

“Many Clouds No Rain”

INTRODUCTION

Go to the World Wide Web and one gets millions of ‘hits’ to organizations for the elderly. Most of these organizations also offer legal services to people with a limited income. Because these community-based programs often operate with very small budgets and do not have enough resources to serve all eligible people, they handle only certain types of cases and must turn away many people who seek help.

Since the elderly cases generally tend to be less pressing as compared to cases dealing with “starving children” or ones involving abuse or violence, they tend to be the ones put on the back burner.

For example, a lawyer, who deals with the Ontario Office of the Public Guardian and Trustee (OPGT), has written about elder issues and states that the OPGT staff is altruistic and genuinely interested in helping the elderly. The problem is that they are under resourced and view themselves as a last resort.¹

One of the most pressing issues for the elderly is, therefore, not a lack of communication but funding problems. WEB and television advertisements offer promises to help or provide directions to the well but the elderly soon discover that, although there may be many clouds, the water well has run dry. Hence we chose as the title of our collective reflections, “Many clouds No rain”.

SHOULD AGENCIES ASSISTING LOW INCOME PERSONS IN ONTARIO BE THE FRONT LINE GROUPS TO PROVIDE SUPPORT TO THE ELDERLY?

Placing the “elderly” and the “poor” in the same basket is problematic because the problems for the elderly are unique and may not discriminate between the poor and the rich. The rich elderly may be just as vulnerable as the poor elderly and regrettably, service providers, including the lawyers of the rich elderly, may be part of the problem.

An organization that has low-income criteria for admission/eligibility for services seeks to assist people living in poverty and does not exclusively serve the elderly. This proposition still stands even if the organization increases the income level or expands the scope of operation to accommodate seniors. It is only levelling the field (*Eldridge v. B.C. Health Services* [1997] S.C.R. 624).

On the other hand, a non-profit municipal landlord like the Ottawa Community Housing Corporation (“Ottawa Housing”) which provides housing for low-income residents in Canada’s capital city, can claim that it has accommodation for

seniors because all the residents in certain units must be seniors even though it uses income level for admittance.

Most importantly, Ottawa Housing will not evict a senior even if that senior's income rises well above the entrance level. All the senior has to do is pay more rent so Ottawa Housing can claim to be serving seniors. On the other hand, another organization that uses only income level as its eligibility criteria cannot as readily claim to serve the elderly because the other poor, as it is usually the case, can drown the elderly. To state that proposition in linear algebraic terms, the poor is contained in the elderly for Ottawa Housing while the elderly is contained in the poor in the other organization.

In our view, the elderly or senior client needs "legal protection" and not necessarily "legal aid" services.

Legal protection encompasses the concept of "total elderly care" in the legal arena. It includes access to legal services but most importantly should be visionary and protect the rights of the elderly. The rights of the elderly are numerous but fall into three categories. At the forefront is the right to legal protection. Secondly (but not necessarily less important) is the right to services and benefits and finally, is the issue whether the senior has access to legal advice.

There is another aspect of "rights-based services" to which we believe that service providers and the public should pay particular attention. That is excess publicity and patronisation. The two can be detrimental to the clients.

A personal anecdote from Kwesi Baffoe will eloquently express the point canvassed.

"I lost my sight when I was in The Pas, Manitoba. I moved to Winnipeg to get mobility and other training. I needed toothpaste. I asked someone on the street where I could buy one. He told me to go to the Canadian National Institute for the Blind (CNIB). CNIB does not sell or supply toothpaste to the blind so why did the person direct me to that organization? The answer is that CNIB has been so successful in advertising itself that in some cases, it has "handicapped" the blind. The CNIB office was more than a mile away and the store that I could buy toothpaste was less than a block away. That incident made me realize for the first time that I was blind. Again, many people refer to my guide dog as "CNIB dog". CNIB provides no funding and has nothing to do with guide dogs. In fact, my branch of the CNIB had issues with the guide dog school, where I got my first dog. Nonetheless, I would not be surprised if CNIB receives donations that are meant for guide dog providers. If my assumptions are correct, then it is possible that the mistake is making it difficult for some of the blind to obtain guide dogs that they need. When service providers strive to do better than well, they do confound their skill in covetousness."

COMMUNICATION AND TECHNOLOGY

The organizers of the 2010 Canadian Elder Law conference have asked participants to consider the role of technology and how it impacts the provision of legal services to seniors.

In our view, the main problem in ensuring access to legal services to seniors is properly allotting funding and determining the best agencies to help provide legal protection for elderly. Before we expand on funding, it may be better to examine one of the important themes of the conference that has already jumped at us and is at the core of the concept of legal protection. That is “communication”, which in modern times, cannot be separated from “technology”.

