British Columbia Law Institute

Canadian Centre for Elder Law

Annual Report 2019

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The year in review



Thomas L. Spraggs



Report of the Chair

2019 was a busy year for BCLI. In addition to wrapping up a number of projects and starting new ones, staff and the board took time to examine how we carry out our work and how we can leverage our strengths in our program planning for the future.

We did this in four ways:

- 1. We implemented a more rigorous financial reporting system so that we can better plan and monitor the status of our projects.
- 2. Staff engaged in a process of reviewing recent projects for their successes and challenges in order to identify the conditions that must be in place for successful project identification and project management.
- 3. As part of the Law Foundation of BC review of its Funding Strategy for Law Reform, our ED carried out a thorough review of our past projects and compared

our structures, processes and challenges with other law reform bodies in Canada.

4. In the latter half of the year we conducted a number of interviews and a survey in an effort to generate information on emerging law reform needs in BC, and priorities. This work will continue in 2020 and our strategies will be refined.

As we carried out this work it reminded me that while many in the legal community and government know who we are and what we do, even more do not. And even for those who know us, I draw an analogy to an iceberg – just as only 10% of the iceberg is above water, the other 90% is unseen. That unseen part of BCLI's work is the incredible discipline and dedication of staff to carry out thorough legal research and policy analysis in order to support the dozens of project committee volunteers to understand the legal issues from all perspectives, debate the policy options

and finalize recommendations for law reform. As the infographic on page 24 shows, we continue to raise our profile through increased interactions in the media, more newsletter subscribers and increased visits to our websites.

2019 was also the year that Access to Justice BC launched its Triple Aim. BCLI was pleased to be one of over fifty signatories at the launch event in March. The Triple Aim is a single goal with three interrelated elements: improved population access to justice, improved user experience of access to justice, and improved costs. It will provide BCLI with a framework for considering how to proactively track how our work contributes to these goals.

In November 2019, the provincial government passed Bill 41, the

Declaration on the Rights of Indigenous Peoples Act. As we move forward BCLI and CCEL will be considering how we can ensure our projects and recommendations can contribute to this provincial commitment.

In 2019 we said goodbye to four board members;

 Dylan Mazur joined in December 2017 and served on the nominating committee and the audit risk and finance committee. His experience as an Executive Director at another agency provided unique perspectives in our discussions and support to our own Executive Director, Kathleen Cunningham. We wish him well in his new role as Director of Human Rights and Equity at Lakehead University.

- Brent Olthuis joined in October 2016 and sat on the Audit Risk and Finance Committee. Brent's contribution to matters of financial stewardship were greatly appreciated.
- Andrea Rolls was a member at large for 9 years. She served as Chair of the Older Women's Dialogue Project and on two committees — the Audit, Finance and Risk Committee, and the Strategic Plan committee. Her wise and thoughtful insights will be missed.
- Janis Sarra, appointee of the Dean of Law at Allard Hall completed her term in August. She also served on the Program Committee. We will miss her insightful comments and contributions at the meetings and on the consultation and final reports issued by BCLI.

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However, with change we bring on new perspectives and experience. I was pleased to welcome Michelle LeBaron as successor to Janis Sarra and three new members at large: James Deitch, Timothy Outerbridge and Dylan Merrick. Each of these individuals bring strengths and expertise in areas relevant to future initiatives. I look forward to working with them and the full board in 2020 as our newly formed Governance Committee leads us through the development of a strategic framework which will set our priorities for 2021 and beyond.

As we ended 2019 we began to plan our search for the BCLI's next Executive Director. After serving out her 5-year term, Ms Cunningham announced that she will be stepping down at the end of May 2020. On behalf of the board, I wish

to thank Kathleen for her dedication and commitment to the BCLI and CCEL. She has laid the groundwork for BCLI and CCEL to move forward as a stronger organization.

This will be my last report as Board Chair. It has been a privilege to work with the staff, board and stakeholders. I look forward to supporting the BCLI and staff in the years ahead.

