



Will You Still Need Me When I'm 64—and Beyond?

When Paul McCartney sang, “Will you still need me, will you still feed me, when I’m 64?” do you think he really envisioned himself reaching that age?

After working with older people for years, I am now 61, well on the way to becoming a senior myself and thinking quite personally about the kind of support older people want and need.

I learned a great deal from my mother’s struggle to put her affairs in order. Mom, who died a year ago at the age of 90, was a strong and independent person all her life. She remained so until the end, determined not to be a burden or leave any expenses or dangling ends for her children.

Each year of the last 8 years of her life, she would review her living Will and make a note on the document stating it still reflected her wishes.

She preplanned her funeral and put money aside for it.

Then came a time when Mom considered putting her home and property in joint ownership. She reasoned that since her home was her only asset, on her death it would pass to the survivor she had designated and probate fees could be avoided.

She sought legal advice about the implications of doing this. When she

did not understand the advice she received, she consulted someone else. My mother told me much later that she was so confused and frustrated by her inability to understand these legal professionals, she became angry and was not as polite as she might have been.

Truth be told, the laws most likely to affect seniors are confusing.

Working with Senior Clients

Seniors are not a homogeneous group; older people differ from one another, just as younger people do.

Many older people have told me they are reluctant to consult legal professionals. Some seniors say they don’t know the questions to ask or how to phrase their query and are afraid of looking stupid. Others, like my mother, simply do not understand the advice they receive, even when their questions are very focused on the information they want to know.

Truth be told, the laws most likely to affect seniors are confusing. As we get older, we turn our attention to Wills and advanced planning tools like Powers of Attorney, Representation Agreements, and the expression of health care wishes. That can seem like a confusing labyrinth. You can imagine the difficulty of making these decisions

if you are under pressure from a family member or if you are facing the prospect of death or serious illness.

A Notary or lawyer who looks beyond the presenting legal question will commonly find that his or her senior clients are dealing with many problems. Some will have a solution in law; some will not. Many of the issues will overlap. Often it is not possible to resolve one problem without first solving another. That can cause the cost of the necessary work to burgeon far beyond the client’s ability to pay.

Older People Face Barriers in Accessing Legal Information and Help

We all know the statistics. People in British Columbia are living longer and surviving more illness and trauma than ever before. This is due to improved living standards and innovations in health care and treatment.

For the same reasons, the majority of younger seniors are living active, independent lives.

But a growing number of older seniors are struggling to live independently and are in need of more support. People in these circumstances face many barriers in asking for and accessing help. Problems that are overlooked or mismanaged can worsen and grow more complex.

Access to Information

While many newly retired people are well educated, people who are a

generation older may have dropped out of school to have children, to work, or to go to war. About 70 percent of seniors today do not have the formal education to read and understand written material, especially if it covers a topic that is new to them. Among seniors whose first language is not English, the literacy rate is even lower.

When we look at the very complex matters older people must manage, literacy rates are particularly significant. My mother was literate—she was a writer—but the legal information she was given dealt with unfamiliar terms and concepts. She was not able to build on her existing knowledge.

The same thing happens to me when I talk with financial advisors—I get lost in the complexities and the terminology.

Dealing with Bureaucracy

When we pass through the portal into older adulthood, we must prepare ourselves to deal with an almost completely different set of systems, especially the bureaucracies dealing with pensions and benefits for people over age 60.

Learning about the various programs and gaining access to them requires a certain amount of skill and perseverance on the part of the senior person or, lacking that, people who can help him or her.

A quick look at the average incomes for seniors underscores how important access to these benefits can be.

- 46 percent of seniors have an annual income of less than \$20,000.
- Low income is even more of a problem for older women.
- More than 7 out of 10 women over age 80 (the fastest-growing age group) have an income of less than \$20,000 per year. These women interrupted their employment to care for children or family members and, when employed, were able to find only low paying jobs that did not provide benefits.

- Few older women have pension plans from their employment. The majority of their income is from government programs such as Old Age Security; Canada Pension Plan—usually based on a spouse's employment contribution; and Guaranteed Income Supplement.

An invaluable resource for seniors and people helping seniors is the booklet "When I'm 64," published by Legal Services Society. This plain language guide to benefits and services for people age 60 and over contains information about seniors' issues including pensions, disability benefits, housing, and various helpful resources.

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Older Adults with a Disability or Illness

Old age seems to add another layer of complexity for people in need of help. Homemaking and home support programs have been cut back. Friends and family may be lost to death or illness, leaving seniors isolated and more defenceless against unscrupulous or predatory people.

