenges ahead is to build on the present meagre research, policy, and practice base so that elder abuse and neglect may cease to be an "issue" or concern in the beginning of twenty-first century.

SECONDARY MATERIALS: ARTICLES

Biggs, Simmon & Irja Haapala, "Theoretical Developments and Elder Abuse: Spreading Awareness and Conceptual Complexity in Examining the Management of Socio-Emotional Boundaries", (2010) 35:3 Ageing Int 171.

This article critically examines how the awareness of elder abuse and neglect advanced without a parallel theoretical progress. Biggs and Haapala note that since the creation of the International network for Prevention of Elder Abuse (INPEA) in 1997 the 'awareness' of elder mistreatment has spread considerably, while 'conceptual development' remained stagnated. The authors critically analyse various trends within the spread of awareness of mistreatment of elders and

found them to be often unsupported by scientific evidence. This then portrayed an inflated state of the problem of elder abuse and neglect.

The authors argue that a theoretical base is needed to address the complex nature of the problem of elder mistreatment. According to them, one way to elaborate the theoretical base of this field is to explore the intrinsic elements of mistreatment that are specific to elders. In other words, conceptual theories can be created by delineating the boundaries that distinguish the phenomenon of elder abuse from other types of social problems, rather than simply focussing on numbers/ prevalence, public expectations of the extent of the problem and definitional disparities.

To support this argument, the authors identify three key areas that distinguish elder mistreatment, namely: interpersonal mistreatment, adult-adult relationships and age distinctions.

The authors acknowledge trust or responsibility as a generally accepted component of the definition of elder abuse and neglect. They maintain that a responsibility for others is mainly an ambivalent (empathetic understanding) enterprise. By ambivalence they refer to the ability to hold two or more opposing emotions or positions in mind at the same time. According to them mistreatment is an interpersonal phenomenon and ambivalence would assist in analyzing and comprising potentially opposite perspectives in order to formulate theories of mistreatment. It would also help in understanding of the failure of empathy as a bridge between wider social factors and individual instances of abuse.

Similarly, understanding adult social relations would help in delineating the matrix of relation from other types of relations: e.g., adult-child relationships. The authors maintain that the nature of adult interaction is triangular in nature – that includes number of implications in terms of responsibility, respect for others and collusive alliance. The key aspect of adult relationship is that it proposes the possibility of negotiated solutions and a problem-solving approach.

The authors argue that in a conceptual development of elder mistreatment, age disparity informs two forms of mistreatment: age-peer mistreatments, and different age groups and intergenerational mistreatment. According to the authors, distinguishing between above two forms of age-based mistreatment allows a more refined conceptual base to emerge. It would nurture various theoretical debates on intergenerational conflicts, solidarity, and ambivalence, and psyco-social approaches to generation including domestic and family violence. Additionally, they argue a similar examination of empathetic understanding in institutional settings will bring out a common thread between different forms of mistreatment.

The authors further recommend empathetic ambivalence as a key to finding emotionally sustainable solutions by simultaneously taking more than one perspective into account and thereby balancing different or opposing views of the same situation.

Cook-Daniels, Loree. "Lesbian, Gay Male, Bisexual and Transgendered Elders: Elder Abuse and Neglect Issues." (1998) 9:2 Journal of Elder Abuse & Neglect 35, online: Taylor & Francis Online < http://www.tandfonline.com/doi/abs/10.1300/J084v09n02_04**>.**

This article focuses on the issues faced by LGBT elders. The author claims that there is virtually no study on how the LGBT population's culture affects their experiences with elder abuse. The author notes that lesbians and gay elderly are often seen as the "invisible population". Cook-Daniels maintains that the issues faced by an elderly gay or lesbian person get prejudiced mainly because elder issues are linked to sexuality. An intervention is essential particularly in those elder abuse cases that may have nothing to do with sex.

Based on her personal knowledge of the LGBT community and discussions with social workers and domestic violence specialists who assist them, the author tries to bring out issues relating to the social, psychological and legal environment of the LGBT community.

