

Does Age Matter?

Law and Relationships Between Generations

Discussion Paper



Cover design:

The illustration of a younger and older rose was created by Alan King based on a sculpture by Jillian Doucet, a high school student from Tusket, Nova Scotia. Jillian is one of the winners of the 2002-03 Roderick A. Macdonald Contest sponsored by the Law Commission of Canada.

A rose is always a rose. Any rose, old or young, orange or pink, is always a rose. Our roots are entwined in the same earth where they run deep. One rose needs the other for support. Without the old rose, the young rose could not survive – their roots form one root. No matter which you choose, a rose is always a rose.

Catalogue Number: JL2-23/2003

ISBN: 0-662-67773-0

February 2004

© Her Majesty the Queen in Right of Canada, 2004

The final version of the discussion paper is available on the Internet at: <http://www.lcc.gc.ca>

Canada



Preface

The mandate of the Law Commission of Canada is to provide independent advice on improvements and modernization of the law of Canada. Its goal is to engage Canadians in the renewal of the law so that our law is responsive to changes in our society. The Law Commission selects its projects through consultation with the general public and with its Advisory Council. This discussion paper on *Does Age Matter? Law and Relationships Between Generations* reflects many insights from the members of our Advisory Council and many suggestions from the general public. We thank them for their input.

The theme seeks to reflect several contemporary phenomena: the demographic changes affecting Canada, the need to strengthen social bonds across categories such as age groups, and the difficulty of developing rules and programs which respond to the diversity of our society.

The discussion paper presents the complexity of the demographic changes, outlines the issues that our current legal categories raise and proposes some new concepts of law that could be explored to achieve equality and justice in intergenerational relationships. It is designed as a tool of reflection for Canadian society.

The Law Commission of Canada wishes to extend its thanks to its Virtual Scholar in Residence, Professor W. A. Bogart from the Faculty of Law of the University of Windsor, who, assisted by Lilli Ripandelli, completed a framework document for this discussion paper. Some of the writing and many of the ideas remain his. Dulcie McCallum wrote a foundation piece that dealt with legal issues affecting children and youth, the inadequacy of a piecemeal approach to youth and the resulting need to consider, as a group, all laws that impact on a particular real-life situation. We want to thank her for her great work and her support to this project. The Law Commission is equally thankful to Michèle Charpentier, Donald Poirier, Norma Poirier, Charmaine Spencer, Marie Beaulieu, Gaile McGregor, Holly Tuokko, Fiona Hunter, Hugh Grant and Greta Wong Grant, who contributed research papers that supported this discussion paper. We also want to thank the members of the study panel, Judy Cutler, Susan McDaniel, Louise Plouffe, Margaret Hall, Jacques Auger, Beverly Boutilier, Lindsay Davis, Betty Havens, Brent Sherar, Sharon Taylor-Henley and Judith Wahl, who



helped shape the Law Commission's thinking on this issue as did the remarks of the many commentators who provided helpful suggestions, Madame la juge Michèle Rivet, Sylvie Gagnon, Rock Beaudet, Solange Lefebvre and Peter Hicks.

The Law Commission also wants to thank the many high school students who participated in the "Does Age Matter?" contest held during the academic year 2002-2003 and the jury members who helped choose the winners. Throughout this discussion paper, you will find excerpts from the students' submissions.

Finally, the Commission owes a special debt to Lorraine Pelot, Senior Research Officer at the Law Commission who coordinated the project and the writing of this Discussion Paper. We would also like to thank Lise Traversy, A/Director of Communications and Stéphane Bachand, Communications Officer who provided help and support on this project as well as Christopher Hynes, Cherolynn Knapp, Éric Malo and Jennifer Schmidt, students who did a great deal of background work.

The Law Commission welcomes your comments, ideas and suggestions, by mail, e-mail, fax or telephone:

Address: The Law Commission of Canada
 222 Queen Street, Suite 1124
 Ottawa, Ontario
 Canada K1A 0H8

Telephone: (613) 946-8980

Fax: (613) 946-8988

E-mail: info@lcc.gc.ca



Table of Contents

Preface .....	.iii
Introduction .....	.1
I Age and Generations Today .....	.5
A. Changing Demographics in Canada – An Aging Society .....	.5
B. Diversity Within Age Groups and Similarities Beyond Age Categories .....	.8
C. Relationships Between Generations .....	.10
II Age and Generations in Law .....	.13
A. The Use of Age Distinctions in Law .....	.13
B. Human Rights and Age Distinctions .....	.18
C. The Impact of Using Age as a Marker .....	.21
III Two Examples of Age and Generations in Law ..	.23
A. Employment .....	.23
B. Economic Security .....	.26
IV Principles for Law Reform .....	.31
A. Values of Equality and Justice .....	.31
B. Efficiency and Coherence .....	.33
V New Conceptualizations of Age and Generations .....	.35
A. Functions, Abilities and Full Participation: Revisiting the Concept of Age in Public Policy .....	.35
B. A Society for All Ages: Supporting Just Relationships Between Generations .....	.39
Conclusion .....	.41
Summary of Discussion Points .....	.43
Additional Reading .....	.47



Introduction

“How old are you?” is a question that children learn to ask early in their lives. After their name, age is often what children want to know about their friends. It is because age defines and structures much of our lives, particularly when we are young. Children are told to wait until they are six to go to school, 13 or 14 to watch certain movies or play certain games, 16 to drive and 18 to vote. The commercial world uses age to target consumers: there are discounts for children and students. Civil society also uses age to define rites of passage: from age groups in the library to age groupings in sports or in classrooms, the lives of children are very much structured according to their age.

Adults also regroup in age categories: the Masters category in sports starts at 40, social clubs often regroup people aged 50 and older, and some movie theatres offer discounts for people over 60. Our popular culture is imbued by the reference to age: we celebrate birthdays and have sayings and proverbs that speak to concepts of age.