Thomas L. Spraggs
Chair, BCLI



Kathleen Cunningham



Report of the Executive Director

Two major projects came to a close in 2019 - the Health Care Consent, Aging and Dementia project with its final report Conversations About Care: The Law and Practice of Health Care Consent for People Living with Dementia in British Columbia and its companion summary report; and the Strata Property Act project with three final reports, Report on Governance Issues for Stratas, the Report on Insurance Issues for Stratas, and the Report on Common Property, Land Titles, and Fundamental Changes for Stratas. Over the strata property project's 6 years, it produced five consultation reports and five final reports. The reports from both of these projects have been well received and we look forward to following implementation of the recommendations, and in the case of the Health Care Consent project, change in practices.

Two other major projects moved closer to completion, the Builders Lien Act reform project, and the CCEL's project Inclusive Investing: Respecting the Rights of Vulnerable Investors through Supported Decision Making. And we started three more: Engaging People Living with Dementia in Decision-Making, Modernizing the Child, Family and Community Service Act Project, Health Care Consent and Capacity Assessment Tribunals Project – Seeking a Model For British Columbia. Each of these projects is described later in this report.

In 2019, in response to the Law Foundation's Funding Review, we took the opportunity to reflect on our past successes and some of the challenges we face as a non-partisan law reform agency, so heavily reliant on annual funding and the commitment of a small complement of staff and the dozens of volunteer committee members who help move our projects forward.

We also embarked on three initiatives:

 We reviewed and redesigned our budgeting and accounting practices to

- allow us to better plan and monitor the progress of our projects.
- We experimented with ways to answer the question posed by the Ministry of Attorney General and the Law Foundation "what are the law reform needs and priorities for BC?" We conducted interviews, we launched a survey and we held discussion events at each of BC's law school Access to Justice Week events. While not all law reform issues can or should be addressed by BCLI or CCEL, seeking a way to capture data to support decisions on project selection is our goal. The staff and program committee will continue the work in 2020 and beyond to refine and formalize strategies to address this goal.
- We carried out a review of 11 past projects with a focus on what made the projects a success and to identify challenges faced by projects and the reasons. The final report was released in March 2020 and provides some valuable insights and concrete recommendations for the future.

I am particularly proud that the Board of BCLI so quickly agreed with my recommendation to endorse the Access to Justice BC Triple Aim launched in March 2019. When setting our objectives for projects, the Triple Aim provides an additional lens to consider as we work to improve the laws of BC for all British Columbians.

This will be my last annual report as ED. It has been an honour and privilege to work with the expert and skilled staff

and to have had the engaged support of the board throughout my tenure. I have met many law reformers across Canada and internationally. As I reported in 2017, in spite of our differences in structure, funding, size and approaches, we share many common values and challenges. The work we do is unique. All those I have met are committed to non-partisan approaches to law reform that seek to identify the experiences of all stakeholders affected by the area of law under study. They document the history of the development of the law, compare approaches in other jurisdictions, explore policy options and make recommendations based on high quality research and rigorous discussion and debate. It is that commitment of everyone involved, that ensures the reports produced provide governments with the research and policy analysis

required in order to move law reform forward. The work requires a unique approach and specialized skills. For the last five years I have had the opportunity to observe how skillfully our staff lawyers guide project committees through this process.

Finally, I wish to thank our funders, community stakeholders, and government ministries and agencies at the provincial and federal level. They have all been supportive, welcoming, and willing to share ideas and information. I will miss you all. I hope our paths will cross again.

Kathleen Cunningham Executive Director, BCLI



Thomas L. Spraggs (BCLI Chair), Kathleen Cunningham (BCLI ED), and Shannon Williams (Law Foundation of BC Program Director, at the BCLI AGM 2019.



Krista James



Report of CCEL's National Director

Aging, Disability, and Decision-Making Autonomy: Making Connections for Greater Impact at the CCEL

Decision-making is a fundamental part of life. We make decisions every day about things like what to eat, and how to spend our time. We also, less regularly, make more significant decisions about how to invest our money, where to live, what kinds of health care treatment to receive, and whether to get married. The freedom to make these decisions, and steer the ship of our own lives— informed by what matters most to us, and what risks we are comfortable with—is critical to self-determination. Many of us likely take this freedom for granted because it is never challenged.