On the basis of sexual orientation, gender identity and the relationship between the two, Cook-Daniels recognizes two main classes to include in this study, namely: lesbian and gay elders and transgender elders.

For lesbian and gay elders, the author recognizes their social environment as 'homophobic'. (Homophobia is a fear of and/or hatred towards homosexuals). The author notes that there are contradictory perceptions regarding the homophobic environment: once approach claims that lesbian and gay men adapt to age better than their heterosexual peers while other approach suggests that they are more vulnerable to abuse, neglect and exploitation.

The author maintains that the homophobic environment for lesbian and gay men exposes them to homophobic abuse, domestic violence, and fear of approaching the authorities or seeking legal remedies. The author further notes self-neglect by lesbian and gay male elders make up to 79 percent of substantiated elder abuse cases. These people exhibit symptoms of internalized homophobia, a negative self-definition, have a history of hiding, simply prefer self-neglect to becoming dependent on someone, which consequently ends in isolation due to the fear of encountering homophobia.

On a gender identity basis, the author recognizes elders who have been transgender or have non-congruent bodies. Similar to lesbian and gay men, transgender elders face extreme victimization not just by society but also by authorities and health care professionals. Such victimization is due the effects of 'transphobia'. They generally tend to refuse services and are extremely protective of their privacy.

The author suggests the following implications for adult protective services: proper identification of such elders to serve them, empathetic in recognition of their relationships, awareness of their

legal realities, listening to their concerns carefully and patiently, being respectful while assisting, and making efforts to connect to clients, and helping them to connect to the community.

Edelstein, Stephanie & Edward D. Spurgeon, "Fostering Elder Rights through Innovative Collaboration: A Look at the Partnerships in Law and Ageing", (2000-2001) 34 Clearinghouse Rev 371, online: Hein Online http://heinonline.org/HOL/Page?handle=hein.journals/clear34&div=40&g_sent=1&collection=journals.

This paper examines various approaches adopted in the United States by various agencies to increase access to legal services to the elderly.

It notes that publicly and privately funded non-profit legal services programs continue to struggle to meet the legal needs of their older clients. The legal problems of these older persons are often compounded by (i) failure to recognize legal issues when they arise, (ii) mental incapacity, (iii) problems with communication, (iv) cultural or physical barriers, or (v) discrimination or victimization.

The paper finds that because of limited resources and growing needs, the legal needs of low-income older people cannot always be met by staff programs, the private bar or traditional delivery systems.

The paper examines the *minigrant* program of the American Bar Association Commission on Legal Problems of the Elderly, designed, since 1986, to enhance access to the legal system by older people, intended for bar groups, legal services programs and ageing networks and other not-for-profit organizations.

The paper concludes by observing that although anecdotal information strongly suggests a number of the minigrant projects have been successful in expanding legal awareness and access to services for older people, no objective outcome measurement of the projects or their continuing impact has been done.

McDonald, Lynn "Elder Abuse and Neglect in Canada: The Glass is Still Half Full", (2011) 30:3 Canadian Journal on Aging/ La revue canadienne du vieillissement 437.

This article examines the developments in the field of elder abuse and neglect in Canada for the past two decades (1991-2011). The monograph, *Elder Abuse and Neglect in Canada,* was first published in 1991 and the current article forms an update on the previous study evaluating the present status of research on elder abuse and to bring out ideas for future research. The author revisits issues of incidence and prevalence of abuse, definitional disagreements, identification of

risk factors for abuse, theoretical development in this field and the legal interventions in order to track the development in the area of elder abuse in the past 20 years.

On the first issue of prevalence of elder abuse, the author acknowledges that there has been a considerable development of international research on elder abuse and neglect since 1991. Regrettably, the same is not the case in the context of Canada. Despite certain studies there is insufficient data to ascertain the problem of elder abuse and neglect both at the community and the institutional level. In fact there is not a single study on Canadian institutional elder abuse and neglect. Furthermore the existing studies fail to deliver accumulative research due to their different research designs and hence no comparisons can be drawn to provide a clear picture of community and institutional elder abuse in Canada. The majority of research can be categorized as either a "recycling work' – what is already known or a 'cycling work' – containing uncorroborated information.