Quarante ans, c'est la vieillesse de la jeunesse, mais cinquante ans, c'est la jeunesse de la vieillesse.

– Victor Hugo

Old age is fifteen years older than I am.

– Oliver Wendell Holmes

It is not only our personal lives that are structured using the concept of age. Our social relationships are very much influenced by our age grouping. We live and are categorized according to “generations”. The labels are interesting: the Depression generation (people who lived as children through the 1929 economic crisis), the baby boomer generation (people born after the Second World War and until 1965), Generation X (people born between 1966 and 1979). Certainly, this generation categorization does not aptly describe the diversity within generations: not all baby boomers are wealthier than their parents, not all members of Generation X have had trouble finding employment.



Law is no exception to concepts of age and generations. Our laws often use age to impose responsibilities and to prescribe eligibility to benefits and programs. While using age as a marker constitutes an easy way to determine eligibility and appears efficient and simple, it can become obsolete, over or under inclusive. It can create unfairness. Law frames relationships between generations in more or less subtle ways. It imposes obligations on one generation to support the other at certain stages in their lives. These obligations often stem from a rigid vision of the proper life course: it often assumes that education is completed in the early years, that work continues uninterrupted for a number of years and is then crowned by a well-deserved retirement period. Our law and policies regarding education, caregiving, work and retirement frequently institutionalize this “standard” life course. Obviously, that course may, increasingly, be out of touch with the way individuals live their lives.

Definitions

Age group = categories of people who share the same age, e.g. children, youth/adolescents, young adults, adults, seniors, frail seniors. People move through these groups as they age. No matter when a person is born, that person will be a child, and hopefully become an adult and reach old age.

Chronological Age = a specific age, such as 16 or 65.

Generations = The term has several meanings. One relates to family notions of children, parents and grandparents. People often refer to a difference of 20 years between these “generations”. A second meaning refers to a group of people born around the same time and referred to according to their year of birth, e.g. those born between 1914-1919. Often, these groups or birth cohorts are also identified by common historical, social or economic experiences or values that differ from other generations. People born between 1930-1939 are known as the Depression-era generation. People born between 1966-1979 are called Generation X or Baby Bust, and are considered to have shared poor job prospects, higher tuition, and a recession, to name a few. However, in popular language, we often use the term “generations” as a synonym for “age group” because we identify a generation by the age group that they represent. We say our parents’ generation when we think of people older than us, or the younger generation to designate people who are young at the beginning of the XXIst century.



Is it appropriate to use age in our legislation, public policies and programs? Are age-based distinctions in Canadian law just? Are there situations in which such distinctions result in injustice? What are the advantages and disadvantages of using age as a criterion? Are the current age categorizations appropriate? Are they outdated? Could other concepts better reflect the diversity of life choices among Canadians? What about the relationships between generations? Are they rooted in fairness and understanding between generations, or disengagement and distrust? What is the role of law in supporting relationships between generations?

These are the questions that are raised in this Discussion Paper. The Discussion Paper is divided in four chapters. In Chapter 1, we present the concepts of Age and Relationships between Generations in our contemporary society, the demographic transformations that affect our society, and the tensions that are experienced around these transformations. Chapter 2 discusses the way law currently reflects concepts of age and generations. Chapter 3 suggests the principles and values that should underpin a law reform agenda. Finally, Chapter 4 outlines new ways of looking at the question of age and relationships between generations.

There are benefits and burdens when it comes to the issue of age; it is how we live our life that determines our character and knowledge. The young and old generation can only be treated fairly without discrimination if we learn to understand each other.

Annalisa Falco, Grade 11
St. Francis Xavier Secondary School, Ontario



I Age and Generations Today

Technological developments, globalization, volatile markets, and evolving social values are some of the factors contributing to substantial transformations in our society today. These changes have an impact both at the individual and at the societal levels. For example, for individuals, there has been an increase in mobility, availability of health care, and adaptation to new technologies. At the societal level, some of these changes and events have impacted on their experiences as a generation and may have contributed to particular values and characteristics. Demographic change is yet another way our society is being altered.

A. Changing Demographics in Canada – An Aging Society

We commonly describe our society as an aging one. What do we mean by aging population? Nowadays, people live longer and are having fewer children. Due to a longer life expectancy and improved health, the number of adults over 85 has more than doubled over the last twenty years. Many people describe the increased ratio of older adults to the general population as the aging of our population. For example, the ratio of older adults to the general population has gone from one in twenty in 1921, to one in eight in 2001.

The following table, adapted from Statistics Canada's analysis of the 2001 census provides a good overview of population trends:



Population Size of Various Age Groups

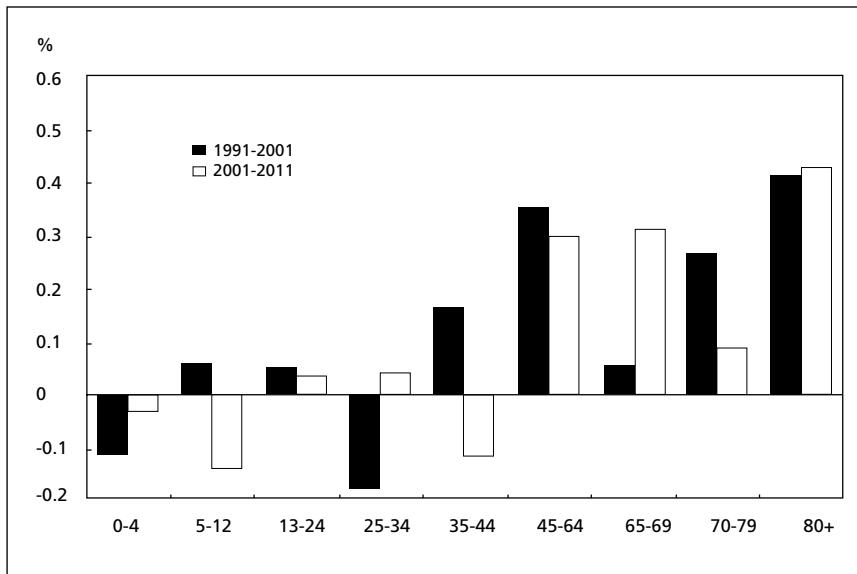
Cohort	Year of birth	Age in 2001	Relative size compared to total population
Pre-WW1	Before 1914	88+	Relatively small
WW1	1914-1919	82-87	Relatively small
1920s	1920-1929	72-81	Relatively large
Depression	1930-1939	62-71	Relatively small
WW2	1940-1945	56-61	Relatively large
Baby boom	1946-1965	36-55	Very large
Baby bust	1966-1979	22-35	Relatively small
Children of the boomers	1980-1995	6-21	Relatively large
Children of the baby bust	1996 on	0-5	Relatively small