- Lack of support puts older people living with disabilities and chronic health problems at great risk of their condition worsening.
- Many seniors who have mental, physical, or health disabilities are already at a significant disadvantage in society.
- Older people with disabilities are often poor or have no access to their own money because someone else is controlling their income and assets. These seniors lack the financial means to purchase services or escape harmful situations.
- Poverty often forces people to live in high crime areas.
- Dependence on others, especially when combined with disability or illness and poverty, can

have a significant impact on a person's self-esteem. When we rely on other people for money or services, we feel the loss of the power we previously had as an adult and a consumer.

The Past is Another Country

Many of these barriers to accessing services and information could affect adults of any age, but some additional factors compound problems for seniors and allow us to generalize a little bit.

First, older people come from an earlier time. They bring with them different understandings and views. When I do workshops, seniors will often remind me that we cannot speak of rights without also speaking of responsibility.

These feelings of responsibility for others make seniors a ripe target for exploitation. For instance, seniors who receive services often feel indebted and will look for ways to make their relationships with caregivers more reciprocal and equal by offering gifts and favours.

For that reason, the BC Law Institute developed a brochure on care agreements to alert seniors about the potentially serious consequences of offering property, commonly the family home, in return for a promise to provide care and support.

Financial Abuse and Fraud

Economists are telling us to expect a huge transfer of money and assets over the next few years as the oldest members of our society pass away and leave their assets to their families. What was considered a modest purchase of home and land 50 years ago can today be worth a small fortune.

Many seniors with a limited income are living in houses that have vastly appreciated in value. These assets and a regular income, no matter how little, can make them even more of a target for exploitation.

Seniors are often a mark for consumer fraud because they are more likely to be home to answer the door or telephone and they are too polite to

say “No” firmly. Also, con artists after the money and assets that seniors have saved for retirement know that older people are also the products of a generation and time when people tended more to help and trust each other—and even do business on a handshake.

Frail Seniors

Anyone can be victimized but seniors living with serious health problems and/or disabilities can be more vulnerable to crime than other people. For example, they may be less able to recognize and avoid danger, protect themselves or escape from harm, ask for help, or provide information about crimes carried out against them.

If receiving help depends on seniors’ ability to reach out and ask for it, these individuals may face communication barriers such as embarrassment, shame, confusion, stress, fear, and disabilities affecting speech, hearing, and sight.

Communication is even more difficult for seniors who are isolated or who do not speak English. For these and other reasons, frail seniors and older people with disabilities often need support to safeguard their rights and personal safety.

Who is currently helping them? Often, health care professionals are in contact with the most isolated and vulnerable seniors. Under the *Adult Guardianship Act*, the regional health authorities have been designated to look into reports of abuse, neglect, and self-neglect of adults who are unable—due to disability, illness, or other conditions—to seek help for themselves.

These nurses and social workers bring a great deal of compassion and skill to their work with seniors, but they cannot be expected to know the intricacies of the law that is applicable in each situation and to advise seniors about their rights.

Then, too, although employees of the health authorities often advocate for the senior they are helping, it is not their job to protect the rights of

their patient/client. In the end, these employees are answerable to their own professional standards and their employer’s policies, which may conflict with the choices a senior would make.

The Risk of Being at Risk

My mother, who lived alone, was determined to live out her life in her own home in the country. When she began to experience some confusion and forgetfulness, she was reluctant to tell anyone. She was afraid that out of concern for her, people would intervene and threaten her independence.

When other people feel the responsibility to protect us, our legal rights can be in jeopardy.

When other people feel the responsibility to protect us, our legal rights can be in jeopardy. People who say they just want to be left alone may, under some conditions, lose their right to make their own decisions. For instance, a person at risk of harm may be assessed as incapable of understanding the consequences of making the decision to refuse services.

Risk has different aspects, depending on your perspective. When people working for the provincial health authorities are assessing risk, they try to determine if the person’s basic needs are being met and if there are health problems that should be addressed. This, for the most part, reflects our society’s values about caring for one another.

Another aspect of risk is very personal; it is how each of us understands and feels safety or danger. These feelings, often buried deep within us, are based on our convictions and our past experiences. We know what is best for us. It can be devastating when other people take away our control over our own life. Norman Cousins—journalist, author, professor, and world peace advocate—said, “Death is not the greatest loss in life. The greatest loss is what dies inside us while we live.”

Mental Capability

Questions about capability are closely related to the way older people are viewed in our society. There is a tendency to equate old age with mental decline.

Seniors with disabilities say they often feel diminished and treated as if they are less visible or too visibly different.

“It happens all the time—a waiter will come up and ask my care attendant what I’d like to eat. If he does talk to me, his voice and tone change.”

This is a fast-moving society. People are expected to speak up if they need something and respond quickly when asked a question. If an individual has a hearing or speech impairment or needs some time to think, there is a tendency to assume he or she cannot think well. Seniors might say that because of their life experiences, they have more information to consider when making a decision so it simply takes longer.

