ELDER LAW

General Information and Calendar Description

In only 15 years Statistics Canada predicts that more than 20% of the population will be 65 years of age or over. Fifty years ago the percentage was about 7%. The issues facing the elderly in our society will be an increasingly important part of government policy. They also inevitably will become a greater focus of lawyers in both specialized and general practices. This course will allow students to explore selected topics concerning the legal implications of our aging population. A wide range of topics will be covered including elder abuse, age discrimination, competency, financial management, personal care, assisted living and government financial and support programmes. The topics will incorporate consideration of relevant legislation and legal tools such as power of attorneys, living wills, trusts, wills and guardianship. Topics will be addressed either from a policy oriented perspective, or with the object of the development of practical skills, or both.

Class Credit

A student may elect to take a 2 hour credit with a take home examination or a 3 hour credit with a paper option. It is proposed that this class be offered every other year.

Method of Evaluation

For the 2 hour credit: -10% class participation;
-20% class presentation; and
-70% take home examination and assignments.

For the 3 hour credit: -20% class participation; and
-80% paper.

Students who elect the paper option are encouraged to pursue publication options in this new and expanding legal area. Their attention is drawn to the newly founded *Canadian Journal of Elder Law* (2008).

Prerequisites

Any one of:

- Equity and Trusts
- Family Law
- Health Law
- Law of Succession
- Taxation I

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What is the reason for the prerequisite?

I think this course should be offered for (mostly) third year students. It is difficult to imagine that a student won't have at least one of the prerequisites. Since this will be a seminar course there will be give and take among us all. Successful completion of least one of the perquisites should assist a student in making a contribution to the class and could be a foundation for a paper.

Topics and Readings

Background readings are from Soden, *Advising the Older Client* (LexisNexis Butterworths, 2005). Some additional readings are indicated. Reference will also be made from time to time to the Special Senate Committee on Aging (First and Second Interim Reports).

Date	Topics	Speakers
Week 1 – Jan 8	Introduction to the Course Who are the elderly?	**Readings:** Barry D. McPherson, Aging as a Social Process (OUP, 2004), ch.1 Posner, chs. 1 and 2. **Speaker: Alex Handyside** - *Certified Senior Advisor, board member for Caregivers Nova Scotia, Preventing Falls Together Coalition, Nova Scotia HomeCare Association and Serving Seniors Alliance* - *Host of Friday morning senior's radio show on NWBC, and host of the "Gray Zone", a blog on seniors and senior's issues on the Halifax's Chronicle Herald website* - *Owner of ScotiaCare Homecare and Caregivers agency*
Week 2 – Jan 15	Age Discrimination	**Readings:** Soden, ch 7. **Speaker:** **Tentatively:** *Senior's Advocate, member of Nova Scotia Association of Health Organisations (NSAHO)*

Week 3 – Jan 22	Personal Autonomy, Competency • Advance Care Planning Health Care Directives • Guardianship • Marriage	**Readings:** - Soden, ch. 3-5, 9. - Incompetent Persons Act - Medical Consent Act (repealed) - Hospitals Act (s.44-50) (repealed) - **Personal Directives Act (Not yet in force)** - Public Trustee Act (s.7) - Supplement **Speaker:** **Jeanne Desveaux** - *Elder Law Practitioner* - *President of the Alzheimer Society of Nova Scotia, Past President of the CBA National Elder Law Section*
Week 4 – Jan 29	Financial Autonomy, Competency • Powers of Attorney • Trusts • Management of Property	**Readings:** - Soden, ch. 3 - Powers of Attorney Act **Speaker:** **Tentatively:** *Member of Community Services, Government of Nova Scotia*
Week 5 – Feb 12 (Munroe Day Feb 5 – No Class)	Advance Care Planning: Accommodation and Long-Term Care. Assisted Living. Rights of Individuals in Long Term Care Financial Planning for Disability	**Readings:** - Soden, ch. 8 - Supplement - Woodman, *Financial Strategies for the Disabled Child* (E.T & P Q) **Speaker:** **Sharon Reashore** - *Executive director of Caregivers Nova Scotia, a non-profit organization which provides support and resources for caregivers (family or friends giving care)* - *Founder of CBA Elder Law Section in Nova Scotia, member of the National Executive of the Canadian Elder Law section.*