Source: Statistics Canada, *Profile of the Canadian population by age and sex: Canada ages, 2001 Census* (Ottawa: 2001 Census Analysis Series, Catalogue no. 96F0030XIE2001002) (available online: <http://www12.statcan.ca/english/census01/Products/Analytic/companion/age/contents.cfm>, accessed: April 25, 2003)

The following bar graph, from Statistics Canada's analysis of the 2001 census, indicates the growth rates of age groups from 1991 to 2011. Over the last decade, there has been a small growth in children aged 5-12, which means that the size of that age group grew slightly. In the current decade the growth is negative, that is, the group's numbers are in decline. Overall, the chart graphically illustrates the small growth or decline in the population under 45, while older groups grow significantly. In particular, the over-80 group has been growing significantly and will continue to do so.



Growth rates, selected age segments, Canada, 1991, 2001 and 2011



Source: Statistics Canada, *Profile of the Canadian population by age and sex: Canada ages, 2001 Census* (Ottawa: 2001 Census Analysis Series, Catalogue no. 96F0030XIE2001002) (available online: <http://www12.statcan.ca/english/census01/Products/Analytic/companion/age/contents.cfm>, accessed: April 25, 2003)

This picture of an aging population must be nuanced. Overall, the population is aging as a result of declining birth rates and increased life expectancy, but the situation is not the same for diverse groups within the population. The life expectancy of Aboriginal peoples has been rising resulting in a 40 percent increase in the number of Aboriginal older adults since 1996. At the same time, the Aboriginal birth rate is higher than the overall population; children represent one-third of Aboriginal peoples. The result is that these communities are much younger than the overall Canadian numbers indicate. In the immigrant population, the majority of newcomers is of young working age (25-44) and has a lower proportion of people in the older working age of 45-65. On the whole, then, immigrant and Aboriginal populations are younger than the overall Canadian population and are somewhat slowing down the aging of the population.

The aging of a population is a multifaceted phenomenon, not only because of the diversity of the population. Generations are not all the same. As people move through the age groups, from children to adults to older adults, they carry their experiences, characteristics and values through these stages. Tomorrow's older adults will not be the



[I]n adjusting society ...to make better provision for today's older generation – the vanguard of the longevity revolution – let us not lose sight of the fact that we are shaping the society in which the current school children and working generations will themselves grow old.

Tom Kirkwood, 2001 Reith Lecturer, BBC Radio, online: <http://www.bbc.co.uk/radio4/reith2001/>

same as today's. Studies indicate that people are becoming more educated and more technologically-oriented. A greater percentage of workers today are knowledge workers rather than farmers and tradespeople. In general, people relocate more than they did in the past, and have concerns that are not restricted to their local communities, but rather include issues and activities taking place at a global level. Increased exposure to media and an increased flow of information may have contributed to a greater awareness of choices, dangers and risks. Our understanding of aging and of relationships between generations itself will change.

Our conceptions of what is needed to contribute to healthy and just relationships between generations could become quickly outdated. It is therefore important to reflect and propose flexible solutions that can be modified and adapted to evolve with the changing lives of Canadians.

DISCUSSION POINTS

- *Large demographic changes have taken place in the past. Why are people concerned about the current one?*
- *What issues are raised in the context of our changing demographics?*

B. Diversity Within Age Groups and Similarities Beyond Age Categories

Concepts such as age and generations often fail to acknowledge the differences that exist between people within an age group or a generation: this diversity is sometimes more critical than the differences between them. As one expert has so colourfully put it, sometimes: “heterogeneity swamps generation.”¹

To begin, the very characteristic that is the focus of attention – age – is, itself, varied. The thirty years between a 65 year-old and a 95 year-old could give rise to a great deal of difference. Activity limitations occur with greater frequency among the very old. In the case of children and youth, the problem of clustering all people under a specific age is equally pronounced. The age demarcation

¹ M. Wolfson and others, “Generational Accounting and Government Policy with Heterogeneous Populations” in Miles Corak, ed., *Government Finances and Generational Equity* (Ottawa: Statistics Canada, Catalogue No. 68-513-XPB, 1998) 107 at 119.



for the threshold into adulthood varies tremendously, depending on where you live and the purpose of the law or policy that relies on a given age to confer a specific benefit or privilege. Generally speaking, a seventeen year-old has a very different level of maturity than a thirteen year-old and an eleven year-old is worlds away from a two year-old. We further categorize young people, based on age, by creating sub-categories: infants, pre-schoolers, school aged, and adolescents.

Most importantly, along with age differences, there are several other characteristics that differentiate people from one another, such as financial situation, race, sex, national origin and geographic location. Older adults living in poverty need financial support in a way that older adults who are well-off do not. Youth who are recent immigrants may need different employment training programs than some other groups. Categorizing people according to age may not respond to all people and may even harm some of them.

