

Laura Watts

New Canadian Centre for Elder Law Report on Assisted Living and Supportive Housing in Canada: Past, Present, and Future Trends



Martha is 78 and Li is 81. They have been married 40 years.

They are both generally in good health but find they are becoming isolated living on the farm. They decide to move to town to a congregate housing-type complex called The Cedars. Martha and Li are very impressed with the range of social outings and clubs available; they have missed playing bridge very much and look forward to engaging in the daily party bridge games advertised. The brochures note that the meals served twice daily are gourmet, healthy, and varied.

After moving in, things do not go quite as smoothly as expected.

Two meals a day are provided, but they are of dubious quality and unvaried. There is nothing unhealthy or unsanitary about the food but it is unappetizing to Martha and Li. Certainly not the wonderful meals advertised in the brochure.

The bridge club has shut down and bingo has been introduced in its place.

Martha and Li are very disappointed. They have tried to complain, but feel they aren't getting anywhere. They don't really know where to go or what to do. They are paying a lot of money for their place in The Cedars. They are having a really

hard time trying to understand their rights and the housing provider's responsibilities.

Housing and care needs shape every era of our lives. As the Canadian population ages, a stronger emphasis on the housing needs of older adults is becoming increasingly important.

As the Canadian population ages, a stronger emphasis on the housing needs of older adults is becoming increasingly important.

To address this need, the Canadian Centre for Elder Law, with funding support from the Good Samaritan Society of Canada, has just released a new national study on assisted living and supportive housing in Canada, "Assisted Living in Canada – Past, Present and Future Legal Trends." This Discussion Paper is currently out for public comment and is easily found at www.bcli.org/ccel. A Final Report, incorporating comments and feedback gathered, will be released in early Summer 2009.

This study concluded that Canadians have a very difficult time understanding rights and obligations in assisted living or supportive housing. The governing laws are

fragmented, confusing, and generally difficult to navigate.

Understanding terms such as "supportive housing" and "assisted living" (SH/AL) can be difficult in itself. The terms mean different things, in different contexts, to various people.

To avoid this lexicon challenge, the Discussion Paper defines assisted living and supportive housing (together) as a "middle option" that generally lies at the centre of a Senior's housing continuum—bookended by independent home-living at one end and high level nursinghome care at the other. It also can be broadly described as a type of independent-living housing that includes some forms of personal and health care services.

SH/AL issues are already of significant concern to Canadians, and will become more important in the immediate future. Canada is being swept up in the "age wave." With the number of Canadian older adults growing rapidly, our systems must be ready.



©iStockphoto.com/Rebecca Ellis

This large demographic shift, however, is not necessarily a negative. Despite the apocalyptic predictions¹ of some demographers, Canadians are living longer and healthier² than ever before. Canadian older adults are active economic and social contributors well into their “third age.”³

While the overwhelming majority of older adults lives independently and does not require assistance with daily tasks,⁴ the availability of a “middle option” to provide independent homes with consistent personal or health support is of increasing interest. This housing is attractive to many who wish to avoid the isolation of living totally alone, or to avoid the congregate nature and services of nursinghome residences.

It quickly becomes clear that Canadians will need to design modern legislative and regulatory systems that take into account both the changed face of aging and the changing needs of older adults wishing a “middle option.”

To achieve this, a more focused discussion on the needs of residents and operators must begin in BC and go across Canada. This Discussion Paper attempts to bring key past, current, and selected future trends in SH/AL together

to prompt discussion and assist in creating a common understanding of challenges.

This is crucial because the laws and policies governing SH/AL in Canada are fragmented, jurisdictionally bound, and difficult to grasp for the lay person and professional alike. This research lays a common ground for discussion and reform.

The study groups SH/AL issues into three broad categories.

- Tenancy issues
- Consumer services issues and protection
- Health and safety issues

Indeed, SH/AL is many things to many people. To some, it is a home. To others, it is a workplace or the place where they provide certain services, the quality of which can vary from excellent to problematic, depending on both the ability of the provider and the needs of the client. Those must match.

To better understand SH/AL in Canada, the study examines nine key criteria and compares them across the country.

- Main governing legislation
- Ancillary legislation
- Lexicon/Parameters of care
- Residential tenancy applicability
- Consumer protection
- Funding
- Complaints/Dispute resolution
- Staffing indicators
- Entry/Exit criteria

The Discussion Paper examines all Canadian jurisdictions based on these criteria, and provides a detailed legislative snapshot.

In SH/AL there is no clear, overarching model. Rather, this study identifies key underlying philosophies that can be seen as guiding service delivery and legislative frameworks. The philosophies of what SH/AL should “be” or “do” varies.

- The first model is one whose philosophy can be tracked to the disabilities movement

of community living that residents should be free from the invasion and regulation commonly found in congregate housing models. This *Autonomous* model espouses supports integrated into Seniors’ lives in a fundamentally private, nongovernmental way.