“How can technology be used to expand access to legal assistance and legal information?”

Communication has two elements, transmission and reception. The elderly may have problems with both, but the problems related to reception are the most common and present serious challenges. The contemporary elderly did not flower in a period where technology was as essential as it is today. Although some seniors are comfortable with computers and technological devices, they are in the minority.

The elderly who are lagging may need training to use technology. The benefits of such training go beyond improving communication and delivery of services. Technological advances add to the comfort of the elderly and can promote intellectual vigour and independence. The powerless and helpless feelings of the aged are not always due to infirmity. It is sometimes due to the society's failure to set up institutions and systems that could prevent or delay the onset of the infirmities. Considering the high cost of personal care, the economic rewards of such systems are massive.

Technological advances or education can reduce the loneliness, depression, and the related infirmities, such as dementia, in an elderly person. For those who want to use technology to promote access to justice, the technological education of the elderly is the best way to maximize results. The question is who is responsible for such education?

Elder-based education in the technological field is the best avenue to success. The concept of legal protection focuses on the weakest link in the chain of delivery and that is why it is a superior avenue to providing technology to seniors. It positions the elderly at the centre of the stage and transforms the question above to the following, “How can we help the elderly expand their ability to access legal assistance and legal information?”

Community based legal organizations should look at the needs of the elderly as a whole. In addition to providing legal services, groups working with seniors should find a way to get the government to provide education for the clients who need it. Individually, they may not be successful but collectively and with the help of other non-legal organizations, they can succeed.

To round up this section, there is only one client in the world. That is the client in the chair. An organization (or lawyer) dealing with an elderly client ought to look beyond legal needs, and if possible, help the client fulfil the other needs which could be “hidden legal rights” and more crucial than the case presented. This means that the lawyer has to learn to listen to the client. A client cannot be helped by a lawyer unless the latter knows what are the client’s needs.

NEEDS WHICH IMPACT ACCESS TO LEGAL PROTECTION FOR THE ELDERLY

Knowledge of the needs listed below will help the lawyer size up the elderly client. We shall now proceed to examine seven (7) aspects of legal protection which are associated with the elderly. They include the following:

1. Lack of data.
2. The inability of the elderly to recognize that a problem may be legal in nature (Ignorance of the fact that there is an entitlement problem is a legal problem).
3. Access to benefits (such as barriers to applying for benefits or the denial or termination of public benefits).
4. Awareness of age discrimination.
5. Certain aspects of the law (such as private pensions, wills, probate, power of attorney, trusts and living wills) lean more particularly towards the interests of senior adults.
6. Medical/legal issues.
7. Rights to children’s support.

1) No one knows the magnitude of the legal problems of the elderly due to (i) lack of data and (ii) insufficient funding

There is no specialized entity (to our knowledge) that collects information on the legal needs of the elderly in Canada. Government bodies exhibit little dedication to the task of collecting information on the subject. Data from community based services are woefully inadequate for the reasons already stated above, namely, that the elderly are usually eclipsed by the “other poor”.

Information gathered from government agencies may reflect the need for the services but not the legal needs of the elderly. Statistics collected from senior legal hot lines may provide some evidence of needs but are insufficient because many elders may not call for assistance. They may not recognize that their problem is serious or is a legal problem. For instance, many elders think having a

will is only necessary for the rich and that their wills are already carved out for them in this fashion.

“I have nothing; I owe much; the rest I give to the poor”.²

Yet, to die without a will or a poor testament and the potential for serious and unnecessary damage looms large as depicted in this true story.

A man died at 85 naming two of his children as executors of his will. The will only gave instructions as to the division of his property. One of the executors planned to cremate the man to save money. This man, during his life, had bought four adjacent burial plots. One was for his wife, who had been buried in her plot, a second one was for himself and the other two for two of his children. He had even personally hand-crafted the tombstone for himself and the wife. Save for the strong objection of the other executor for religious reasons, the man would have been cremated. Are the plots and the tombstone not a will that should have been considered by the attorney drawing the written will? A will can go beyond money and property so the elderly should be educated to take full advantage of the power of such a document.

To get back to collection of data, the government or seniors organizations must embark on a survey by an expert on the legal needs of the elderly. Once the needs are identified and established, Statistic Canada can then use the survey and incorporate the needed questions in its data collection. Community based organizations may collectively establish a data bank for the elderly. The information collected may include services provided, services that they could not provide for financial or logistic reasons, or other needs of the client apart from the ones that the client presented. The information collected can also be used to support claims for more funding.

