

Protection vs. Autonomy? The Challenges of Advancing Effective Justice for Older People

- Supporting the Older Person's Voice
- Developing Better Awareness of Risk Factors
- Building Stronger Systems and Coalitions of Professional and Family Partners

December 4, 2024 Presentation hosted by
University of Ottawa LIFE Institute *and* Centre for Health Law, Policy and Ethics

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Overview

- What do we mean by “Justice”?
- Risks Factors Affecting Access to Justice for Older People include:
 - Poverty *and* Wealth
 - Physical Frailty
 - Cognitive Frailty
- “Joined Up” Partnerships to Provide Effective Solutions – or as Michael Tulloch, Chief Justice of Ontario, Court of Appeal, recently observed, “strong, collaborative teams that embrace education and action”

With Appreciation to:

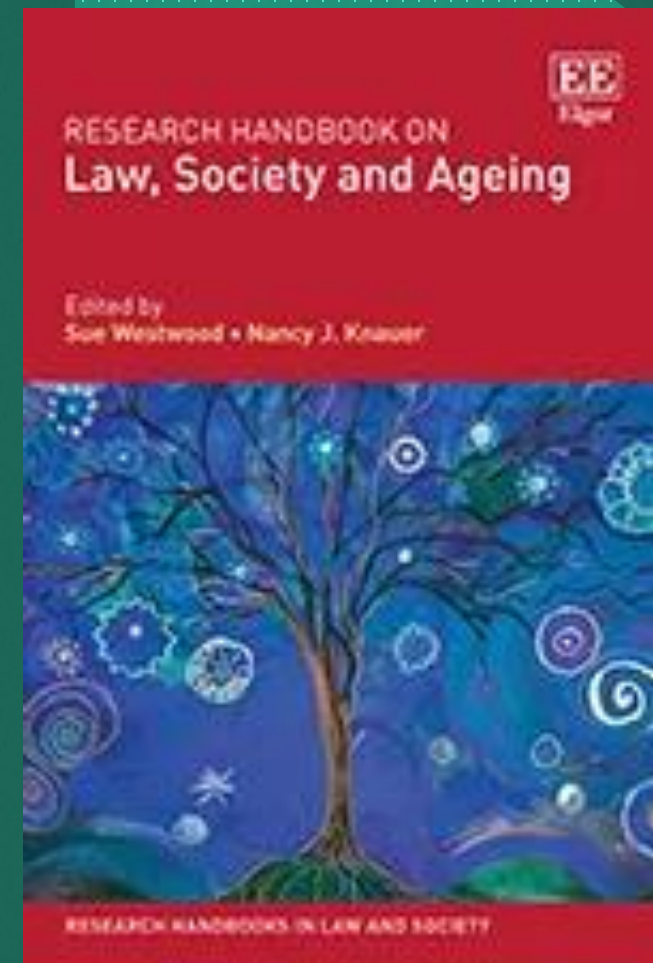
Edward Elgar Publishing Ltd and
Sue Westwood & Nancy J. Knauer, Editors

Canadian Contributors to the Research Handbook on Law, Society and Ageing include:

**“Ageism as an Institutional Push Factor for Retirement” by
Martine Legacé and team at University of Ottawa
LIFE Research Institute**

“An International Convention on the Rights of Older People?” by Joan Harbison, Dalhousie University School of Social Work

“Virtual Spaces: Ageism in Social Media,” by Brad A. Meisner, Deanna Vervaecke, and Matthew Le, York University Centre for Aging Research & Education



Our Team's Working Definition of "Justice"

"Justice is the ethical, philosophical idea

- that people are to be treated impartially, fairly, properly, and reasonably by the law and by the arbiters of the law,
- that laws are to ensure that no harm befalls another,
- and that, where harm is alleged, a remedial action is taken – [and] both the accuser and the accused receive a morally right consequence merited by their actions."