Age and Decision-Making

Aging can be a time where new lifechanging decisions need to be made, for example, whether to move into a communal housing, such as assisted living or long-term care. Further, although advance planning for health care and finance tends is best done earlier in life—because we never know what tomorrow will bring—we tend to turn our minds to drafting wills, powers of attorneys, and representation agreements when we are older.

Older age can also be a time when folks start to question whether we can or should make our own decisions. Adult children may begin to question whether their parents are making the best financial choices and exert pressure to manage their funds for them through a power of attorney. Family members may query whether it is safe for their aging parents to continue to live independently. Illness and new disability, and particularly diagnosis with degenerative conditions like dementia, can cause others to question decision-making capacity. This decisional making autonomy, that many take for granted for most of our adult lives, can become fragile and at risk as we age.

(cont.)

As a result of these dynamics, in recent years many CCEL projects have focused on decision-making rights. In 2019 our three major projects addressed different aspects of decision-making.

1. We published our report on the Health Care Consent Project, *Conversations*

about Care: The Law
and Practice of Health
Care Decision-Making
for People Living with
Dementia in British
Columbia in February
2019. We developed
a plain language legal
rights booklet for people
living with dementia as

part of this project, and began developing companion animated videos.

2. We continued work on the Inclusive Investing Project, which explores the

use of supported decision-making in an investment context. For more on supported decision-making you can check out our earlier study paper, commissioned by the Law Commission of Ontario, *Understanding the Lived Experience of Supported Decision-Making* in Canada.

"In recent years many CCEL projects have focused on decision-making rights". 3. We hosted a forum on decision-making on December 3, the International Day of Persons with Disabilities, and conducted research into resources on supporting people with disabilities to participate

in decision-making. This work was a first phase in work on The Engaging People Living with Dementia in Decision-Making Project, which aims to address one of the recommendations made in Conversations about Care.

Working Across Disability

Although a number of our projects are concerned with respect for the legal rights of people living with dementia, this year our consultation and research explored what we can learn from other disability communities that could support development of best practices in the dementia community. Particularly in the community living sector, people living with disabilities and their families often have many years of knowledge and experience regarding how to support decision-making autonomy. In contrast, dementia is often a later life diagnosis, and so people can be new to thinking about what is possible for a person living with a disability and default to protective in-ability/in-capability assumptions.

This year's work has been a great opportunity to connect with other organizations in BC and Canada. We owe thanks to Disability Alliance BC, Inclusion Langley Society, Planned Lifetime Advocacy Network, Richmond Society for Community Living, posAbilities Association of BC, Inclusion BC, and the Bloom Group for attending the December forum and supporting the participation of their members in the event. Also we are excited to have representatives from the Canadian Society for Community Living, ARCH Disability Law Centre, and the PLAN Institute, in addition to Inclusion BC, on the Inclusive Investing Project Advisory Committee.

Working across disability has also given us a chance to work more intergenerationally. Younger people with disabilities often have practical experience asserting their autonomy and great wisdom to share. In the end, adults of all ages attended our disability forum. It was really exciting to see this intergenerational quality emerge because we have heard from consultations over the years that older adults value connecting with younger people and love to see younger people caring about their quality of life.

We look forward to making new connections and nurturing these new relationships in 2020.

Krista James National Director, CCEL

Our People

BCLI Board of Directors

BCLI's Directors bring experiences from across the legal profession and the community. They include practicing lawyers and notaries, retired judges, academics, and public policy professionals. Together, they provide BCLI with the perspective and guidance necessary to serve the law reform needs of the people of British Columbia.