For example, the City of Ottawa currently advertises that seniors may be eligible for home care services. As an experiment, Kwesi responded to the advertisement to test our first assumption (placing the elderly with the poor being problematic). He responded to a help for seniors' WEB advertisement by the City of Ottawa. He told them that he was a senior and needed help in home care. The person who answered his call assured him that they could help and gave him the number of the person to contact. The officer that he contacted initially said, “We sure can”. She then informed him that she could not find his phone number on her computer. She then asked if he was on welfare. He answered in the negative. She then gave him the contact number for the department for financial assessment. Of course, he could not qualify. Is the advertised “help” for seniors or for the poor? Unfortunately, no other resources were offered ie. another agency helping seniors find care. This is the problem.

For the senior whose income is above the welfare level, that person has to take the risk (and costs) of advertising for the help to meet needs. That senior may

end up with dishonest or unreliable helper (or worse, a burglar). In addition, it may be very difficult for the senior to get a person to come to clean for just an hour or two per week. On the other hand, the City of Ottawa workers are trustworthy and are capable of working split shifts. With adequate resources, the city could increase the number of its available caregivers, ask middle class seniors to pay the going rate for the needed services and in so doing, would provide comfort and protection to more seniors.

Separating the “poor” and the “elderly” may have a second blessing directly related to elderly legal rights. “Negative views of old age translate to poor health”³. The negative view in the association of “poor” with the elderly affects our feeling and mindset. We are what we think and feel. Placing the poor and the elderly in the same basket is equivalent to labelling the elderly as poor and sums up what is termed the “ageist mentalities”. It reinforces the stereotypical views of elderly persons being incompetent, helpless, or even burdens. The elderly deserve the same respect and the protection of their rights to good health and services as others (regardless of income).

2. Timing issues and other issues which can lead to legal problems

The inability of the elderly to recognize that their problems may become legal in nature only after those problems reach crisis proportion is so vast that it is best to deal with it as it surfaces in each situation on a case by case basis.

Situations relating to health and medical care, financial and estate planning, or access to benefits for seniors are all common times where timeliness is an issue. The lack of proper information (or lack of information) may create additional confusion, anxiety or a worsening of the initial problem.

3. Ignorance of entitlement to benefits is a common and costly problem

Many elderly persons are not even aware of their entitlement to benefits. The right to benefits can also sometimes be delayed or denied for reasons completely beyond the control of the applicants i.e. the lack of necessary documents or information to process an application.

Recent media reports describe situations where seniors miss out on years of retroactive pension benefits because they did not apply in time. In other cases, some pensioners may only receive 12 months retroactive benefits under certain programs even though they might have been eligible several years earlier.

One elderly person told Kwesi that she started to receive her old age pension at the age of 65. However previously, she mistakenly went to an unemployment office at the age of sixty (60) to apply for an “old age pension”. The officer told her to come back when she was 65. The officers likely mistook her request for pension information as a request to apply for an old age security (OAS) pension.

OAS benefits are available only after the age of 65. The lady was working and was not desperate for the money. However, she might have been eligible for other pension benefits, such as Canada Pension Plan benefits (CPP) as of the time she turned 60. She likely lost years of CPP benefits. This might not have happened if all government offices were equipped with all the appropriate forms and information on related government benefits for seniors. If that had been the case, the officer would have been able to provide the right forms to the above person and not have acted under any assumption.

The solution above to that situation will also have the potential of resolving some of the issues with “conflicting” benefits. Government officials with a broader knowledge about Old Age Security (OAS) and Canada Pension Plan (CPP) benefits could also advise the elderly on how and when to apply for benefits such as CPP for those who are 60 years or older.

The above scenario opens the door to the next issue. That is, those that depend on government for assistance are usually timid. They have other problems such as lack of access to information and assistance. Even if the senior woman described above had knowledge concerning the right age for claiming old age pensions, she was not courageous enough to fight for her rights. Most likely it was a little of both. Certainly she knew about pensions for seniors; otherwise she would not have gone to inquire about them. She also must have had some knowledge about certain benefits starting from the age of sixty (60) for the same reason. However, she was not certain and also likely lacked the courage or the zeal to investigate.

Conflicting public benefits creates confusion for many. Let’s look at the case of an older person who is receiving Ontario disability benefits (ODSP benefits) due to medical conditions. An ODSP recipient approaching the age of 65 will be told that an application for Old Age Security (OAS benefits) must be filed. However, there are certain ODSP recipients who cannot receive OAS (such as those who have lived in Canada for less than 10 years since turning the age of 18 years). The ODSP recipient, often who lives with substantial disabilities, must then navigate the road to applying for OAS only to be then told that he/she does not yet qualify.