The author further recognizes the absence of uniform definition of the word elder abuse and neglect to explain the phenomenon. It further results in very little theorizing about the abuse and neglect. The author maintains that the varied definitions and uncertain theoretical perspectives further culminate in variable risk factors addressing elder abuse and neglect. Previous studies have failed to develop a theoretical model to guide the research. The author contends that this lack of fundamental research results in poor understanding of the issue and consequently there is no essential equitable solution to problem.

Regarding interventions to the problem of elder abuse and neglect, the author finds that there is a lack of reliable data to evaluate the effectiveness of interventions. In the context of legal interventions, Canada, unlike United States, does not have a comprehensive elder abuse statute approach. Canada's legal interventions are contained in a set of statutes that often refer to adults of all ages rather than specifically to older adults. Additionally the requirement of mandatory reporting of abuse and neglect also varies across Canada.

The author notes that the lack of research and relatively small cadre of researchers both in Canada and the world aggravates the problems with the research in this area. It is in this context, the author argues that the glass of research on elder abuse and neglect is still half full and recommends greater research in order to properly protect older adults from abuse and neglect. On the basis of the foregoing, the author makes two arguments: first, there are no sufficient resources to determine the nature and size of domestic or institutional elder abuse and neglect in Canada, and second, there is no solution available either to resolve the issue of elder abuse or its attendant corollaries.

The author concludes that it is time to start the 'awareness phase' in order to bridge the knowledge gap. She recommends an urgent need to develop community and institutional prevalence studies, innovative theory development and random clinical trials to test the legal and social interventions to the issue of elder abuse and neglect.

Pietsch, James H., "Expanding Access to Justice for Socially and Economically Needy Elders Through Law School Experiential Programs", (2013) 20 Elder LJ 315, online: LexisNexis < http://publish.illinois.edu/elderlawjournal/files/2015/02/Pietsch.pdf>.

This paper examines the issue of access to justice for the elderly in the United States, with a focus on the state of Hawaii.

The paper notes that as more socially and economically needy people, young and old, seek legal services, many will be turned away by the very organizations that promise to afford them access to legal services. When the need for legal assistance far exceeds the legal resources available, an ever-widening gap, "the justice gap" is the result. This gap impacts older people particularly and the problems faced by them are growing in number and complexity.

The paper notes that over the past quarter century Elder Law has developed as a unique practice of law to meet the diverse and growing needs of the aged and ageing population. However, the growing number of older people and their growing need for affordable legal services has led to the evolution and popularity of non-traditional legal services providers.

The law school is a sometimes-overlooked resource in this regard. The paper shows how elder law clinics can be a symbiotic method of both teaching lawyering skills and increasing legal services to the older population. The Elder Law Clinic of the University Of Hawaii William S. Robertson School Of Law is used as a model.

The paper contends that in addition to law schools, legal services to the elderly can be fostered in the gerontology discipline in the broader realm of academics, perhaps as part of a holistic study of lifetime personal needs of older persons.

The paper concludes that law school experiential programs can be significant to both students and needy individuals in the community who benefit by having access to quality legal services that may otherwise be unaffordable to them.

Shone, Margaret A, "Health, Poverty and The Elderly: Can the Courts make a Difference", (1991) 29 Alta L Rev 839, online: Hein Online < http://heinonline.org/HOL/Page?handle=hein.journals/alblr29&div=48&g_sent=1&collection=journals>.

This paper examines the effects of poverty and ill-health on the elderly population of Canada. Two-thirds of elderly Canadians, Shone says, live in poverty or near-poverty. " For unattached elderly individuals, the rate is almost two-thirds; for the disabled elderly, four-fifths", Shone says. Far too many elderly survive at subsistence levels.

