



CANADIAN PENSIONERS CONCERNED, Inc.

ONTARIO DIVISION

RESPONSE TO

**LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO
CONSULTATION**

**The Law As It Affects Older Adults : Shaping the Project
May 2008**

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Canadian Pensioners Concerned Inc. (CPC), founded in 1969, is a provincial and national, voluntary, membership-based, non-partisan organization of mature Canadians committed to preserving and enhancing a humanitarian vision of life for all citizens of all ages.

We are delighted to have an opportunity to respond to the Law Commission's Consultation Paper. Our response will reflect our thinking about the "Law" as it pertains to public policy enacted by governments in the form of laws and regulations. Needless to say, we are not lawyers and our responses to your questions will make that very obvious.

Question 1 What aspects of diversity should any approach to the law affecting older persons take into account?

The older population reflects the diversity found throughout society. Some elements of diversity are perhaps of greater significance as people age but some are shared with everyone in society.

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|---|---------------------------------|
| Socio-economic status | Educational background |
| Ethno-cultural background | Competency in English or French |
| Gender | Sexual orientation |
| Disability | Chronic illness |
| Aboriginal status | 55-65 unemployed |
| Literacy skills | Reduced mental competency |
| Limited access to common public services | |
| Dependent or independent status (vulnerability) | |
| Immigrant status especially those from racialized communities | |

Question 2 What principles and goals should guide the law as it affects older persons?

We support the principles cited in the United Nations *Principles for Older Persons* (1991), the Canadian National Framework on Ageing and the goals set out by the World Health Organization in its *Active Ageing Policy Framework*. However, we have a particular concern that, despite these excellent principles and goals, older persons are rarely engaged in planning public policies or programs or changes to the law.

Question 3 Do negative attitudes or stereotypes about the characteristics, capacities or contributions of older persons affect the law or the administration of the law?

Ageism permeates our society and the law re-enforces this pervasive attitude. Discrimination in employment or conditions of employment is permitted under the law. The health care system sees older patients as “bed blockers” or as “over consumers” of health care resources. Long Term Care facilities take advantage of older persons when determining a person’s capacity to make decisions for their own care. Physicians can refuse to take on new patients who are older and possessing complex care needs. Rationing of health care services can limit access for older persons to procedures and programs. Discrimination against those with disabilities directly affects the frail elderly. (The lack of accessibility to public transportation is one example.) The lack of understanding and adequate responses to elder abuse is a serious problem for many. The view that age not competency should determine a person’s right to drive a car is discriminatory.

Does the law adequately take into account the needs and experiences of older persons?

We believe the law tends to be a rather blunt instrument and rarely takes into consideration the diverse needs and experiences of individuals and of older persons in particular. If older persons are consulted on changes to the law that consultation is usually token. This is a reflection of the all too pervasive ageism and paternalism found throughout society.

Are there specific issues or areas of the law that are of concern?

These areas are of significant concern to many older persons:

Driving rights or privileges; Employment conditions; Pensions and benefits; Elder Abuse; Determination of mental competency to make decisions; Hospitals abusing the rights of older persons through the application of the “first available bed” strategy without penalty; contract law, family law and the rights of grandparents; Immigration law and family breakdown.

Question 4 Should the use of age based criteria in laws and programs affecting older adults be examined?

The obvious answer is “yes” given what we have already discussed. Older adults appreciate the benefits that they receive based on age but unfortunately find that age is all too often the basis for harmful discrimination rather than benefits. Intergenerational equity is important but that should not mean that older persons should be denied access to employment, services or benefits based on age.

Are there specific age based criteria that warrant the attention of the LCO?

We would draw your attention to the following:

- The right of employers to discriminate against the older worker.

- Driving rights and privileges.

- The provincial policy that refuses to recognize the discrimination against older workers – especially those between 60 – 65 - and treats them as unemployed under Ontario Works rather than “disabled” on the basis of age under the Ontario Disabilities Benefits Program.

Question 5 Do current legal frameworks adequately support access and participation for older adults? What are the key barriers to access to justice for older adults?

Only the very wealthy or very poor, through legal aid, have some access. Ignorance, fear of the system, lack of knowledge and lack of financial resources are major obstacles for many older adults. Those living in rural communities, recent immigrants, persons with disabilities and the frail elderly face serious obstacles in addition to those cited above. Language and ethno-cultural traditions and practices are significant barriers in addition to the lack of fluency in either English or French. Illiteracy is also a factor affecting many older persons and their understanding of the law and their rights under the law.

Question 6 What are the key legal issues with respect to the relationships of older adults? Are there aspects of the relationships of older adults that have not been adequately addressed by current legal frameworks?

A. Elder Care

The CPP childcare dropout provision should be replicated for families caring for members with serious chronic or disability conditions. The taxation system must make provision for the extra costs caused by serious illness.

B. Elder Abuse

Older persons must have the right to decide what action they will take when the abuse is identified and the abuser known. They must not be treated in a manner similar to that taken when a child is abused.

Recent older immigrants need to be educated about their rights and protections under the law.

The Substitute Decisions Act needs to be reviewed and updated. However, there is great need to educate the public and those providing care to older persons about the meaning and implications of the Act.

Older persons must be assured of access to legal advice especially when they are under institutional care.

C. Older Adults as Caregivers

Grandparents are frequently bringing up their grandchildren but they face many obstacles in receiving the necessary government supports for their care-giving that foster parents receive.

Older parents who have cared for children with serious disabilities throughout their lives must have access to the legal and financial advice they need to provide for the future care of their children.

D. Other Issues

The rights of same sex partners in care situations and decision making about care needs of their partner must be fully supported by the law and practice.

Partnerships or marriages later in life can lead to issues such as abuse, neglect, family anger and poverty. Legal advice is essential when such problems arise.

Question 7 What are the key legal issues related to the living environment of older adults?

We need government regulation of Retirement Homes - not self-regulation. The recent government consultation process was seriously flawed.

The Residential Tenancies Act needs strengthening. There is evidence that some facilities have abused the rights of residents by illegally determining that the resident should be in a secure environment when in fact the person is fully competent. Access to legal advice is essential for the resident.

Clear regulation and frequent inspection of Long Term Care Homes and Nursing Homes is needed to ensure that the residents are receiving appropriate levels of care based on their needs.

We are concerned about the evident vulnerability of older persons to fraud and exploitation by salespersons and service contracts. Special protections are needed in cases where older persons have signed contracts without understanding the implications of what they have signed.

Reverse Mortgages must be tightly regulated and legal advice from an independent source must be required before such an agreement is signed.

Thank you for the opportunity to participate in your consultation. We hope that our ideas will be of some use to the Law Commission as it reviews the many aspects of the law in relation to the lives of older adults.

Christine Mounsteven, President
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