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RESPONSE TO

LAW COMMISSION OF ONTARIO

COMMISSION DU DROIT DE L'ONTARIO

CONSULTATION

Draft Framework for an Anti-Ageist Approach to the Law :

Released June 2011

Prepared by Gerda Kaegi, Board Member

NOVEMBER 2011

A RESPONSE TO THE LAW COMMISSION OF ONTARIO

We are delighted to have an opportunity to respond to the Law Commission's *Draft Framework for an Anti-Ageist Approach to the Law* released in June 2011. 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. We had the opportunity to respond to your *Shaping the Project* document in May 2008 and are truly delighted to see how much has been achieved in such a relatively short period.

The *Interim Report and Draft Framework for an Anti-Ageist Approach to the Law* is a great step forward in addressing the negative impacts of the law, policies, programs and practices that affect the lives of older persons. We believe that you have measured up to the goals you have set for the final *Framework* document:

1. A set of principles which may form the basis for an anti-ageist approach to law, policy and practice;
2. An outline of key circumstances and contexts of older adults that should be taken into account when developing laws, policies and practices; and
3. A practical guide, based on the above two elements, to assist policymakers in implementing and reviewers in assessing laws, policies and practices as they may affect older persons. (p.1)

We look forward with confidence to the final document.

This project is very important as it has the potential to make fundamental changes in the way that current and future laws, policies, programs and practices impact on the lives of older people. The resulting document, the *Framework for an Anti-Ageist Approach to the Law*, will make a substantive difference to the lives of older people **if it is used, and if it is used by those whose actions and decisions directly affect older persons.**

We have two broad issues that we would like to bring to the attention of the Law Commission as it develops the final *Framework*.

Our first concern is the very ageist environment that is so prevalent in our country. The ageist perceptions, attitudes, stereotypes and practices that are widely accepted will have to be changed. If those ageist attitudes and practices are not changed then the excellent work of the Commission will be for naught. You identify this issue as a significant concern and we would like to see a significant effort devoted to suggestions as to how this overarching matter can and should be addressed.

The dominant value system is very influenced by looking at people as contributors to the economy, the less someone contributes, such as those with disabilities, the less value is placed on them and the less power they will have. The less social, political and economic power they have the less likely they are to receive the attention and

support for their needs. The bias of ageism is supported by the media, in stories, in advertising, and unfortunately in the highlighting of problems and vulnerabilities rather than the contributions of older people to society.

Governments at all levels tend to see older people as a burden, as a drain on the economy, as a growing sector of non-productive people. Unlike the young, older people are far more likely to increase their dependency as they age while children grow out of dependency. Furthermore, dependency is linked to power, and the greater the dependency the less power one may have. Thus older persons, unlike the young, are vulnerable to the growing loss of power and influence in society. An easy example to look at is the rising institutionalization of older people in nursing homes (out of sight, out of mind) rather than enhancing their participation and inclusion as members of the broader community. (The Danes stopped building nursing homes many years ago and ensured that ageing did indeed take place in the community, in homes that were local and non-institutional). Independence and autonomy are difficult to achieve if one is living in an institution with its own established needs and practices. We hope, therefore, that your final *Framework* will have some suggestions that will help to tackle this broader societal issue of ageism that leads to so many unwanted consequences.

Our second concern is the need for the inclusion of potential consequences for those who, despite the law, policies and programs, discriminate against and even harm older people. While the *Draft Framework* identifies the impact of ageist attitudes on the lives of older people it needs to recommend policies and practices that will actually lead to change on the ground. The *Draft Framework* identifies potential problems with policies and the law – these are important - but we also need attention paid to practices that occur despite the law, despite the policies.

Headlines about the abuse or neglect of residents in nursing homes are not new so why are they continuing year after year? Older persons (called “bed blockers”) waiting in hospital for the appropriate level of care in the community or nursing homes, are threatened with hundreds of dollars of co-payments in order to force them to leave as quickly as possible – a practice that everyone within the system knows to be illegal. Why does this continue? A resident of a nursing home is confined to a “secure unit” without clear evidence from the Consent and Capacity Board that he/she is not capable of functioning. Why does this happen? The triage system of rationing health care tends to exclude the old and frail. Why is this so when the scientific evidence shows they would benefit? These are examples of ongoing actions that must be stopped. If there are no consequences that follow such actions, why would they end? Society has brought in measures that have significantly reduced the abuse and exploitation of other groups in society such as children and racialized communities yet nothing has been done in a similar vein to change the environment for older people.

It is also necessary to fully explore how almost all levels of government, the providers of services to the public, the judicial system, the media and the public at large hold stereotyped views of older people and act according to those views. The judicial system has recognized the negative impact of sexism, racism, homophobia, aboriginal status, and disability upon the lives of individuals and their capacity to live and fully participate in society but ageism has not “made it to the table”. Children are increasingly being recognized as having the capacity to speak for themselves but it is far too easy for those in authority to deny that voice or agency to older people.

Steps towards change

Education is one step but we know that it is not enough. Well-trained professionals are not immune from ageist attitudes and practices. Perhaps specific targeted education and re-education and training should be mandatory for all those dealing with, or providing services for, older persons. We know that will not stop discrimination and abuse but it is one part of a solution.

The development of a policy lens is another approach that might be considered in addition to education and training. An adaptation of the *Seniors Mental Health Policy Lens* or the *Prevention of Elder Abuse Policy, Program and Practice Lens* could be a useful tool in limiting the impact of ageist thinking and practices.

Finally, the role of leaders, professional associations and regulatory bodies, spokespersons, advocates and the media will all be crucial to achieving the change the *Draft Framework* is calling for. One of the most critical actors will be older people themselves. They need to be educated and empowered through knowledge and understanding of their rights. The work of the Law Commission of Ontario has the potential of achieving its goal of substantive equality for all older adults in society. We believe it can provide a road map and essential strategies to achieve that goal. This work must not be sent to some shelf to gather dust – it must be used for change.

Prepared by Gerda Kaegi
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