Shone says that "old age for Canadians is characterized typically by cumulating health problems accompanied by diminishing financial resources". She predicts that the elderly poor are likely to fall more deeply into poverty in the upcoming years due to the interplay of several factors. Relying on statistical data, the paper notes that elderly women are more likely to live in poverty than men; and concludes that the issues of health, poverty and old age aggravate women's problems.

The paper notes that in addition to ill-health, the elderly poor also experience *poverty of spirit* and *poverty of power*. Poverty of spirit creates for many a crisis of identity, loss of self-esteem and diminished feelings of self-worth. Poverty of power results in the loss of freedom of choice and autonomy. The author concludes that: "…health problems, poverty and old age combine to produce an enormously disadvantaged group, one that is elderly—in a society that celebrates youth; poor—in a society that confers status on those with monetary wealth; sick and disabled—in a society that admires intellectual and physical strength, prowess and energy; and largely female - in a society in which men hold the predominant power and are the political decision makers".

While a great deal of responsibility for remedying the plight of the elderly falls on the shoulders of legislators and policy makers, the author says that the courts have an important role to play at the micro and macro levels. He urges the courts to be vigilant to ensure that the elderly poor are granted the protection of life, liberty and security of the person conferred by section 7, as well as protection against discrimination on grounds of age, sex and mental and physical disability conferred by section 15, of the *Canadian Charter of Rights and Freedoms.* The author also recommends to the courts affirmative action to improve the situation of elderly women "whose income needs are generally greater than those of elderly men, and whose health needs are different to a significant extent".

Three strategies are suggested in response to the effects of poverty and ill-health on the elderly.

    a. Improving the financial position of the elderly poor, by
        (i)   protecting against age discrimination in employment;
        (ii)   lifting mandatory retirement requirements;
        (iii)   ensuring gender equality in the work place; and
        (iv)   enforcing filial obligations of support.
    b. Reallocating health resources to benefit the elderly poor, by
        (i)   shifting the focus from hospital to community care;
        (ii)   targeting the elderly poor for preventive health-care education; and
        (iii)   setting minimum standards of institutional care.
    c. Assisting the elderly poor to exercise their rights, by
        (i)   educating the elderly poor on their rights; and
        (ii)   practical assistance to exercise and enforce rights.

Shone notes: "This may take several forms including 'practical advocacy to claim individual rights, help organizing the elderly poor for political action to seek rights, or publically funded legal assistance. It might involve the relaxation of costs and requirements that block access to justice—for example, a court could refuse to order an elderly person living in poverty to post security for costs."

Spencer, Charmaine & Ann Soden, "A Softly Greying Nation", (2007) 2 J. Int'l Aging L & Pol'y 1, online: < http://www.stetson.edu/law/agingjournal/media/article-1-journal-of-aging-vol-2.pdf>.

The authors examine broadly the legal and policy infrastructure that respond to ageing across Canada. It describes what is available to senior citizens in Canada under these headings:

- The Right to Social Security
- The Right to Health Care
- The Right to Adult Protection
- The Right to Institutional Long-Term Care
- The Right to Community–Based Long-Term Care
- The Right to Labour, and
- Income Tax.

Summary:

- There is an ongoing need to improve access to justice for older Canadians. Older adults on fixed incomes often have their legal needs overlooked, and can find access to legal remedies highly problematic. They often have little or no means to afford legal assistance for relatively simple, but sometimes time-consuming, legal matters. Many older adults may experience difficulties communicating in English or French, or may lack basic literacy, let alone the capacity to achieve good legal literacy to understand and enforce their rights. At present, general purpose legal aid clinics, where they exist, are not set up to address the types of issues or to meet the often complex set of needs of older adults in a multidisciplinary and holistic manner. As a result, there is a pressing need for specialized government-subsidized legal aid clinics in each province to provide formal legal advice and representation for older adults on individual matters, as well as advocacy on systemic issues, drawing on proven models such as that of the Advocacy Centre for the Elderly.
- There is strong need for critical legal analysis in the areas of law affecting older adults, whether that is a feminist analysis that looks beyond middle age or other critical approaches. Among other things, this analysis will need to examine the intersection of aging, gender, ability, race and other statuses in the context of social policy and law. The

law is seldom neutral or objective in its application to the lives of older adults, and aging is a highly gendered issue.