...[T]he sweeping of older adults into a single “similar circumstance” category may be distinctly inappropriate. This further disadvantages older adults who are already disadvantaged, widening the polarization within this generation.

Susan McDaniel, ““What Did You Ever Do For Me?”: Intergenerational Linkages in a Restructuring Canada” in Ellen Gee and Gloria Gutman, eds., *The Overselling of Population Aging – Apocalyptic Demography, Intergenerational Challenges, and Social Policy* (Toronto: Oxford University Press, 2000) 130 at 147.

The assertion of stark differences between older and younger age groups also fails to reflect that people may have a lot more in common across age groups than within their respective groups. For example, an older person with a physical disability, who has inadequate transportation, may have more in common with others who have mobility limitations than with people of the same generation. Older youth, who do not have their medical decisions respected, are being treated similarly to older adults whose decisions are overridden by family members.

Categorizing people according to age and looking at them solely as distinct age groups, fails to acknowledge the many differences and similarities between them. Diversity may lead to the determination that age may not be the best criterion to reach the law’s objectives – some other criteria such as need or ability may better reflect what governments are trying to achieve.

It has become commonplace that work has been transformed over the last decade. What is not so widely recognized is that the down side of this transformation has been disproportionately felt by older workers [...] The real problem for women is the number of work interruptions they have, and their greater tendency to fall out of the labour force [...] Other subgroups are less well documented than women, but there is ample evidence that *any* disadvantaging factor becomes more disadvantaging with age. In 1991, for instance, African-Canadian and Aboriginal seniors had a poverty rate over one and one half times the general poverty rate for seniors. [...] In 1991, nearly three quarters of disabled individuals 55-64 were not in the workforce, and another 13-16% (men versus women) were unemployed.

Gaile McGregor, *A Fact Sheet On The Economics Of Aging In Canada* (Ottawa: Law Commission of Canada, September 2002) at pp. 4 and 11-13.



Getting involved in the community is a skill that one needs to learn at an early age, just like reading...

So as I drive to the seniors' home to play crib every week, I have to be optimistic that I am making a difference in the community for all generations. I have to educate myself on both sides, to get a more equal view.

Brian McLean, Grade 12
Columneetza Secondary School,
British Columbia
"Closing The Generation Gap"

Unlike what most adults and older adults may think, young people contribute to society just as much as older people. They volunteer to help their communities just like older adults. I have friends who volunteer at community centers, homeless shelters, women's shelters, libraries, old age homes and daycares. Most secondary schools now require volunteer work as a requirement to graduate, so some young people have to volunteer whether they want to or not. Also, many of my friends are involved in clubs and organizations through their schools where they again help ou[t] in their community by volunteering and fundraising.

Amna Ali, Grade 12
John Cabot Catholic Secondary School, Ontario
"Does Age Matter?"

C. Relationships Between Generations

The question of an aging society must be grounded in an understanding of the nature of the responsibilities between age groups and generations and the way in which such responsibilities take place and frame the relationship between generations. The relationships between age groups can be aptly characterized by one of interdependency, where one group provides support or services to the other in return for other benefits, either immediate or future.

The measure of relationships between generations does not lead to a full accounting in the here and now, but rather to a reciprocity experienced over a lifetime. Nevertheless, the current discussion about relationships is often described by concepts such as "dependency ratio". The dependency ratio, used to estimate the burden of public expenditures in relation to production, is the sum of the "dependent" population (under 16 and over 64) as a proportion of the working age population (16-64). So if the number of 'dependent' people is low (for example, 4 million) and the number of working age, high (20 million), the dependency ratio is low ($4 \div 20 = .2$), meaning that working people can support dependent people. As the number of dependent people rises (8 million), while the number of working people decreases (16 million), then the dependency ratio is higher ($8 \div 16 = .5$), meaning that less taxes are being collected and more people need financial support thus increasing the burden on public expenditures. This method of calculating dependency fails to acknowledge the many contributions over a lifetime.

One of the myths that characterizes discussion about the dependency ratio is that youth and older adults are a drain on society's resources and are not contributors. In that context, older adults' contributions to others are often ignored or undervalued – contributions such as caring for children, paying taxes, making investments and charitable donations, volunteering their time and expertise, mentoring and providing wisdom, sharing their wealth through financial assistance to family and others and, later, through their estates. Similarly, younger generations contribute to the well-being of other generations through physical, emotional and financial support, the transfer of new skills and areas of knowledge, and volunteering. As a society, we are both dependent and interdependent; the ebb and flow of resources touches both young and old at various points in their lives.

In our diverse and mobile society, there are new concerns raised in the context of relationships between generations. With the mobility of family members, people have less contact with other age groups or generations. When a family becomes separated by distance, it is much harder for grandchildren to get to know their



grandparents and vice versa. Also, many argue that our society is becoming more structured by age grouping: adult-only condominiums, youth centres, youth T.V. channels. In the future, the interdependence between generations may not be experienced concretely: youths and older adults may know that they benefit from each other's labour and skills, but may not see it in their daily lives. The concern that our society is becoming fragmented along age lines has prompted many to create more occasions for reunions between generations.

The "explosion" of interest and participation [in intergenerational programming] reflects the growing recognition that linking the generations provides direct and immediate benefits to the participants, taps a deep psychological need for cross-generational contact between the young and the old, stimulates interagency collaboration, and demonstrates the value of a lifespan approach to policy and to practice.

United Generations of Ontario, Issues and Context, online:
<http://www.intergenugo.org/English/about/issues.htm> (accessed: February 5, 2003).

One of the issues discussed in this paper is the extent to which analysing and making policy decisions according to a standard life course, that is, by predicting a pattern (often age based) of dependence and interdependence may, increasingly, be out of touch with our transforming society and the different ways individuals live their lives. By relying on an assumed standard life course, laws and policies may contribute to stereotypical conceptions about aging and prevent us from developing more flexibility to accommodate changing visions of age and relationships between generations in our society.