In our view, the solution is very simple. The government has knowledge of all seniors. It could notify them about seniors’ pensions every year through the tax department. We shall expand on this theme in the conclusion. For those who are on welfare or government assistance, the lack of courage is even worse. There is the fear of losing the little that they have if they complain. Their fear is well founded. It is usually the same worker that provides the information who also processes applications. It may be better to separate the two processes by having an intake officer and a processing officer. Being told that you may qualify may build confidence (in the client) and at the same time, the processor may have to

apply the rules and thus have very good reasons for rejecting a client's application.

Part of the mandate of West End Legal Services of Ottawa (the legal clinic where Laurie works) is to refer callers to agencies that provide these services and to explain conditions for acceptance. Clinic staff and volunteers are continually looking at means of ensuring that people are fully informed of their rights and then referred to the appropriate agency.

In west Ottawa, such agencies might be the local community and health centre, or a community centre for seniors, groups like the Ottawa West Seniors Support and the Good Companions or municipal offices (Ontario Works) or provincial bodies (such as Service Ontario) or federal departments (such as Service Canada). These agencies are ever changing and, in some cases, there are a few agencies which provide overlapping services. Overlapping or multiple referrals are confusing to the average person.

There are more than 80 federal agencies alone in Canada dealing with seniors' rights. If the information is available through federal agencies, clinics also provide information about Canadian government sources of information (including websites such as www.seniors.gc.ca).

Clinics often refer people as well to Community Legal Education Ontario (CLEO). CLEO provides high quality legal education pamphlets which are free and explain legal rights and access to services in clear and accessible language. Clinic staff provide contact information about services for seniors (i.e. the SeniorsInfo line, Service Ontario, or local or provincial political representatives' contact information).

In this paper, we will share lessons learned in our efforts to design helpful, user friendly legal education sessions to address the issues of interest to seniors. It has been our experience that many people contacting the clinic either do not have access to internet services. Some lack the confidence, capability, training or language skills to navigate websites. Written brochures can provide a snapshot of services or provide contact information. Many people however prefer to deal with a friendly person to explain benefits and services either by telephone or in person.

4. Be aware of Age-related discrimination

How do you prove age-based discrimination in the provision of legal services?

Academics and researchers are also asking the question of whether or not there is age-related bias in laws relating to services available for low-income persons or other `social services` which are part of the Canadian social safety net.

With respect to access to legal services, we have touched on the barriers to access to services for low income people earlier in this paper. All of the groups working with low-income populations (i.e. legal clinics, anti-poverty groups, seniors' organizations and others) constantly deal with the challenge of balancing priorities for programs or clients. Whether adequately resourced or not (more often the latter), such groups must set priorities about types of services offered. Even speciality legal clinics like the Advocacy Centre for the Elderly (ACE) cannot provide certain types of assistance to the elderly.

At the legal clinic in Ottawa where Laurie works, we often speak with seniors whose benefits are delayed or denied due to their apparent `failure to provide information`. An applicant's alleged failure to provide information may result from many factors, including difficulties accessing information. Many of the factors are beyond the control of the applicant yet the impact can be substantial.

Examples of age discrimination are also common in employment situations. Seniors often must work to pay for basic necessities yet have trouble finding jobs for which they are qualified and are even told that they are "over qualified". Others are slotted into certain jobs and not considered for advancement because of their age. The obstacles for newcomers to Canada to find work are even greater for an older immigrant. Trying to improve legal protection for seniors who face age-based discrimination is a daunting task and regrettably, West End Legal Services is not able providing case representation in employment law.

While not all barriers to services are a direct result of age-discrimination, there is little doubt that senior adults have greater difficulties obtaining or acting on information about services. As stated elsewhere, legal clinics are particularly concerned about those persons who are isolated due to medical problems, lack of integration due to language, culture, religion, and other factors.

One challenge that many legal clinics face is how to provide appropriate services to non-English or non-French speaking senior clients. Service can be affected by a lack of availability of culturally appropriate interpretation services. For example, how does one find the opportunity or courage to complain about elder abuse through an interpreter (often a much younger person) who may be from the same cultural community? If the shame or denial about a problem does not keep the person from asking for legal help, the lack of accessible transportation or money to get to the legal clinic, hire an interpreter or follow up with any referral agency will surely stop the process of seeking or providing assistance in its tracks.

Community legal clinics rely heavily on the expertise of and utilize our contacts with the different agencies which represent, assist or are keenly interested in the rights of seniors. When we are able to respond to invitations from diverse groups

in our community, we also get to learn about what accomplishments they have achieved and what challenges are still to be faced.

Good networks to facilitate community health and education programs, legal services and rights for seniors are essential to keeping communities healthy and age-friendly.