- The practice of elder law in Canada is likely to continue, in large part, in conjunction with other fields of law. Although it is an approach, which has not yet been widely adopted in the country, future elder law practice may need to draw on multiple disciplines. There are several different models to consider, including case management approaches to addressing client files that present a combination of legal, accounting, tax, health and social issues.

The authors note that despite the ever-increasing number of older citizens across Canada, their ability to shape the public discourse on ageing is currently modest at best. It notes particularly that the needs of older women have been largely under-represented, although there has been an effort to apply some "gender lens" to federal programs and policies. The intersection of ageing and gender is much less well recognised at the policy level.

The twin issues of "elder abuse" and "elder neglect" in treatment and care facilities are also examined, with references to various legal and policy responses across Canadian provinces. Citing the Supreme Court of Canada case of *R v Khelawon*, the authors highlight the risk of perpetrators of "elder abuse" escaping justice by simply outliving their victims. They note however that the availability of new technology such as video recording to tape victims statements have helped police efforts in some municipalities to improve the likelihood of securing a conviction in the event that the older adult subsequently becomes ill or mentally incapacitated.

Walsh, Christine A & Yonhjie Yon, "Developing an Empirical Profile for Elder Abuse Research in Canada", (2012) 24:2 Journal of Elder Abuse & Neglect 104.

The article aims to identify the gaps in the knowledge base for elder abuse research in Canada. The authors assert that these knowledge gaps preclude the development of effective programs and policies to address elder abuse. For the above stated purpose the authors conducted a review of the existing literature on elder abuse and thereby made recommendations and directions to improve Canada's empirical profile of elder abuse.

In their literature review the authors included: the challenges with the definition of elder abuse, Canadian prevalence resources of elder abuse and risk and protective factors for elder abuse.

The authors maintain that a careful consideration of varying perceptions of elder abuse is necessary to develop an accurate, relevant, comprehensive and inclusive definition of elder abuse. Vulnerable older subgroups conceptualize elder abuse in a way different from what an academic or a health care professional does. The authors necessitate a uniform and inclusive

definition of elder abuse for making cross-jurisdictional comparisons, synthesis or generalization the elder abuse data.

The authors note that there are only two national resources to gather the prevalence data for elder abuse: Uniform crime Reporting Survey (UCR2) and the General Social Survey (GSS). They argue that these studies do not reflect the true magnitude of elder abuse in Canada. There is need for a national prevalence study that includes both community and institutional settings with a modified methodology that includes abuse and risk factors for senior sub-population such as aboriginal, immigrants, ethnic and religious, sexual minorities and persons with disabilities.

Commenting on the risk and protective factors for elder abuse, the authors argue that the research should not only include the characteristics of the abused, the abuser, the relationship between the two, but also the environmental factors for elder abuse. Environmental factors bring out the socio-cultural-demographic aspects of risk factors for elder abuse. They claim that there is little research that examines elder abuse in rural and remote communities

The authors concludes that an accurate picture of the extent and nature of elder abuse in Canada is still absent. The nation does not have comprehensive program to address elder abuse mainly due to lack of updated prevalence study, gaps in understanding risk factors within the elder sub-populations and the lack of uniform definition for elder abuse. As a research direction, the authors provide six key recommendations to the Canadian government for future research.