Like many other industrialized countries, Canadian society is aging – the proportion of older adults is increasing more quickly than its youth. This trend is not consistent in all communities, but overall is a characteristic of our society. Law and policies defined years ago may no longer be appropriate.

...young people should work with older adults and, as well, older adults should work with young people. This applies not just to family but also to society as a whole. Among teenagers and seniors lies a great gap of age differences and for both to understand the needs and thoughts of each other both need to stay together.

Khan Ali uz zdman, Grade 12
John Cabot Catholic Secondary School,
Ontario
"Does Age Matter?"

"I am an old person, but I think old age is what you make of it yourself."

Audience member, "Making Choices", 2001
Reith Lectures, BBC Radio, online:
<http://www.bbc.co.uk/radio4/reith2001>



II Age and Generations in Law

In law, age is frequently used as a criterion to assign advantages and benefits or to impose obligations and restrictions. In this chapter, the use of age distinctions in law and the reasons why they are used is discussed. Also, the impact of such age distinctions, particularly in the area of employment and economic security is examined.

A. The Use of Age Distinctions in Law

Society has accepted age-based criteria as a way in which to structure policies and programs and to make decisions about people in areas such as employment and services.

Ontario Human Rights Commission, *Policy on Discrimination Against Older Persons Because of Age* (Toronto: Ontario Human Rights Commission, March 2002) at 2.

Throughout history, public policy was often based on specific notions of childhood, adulthood, and old age. Nineteenth century America perceived older men as non-contributors to society, having made their contribution while they were young.

...the unprecedented disesteem for the elderly reflected and resulted from the impact of new scientific, bureaucratic, and popular ideas converging with innovations in medical practice, the economic structure, and American society itself.

W.A. Achenbaum, *Old Age in the New Land: The American Experience since 1790* (Baltimore: The Johns Hopkins University Press, 1978)

In the late 19th century, the poor, who needed state assistance, were considered to have forfeited their citizenship status. This greatly affected the status of many older people because they lived in poverty. In the 20th century, the notion of citizenship was expanded to include social and economic well-being, which led to the poor, and therefore, many older people, being accepted as members of society. Some historians say this led to the creation of the label “senior citizens”. However, as we have seen, there remains a perception of older persons as non-contributors to society.



The new discourse centred on the social and economic costs generated by an ageing population was somewhat alarming, excessive. There was less and less talk about the elderly, their contribution to a more humane and united society, and more and more about old people who were becoming less functional and more dependent. Ageing, now socially recognized, was defined almost solely as a problem, even an illness — the illness of dependency.

Michèle Charpentier, *The Law and the Relationships of Dependency Experienced by Seniors: the case of privately operated homes for the aged* (Ottawa : Law Commission of Canada, July 1999) at 10.

In the 19th century, children and youth often worked in the family business, and legislation was enacted to increase society's control over them. The criminal justice system provides a good example of the treatment of children and youth. Prior to the 19th century, there was little recognition of the special needs of children. When convicted of criminal offences, children, as young as seven years old, were treated as adults. In 1908, *The Juvenile Delinquents Act* was enacted and created a separate system with a welfare-oriented philosophy. While this improved the treatment of children and youth, the law was used to control certain groups and a wide range of behaviours. Children from lower income, Aboriginal and immigrant families were often sent to reformatories and training schools in order to respond to their 'best interests'. 'Delinquency' encompassed more than criminal acts; it included 'immoral' behaviour such as promiscuity, truancy and running away from one's parents.

In the 20th century, many of these policies were changed, but there continued to be a legislative framework articulated around conceptions of age-appropriate activities and a proper life course. Currently, everyone ceases to be a child or youth for particular legislative purposes at a designated age. All adults who live long enough become defined as old under the law at a specific age, for a particular purpose.



Age references found in law are variable. Children can be defined anywhere between 12 and 17, and youth anywhere between ages 13 and 24. The United Nations defines children as under 15 and youth as 15-24. Older adults can belong to a separate category at age 50, 55, 60 or 65. Generally, older adults are usually thought to be aged 65 or older. This is an age frequently used to designate the older age group in both society and the law. It may be that 65 has been set as the lower limit because it is the age for mandatory retirement.

Age (specifically old age) has been extensively used as a criterion for legal eligibility and differentiation in statutes during the 19th and 20th century. The use of categorizing people by age has invaded education, industry and family life. This development has not been without its detractors. It has been cautiously suggested that having a separate area of law and legal practice may inadvertently promote “the pernicious belief that older persons are less capable, less deserving of respect, and less needful of independence and autonomy.”² In other words, it is feared that law is (or can become) ageist.

Marie Beaulieu and Charmaine Spencer, *Older Adults' Personal Relationships and the Law in Canada: Legal, psycho-social and ethical aspects* (Ottawa: Law Commission of Canada, September 1999) at 35.

Issues relating to young people and older adults can arise either in laws themselves or in the application of laws. Age can be explicitly addressed in legislation such as in the requirement that one must be 18 in order to vote and to apply for citizenship. Some provincial human rights codes allow employers to force mandatory retirement on employees 65 years of age and older. Alternatively, laws may be silent regarding the relevance of age, but their application can have particular consequences for age groups. For example, legislation states that everyone is to have access to basic health care; however, there are concerns about the lack of chronic care health services for older adults.

Law imposes restrictions on age groups; however, age can also be used to favour individuals and to confer benefits upon them. Children and youth have a number of special protections in law; for example, the Criminal Code provisions regarding age of consent for sexual activity and the requirement that parents or guardians provide the necessities of life. Our system of public pensions, Old Age Security (OAS) and Guaranteed Income Supplement (GIS), use age as a trigger to confer financial benefits upon older adults. In addition, the

² L. Frolik, “Introduction, Social Attitudes Towards the Elderly” in L. Frolik, ed., *Aging and the Law* (Philadelphia: Temple University Press, 1999) at 18.