Our Board members at the end of 2019 are:

Dr. Elizabeth Adjin-Tettey Dean of the University of Victoria Faculty of Law appointee

The Hon. Marion J. Allan Member at large

Emily L. Clough Attorney General of British Columbia appointee

Dr. Tesh W. Dagne Dean of the Thompson Rivers University Faculty of Law appointee

> Jennifer A. Davenport Law Society of British Columbia appointee

> > James S. Deitch Member at large

Oliver A. Fleck, Secretary Canadian Bar Association (British Columbia) appointee

Mathew P. Good, Vice-chair Canadian Bar Association (British Columbia) appointee Michelle LeBaron Dean of UBC Peter A. Allard School of Law appointee

Tejas B.V. Madhur Attorney General of British Columbia appointee

Margaret H. Mason, Q.C., Treasurer Law Society of British Columbia appointee

> Dylan Merrick Member at large

Timothy Outerbridge Member at large

Lisa. A. Peters, Q.C. Member at large

Leanne Rebantad Society of Notaries Public of British Columbia appointee

> Thomas L. Spraggs, Chair Member at large

Board Committees

The volunteer members of BCLI's Board of Directors also serve on board committees. At the 11 September 2019 board meeting, committee membership was confirmed for September 2019—2020.

2017 2020.	
Executive Committee — meets as required and has the full power of the Board of Directors, except for the approval of commitments over \$75,000 or matters delegated to another Committee of the board.	Members: Emily L. Clough, Oliver A. Fleck, Mathew P. Good, Margaret H. Mason, Q.C., Lisa A. Peters, Q.C., Thomas L. Spraggs, Kathleen Cunningham (<i>ex officio</i>)
Audit, Finance & Risk Committee — meets at least four times per year and assists the Board of Directors in fulfilling its oversight responsibility relating to financial, accounting, and risk matters.	Members: Dr. Elizabeth Adjin-Tettey, Oliver A. Fleck, Mathew P. Good, Margaret H. Mason, Q.C., Timothy Outerbridge, Thomas L. Spraggs.
Program Committee — meets at least twice per year and assists the Board of Directors in fulfilling its responsibilities relating to the development and approval of law reform projects and public education and outreach projects.	Members: Dr. Elizabeth Adjin-Tettey, Hon. Marion J. Allan, Dr. Tesh W. Dagne, Mathew P. Good, Dylan Merrick, Lisa A. Peters, Q.C., and Arthur L. Close, Q.C. (member emeritus), Prof. Robert G. Howell (member emeritus).
Governance Committee — meets as needed and assists the Board of Directors in the review and update of the strategic plan.	Members: Emily L. Clough, Jennifer A. Davenport, James S. Deitch, Oliver A. Fleck, Margaret H. Mason, Q.C., Lisa A. Peters, Q.C., Thomas L. Spraggs, Prof. Joost Blom, Q.C. (member emeritus), Kathleen Cunningham (<i>ex officio</i>).
Nominating Committee — meets at least once per year and assists the Board of Directors relating to the appointment of members, officers, and committee members.	Members: Hon. Marion J. Allan, Emily L. Clough, Jennifer A. Davenport, James S. Deitch, Tejas B.V. Madhur, Timothy Outerbridge.

Member Emeritus

Arthur L. Close, Q.C.

Joost Blom, Q.C.

Prof. Robert G. Howell

D. Peter Ramsay, Q.C.

BCLI's Judicial Liaisons

Madam Justice Lauri Ann Fenlon Court of Appeal for British Columbia

Mr. Justice Peter Voith Supreme Court of British Columbia

Judge Malcolm MacLean Provincial Court of British Columbia

BCLI'S Patrons

The Honourable Robert J. Bauman Chief Justice of British Columbia

The Honourable David Eby, Q.C. Minister of Justice and Attorney General of British Columbia

The Honourable Chief Justice Christopher Hinkson Chief Justice of the Supreme Court of British Columbia

The Honourable Melissa Gillespie Chief Judge of The Provincial Court of British Columbia

BCLI Staff during 2019

Executive Director Kathleen Cunningham

Senior Staff Lawyer Greg Blue, Q.C.

Staff Lawyer Kevin Zakreski

National Director, CCEL and Staff Lawyer Krista James

> Staff Lawyer Valerie Le Blanc

Maria Sokolova Research Lawyer

Social Media Coordinator Benedicte Schoepflin

> Research Lawyer Rachel Kelly

Legal Assistant Shauna Nicholson

Chelsea Szafranski Articling Student

Sara Pon Legal Research Assistant

Our Projects



BCLI

Completed Projects

Strata Property — Phase Two

Project Manager: Kevin Zakreski

Funders: Real Estate Foundation of BC, Notary Foundation of BC, BC Ministry of Municipal Affairs and Housing, Real Estate Council of BC, Real Estate Institute of BC, Association of BC Land Surveyors, Strata Property Agents of BC, Vancouver Island Strata Owners Association, Condominium Home Owners Association of BC.