- Joe Duffy, K. Pearson & Subhajit Basu, "**Older People and Access to Justice**," from RESEARCH HANDBOOK ON LAW, SOCIETY AND AGEING (Elgar. 2024).

- Justice, Legal Info. Inst, at www.cornell.edu/wex/justice



Canadian Refinements to Definition

Justice is the ethical, philosophical idea

- that **all people** are to be treated impartially, fairly, properly, and reasonably by the law and by the arbiters of the law,
- that laws are to ensure that no harm befalls another,
- and that, where harm is alleged, **a timely** remedial action is taken – [and] both the accuser and the accused receive a morally right consequence merited by their actions.
- I note: Both **Canadian Justices Beverley McLachlin and Michael Tulloch** have advocated for “**creativity**” in solutions



Justice on the International Stage

- On global stage, certain rights have received **recognition**
 - 1982: First World Assembly on Ageing – UN endorsed Vienna International Plan on Aging
 - Topics include health and nutrition, consumer protection rights, housing and environment, social welfare, income security and education
 - 2002: Second World Assembly on Ageing, UN endorsed broader and more detailed Madrid International Plan for **Action in Ageing**
 - BUT, in 2018: UN General Assembly announced negative critique citing lack of progress on action in ageing....
 - **No clear movement on proposed Convention on Rights of Older People (CROP), despite UN's promotion of Conventions on the Rights of the Child (1989) and Rights of Persons with Disabilities (2008)**



“While uncertainties remain, it appears that a pre-negotiation stage that may lead to a convention on the right of older people is under way.”

-Prof. Joan Harbison, Research Handbook (2024)

Example: On a Domestic Front – Who is *Already* Exercising **Creativity**?

- Woman admitted from home to Hospital then to Nursing Home (NH) for stabilization of conditions associated with diabetes
- In hospital – she was “better”
- In NH -- she deteriorated – “Pressure Sores”
- Died from complications occurring in the Nursing Home
- Personal Injury Suit (currently on appeal):
 - Jury found both “**Operating Companies**” and “**Management Companies**” for NH liable for negligence
 - Judge set aside verdicts against Management Companies found to be 65% at fault
 - Operating Companies had insufficient insurance or assets to cover remaining verdict
 - **Research shows that both Operating and Management Companies were separately incorporated – and this “design” has been recommended precisely to avoid or minimize financial liability for negligence**

Four Case Studies Highlighting Potential Client Concerns

- 1. **New Mexico:** Older man seeks legal assistance from local attorney after death of his wife, who had “handled all their finances.” Goes to an attorney with a neighbor, recommended by neighbor. Attorney and older man do not speak the same language; neighbor interprets, as the older man signs a power of attorney making the neighbor his agent....
- 2. **Ireland:** Professor makes a presentation in a country not her own about “exploitation of older adults.” After presentation, a line of people from audience approach speaker, seeking to tell their families’ stories. One person approaches with a story about a family pub....
- 3. **Arizona:** Family of older woman puts together a paid “team” of “certified” caregivers for home assistance. Woman is able to handle many daily tasks including paying routine bills via personal checks. One day, daughter realizes there is no money in mother’s checking account and one caregiver has been receiving twice weekly checks....
- 4. **Pennsylvania:** Grandson learns that recently widowed grandmother is dating a man from another state, who says he was former high school boyfriend. Grandmother seems to regain interest in life but admits she doesn’t remember man from high school. Within three months grandmother announces she and new man are to be married soon; he’s moving in....

One potential commonality?
Is older person unable
to appreciate risks and/or to
Self-protect?