- A second model is based on the notion of service delivery and *Hospitality*. This Hospitality model is more philosophically aligned with hotels, restaurants, cruise lines, and valet services. It is generally a higher-end concept, and one with more of a private-pay client base. In the same way hotel chains offer higher-, middle-, and lower-end options, so too could this model provide services across the spectrum.
- A third model responds to the reality that many in SH/AL really do need a higher level of care than many programs provide; such needs will only continue with the age wave. Advocates of this model note that most Seniors will not choose a SH/AL option until well after they probably need the services.⁵

This *Pragmatist* philosophy rejects standalone notions of independent living and focuses on ensuring that residents are protected and served well—for who and how they are. Its proponents would generally espouse a higher level of regulation, regular inspection, and provision of services to older adults who fall into the grey zone—a category of uncertain fluctuating mental capability, but whose other care needs do not require nursinghome-style residential care.

The last section of the paper suggests some emergent future legal issues in SH/AL. One such issue is tobacco use. Generally, people may smoke in their own

1 For an excellent and critical discussion of the existing discourse of “cataclysmic impacts” of population aging, see Ellen M. Gee, and Gloria M. Gutman, eds., *The Overselling of Population Aging: Apocalyptic Demography, Intergenerational Challenges and Social Policy*, (Don Mills, ON: Oxford University Press, 2000).

2 The Canadian Senate Special Committee on Aging, *Second Interim Report: Issues and Options for an Aging Population* (March 2008), online: Parliament of Canada <<http://www.parl.gc.ca/39/2/parlbus/commbus/senate/com-e/agei-e/repfinmar08-e.pdf>> at 35 and 36.

3 Health Canada, *Canada’s Aging Population* (Ottawa: Minister of Public Works and Government Services, 2002) at 9 [Canada’s Aging Population].

4 Public Health Agency of Canada, Division on Aging and Seniors, *Canada’s Seniors At a Glance* (Ottawa: Canadian Council on Social Development for the Division of Aging and Seniors, 2005) online: Public Health Agency of Canada <http://www.phac-aspc.gc.ca/seniors-aines/pubs/seniors_at_glance/poster1_e.html>.

5 BC’s model of Assisted Living was designed for a much younger and more “able” group of residents than those who actually live within that system.

home because smoking is a legal activity for adults. While smoking is regulated in workplaces and public areas,⁶ it is not regulated in private homes, or generally in private suites in congregate settings.

Smoking bans are, however, appearing in Canada's SH/AL facilities. The problems stem from the tension between a resident's private right to smoke and the public's interest in having smoke-free environments. Many older adults who smoke have found that recent laws or policies governing smoking have become a significant barrier to securing or maintaining appropriate SH/AL.

Another trend of increasing importance is the growing number of openly gay, lesbian, and bisexual older adults entering SH/AL. While discrimination based on sexual orientation has been made illegal,

6 On March 29, 2007, the British Columbia Legislature passed Bill 10, the Tobacco Sales (*Banning Tobacco and Smoking in Public Places and Schools*) Amendment Act, 2007, which would ban smoking in all indoor public places and school grounds by early 2008.

the gay, lesbian, bisexual, and trans older adults who disclose their sexual orientation still may be "vulnerable to discrimination or abuse."⁷ There are anecdotal reports of care being withheld by some SH/AL staff. Concealing their sexual/gender identity can effectively push these older adults "back into the closet."

Recent advances in medical technologies and rehabilitative therapies also have impacted the SH/AL resident population. Children with severe congenital, acquired, and early onset disabilities often are now living well into middle and late life.⁸ This population's increased longevity already has created new housing needs.⁹

This study hopes to engage Canadians in determining the model

7 *Ibid.*

8 Bryan J. Kemp, PhD, and Laura Mosqueda, MD, "Introduction" in Bryan J. Kemp, PhD, and Laura Mosqueda, MD (eds.), *Aging with a Disability: What the Clinician Needs to Know* (Baltimore and London: The John Hopkins University Press, 2004) 1 at 1 [Kemp]; Young, *ibid.* at 1455.

9 *Ibid.*; Sheets, *supra* note 10 at 37.

that would best suit the nation and its people. It concludes by asking a series of questions, and inviting input and consultation on these questions and other issues not specifically raised, to better inform the process.

The Canadian Centre for Elder Law welcomes comments, concerns, and submissions on this paper. The formal consultation period will conclude **April 30, 2009**. To obtain the full document or to comment on this or any of the Canadian Centre for Elder Law's work, please visit our Website at www.bcli.org/ccel or email Laura Watts at lwatts@bcli.org. ▲

Laura Watts is the National Director of the Canadian Centre for Elder Law Studies (CCEL) and a Staff Lawyer at the British Columbia Law Institute. She drafts legislation, teaches, writes, and presents on law and aging issues. Laura serves as co-Editor-in-Chief of the *Canadian Journal on Elder Law* and facilitator of the World Study Group on Elder Law. She also organizes the Canadian/International Conference on Elder Law.

"Sure, we could do things the conventional way, but our track record stands for solutions that transcend the traditional."

Rob Mitchell CFA, President & Co-Founder



The Dixon Mitchell difference is clear. Literally transparent. It's not about just beating the market. Our focus is on generating consistent, absolute returns unaffected by boom or bust speculation. To discuss your needs and our commitment to serving them, call 604.669.3136 (1 888 340.3136) or visit us at dixonmitchell.com.

DIXON MITCHELL
INVESTMENT COUNSEL