Awareness about seniors' legal rights can be raised through public legal education programs to community groups, to people working with the vulnerable and the elderly (such as personal support workers, community centre staff and volunteers) and the general public. We support legal clinics developing education sessions in a collaborative and appropriate manner with seniors' groups. By highlighting the particular needs and interests of seniors, as well as age-related rights, benefits and barriers, this may also prevent problems arising for those on the cusp of joining the `golden era`.

In Ottawa, there are senior rights agencies who are seeking to have the Nation's capital designated as an "Age Friendly community". If Ottawa-based senior groups are able to achieve this goal, there will be increased awareness of the services and benefits available to seniors (or based on an age-related criteria) in our community. The elderly and their support networks will better know where to go for assistance and what is available. Such measures may assist in reducing or eliminating age-related bias or discrimination.

5. Preservation of income for seniors

(I) Wills, Powers of Attorney and other

Certain aspects of the law, such as private pensions, wills, probate, power of attorney, trusts and living wills lean more particularly towards the elderly. Some of these, such as power of attorney, could spell disaster for the elderly. The lawyer or supportive family members must be on the lookout.

The rules regarding estate planning vary from province to province. Planning options can include:

- Converting non-exempt assets into exempt assets
- Transfer of the family residence to a spouse
- Transfer of the principal residence with the retention of a life estate
- Use of court orders to increase the amount of resources and/or income that the spouse of a nursing home resident can retain
- Trusts and Gifting of assets.

The options for distributing assets on death include:

- The execution of a formal Will
- Revocable Living Trusts

- Joint Tenancy Accounts
- Transfer of property with a Retained Life Estate

Each income preservation or planning option has significant legal ramifications and should be discussed with a knowledgeable advisor. Also, there are many financial products, such as life insurance, funds and annuities, which provide for the distribution on death to a beneficiary.

(ii) Access to public benefits for seniors

It is not our intention to review all of the benefits for seniors in Canada as rules and entitlement may vary from province to province. However, all seniors should be aware of benefits such as OAS, CPP, the Guaranteed Income Supplement (GIS) and the Guaranteed Annual Income System (GAINS).

Many seniors and their supporters are not aware of the different types of public benefits available to them or do not know when such applications should be made. Remember the senior who was working and did not realize that she could have applied for CPP benefits? She missed out on this type of income support and was penalized because of her delay in applying for benefits.

6. Intersectionality with medical issues –a vast array of problems

The physical, physiological, psychological, and social reserves of the elderly expose them to greater risk of adverse outcomes in the medical context. This is an area where the elderly may be even more vulnerable, regardless of income level.

The Merck Manual of Geriatrics, in chapter 14, generously lists an array of topics that could precipitate risk of adverse outcomes and which fall under legal and ethical issues. They include: Capacity, Competence, Informed Consent, Confidentiality and Disclosure, Advance Directives, Surrogate Decision Making, Do-Not-Resuscitate Orders, Withholding of Food and Fluid, Euthanasia, Assisted Suicide, and Palliation, Discharge and Placement and Long-Term Care.

While the responsibility for assessment of decisional capacity and competence fall mainly on the physicians, psychologists and assessors, the lawyer can have a major role in the identification of decision-makers and the resolution of conflicts about care.

For that reason, clients, lawyers and community services providers ought to keep a keen eye and, in a timely manner, advise the elderly about the issues of power of attorney, privacy matters, legal responsibility, advance directives and informed consent, which must always be considered in geriatric care and procedures.

Like the physician, the lawyer must not make assumptions about a person's abilities based on age, but assess each elderly client individually and delineate legal rights options accordingly. One must be aware that family members may be part of an unscrupulous scheme aimed at defrauding their elderly family member of property or money. Support persons or legal advisors with good insight can defeat these schemes by timely and effective legal intervention. The lawyer may be best positioned to detect potential elder abuse.

The Toronto Police Services website⁴ provides a list of telltale signs of potential elder abuse:

- A) An elderly person is brought in to sign a document but it is clear that that person does not understand the document,
- b) There is a sudden drop in financial status of a senior,
- c) Large gifts or transfer of money are passed on to a relative or friend, or,
- d) There is an unexplained change of power of attorney.

Any of these signs should alert the lawyer or community service provider of a potential problem.

(i) Long-term care referrals:

The handbook on “Guide for Programs for Seniors in Ontario” (the Guide) devotes chapter 13 to long time care. It projects a spectrum of abodes that is not necessarily related to infirmity but more to financial capabilities of the elderly. They include but are not limited to the elder’s home, a retirement home, a supportive housing building or residential care settings, such as a long-term care home (also known as a nursing home or home for the aged).

The Guide correctly points out that the need for any of the above is very fluid and changes may be sudden. It goes on to describe each type but does not rate them with respect to affordability. It also does not outline the qualifications for government assisted programs, but instead refers the applicant to the “Community Care Access Centres” (CCACs)⁵.