Canada/Quebec Pension Plan (C/QPP) and Registered Retirement Saving Plans (RRSPs) are both designed, in terms of such aspects as tax deductions, to allow individuals to support themselves as older adults. Some provinces have special health benefits for older adults, such as subsidized access, in whole or in part, to prescription drugs.

Some laws and policies provide a legal framework for relationships between the generations which defines the rights and responsibilities between them. One example is the requirement that parents must provide the necessities of life to their young children. Similarly, adults have an obligation to support their older parents. Decisions to award student loans are made on the basis not only of the individual's income but also that of the parents. Efforts have been made to hold parents financially responsible for costs arising from their children's criminal activity.

There are a number of reasons why governments use age as a marker in the law and presume a standard life course in defining programs and policies. In trying to respond to people's needs in a number of areas, such as housing, income, transportation, health, neglect and violence, young people and older adults are sometimes seen as more vulnerable, and in need of protection. For example, child labour laws specifying certain minimum ages for work are in place to protect children from risks to their health and well-being and to encourage continued schooling. The same needs may be experienced by many people throughout the span of ages due to poverty, different abilities and vulnerability; however, the policy-makers want to rely on the (assumed) predominance of these needs among younger people. Age is often used as a substitute term for needs that may or may not characterize the entire age group or be limited to that age group.

Governments use age because it is an easy and efficient criterion to use. For example, age is used as a substitute for vulnerability, as a substitute for ability and as a tool to redistribute a scarce resource.

Age as a substitute for vulnerability

As described, child labour laws can be understood as laws aiming to protect children from exploitation by their employers or even their family. Mandatory retirement is sometimes thought about in terms of protecting older adults who have worked for a large part of their lives against being forced to continue to work against their wishes.

Age as a substitute for ability

Laws that require older adults to undergo a fitness-to-drive medical examination due to the predominance of certain health conditions



within that age group, can be interpreted as attempting to define groups according to ability or maturity. The minimum age for driving or voting could also be interpreted in the same way.

Age as a tool to redistribute a scarce resource

At times, governments' perceptions of limited resources, such as the number of jobs, are the underlying reasons for using age as a marker. For example, one reason given for the existence of mandatory retirement at age 65 is to make room for younger workers (although many researchers have declared this a false assumption). This is one way to transfer resources between generations.

Underlying a number of these laws and policies is the concept that age is being used as a substitute for dependency – the dependency of children, youth and older adults. 'Dependency' is variously associated with illness, lack of ability, insufficient income, and lack of maturity or capacity to be responsible or to make decisions – all states of being that are used as a broad brush to define people in older and younger age groups. Instead of actually determining who is dependent, certain ages are used by policy-makers to determine who needs support.

Chronological age or age groups are used instead of other criteria because they provide a bright-line, objective, simple way to determine benefits and restrictions. It is a clear line that provides a high degree of certainty to both policy-makers and members of the public, since it is easily determined through the presentation of a birth certificate or other official document. Furthermore, age usually requires minimal resources to verify. Using age avoids having to put in place a more complex administrative mechanism to determine eligibility for benefits or to impose restrictions that might be based on ability, need or maturity. In that respect, the use of chronological age or age groups promotes efficiency, sometimes at the expense of fairness.

DISCUSSION POINTS

- *Are there other problems associated with using age as a category in law?*
- *Have you experienced difficulties in your own life by being categorized into an age group?*
- *In your opinion, what would be the impact of removing chronological age and age categories in laws?*
- *Are there benefits to using age and age groups in law?*

As previously mentioned, the concept of intergenerational conflict is often brought up in discussions surrounding older workers. We believe that by including this biased view of intergenerational relationships, the discussions miss the broader issues. As a response to the precariousness of employment, it is far too simplistic. For example, there is no evidence that a job vacated by an older person translates into a real job for a young worker. Often the position is simply abolished. Older workers are often told that they don't push themselves, that they are not creative. However, they are not given training or development. Nevertheless, some workers take it upon themselves to obtain training rather than waiting for their employer. Unfortunately, their willingness to improve their skills is halted by employers who are worried about the results and are not prepared to commit. How, then, can this employee continue to feel stimulated by his or her work and remain interested in taking on new challenges? Shouldn't it be the employer who encourages employees to advance themselves?

Translation – FADOC – Mouvement des aînés du Québec, *Les travailleurs âgés et les aidantes naturelles : des groupes cibles d'une importance capitale*, Paper presented to the Minister of Labour for the consultations on Reviewing Labour Standards: a Collective Challenge, May 2002 at 6. online: <http://www.fadoq.ca/pdf/05-normes-travail-memoire.pdf> (accessed: October 17, 2003)



- *Are there some areas of the law where age should be used to award benefits or impose restrictions that don't currently do so? Are there other areas of law in which rights and responsibilities between the generations should be imposed?*

People are discriminated against not only because of their race but also because of their age. If two teenagers were to walk into a clothing store and then two adults happened to walk in at the same time, I can almost guarantee that the two teenagers will be watched like hawks. I can say this because this actually happened to a friend and I. The clerks at the store assumed that because we were teenagers that our intentions were to cause trouble...


Amy Carruthers, Grade 12
Bonnyville Centralized High School, Alberta
"Does Age Matter?"

B. Human Rights and Age Distinctions

At times, the use of age categories in the law is questioned. When making distinctions based on age, decision-makers, both private and public, have to be very careful not to single out a group unfairly and impose burdens on them that are not imposed on others. If this occurs, then the different treatment is not merely a distinction; it amounts to discrimination against that group. Age distinctions, plainly stated in a statute or regulation, can be challenged. In addition, the implicit way in which age is taken into account also raises concerns. People are often treated unfairly because of their age.