OTHER MATERIALS

Abbate, Gay, "Seniors eager to surf the Net find help is just a click away", Globe and the Mail (Published Thursday, Feb. 20, 2003) online:
http://www.theglobeandmail.com/news/national/seniors-eager-to-surf-the-net-find-help-is-just-a-click-away/article4127056/

The author recognizes that more and more elders are getting tech-savvy. The Toronto Public Library Program is getting a positive response by the elderly population. It is a free program focused on providing internet education for the elderly. The program is strictly for people 50 and older, although most participants are in their late 60s or 70s. In addition to the main library, computer training courses for seniors are offered at 10 branches across the city. The computer training program is offered 11 times a year, and in two sessions, the first being a prerequisite for the second. Fourteen students can be accommodated at a time. An instructor and an assistant teach the course and give individual help. It also has a drop-in program at the reference library that can accommodate 27 people each session. The author notes that there were 616 drop-ins in 2002.

Brenan, Shannon, "Victimization of Older Canadians, 2009", *Juristat article* **(Released on March 8, 2012) Statistics Canada Cat No 85-002-X.**

This article examines statistical trends regarding the victimization of older Canadians in ten provinces by analyzing the 2009 General Social Survey (GSS) data on victimization. In order to comprehend the propensities of elder abuse in Canada, the author focuses on the nature and prevalence of victimization, various attributes of elder abuse, incidences of police reporting of elder victimization, emotional and financial consequences, and the associated safety and crime prevention issues. For a wider scope of the study, the author expands the typical definition of the "older persons" (65 and above) to include persons aged 55 to 64 years in the study. The coverage of the article contains GSS data for both violent and household victimization. Violent includes-sexual assault, robbery and physical assault, whereas Household victimization includes instances of break and enter, motor vehicle theft, household theft and vandalism.

Summary of the findings:

- In 2009, more than 154,000 or 2% of all Canadians aged 55 and above living in 10 provinces reported being victims of a violent crime in past one year.
- Age and marital status had a close connection with the rates of self-reported violent victimization. For example- out of 154,000 older Canadians who were violently victimized, approx. 39,000 were physically or sexually abused by a current or ex-spouse or a legal/common law partner. Around 13% of older Canadians felt emotional abuse by a current or ex-spouse or a legal/common law partner.
- Older Canadians reported lowest rates of violet victimization as compared to any other age group. The rate of self-reported victimization for those aged 65 and older is about half the rate reported by those aged 55 to 64 years.
- Violent victimization of older Canadians is most often committed in private residences (50%). Around 69% of the violent offences against older Canadians were committed by just one offender, majority (86%) of whom were males and 54% of the offenders were strangers to the older Canadians.
- Approximately 107,000 or 2% of Canadians aged 65 and above claimed that they were emotionally and financially abused by their child, relative, friend or caregiver.
- As compared to older men, older women were more likely to be emotionally or financially abused by a child, relative, friend or caregiver.
- In 2009, there were around 462,000 incidents of 'household victimization' in around 333,000 (8%) of Canadian household that were composed solely of residents aged 55 and older. The overall rate of household victimization has increased 39% from what it was in 1999. Theft of household property was the most common form of household victimization.
- Factors like the location, ownership of the residence and total household income were linked to the rates of victimization of older Canadians. Residence in census metropolitan

area and those who owned their home reported higher rates of household victimization. Likewise, households with annual income of $100,000 or more had higher rates of victimization. While other socio-demographic characteristics like- household size, type of home, and length of time living at the residence, were not found to be associated with household victimization.

- Not all incidences of victimization get reported to the police. Only 46% of all violent incidences involving older Canadians were brought to attention of police, while 36% of victimizations involving older households were reported to the police.
- Receiving protection was the most common reason cited for reporting victimization to the police.
- As compared to younger victims, older Canadians have a greater emotional and financial impact on them. Among older victims, impact is more prevalent among female old victims.

In general older Canadians reported high levels of satisfaction with their personal safety from crime, and a strong sense of belonging to their neighbourhood; however these feelings tended to be lower when the person reported having been victimized.

