

World Study Group on Elder Law 2009

Friday November 20 - Saturday November 21, 2009

Friday, November 20

1:00 - 1:15 p.m. Welcome & Introduction of Participants

Laura Watts, Canadian Centre for Elder Law
Rebecca Morgan, Center for Excellence in Elder Law

1:15 p.m. Afternoon Program-Research Initiatives

1:15 - 2:00 p.m. *Elder Abuse in Long Term Care Facilities*
Jane E. Meadus

In Ontario, as in many other jurisdictions, there is a “zero tolerance” policy for elder abuse. However, despite these policies, the realities can be quite different. Long-term care administrators and governmental authorities are unable to “verify” abuse, because of the private nature of the care as well as capacity issues of the residents. Police are ill equipped to deal with the situations. Even when abuse is documented, homes are unable or unwilling to fire the perpetrators because of labour issues. Staff involved in the abuse continue to work at the home and often on the same unit as the accuser. This presentation will involve a discussion with participants to different strategies which may be used in other jurisdictions and to brainstorm possible remedies.

2:00 - 2:45 p.m. *Telling the Story of Elder Abuse*
M.T. Connolly

The OJ Simpson trial transformed how we think about domestic violence and catalyzed passage of the Violence Against Women Act. By contrast, coverage of the Astor trial largely ignored the elder abuse aspects of the case. This and myriad other examples illuminate the glass ceiling that has kept elder abuse largely invisible, especially when compared to related issues. Why? And how do we begin talking about the problem in a way that will make a difference?

2:45 - 3:00 p.m. Break

3:00 - 3:45 p.m. *A Modern Constitutional Challenge to Age Discrimination*

Nina Kohn

The paper argues that current trends in equal protection jurisprudence open the door for successful constitutional challenges to certain forms of age discrimination in the U.S.

3:45 - 4:30 p.m. Increasing Diversity in Aging
Professor Richard Kaplan

In many countries (especially the United States), the elder cohort is the most Caucasian of any age group, but that characteristic is changing over time. How does the increasing diversity of the aging affect various issues within Elder Law subject; viz., advance medical directives, congregate living arrangements, definitions of - and responses to - elder abuse, and the like.

4:30 - 5:15 p.m. *Consumer Protection and Unfair Contracts*
Associate Dean Mark Bauer & Laura Watts

Consumer protection issues and unfair contracts are an increasing and multi-jurisdictional issue particularly facing older adults today. Ranging from frauds, scams, cross-border 'boiler rooms,' targeted marketing, unfair contracts and refusal to fulfill obligations can all frame a part of this increasingly sophisticated patchwork of problems. This session will present research from Stetson University and the Canadian Centre for Elder Law on several of these key issues.

5:15-5:45 Discussion of Research Agenda

5:45 p.m. Wrap up-Day One & Adjourn

5:45 - 6:00 p.m. Campus Tours (for this interested)

6:00 Dinner Mann Lounge

Hosted by the Center for Excellence in International Law

Saturday November 21

Working Agenda

7:30 - 8:00 a.m. Continental Breakfast

8:00 a.m. Morning Program Teaching Elder Law & Advocacy

8:00 - 8:45 a.m. *Elder Law in the Academy*
Professor Richard Kaplan

After the creation of numerous Elder Law clinics, courses, journals, etc., why do law schools still seem disinclined to hire faculty for this subject? Faculties certainly appreciate having an on-site source for dealing with their personal family crises, but that recognition of Elder Law's importance does not translate into curricular enhancement or expansion in this area. Put more bluntly, if a current faculty member did not decide to offer an Elder Law course, would an Appointments Committee try to find one?

8:45 - 9:15 a.m. *The Development of the Elder Law Teaching and Research in Quebec: Interdisciplinary, Transsystemic and Inter-University Approaches*
Ann Soden

The session will focus on the teaching of elder law from a combined law and social work programme at McGill's Faculties of Law and Social Work. It will also explore the development of a comparative law and aging course at the LL.M. level at U. de M.

9:15 - 10:00 a.m. *A Focus Forum on Elder Law Education*
Facilitated by Professor Nina Kohn

This session will be a structured discussion in which participants will be asked to brainstorm about what the field of elder law should look like in 20 years and how legal educators can get it there. Discussion will be framed in the context of the new study of elder law education, funded by the Borchard Foundation and McGeorge's Institute for Aging and Law.

10:00 - 10:15 a.m. Morning Break

10:15 - 11:00 a.m. *Design of Effective Mechanisms for Enforcing the Rights of Older Adults Residing in Congregate Settings*
Lisa Romano

The Advocacy Centre for the Elderly recently completed a research report about access to justice for older adults living in congregate care settings. This presentation will examine its findings and recommendations for change. It will also involve a discussion with participants about the instruments used in other jurisdictions and the design of “ideal” mechanisms. The presentation will review legal structures and oversights in place, current and future needs regarding complaint resolution, and other key issues to assist older adults in congregate care enforce their rights.