Committee: Patrick Williams (Chair), Veronica Barlee, Larry Buttress (2013-2016), Garth Cambrey, Tony Gioventu, Ian Holt (2016-2017), Tim Jowett, Alex Longson (from 2016), Judith Matheson (2013-2016), Elaine McCormack, Susan Mercer (from 2016), Doug Page (2013-2014), David Parkin, Allen Regan, Garrett Robinson (from 2017), Stanley Rule (2013-2016), Sandy Wagner, Ed Wilson

After six years, the Strata Property Law Reform Phase 2 project came to a close in mid-2019.

The project saw the release of five consultation papers and five final reports. Recommendations from the first report on terminating a strata were introduced in the legislature in October 2015 and received royal assent in November 2015.

The ministry has supported the project from the inception with both funding and staff time to attend committee meetings. While implementation of recommendations from all of the reports will take time, the ministry has expressed its appreciation for the contributions the project has made to its ongoing review of the legislation and policy options.

The ministry has encouraged BCLI to consider a third project to address outstanding issues as part of our next law reform program agenda.

Ongoing Projects

Builders Lien Act Reform Project

Project Manager: Greg Blue, Q.C.

Funder: BC Ministry of Attorney General

Committee: David Mckenzie (Chair), Donald A. Thompson (Past Chair), Leslie J. Armistead, Arthur L. Close, Q.C., Heather Ferris, Helmut K. Johannsen, James R. White, Dirk Laudan, J. Marc MacEwing, Karen Martin, Tyler Nyvall, Marina Pratchett, Q.C.

The Builders Lien Act is a complex piece of legislation that is one of the major cornerstones of construction and insolvency law. It gives contractors, material suppliers, and individual workers several forms of security for payment for work done or materials supplied to a building site, most notably a lien on the land. This major law reform project is a comprehensive review and overhaul of the Builders Lien Act.

A Consultation Paper was issued in September 2019 to gather comments from stakeholders and the public at large on reform of the Act. This consultation closed on January 15, 2020. Responses will assist BCLI and its Builders Lien Act Reform Project Committee in finalizing recommendations to appear in a report expected in mid-2020.

Modernizing the Child, Family and Community Service Act Project

Project Manager: Kevin Zakreski

Funder: Law Foundation of BC

Committee: Corinne P. Feenie—Co-chair, Katrina M. L. Harry—Co-chair, Holly Anderson, Fiona M. Beveridge, Jennifer Davenport, Meena H. K. Dhillon, Robert W. Evans, Meghan Felbel, Carly Hyman, Serena Kullar (2019-2020), Claudia Liddle, Crystal Reeves, Brandi Stocks

In the fall of 2018, the Law Foundation of BC provided funding for this two year project which has two dimensions: (1) a focused review of the Child, Family and Community Service Act to identify outdated provisions and operational incompatibilities and gaps within the statute itself and with legislation that intersects with this act; (2) comparative legal research into legislative models that support policy and practice related to youth aging into the community.

The committee began to meet in 2019 and a consultation paper is expected in 2020.

Pension Division Review Project

Project Manager: Kevin Zakreski

Funder: BC Ministry of Attorney General

Committee: Colin Galinski (Chair), Cynthia Callahan-Maureen, Stephen Cheng, Stephanie Griffith, Darryl Hrenyk, Gail Johnson, Hon. Peter Leask, QC, Margaret H. Mason, QC, Beatrice C. McCutcheon, Jacqueline G. McQueen, Michael J. Peters.

The Pension Division Review Project is dedicated to a review of part 6 of British Columbia's Family Law Act, which came into force in 2013. When a spousal relationship breaks down, the Family Law Act provides for the division of family property between the spouses. Pensions represent a particularly complex form of property to divide. The Family Law Act, along with the Division of Pensions Regulation, contains a comprehensive set of rules that apply to this process. This project will examine these rules in light of new developments, such as the advent of the Pension Benefits Standards Act, which came into force September 30, 2015.