I AM WORTHY.
I have an open mind and a firm handshake.
Get to know me. I am somebody.

Appearances are skin deep. Look deeper.

www.preventingcrime.net  Community Safety & Crime Prevention Council
Because a connected community is a safer community



Our society is not immune to the use of stereotypes about young and old. Youth are often portrayed as rude, untrustworthy, rebellious and violent – either gang members or bullies who prey on the weak and vulnerable. Studies have shown that youth accomplishments are infrequently portrayed in the media, while news stories concentrate on violence and accidents. Coverage of youth crime outweighs the actual crime rate. Young people of colour are even more susceptible of being associated with crime. While youth crime is an issue that needs to be addressed, crimes are committed by a small number of youth.

Older adults are also the subjects of stereotypical but contradictory images. Consider two prominent but colliding views. On one hand, they are seen as healthy, well-travelled, living lives of carefree luxury – at least compared with much of the rest of the population. On the other, older adults are thought to be weak, prey,

...the media is a powerful tool to influence behaviour, the way people think and the way they perceive the world. in this way you'd think that the media would use its power for positive change, instead we still see images of 'good for nothing' youth instead of the progressive people we are trying to be.

Young girl, 21
Zambia
Unicef web site: Voices of Youth

Nobody has a shelf life.
Employment matters. Age has nothing to do with ability. Don't limit the potential of older workers. Stop age discrimination. It's illegal, and it's just plain wrong.

Ontario Human Rights Commission
1.800.387.9080 TTY 1.800.308.5561
www.ohrc.on.ca

Ontario Human Rights Commission
CARP
Canada's Association for the Elderly

© Queen's Printer for Ontario, 2003. Reproduced with permission.



vulnerable and incapacitated – unable to keep up with change, easy and incapable of making responsible decisions – a growing burden on the social welfare and health systems as well as on their families and communities. In a United States Senate report on Aging in Media and Marketing, older adults are said to be portrayed as unproductive, depressed, inflexible, senile and greedy.

Like all representations and stereotypes, such images of youth and older adults can prevent us from looking at individuals and developing healthy and respectful relationships. In subtle ways, they contribute to undermining the contributions that both old and young make to society and their active participation in it.

Human rights legislation aims at stopping discrimination and fostering just relationships in our society. Individuals and groups can lodge a complaint against people who treat them on the basis of stereotypical judgment. The legislation gives power, as individuals or as members of a marginalized group, to challenge unfair treatment. The use of human rights legislation may allow people to feel like they are part of a group and not alone in experiencing unfair treatment. Unfortunately, there are some disadvantages to using the human rights mechanism to address unfair age distinctions in law, and its application.

To make a case, a complainant must belong to a certain group characterized by a particular element of who they are as a person. For example, a person who cannot access a job because of his or her age, must show that he or she is a certain age or a member of an age group that is being treated differently from other age groups. Many people experience unfair treatment as a whole person with many characteristics, and not solely on the basis of one characteristic. For example, a woman may not be hired for a job not only because she is young, but also because she is a woman of East Asian descent. The use of “categories” does not always accurately reflect people’s experience of unfair treatment. While many courts and tribunals have been responding to situations involving multiple categories, current human rights mechanisms continue to struggle to fully respond to people who experience unfairness based on more than one category, such as age and race or age and religion.

In addition, although ‘age’ is recognized as one of the grounds on which unfair distinctions take place, a number of human rights statutes across Canada do not protect all age groups from discrimination. Some statutes indicate that they do not apply to people under 18 or 19 nor to those over 64, and, other statutes simply do not include age as a protected ground in certain areas, such as



employment, accommodation or services. For children and youth, the limitations mean they have no protection from discrimination in areas such as employment, accommodation, or goods and services, even when they may be involved in these activities. The *Canadian Charter of Rights and Freedoms* places no such limitations on age, although the case law has accepted many distinctions based on age. The Quebec Charter of Rights protects people from age distinctions, except as provided by law. This means that if a Quebec statute contains a distinction based on age, such as voting age, the Quebec Charter does not apply. The Quebec Charter also contains a number of provisions that protect older adults, children and youth from neglect and exploitation.

While human rights legislation in Canada allows special measures that promote the equality of older and younger people, some of these statutes exclude certain age groups from all or some of the protections. In effect, this legislation limits the number of mechanisms available to members of those age groups who want to complain about unfair distinctions.

“Children are part of society. Why don’t building codes take them into account? Why don’t we have small chairs? Why aren’t there small toilets?”

June Callwood, Member of the Law
Commission of Canada Advisory Council,
October 2003.

DISCUSSION POINTS

- *Are there other stereotypes about old and young which continue to exist?*
- *What is the impact of such stereotyping?*
- *What can we as a society do to get rid of stereotypes and incorrect perceptions?*
- *Should human rights legislation provide protection for all age groups?*
- *How should we address the rights of children? Should there be a way for children or others on their behalf to complain about governments not living up to the commitments in the United Nations Convention on the Rights of the Child?*

C. The Impact of Using Age as a Marker

There are numerous ways in which age categorizations affect the lives of Canadians. Some statutes that may have been enacted to specifically target an age group to achieve a certain objective may no longer reflect the current state of Canadians’ lives. Some statutes undermine the objectives of other statutes. The following situation is an example of how age is applied in one of the provinces:



Where a child is in the care of the State, he or she can be supported to live semi-independently until his or her 19th birthday. A youth over 16 years of age and under 19 years of age can receive income assistance but must be either actively seeking work or going to school. Once 19 years of age, in order to receive income assistance, the person must be actively looking for work. If they are going to school at 19, all they can receive is assistance under the Youth Educational Assistance grant program. This means that once a person is 19 years of age and has finished grade 12, all he or she can receive is a \$2500 education assistance grant but no further income assistance. For a youth who has been in care and unable to complete grade 12 at the usual chronological age, there is no provision to continue going to school at 19 years of age and receive any assistance. They are no longer in care of the State, cannot get the educational grant having not completed grade 12 and must be working or actively seeking employment to get income assistance. So, for individuals who are exposed to these various legal treatments, do any come out with a sense of personal well-being and a respect for the law? Has the way in which youth have been treated help them understand the concept of interdependence? Has it helped them appreciate what it means to learn autonomy and responsibility?