CCAC staff work in conjunction with private or non-profit corporations, and are generally known as community support centres. The Guide lists their functions but does not indicate how much they charge for services. In Ottawa, where West End Legal Services is located, Ottawa residents are fortunate to have access to the local CCAC. This service works hand in hand with families, caregivers, hospices, long term care facilities and hospitals.

Unfortunately, CCAC services are not as available or physically in close proximity to seniors in rural or northern communities. As far as we know, there are only fourteen CCAC networks in Ontario.

(ii) Legal aspects of Long-time care:

It is trite to emphasize the importance of educating seniors about setting long term care plans for themselves so that their families may not have to `guess` when it becomes to time to `take over` decisions about personal or property care and medical treatment. Such plans encompass the preservation or disposition of personal property and assets, or, whether or not end-of-life care should be provided in a home, long term care facility or hospital setting. It is also important to share with families and caregivers any particular cultural, religious or individual desires or practices. This advance information will assist the family or caregivers.

If the elderly person has not selected his/her power of attorney by the period that person is slated for long time care, then it is time for him/her to consider getting one. Many people deteriorate very rapidly when they reach this stage and those in nursing home are prone to over-medication, abuse and fraud.⁶

Through public legal presentations, community legal clinics explain about the different types of Powers of Attorney documents and when it is appropriate to use different ones. We also take the opportunity during those presentations to strongly recommend that the audience take time to consider a comprehensive will. The elderly ought to discuss also subjects with respect to Palliation, ie. Do-Not-Resuscitate Orders, Withholding of Food/Fluid and legally allowed Euthanasia and burial arrangements with the power of attorney.

The “Guide to Programs and Services for Seniors in Ontario” does not address another very important subject related to long-term care, which is “Elderly Citizens being medicalized through needless mass medication”.⁷

Minor or temporary dementia, for instance, is a condition best dealt with by care and attention, but in long term care homes, medication such as respridone is usually prescribed to patients who show the slightest form of resistance. One of the side effects is `Parkinson-like symptoms` and this medication is often prescribed for patients with Parkinson disease. Perhaps the medical care issues are beyond the scope of the Guide. However, the Guide does list some health and community agencies as well as lists of a number of government websites and offices. It might do more to steer people to sources which could help identify or could list potential abuses of the system and offer contact information for agencies that can offer help. There are also a number of government websites and offices which provide useful information.

7. Filial obligations towards the elderly- The “duty” of children to support their parents

There seems to have been a hardening of equity's arteries in the 20th century. A poll conducted on the WEB⁸ asked the viewers: “Is it your duty to support your elderly parents financially when the need arises?” The results as of August 23,

2010 indicated that 79% or 630 respondents answered in the affirmative (yes) out of 793 votes. Those who answered in the negative (no) were 163 or 21% of the votes.

It is sad and strange that, despite the results of the poll, the Canadian society is in practice slowly moving away from filial obligations towards the elderly. Ghanaians express Rights to children's support proverbially, "If a person helps you grow your teeth, you should help that person lose his/her teeth." Ghanaians are not unique in this respect. Most cultures believe in that philosophy. These include some Aboriginal Peoples of America, Africans, Chinese⁹, East Indians and many others. Ancient and until recently, western cultures believed in the duty of children to support their parents as well.

"In Roman law, the duty of children to support parents in case of need, as a duty of gratitude and piety, was turned from a moral duty into a legal duty."¹⁰

"To the Greek moral sense filial duty is not gratitude, but stands above and takes precedence of it."¹¹ Athenian law required a son to support his parents, piety which brought equal advantage and glory to his nation.

Religious institutions and Western cultures until recent times:

The Catholic and other Christian churches have a long tradition of advocating for the caring of elderly parents by their children. The Catechism of the Catholic Church states, "Respect for parents (filial piety) derives from gratitude toward those who, as much as they can, they must give them material and moral support in old age..."¹²

Confucius said, "Filial piety nowadays means to be able to support one's parents."¹³ One Muslim writer states that,

"Thy Lord has decreed that you worship non but Him, and (you show) kindness to your parents. If one of them or both of them attain old age (while with you), say not fie (a word of contempt), nor repulse them, but speak a gracious word, and lower your wings of submission through mercy, and pray "My Lord! Have mercy on them both as they did come for me when I was little".¹⁴

Kinoshita and Kiefer report that the duty of children to support parents during old age was very much in force in 1960.¹⁵ Somehow, the state slowly assumed responsibility for some senior citizens and enabled some children to catapult out of their responsibilities.