The goal of this project is to consider the new rules and make recommendations for reform of part 6 of the Family Law Act and the Division of Pensions Regulation.

A consultation paper for the project is expected to be published in May 2020.

New Projects

Health Care Consent and Capacity Assessment Tribunals Project

Project Manager: Greg Blue, Q.C.

Funder: Law Foundation of BC

The Health Care Consent and Capacity Assessment
Tribunals Project follows upon a finding and
recommendation in a recent Canadian Centre for
Elder Law report, Conversations About Care: The Law
and Practice of Health Care Consent for People Living
with Dementia in British Columbia (2019). That report
identified a need for an accessible and expeditious
mechanism in British Columbia for challenges to findings
of mental incapability to consent to health care or care
facility admission, and for resolving disputes related to
substitute decision making for persons incapable of giving
or refusing consent.

This project involves comparative research into health care, guardianship, and capacity tribunals in Canada and abroad. It will lead to publication of a study paper that can serve as a foundation for consideration by policymakers and legislators of the merits of creating a health care consent and capacity assessment review tribunal appropriate for British Columbia.

PROJECT SPOTLIGHT: Strata Property Law – Phase Two

In 2019, the BCLI brought the Strata Property Law Project—Phase Two to a close.

Here are some statistics that measure activity and public engagement with the project;

- Project term: 6 years (July 2013 to June 2019)
- Number of reports published: 5
- Number of consultation papers published: 5
- Number of recommendations for reform made: 206
- Number of reports implemented by legislation: one,
 Report on Terminating a Strata (see Natural Gas
 Development Statutes Amendment Act, 2015, SBC 2015,
 c 40, ss 37–55—in force 28 July 2016)
- Number of committee members: 18 (maximum 13 at any one time)
- Number of committee meetings held: 60
- Number of project funders: 9
- Number of responses to public consultations: 596
- Number of supporting documents (media releases, backgrounders, summaries, booklets) published: 39
- Number of posts on BCLI blog: 220

The project was generously supported by



















CCEL

COMPLETED PROJECTS

Health Care Consent, Aging and Dementia: Mapping Law and Practice in BC

Project Manager: Krista James

Funder: Law Foundation of BC

BCLI's annual funding from the Law Foundation of BC also contributed to the completion of this project

Committee: Barbara Lindsay (Chair), Dr. Heather D'Oyley, Dr. Elisabeth Drance, Tara Fitzgerald, Isabel Grant, Laura Johnston, Michael Kary, Alison Leaney, Isobel Mackenzie, Jim Mann, Dr. Deborah O'Connor, Lisa A. Peters Q.C., Michael Vonn, Penny A. Washington, Alix Adams (Ministry Liaison / Observer), Scott Wingrove (Ministry Liaison / Observer)

This project commenced in October 2016 and continued to late 2018. The final report, <u>Conversations about Care:</u> The Law and Practice of Health Care Consent for People Living with Dementia in British Columbia was released in early 2019, identifying 34 areas for law and practice reform.

The work is a collaboration with the Alzheimer Society of BC and involved extensive comparative legal research on informed consent and interrelated areas of the law, as well as community and key stakeholder consultation.

Project findings determined that BC's health care consent laws are robust but would benefit from reform, particularly the regulations applying to long-term care. Further, practice and education among all stakeholders, from health care providers, patients and family/caregivers, should be improved. There is a need to identify emerging best practices. The CCEL is working to address these issues on a number of fronts.

In addition to the project report, the CCEL worked with the Society to develop:

- a plain language educational booklet on health care consent rights (available in English, French, Punjabi and Chinese);
 and
- three short animated videos on decision-making rights

The videos were funded by a grant from the Notary Foundation of BC, and the translation and design of the booklets were funded by the Vancouver Foundation.

National Director, Krista James, continues to respond to requests for presentations on health care decision-making law.

Ongoing Projects

Inclusive Investing: Respecting the Rights of Vulnerable Investors through Supported Decision Making

Project Manager: Valerie Le Blanc

Funder: Law Foundation of Ontario Access to Justice Fund

BCLI's annual funding from the Law Foundation of BC is contributing to the completion of this project.