Remarks of the Right Honourable Beverley McLachlin, PC, Chief Justice of Canada to the 3rd Annual Canadian Conference on Elder Law, *Elder Law: An Emerging Practice",* (Vancouver, BC, November 10, 2007)

In her speech, the Chief Justice identified the three primary challenges faced by the growing aged population: how to continue to live - (1) with dignity, (2) in security; and (3) as an autonomous human being. Her speech focuses on how the law and the legal profession can work to protect and assist the aging and the aged to address to their special challenges and to maintain the basic Canadian values of dignity, security and autonomy.

- The law has a vital role in ensuring that people continue to live in dignity, security and autonomy.
- As people age, the dignity, security and autonomy taken for granted in youth, may be threatened. Their dignity may be increasingly threatened by discrimination, their security may be threatened by abuse, and their autonomy may be undermined by difficulty in accessing care and services.
- The values of dignity, security and autonomy find their counterparts in three needs: the need to be protected from discrimination, the need to be protected from abuse; and the need to receive appropriate care and services
- Underlying the challenges of the elderly are the twin stereotypes of "ageism" and the society's cult of youth and vitality. "Our society has a tendency to think of the elderly as

less vital and less important than younger people. The message is that youth is good; age is not so good."

- "Unless we acknowledge our society's cultural bias for youth, and guard against the stereotypes and prejudices it induces, it may unconsciously skew our view of the moral and legal entitlements of the ageing population", the Chief Justice warns.
- Discrimination against elders may take many forms. Age-based discrimination may arise in many contexts - in the employment context, with respect to mandatory retirement rules; in the driving context, with respect to age-based license restrictions; and in the social services context, with respect to equal access to care and treatment, to mention only three.
- Like other forms of abuse in our society, elder abuse may be expressed in physical, emotional or financial abuse, the restriction or denial of rights, and active or passive neglect. Because of a higher incidence of disabilities, poor health, and financial and emotional dependency, seniors are particularly vulnerable to abuse and exploitation.

How can the legal profession respond to these challenges? Through the development of the practice of Elder Law, the Chief Justice counsels. Elder Law refers both to a loosely defined group of legal issues and to a unique multi-disciplinary approach that recognises the connections among the legal, social and health needs of older persons and their families. "The practice of elder law is demanding. Elder Law lawyers are expected to bring to their practice more than just legal expertise. In order to properly serve their clients' interests, they must understand how to counsel older people, understand the ageing process, and be familiar with the network of ageing services available to meet their clients' needs. Above all, they must be capable of dealing with the special legal and ethical issues that may arise in the course of the representation of older persons."

The legal profession should:

- Recognise the importance of elder law and the unique challenges it poses to those who practice it. These challenges suggest that there may be merit in recognising elder law as a specialty worthy of special study and support.
- Promote and assist in drafting legislation to palliate some of the disadvantages that may come the way of the aging and aged. The age of retirement is largely in the hands of individual employers, Parliament and the legislatures; as the law stands presently, mandatory retirement is permissible but not required. Other forms of discrimination against the elderly - from impediments to transport, to barriers to equal access, to social and medical services - may similarly be amenable to alleviation through legislation and regulation. Several jurisdictions in Canada have already enacted legislation to protect older adults who are victims of physical or sexual abuse, mental cruelty or inadequate care or attention, and to better coordinate legal, health and social service interventions.

- Educate the public and the elderly population itself, on the rights of the elderly and the appropriateness of seeking legal redress for the wrongs that have been done to them.

Remarks Of The Right Honorable Beverley McLachlin, Pc, Chief Justice Of Canada At The National Academy Of Elder Law Attorneys Conference, " *Human Dignity At Any Age: The Law's Response To An Aging Population",* (Seattle, April 26, 2012).

In this paper the Chief Justice of Canada examines, with a bias for the aged and ageing population, the idea that every human being, regardless of their age, possesses inherent and equal fundamental dignity and basic rights. She asks: "what does 'human dignity' mean in the context of the older members of our society".

The Chief Justice points out that various international charters recognize the right of the elderly to live in dignity. "What emerges then", she says, "is universal acknowledgment that dignity is the central, guiding concept in our approach to the elderly".