11:00 - 11:45 a.m. *Current Developments in Elder and Guardianship Mediation*

Bob Rhudy (Virtual Presentation)

This session will describe current developments in elder, guardianship, and family caregiver mediation in the United States, Canada, and other countries, including this summer’s creation of a national Elder Decision-Making and Conflict Resolution Section by the Association of Conflict Resolution, Washington, D.C. Other topics presented will include the challenges and opportunities of elder mediation; what’s different about mediating with older persons and others who may have cognitive or other disabilities; particular ethical issues confronted in elder mediation; the advantages of elder mediation to help resolve a range of conflicts involving older persons, their families, service providers, and other to them, their attorneys, courts, and others; and suggested roles of attorneys in elder mediations.

11:45 - 12:30 *Sexuality and Aging - The Challenges in Long Term Care and Congregate Living*

Jane E. Meadus (Judith Wahl joining virtually)

The Advocacy Centre for the Elderly, a community legal clinic in Toronto, is going research on legal issues related to sexuality and aging, especially in long term care settings. For those people that live in long term care or other seniors congregate living settings, expression of sexuality may be a challenge due to lack of or limitations on privacy and other factors inherent in a congregate health setting. Even in those settings where the operators are supportive of creating an environment that provides the privacy and other supports to residents to engage in consensual sexual relations there are challenges in managing this in that a high proportion of residents may have dementia or other disorders where their mental capacity may be diminished. this research session will explore, in particular the issues of

consent, and capacity to consent, and the duty of care of the operators to protect residents from sexual abuse are challenging to define and manage.

12:30 - 1:15 p.m. Lunch

1:15 p.m. Afternoon Program - Developing Issues & Programs

1:15 - 2:00 p.m. *Developing a Principled Approach to the Use of Age-Based Distinctions in the Law*
Lauren Bates

The Law Commission of Ontario (LCO) is currently undertaking a multi-year project to develop a systematic framework for the law as it affects older adults, with the intent that it serve as a reference point in developing this area of the law. One area of research and public consultation for the LCO in this project has been the use of older age as a criteria for the provision or denial of benefits, services, opportunities or responsibilities to older adults. The research presented provides a basis for an examination of the principles and considerations that ought to guide policy-makers in determining whether it is appropriate to employ age-based distinctions in the design of laws, programs and policies.

2:00 - 2:30 p.m. *Police Investigations of Elder Abuse in the U.S.*

Randolph Thomas, Retired Police Officer

There has been a shift in the way in which we now view elder abuse. In the past, it has been viewed primarily as a social service problem with solutions difficult and often did not address offender accountability. This has changed. The purpose of this presentation is to provide an overview of the progress the criminal justice system has made in addressing elder abuse as criminal behavior. It will provide a look at efforts at the local, state and national level. It will also discuss some of the issues that remain if we are to achieve a response that provides for both victim safety and offender accountability.

2:30 - 3:00 p.m. Afternoon Break

3:00 - 3:45 p.m. *Capacity and Guardianship Issues*
Ed Boyer

This presentation covers multiple considerations for attorneys representing clients with marginal capacity. It explores

dementia and the causes of incapacity and the distinctions between clinical capacity and legal capacity. there is a focus on an attorney's ethical considerations in legal representation of clients with marginal capacity and the ethical rules that apply. The lecture also explores the question of whether and to what extent an attorney should assess a client's capacity, and what resources are available to do so. Tips are offered for enhancing capacity in the legal setting and for preparing legal documents with marginal capacity.

3:45 - 4:30 p.m. *Multi-state Jurisdictional Guardianship
Tangles: Where Do We Stand?*
Erica Wood

Adult guardianships often involve more than one state, raising complex jurisdictional issues. Thus, judges, guardians, and lawyers frequently are faced with questions about which state should have initial jurisdiction, how to transfer a guardianship to another state, and whether a guardianship in one state will be recognized in another. Moreover, lack of clear jurisdictional guideposts can facilitate "granny snatching" and other abusive actions. To address these challenging problems, the Uniform Law Commission in 2007 approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The UAGPPJA seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas where more than one state is involved. The UAGPPJA cannot work as intended - providing jurisdictional uniformity and reducing conflict - unless all or most states adopt it. This session will profile some recent multi-state cases, discuss the Act and how the Act would affect the cases, and provide an update on recent state enactments.

4:30 - 5:00 p.m. Development of Research Agenda
Wrap Up and Final Comments

5:00 p.m. Adjourn

Note: those staying over until Sunday may wish to have an informal dinner at a local restaurant.