Week 6 – Feb 19	Family Law and the Elderly • Intra family Support Obligations. • Grandparent Access • Grandparent Custody and Financial Implications	**Readings:** - Soden, ch. 10 - *Hansard*: Committee on Community Services; Grandparents Rights for Nova Scotia Association - Supplement **Speaker:** **Tentatively:** *Family law practitioner, with specific knowledge of grandparents rights*
Week 7 – March 5 (Reading Week Feb 26)	Social Security and Public Pensions Insurance, Deferred Tax Vehicles (RRSP, RRIF, LIFs) and Pension Issues • An Examination of the Proposed Pension Reforms in BC/ Alta, Ontario and Nova Scotia. • A Review of the *Pension Benefits Act.* • The Advantages and Disadvantages of Deferred Tax Vehicles • Insurance	**Readings:** - Posner, 11. - Soden, ch. 2 **Speaker:** **Professor Woodman**
Week 8 – March 12	Financial Planning: Estate Planning and Trusts	**Readings:** Woodman, *The Use of Trusts in Succession Planning* (Edmond Montgomery, 2008). **Speaker:** **Professor Woodman**

Week 9 – March 19	Financial Planning The Will • Taxation • Financial Planners	**Readings:** Soden, ch. 2. **Speakers:** **Rob McDowell** - *(FMA, CIM, FCSI), Assante Financial Management Ltd.* **Glen Rankin** - *(CFP, FMA, CIM, FCSI), Assante Financial Management Ltd.*
Week 10 – March 26	Elder Abuse Ethical Issues	**Readings:** - Soden, ch. 6 - *Nova Scotia Elder Abuse Strategy*

		- Adult Protection Act - Protection of Persons in Care Act - Supplement Canadian Network for the Prevention of Elder Abuse Ontario Network for the Prevention of Elder Abuse (ONPEA) Senate Committee on Aging Interim Report, March 2007 **Speaker:** **Tentatively:** *Member of Department of Seniors, Government of Nova Scotia, member of Elder Abuse Awareness and Prevention Strategy Committee*
Week 11 - TBA	Techniques for Helping Older Clients Formalities of Death	**Speaker:** **Tentatively:** *Member of CBA National Elder Law Section, Senior Practitioner*

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How does this course fit with the curriculum?

First, I hope this course will be a capstone course in which students will have an opportunity to pull together skills, insights, and knowledge from their law school experience and apply them to the legal issues of the elderly. I would encourage students who choose the paper option of the course to address topics from a broad policy oriented perspective. The topics chosen will also depend on their background and, of course, their interests.

Second, for the students who take this course as a non paper course and to a lesser extent those who choose the paper option, there will be an opportunity to review from a more integrated perspective some of the practical issues that face any lawyer. For example, a student may have taken the law of succession and studied issues of competency but only from the perspective of will making and perhaps, durable powers of attorney. In the elder law course, she will look at the issue from several perspectives including marriage, personal care and property management. A student will have to consider the practical implications of working with a client who may be competent to marry but not competent to draft a will or competent to draft a will but not competent to manage their finances Even where students have taken a prerequisite such as trusts, the emphasis will not be on the topic generally but on how trusts help the elderly avoid probate, manage their property if they become unable to, keep their creditors at bay, prevent the unwelcome exactations of dependants and, finally, to reduce taxes.

In some areas, such as family law, students will have further opportunities to delve into issues such as grandparents' rights and the mutual rights of financial support among family members (this may be a hot topic with the current economic downturn). The latter topic has interesting practical and policy issues. Nowadays more grandparents (it seems) are taking over the parenting of grandchildren. An important issue is whether grandparents should be treated as "strangers" or part of the family for tax and welfare purposes.

Third, this course deals with a number of areas that are not otherwise addressed in the curriculum in a comprehensive and integrated manner. One area that comes to mind is pension policy and practice. In particular students will be introduced to a comprehensive survey of CPP, GIS, OAS, RRSPS, and RRIF (and locked-in plans) and DB and DC pension plans. It is hard to imagine dealing with an elderly client without in one way or another facing issues arising from public and private pension plans. The overview offered in the elder course may be useful to students who cannot take the pension course (which deals only with private plans). It is also noteworthy that this area is currently being examined and "reformed" in over half of the jurisdictions in Canada.

Fourth, some of the topics in elder law parallel those examined in other courses. For example age discrimination is examined in public law and constitutional law. In the course on elder law we will attempt to build on that legal knowledge by adding other perspectives from economics and sociology.

Fifth, there is a large and active community dealing with the elderly in Halifax. The elder law course will give students both the reason and opportunity to engage with it. I hope to be able to bring in speakers from the community ranging from the Registrar of Probate for Halifax, financial planners, elder advocates and government representatives.

Sixth, one unique aspect of this course is that virtually every topic will be examined from a financial perspective as well as substantively. Money or the lack of it is an important element of many elder law issues.