By contrast, another person who steps forward to answer for that senior will answer much more promptly. Busy service providers find it easier to deal with the person who makes a decision quickly.

This common assumption—that people who have disabilities or obvious health problems also have impaired decision-making ability—is pervasive.

When there is a disagreement about, for instance, making a Will or disposing of property, seniors are frequently asked to prove their capability by having an assessment of capability done.

In the past, the word “incompetent” was used to describe someone who had lost mental capability. Assessments of competency painted a broad stroke or took an “all or nothing” approach—a person was either competent or incompetent. Today, the *BC Adult Guardianship Act*, which came into force in 2000, tells us to assume capability.

If there is a demonstrated need for a capability assessment, it must be

done within the context of the problem that made the assessment necessary. An assessment might be done to determine if someone is incapable of doing certain tasks or making certain decisions. For example, an older woman with some dementia may not be able to remember to pay her bills or write cheques but she still may be quite capable of making the decision to continue living in her own home.

The reality is that most of us are better at doing some tasks than others or we are good at making decisions in some areas and not in others. Even individuals who have a mental disability may have difficulty understanding some things but are quite capable of learning and making decisions in other aspects of their lives.

A person's mind may work on a number of levels that are not well understood. People are not incapable just because they don't function or think in a normal way. We have seen many people labelled as "mentally handicapped" who have flourished when moved to a different environment.

Seniors who are being abused or neglected face the additional threat of being found incapable because long-standing physical and psychological control by an abuser is confusing and can destroy a person's ability to think straight. People who are most at risk of harm or death may also be most at risk of being found incapable because capability can fluctuate, depending on the time of day or circumstances.

Our laws in BC do not require that a lawyer or advocate be appointed to protect the rights of a person who is being assessed for incapability. Criminals faced with imprisonment are given legal protection; seniors faced with the loss of control over their own lives are not.

Ageism

Another factor greatly affects the way seniors are viewed by others and the way we feel about ourselves as we age: Society values and promotes youthfulness.

Even here, there are some confusing messages. On one hand,

older people are honoured and recognized for the contribution they have made. Canada's system of age-related benefits allows many older people the opportunity to live with dignity and in relative comfort.

But then, contrast those financial benefits to the lack of support for older people in need of homecare. Seniors unable to purchase private services—or who are being abused and neglected by people they should be able to trust—may end up in an acute care hospital and be referred to as "bed blockers."

Criminals faced with imprisonment are given legal protection; seniors faced with the loss of control over their own lives are not.

Stereotyping Older People

I have had a few glimpses of the difference between

- the way some people view me in my early old age; and
- the person I feel myself to be.

This gap will likely grow.

Some seniors actively fight patronizing attitudes but other older people internalize negative stereotypes about age, struggle with diminished self-esteem, and do not speak out or seek help for harms against them.

Age and ageism are significant factors leading to financial abuse. They can contribute to difficulty in resolving problems.

One example is when family members do not wait for a death to inherit an estate. They take over assets with the excuse that the current owner "doesn't really need it" or under the pretence of safekeeping. In other situations, seniors are pressured to share or give away assets and money, then are left without the basic necessities of life.

All these actions—or inactions—are taking place within the context of society's view of old age. In the

Fountain of Aging, Betty Friedan asked, "Is it simply death that inspires the denial of age or is it the obsessive dread of age itself much of what we fear about death?"

Many people believe "ageism" is one of the greatest barriers seniors face in getting the help they need.

Provincial Advocacy Centre for Seniors

Laws, policies, and practices affecting seniors have developed over the years without much consideration of the consumer voice or seniors' rights. In the absence of these checks and balances, we can expect some unfavourable outcomes and, at worst, violations of rights of some of the most vulnerable people in our society.

It is vitally important to all of us that we address the common barriers seniors face when trying to access legal information and services.

Old age is not an illness or a disability but, as we grow older, we cannot bounce back as well as younger people. We experience cumulative damage to the cells and tissues of our bodies. And, because we are no longer working, we cannot recoup losses to our savings and property. Putting the following factors together gives us insight into the additional challenges seniors face in asking for and receiving help.

- A loss of physical, financial, and possibly mental resiliency
- A determination to look after oneself and one's family
- A preference not to complain and not be a burden
- Outdated knowledge about the law that the senior acquired many years ago

It is common to hear seniors say that age tends to be something that surprises them when they look in the mirror or if they hear themselves portrayed as an old-timer by other people.

People do not tend to think of themselves as "old" or "disabled." Living with a loss of physical or mental ability requires a focus on strengths or **what we can do** instead of what we