Committee: Jim Emmerton (Chair), Tim Ames (2018-2019), Lauren Bates, Emily Clough, Kurt Goddard, Ken Gracey, Mario Gregorio, Robert Lattanzio, Alison Leaney, Barbara Lindsay, Marian Passmore (2018-2019), Krystal Renschler (from 2020), Karla Verschoor, Eleanor Wong (2019-2020).

This project explores how vulnerable investors use supported decision making in the investment process to maximize their access to investment options while minimizing loss of autonomy and unnecessary intervention through court-ordered guardianship. The project examines the laws and practices that inform investment decision making for people

who live with Alzheimer's or other forms of dementia, and people who identify as living with an intellectual or developmental disability. The research explores the law and policy in BC and Ontario from the perspective of investment advisors and regulators, lawyers, people receiving support, supporters, academics, and advocates. The goal of this project is to identify the issues, and to highlight ideas and opportunities to facilitate the use of support in the investment context. The project focuses on investors from two communities who are using supported decision making in their lives – people who identify as living with an intellectual or developmental disability and adults living with Alzheimer's or other forms of dementia.

Between the period October 2018 to October 2019, Project Manager and CCEL Staff Lawyer, Valerie Le Blanc, interviewed 95 people with lived experience, investment advisors and regulators, lawyers, academics, and community advocates in British Columbia, Ontario, the United States, and internationally.

The project is expected to issue its final report and a suite of tools in late 2020. The project is supported by a 12-member volunteer inter-disciplinary advisory committee representing adults with diminished capacity, supporters pursuant to supported decision-making relationships, the investment industry and relevant regulators from BC and Ontario.

New Projects

Engaging People Living with Dementia in Decision-Making

Project Manager: Krista James

Funder: Vancouver Foundation

In the fall of 2019, CCEL began work on it's project *Engaging People Living with Dementia in Decision-Making*. This work is funded by the Vancouver Foundation and will include preparation of an application for a multi-year system change grant in 2020. The project is a collaboration with the Alzheimer Society of BC (the Society) and the Centre for Research on Personhood in Dementia.

This project aims to recognize the barriers people living with disabilities experience to participating in decision-making, and identify strategies and tools for supporting people living with dementia to assert their decision-making autonomy. The project builds on a past collaboration of the CCEL and the Society which identified a critical need to develop best practice resources that would help health care professionals to better engage people who are living with dementia in health care decision-making, and maximize the capacity of people living with dementia to participate in their health care decisions.

Practical Guide to Elder Abuse and Neglect Law in Canada

Project Manager: Krista James

Funder: Department of Justice Canada Victims Fund.

In 2019 we began revising and updating our popular bilingual practical guide to elder abuse law. We will be re-publishing it as an online resource. The guide aims to summarize the law by jurisdiction and will:

- Provide a summary of key laws relevant to elder abuse and neglect
- Identify obligations to respond to abuse, neglect and risk
- Identify key agencies to contact if someone is concerned that an older adult is being abused or neglected
- Outline the relationship between mental capacity and the law in relation to elder abuse
- Discuss the impact of professional confidentiality obligations and privacy law on the ability of professionals to disclose an older adult's confidential information in order to follow up on concerns regarding abuse and neglect
- Provide a list of resources

To learn more about the upcoming updated Practical Guide, watch Krista James' recent <u>webinar</u>: *Exploring the Updated Practical Guide to Elder Abuse and Neglect Law in Canada*.



The 2019 Canadian Elder Law Conference *Bridging the Gap: Elder Law for Everyone* took place on November 14-15, in Vancouver, BC. CCEL hosted the event in collaboration with the Continuing Legal Education Society of BC (CLEBC).

The conference was the 9th Canadian Elder Law Conference and the 3rd collaboration with CLEBC. The program highlighted access to justice issues for older adults. Registrants came from as far away as Australia and Israel, and had a record number participating by webinar.