The author maintains that human dignity for the elderly has two facets. First, the dignity of the elderly means enjoyment of equal opportunity for well-being, for realization of talents, and for the discovery of their capabilities to the same extent as anyone else. Second, maintaining human dignity for the elderly requires pro-active affirmative action, different approaches that take into account the particular needs of the elderly.

The Chief Justice regrets that the dignity of the elderly is far from guaranteed, but is increasingly under siege by "ageism". In Robert Butler words, ageism is an idea, which allows the younger generation to see older people as different from themselves; thus they subtly cease to identify with their elders as human beings. This detachment results in negative stereotypical attitudes towards elders, such as: seeing them as dependent and vulnerable, unable to make appropriate decisions for themselves, and not contributing to society. The cult of youth and vigor in the society, she says, exacerbates ageism.

A proper respect for the dignity of the elderly population requires that proper attention be paid to their peculiar needs. The paper identifies four of these needs, among others: (i) the need to be protected from discrimination, (ii) the need for security and protection from abuse, (iii) the need for appropriate care, and (iv) the need for autonomy.

The paper finds in the practice of "Elder Law" an appropriate response by the legal profession to the needs of the elderly. Elder Law is a focus on the problem of access to justice for the elderly. "Without access to justice, the dignity that is the right of every person will be denied to older people in our society", the Chief Justice says.

Chief Justice McLachlin notes that the legal profession can promote access to justice for the elderly by (a) professionalizing and deepening the study and practice of Elder Law to improve

legal services to the elderly, (b) promoting legal reform through protective legislation and impact litigation, and (c) education and social sensitization to reduce the barriers that impede understanding and access by the elderly to the legal system.

World Health Organization (WHO) (2002b), Chapter -5, Abuse of the Elderly, In Krug, Etienne G, Linda L Dahlberg, James A Mercy, Anthony B Zwi & Rafael Lozano [eds]*, World Health Report on Violence and Health*, **(WHO Press, Geneva, 2002) at pages 124-145, Retrieved on February 18, 2016, online: WHO <** http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap5.pdf**>**.

The editors in chapter five of the WHO report discuss the abuse of the elderly. After providing a historical background of the concept of elder abuse, they focus on the definition of elder abuse. (Note: The WHO definition is the most accepted definition on elder abuse). The editors talk about the extent of the problem prevalent in both domestic and institutional settings. From their literature review, the editors identify factors of elder abuse in the characteristics of the abuser, the abused and the relationship between the two and the community and societal influences. They maintain that older people become more vulnerable to abuse in domestic and institutional settings mainly due to their restricted mobility and dependency. They distinguish between the individual acts of abuse or neglect in an institutional setting and institutional abuse. Institutional abuse is where the prevailing regime of the institution itself is abusive or negligent.

In order to prevent elder abuse, the chapter acknowledges responses at both the national and the local level. Through international motivational efforts like the International network for the Prevention of Elder Abuse (INPA) in 1997, various countries started similar initiatives at the national level. INPA was the inspiration for Australian and Canadian Networks. For local responses, the editors identify key areas of social services, health care, legal initiatives, education and public awareness campaigns to have immense potential for reducing the problem of elder abuse. The editors referred about a Canadian school curriculum to prevent elder abuse as a setting and inspiring example to others.

The report provides key recommendations as follows:

- Top priority is to develop a better knowledge base for elder abuse. More research is needed for ascertaining the causes of abuse, its impact, about the evaluation of the intervention and recognizing existing abusive traditions.
- Recommendation for more effective prevention strategies. The first point of prevention is awareness – both among the public and concerned professionals. Optimum utilization programs for older people. Measures to be taken to prevent elder abuse both in the domestic setting and the institutional setting.

The report acknowledges that where the elders face challenges for meeting their basic needs, the problem of elder abuse cannot be properly solved. It concludes with a hope that the nations of the world must create an environment that accepts ageing as a natural part of the life-cycle, discourage anti-ageing attitudes and provides older people a right to live in dignity.