Children vs. the State:

This treatise does not limit "duty to support" with financial support, but adopts the notion of duty of "Conduct based on moral or legal obligation or a sense of

propriety".¹⁶ It is difficult to fathom how a society could slowly allow children, who could well be the cause of their parents' demise, escape the responsibilities to support their parents. Indeed, sections of the family law in Ontario¹⁷ require children under certain circumstances to support their parents. However, laws to mandate families to help relatives are not always adequate and infrequently used by the elderly, who are generally shy or uncomfortable with litigation.

Lawyers and community-based organizations must give the elderly the moral support and encourage them to use the law, lest we lose the right. The courts can only deal with cases that come before them. Even where the state has taken over the legal responsibility of its senior citizens, children ought to be by their parents' side for moral and other forms of support. Those non-financial supports are essential for the health and well-being of their elderly parents.

Those who argue against the duty of children to take care of their parents usually claim that their taxes pay for the care of the older generation through the government. They forget that their parents were also taxpayers at a time when those same parents were looking after them and the government was not providing much for their grandparents. That means the parents were probably paying taxes as well as simultaneously helping the children and their grandparents.

In a wealthy land blessed with a very strong social conscience, its seniors tenuously cling to a mere fraction of their past riches while their children abound in riches. It is an injustice that demands attention. It is heart breaking to see a beautiful way of life rendered desperate by diminishing opportunities and expectations.

CONCLUDING REMARKS

Too much choice and information can overwhelm the elderly, leading to unpleasant experiences, especially if the information leads to a dry well.

Low income senior citizens are aware of their financial status. As a first step, if all organizations using income levels as the sole criteria for admittance were to eliminate the word "seniors" or "elderly" from their Websites, the number of hits for help of the elderly will decrease by more than seventy-five percent¹⁸ without significantly impeding the number of financially poor seniors who qualify. They will apply as people with limited income.

The second phase is that all organizations which simply refer the elderly to other organizations or agencies should refrain from using the words "help", "provide" or words related to the benefit such as "home care" in their advertisements. This will enable the real providers of such services to stand up by being at the top of the hit list.

Since several levels of government have assumed some responsibilities of looking after the elderly, it is incumbent on them to not only provide adequate funding, but the means of communicating to the elderly who qualify, the range of medical supports and legal benefits provided. When an information agency provides appropriate referrals to institutions and systems, this promotes health and prevents or delays the onset of infirmities by assisting a senior in a timely manner.

(i) Information:

All government agencies (including the post office) that provide information or benefits to the public should provide information on benefits to the elderly. The employees must be conversant with the benefits and the qualifications for those benefits. The general information government office may not provide the services per se, but must be able to direct the elderly to the appropriate agencies. It is essential that providers of information know the criteria for such benefits so that they do not send the elderly on a wild goose chase.

(ii) Institutions or agencies:

Agencies such as Service Canada (or agencies that specifically provide services to seniors) must have more knowledge than the general agencies described above. If possible, Service Canada should be a one-stop shop for all elderly needs, or at least be able to help the elderly obtain the benefits. The relationship of Service Canada to the tax department (CRA), the Canada Pension plan (CPP) and Old Age Security (OAS) benefit providers gives Service Canada the opportunity to assist the elderly in many ways. However, that should not free these other agencies from their responsibility to notify the elderly of their rights to benefits.

The Canadian government also has the duty to notify seniors who reach the age of 60 years (and every year after that) of the right to apply for CPP benefits. If possible, the department should point out to the senior that it might be beneficial to delay an application if the senior is working for more wages than he/she did in the past five years. The Canada Revenue Agency (CRA), for instance, could send annual letters to seniors reminding them that they now might be eligible for benefits (as of the age of sixty) until they are eligible to apply for OAS. At that point, the responsibility may shift to the OAS providers.

The government is doing a good job of using the senior websites to advertise public benefits. While websites are very useful to the younger generation, it may not have the same beneficial effect on the elderly who may not be comfortable with technology. The government should go a step further and provide technological instructions for the elderly.

(iii) Education:

It is in the best interest for governments, both financially and politically, to have an education plan for the elderly.

Knowledge is power and the educated senior, especially in technology, will be more powerful, comfortable, independent and healthy. That will save our society a large amount of money. Elderly education must be the principal goal of every legal service provider for the elderly. Legal service providers may perfect and employ all the technology possible to expand access to legal assistance and information but, if the elderly person is not capable of manoeuvring through the technological system, the effort may be fruitless.

(iv) Community based groups working with seniors:
Overburdened community agencies often lack the time or creative energy to offer education programs for seniors, even though this education would help reduce or even prevent legal problems.

At the legal clinic in west Ottawa and (we can say with some assurance) at all of the clinics that we work with, our mandate is to provide the highest level of legal help in the most appropriate manner. Legal services are only useful if available in a timely and accessible manner. Delayed access to other seniors` services and benefits (even if these services are readily available and widely publicized) can be seriously detrimental or even fatal in some cases.