A Research Path Leading to Recommendation for “Preventative Visitor Program”

- 2008-9: Qualitative Empirical Research by Duffy, Basu & Davey, in Northern Ireland, initiated and supported by Changing Ageing Partnership at Queen’s University Belfast.
- 2009: Technical Report titled “Digital Divide, Ageing and Online Legal Advice,” noting that older people identified cognitive impairments, cost, isolation, inadequate access to technology, and complicated family dynamics as potential barriers to both seeking and obtaining relevant advice and planning assistance as they aged.
- 2012: Research commissioned by Commissioner of Older People in Northern Ireland (COPNI), reported by Duffy, Basu & Pearson in “Older People and Legal Advice: The Need for Joined Up and Creative Approaches,” 34 J. SOC. WELFARE & FAM. L. 31 (2012)
 - Concludes there is a clear need for **unified access point for early information** on law, rights, and entitlements, and points to approaches taken in Denmark (M. Voss).
- **2022 COPNI proposal: “Preventative Visitor Program” supported by legislation (funding), an opportunity for in-home consultation beginning at age 75, described in “Report on Public Consultation is Launched on Reshaping Adult Social Care”**
- NEXT STEPS? Reality check & reconsideration of costs, funding, and **changes in technology....**

New Pathways opening for my future work because of Canadian Opportunities

- September: LIFE Research Institute Program on Neuroimaging for dementia risk
- October: Conference on International Access to Justice, hosted by University of York in Toronto – highlighting public and private outreach efforts throughout Canada, including law school clinics
- October & November: Centre for Health Law, Policy and Ethics programs on “AI and Health” and “Advancing Women’s Health with AI”
- November: Comparative law developments on access to abortion, contraception, surrogacy as reported during Centre’s Conference on “Governing Reproduction”
- November: Bruyère Health Research Day, including Dr. Andrew Frank on developments related to Alzheimer’s and other cognitive impairments
- Throughout Fall 2024: Individual and team meetings with Leaders, Academics and Practitioners, including LIFE Institute, Bruyère Health, Ontario Certified Capacity Assessment program, and Canadian Office of the Minister of Labor and Seniors

“Meaningful change always starts with connections.”

Dr. Claire Kendall, Bruyère Health Research Day, Nov. 28, 2024

Advocating for Older People ?

- **Identification:** What is your role? Who is the Client? Their goals?
- **Approaches:** Handling Meetings with Client and Family/Friends/Neighbors
- **Awareness:** Subtle Risk Factors may be involved & may require Special Training/Information/Education for professionals and families
- **Avoidance:** of “Siloed” Thinking: Teams may need Medical Providers, Social Services and Caregivers, Family Members, “even” Lawyers & Judges
- **Availability:** Advocating for Justice takes Availability, Creativity, Teamwork, **Persistence and Funding**....

Additional Selected Resources

- Elder Law Prof Blog: https://lawprofessors.typepad.com/elder_law/
- K.C. Pearson, “The Lesson of the Irish Family Pub: The Elder Clinic Path to a More Thoughtful Practice,” 40 STETSON L. REV. 237 (2010)
- Filial Support Laws – the good and the not-so-good...
 - K.C. Pearson, “Older People and Filial Support Laws,” in RESEARCH HANDBOOK ON LAW, SOCIETY AND AGEING, (ISBN # 978 1 80392 528 8) Edward Elgar Publishing, edited by S. Westwood and N. Knauer, published 2024)
- Upcoming: K.C. Pearson, “Continuing Care Communities: The Refundable Fee Problem?” PENNSYLVANIA B. QUARTERLY (Spring 2025)
- Ai-jen Poo, THE AGE OF DIGNITY: PREPARING FOR THE ELDER BOOM (New Press, 2015)
- Beverley McLachlin, TRUTH BE TOLD: MY JOURNEY THROUGH LIFE AND THE LAW (Simon & Schuster, 2019)

In Closing...

- My Deep Appreciation
 - Dean Danielle Conway, Penn State Dickinson Law
 - Vanessa Gruben, Dina Idriss-Wheeler, CHLPE uOttawa
 - Nafissa Ismail, Dean Lucie Thibault, LIFE Research, uOttawa
 - Dr. Kumanan Wilson, Bruyère Health
 - Giles Holland, Chrystine Frank & Amanda Mullen, uOttawa
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