The Honourable Justice Thomas A. Cromwell, former Supreme Court of Canada Justice, provided an opening address on the second day of the conference noting that "transformative

CANADIAN ENTRE FOR LDF

The Honourable Justice Thomas A. Cromwell with Krista James, CCEL National Director

justice is urgently needed." He questioned why access to justice is not improving in Canada despite decades of excellent work developing reports which identify the problems. He suggested that one answer is that our leaders do not recognize the need for change. He spoke to a need for public and political desire for change. He challenged the diverse groups working on access to justice to come together to create an access

to justice movement that will be a "unified force for change". Anne-Isabelle Cloutier, the recipient of the Gregory K Steele Student Paper Prize in Elder Law (sponsored by Clark Wilson LLP), presented her paper on the potential opportunities of establishing a guardianship tribunal for Canada.

Ms. Cloutier argued that the current guardianship regime often fails to uphold principles of presumption of capacity and respect for autonomy, and instead defers to medical and psychosocial assessments which fail to recognize the rheostat nature of capacity. She explained why her research suggests that a guardianship tribunal would be able to better protect rights. Specifically, argues that under tribunal model, tribunal members would have specialized



Isabelle Cloutier, winner of Greg Stelle Q.C Prize with Krista James, CCEL National Director

training on capacity and be more sensitive to the needs and rights of vulnerable adults.

The second day of the Conference featured a panel discussion on human rights for people living with dementia, moderated by Emily Clough, a partner at Clark Wilson LLP and BCLI Board member.

- Mario Gregorio, a person living with dementia, shared with the audience his experiences of living with dementia, noting people living with dementia need to know their rights.
- Jane Meadus, a lawyer with Ontario Advocacy Centre for the Elderly (Toronto), noted that people living with dementia face misconceptions about capacity, paternalism, improper understanding of informed consent, and discrimination in accessing health care. She also noted that people living with dementia often lack access to legal advice.
- Barbara Lindsay, the Director of Advocacy and Education for the Alzheimer Society of BC, outlined the services they provide to people living with dementia, including dementia education, resources and support groups. Lawyers and notaries can better help people with dementia by taking their time during meetings, having patience, and creating a accessible and supportive environment.
- Laura Track, a lawyer with the BC Community Legal Assistance Society (CLAS), described CLAS's Human Rights Clinic and the BC Human Rights Tribunal's latest initiatives for supporting representative complainants who may have capacity issues.

Returning Canadian Elder Law Conference Alumnus Clare Burns presented with CLAS lawyer, Kevin Love on the legal, ethical and practical issues related to representing adults who may have capacity issues. The session covered recent court decisions of note and identified strategies lawyers can employ in order to more effectively advocate for their clients who have disabilities that can impact their capacity to understand information and make decisions.

CCEL is particularly grateful the conference sponsors (see <u>page 25</u>) which allowed BCLI to provide 23 bursaries to facilitate participation. No applicants had to be turned away.

To find out more about the conference and read interviews with presenters, visit CCEL's conference webpage.

Our conference partner, the Continuing Legal Education Society of BC, will replay the conference sometime in 2020,

providing those of you who missed this fabulous learning opportunity, with the chance to catch up.



The conference Chairs: Hugh McLellan, Jan Goddard and Geoff White.

LAW INSTITUTE

2019 AT A GLANCE





8 active projects



20 publications



2 consultations 167 responses



50 committee members 19 meetings



5 partners



4,466 downloads



Presentations: 25



Contributions to blogs and articles: 13



Student involvement: 2



Media mentions and interviews: 53



689 newsletter subscribers



70,106 website users 161,201 page views



2,045 Twitter followers

+ 26.3%



702 facebook followers

Appreciation

The BCLI thanks all of its friends, supporters, colleagues and collaborators over the years. In particular we thank the many committee members for generously sharing your time and expertise, and a special thank you to our funders.

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- Ministry of Municipal Affairs and Housing
- Law Foundation of Ontario Access to Justice Fund
- AGE-WELL NCE
- The Council to Reduce Elder Abuse (CREA)
- Government of Canada: Canada Summer Youth Grant
- Department of Justice Canada
- Vancouver Foundation
- Society of Trust and Estate Practitioners (STEP)

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British Columbia Law Institute & Canadian Centre for Elder Law



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