A LITTLE INFORMATION ABOUT THE PRESENTERS

Kwesi Baffoe recently completed his doctoral thesis in law at the University of Ottawa. He qualifies for many programs for the elderly and can provide personal and academic reflections on services for seniors.

Laurie E. Joe is a staff lawyer at West End Legal Services in Ottawa. She is interested in the intersectionality between legal services for the elderly and the needs of those most vulnerable in society (i.e. Due to disabilities, lack of English or French language capability, isolation).

The opinions of the presenters are their own and do not necessarily reflect the views of everyone at West End Legal Services or the conference organizers. Thank you for your anticipated discussion and feedback about our ideas and your own work with seniors.

ENDNOTES

¹ "Elder legal Abuse in Ontario" <http://www.estatelawcanada.ca/elder-abuse-in-ontario/>. It is a snapshot of the page as it appeared on 4 Jun 2010 07:56:17 GMT.

² The will of the extraordinary French genius of the pen, Rabelais, Evening Post, Volume CXXVII, Issue 95, (24 April 1939), p. 8.

³ Reuben Chow, "Negative views of old age translates to poor health", NaturalNews, (Saturday, March 14, 2009).

⁴ <http://www.torontopolice.on.ca/communitymobilization/elderabuse.php>

Other Agencies to contact for more information on the subject are:

The Advocacy Centre for the Elderly (ACE) and Community Legal Education Ontario (CLEO) and the Office of the Public Guardian and Trustee (OPGT) tel. 416 327 6348.

⁵ Seniors' INFO line

1-888-910-1999, TTY: 1-800-387-5559

See also www.310CCAC.ca or visit www.seniors.gc.ca

⁶ See generally, Oppenheim, R.

Care of the Elderly: Legal issues in relation to medical and social care of the elderly

Clinical Risk > Volume 9, Number 1 > Pp. 28-31 Clin Risk 2003;9:28-31

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1 Wimpole Street, London W1G 0AE, UK

⁷ David Gutierrez, "Elderly Citizens Being Medicalized Through Needless Mass Medication", NaturalNews (Friday, April 24, 2009).; Oppenheim, R. Care of the Elderly: Legal issues in relation to medical and social care of the elderly, supra,

⁸ Helium: Link to Helium - Where Knowledge Rules - Where Knowledge Rules
Accessed August 23, 2010 6:25 GMT.

⁹ Xiaomei Pei and Vijayan K. Pillai, The International Journal of Aging and Human Development

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¹⁰ Pound, Roscoe, 1870-1964.

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¹¹ Pound, Roscoe, 1870-1964.

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¹² The Catechism of the Catholic Church – Part 3, Section 2, Chapter 2 - 2215
www.scborromeo.org/ccc/p3s2c2a4.htm -

¹³ www.questia.com/PM.qst?a=o&se=gglsc&d=95690686 – visited August 23, 2010.
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¹⁴ Helium: Link to Helium - Where Knowledge Rules - Where Knowledge Rules
Accessed August 23, 2010 6:25 GMT.

¹⁵ R. Alan Hedley, Identity: Sense of self and nation-The duty of children to support parents during old age (1990) Continental Divide: The Values and Institutions of the

United States (Article first published online: 14 July 2008)
onlinelibrary.wiley.com/doi/10.1111/j.1755-618X.1994.tb01259.

See also, the Canadian Review of Sociology/Revue canadienne de sociologie
Volume 31, Issue 2, pages 200–214, May 1994;
www3.interscience.wiley.com/journal/120187274/articletext?DOI=10...Jurisprudence,
see generally M. Rheinstein, “Duty of children to support parents” in E. W. Burgess.
(ed.). *Ageing in Western Societies* (1960) Chicago: University of Chicago press.

¹⁶Carlson Montour, citing Webster’s Dictionary in
Helium: Link to Helium - Where Knowledge Rules - Where Knowledge Rules
Accessed August 23, 2010 6:25 GMT.

¹⁷ *Skrzypacz v. Skrzypacz* (1996) 25 R.F.L. (4th) 450 (Ont.C.J.).

¹⁸ We arrived at this figure by randomly reading through the WEB hits and discarding those that do not meet our criteria of serving the elderly. We attempted to apply for help where we were in doubt to confirm our position.

¹⁹ “Elder legal Abuse in Ontario” <http://www.estatelawcanada.ca/elder-abuse-in-ontario/>.
It is a snapshot of the page as it appeared on 4 Jun 2010 07:56:17 GMT.

²⁰ Reuben Chow, “Negative views of old age translates to poor health”, *NaturalNews*,
(Saturday, March 14, 2009).