Dulcie McCallum, *A Discussion Paper for Children and Youth and Older Adults* (December 2002) [unpublished, archived at the Law Commission of Canada].

The categorization of people into age groups for the purposes of awarding benefits or imposing restrictions has a number of disadvantages. Categories lead to comparisons and encourage people to emphasize differences between age groups; this can lead to stereotypes and incorrect assumptions. Categorization can also fail to recognize similarities between age groups and differences within age groups. In addition, the use of chronological age in legislation and its implementation often have an impact on the nature of relationships between the generations. Often, this is because the benefits or restrictions imposed shift the balance of interdependency between those affected and their families, and society as a whole. For example, because of age restrictions in the workplace, a youth or an older person un- or underemployed or forcibly retired may have to depend on the support of other family members, often parents, grandparents, sons and daughters.



III Two Examples of Age and Generations in Law

In this section, we present how relationships between generations and concepts of age are used in two domains, employment and income security. Examples other than employment or income security could have been chosen: education, health policies, regulations on driving permits and insurance rates. The area of employment relationships and income security are proposed here as examples of the way in which concepts of age and generations have been used and the results of such laws and policies.

A. Employment

There are a number of issues related to employment that revolve around age and intergenerational relationships. A number of laws and policies govern participation in the workforce.

First, concerns over the safety of children and youth, as well as the need for them to stay in school, have prompted a number of limits on access to jobs. Both the federal and provincial governments have legislation prohibiting employers from hiring young people required to attend school (ex. up to the age of 16), and limiting the age at which young people can be hired outside of normal school hours. For various ages, hiring is limited by the requirement of parental consent, restrictions or access to certain specified jobs and controlled number of hours (ex. for those between 12 and 15, and those 15 to 18). In addition, some collective bargaining agreements contain an orphan clause, that is, a provision that gives workers hired after a given date less pay and/or benefits than those workers already on the job. In those circumstances, young people might consider older workers part of the problem. As a result of these policies, both groups can see each other as non-contributors to the workplace and society.

According to some, the thrust to protect children from arduous work during the Industrial Revolution and to encourage youth to remain in school may have had considerable undesirable results for many, particularly the poor. The lack of work for youth, particularly those who are poor, has been linked to signs of despair, including suicide, alcohol and drug abuse, and rising school drop-out rates. While overall, there is a need to prohibit child labour in order to



At my current job, age seems to be a major factor when it comes to listening to what I have to say and believing that what I say is true. None of them respect me because I'm still in school and because I'm young. It's very frustrating. Does anyone else see this as a problem? Does anyone else have this problem? In think it all should boil down to experience, however many people mistakenly believe that experience is proportional to age. This belief is faulty, however, when you consider that tomorrow's computer professionals start gaining experience in their teens, not in their twenties or thirties.

Rachel Fenol, Grade 11
Ascension of Our Lord Secondary School,
Ontario
"Does Age Matter?"

My daughter Marion thinks I'm at the perfect stage of my life to retire because I have so many other interests. But I graduated from university 20 years ago and I still feel like I have something to contribute to my community.

Ellen Hansel, age 65, *The Calgary Herald*
(August 7, 2003) N2.

ensure children's safety and education, there are disadvantages to consider, particularly for youth.

While employment is available for those aged 16 and over, young people, under the age of 18, who apply for work or are employed, are not protected against unfair treatment under the human rights legislation of some provinces. Although they may be permitted to work, some provinces have a lower minimum wage rate for inexperienced workers, which disproportionately affects youth. For the most part, limited access to jobs often results in young people working in jobs that are non-unionized, that provide no training and that require very little skill.

Lack of access to well-paying jobs creates a particular disadvantage for young people and may compound, exacerbate or assist with the systemic problem of child poverty. This is particularly true of those groups who have difficulty finding jobs because of race, ethnic background, disability or language. It can reinforce the image of youth being lazy and unproductive and have an impact on young people's ability to shift the balance of interdependency in their family relationships.

Workers over 50 years of age also have a very difficult time finding work or changing jobs. In industries characterized by youthfulness, such as information technology, older workers face even higher barriers. Studies have shown that periods of unemployment are longer for older adults, and that a significant percentage of employers admit that they do not consider candidates over 55 or 60 years of age. Acquiring new skills and knowledge greatly increases the likelihood of finding and maintaining jobs. Unfortunately, older adults are often passed over for training since the "return" is thought to be too small and they are considered unable to learn. Limiting access to training guarantees that older adults will not be able to contribute as much to the organization whereas studies show that older workers can be trained just as well as younger workers.

In addition, older workers are often forced, explicitly or implicitly, to terminate their employment relationships. In the 19th century, Chancellor Bismarck decided that 65 was the age at which people should retire. Some say age 65 was an arbitrary choice, while others claim that the choice was related to life expectancy of the times. Behind mandatory retirement lie assumptions about older workers, including: "job productivity declines with age"; "older workers lose physical capacity"; and, "older workers can't learn new things".



Some of these stereotypes and incorrect assumptions date back to the era of heavy physical work in the industrial era, when people did not live much beyond 65 years of age.

Mandatory retirement has a disproportionate impact on diverse groups of older adults. Women may have more interruptions regarding work outside the home because of child rearing and other responsibilities. In addition, they often earn less than men when they work outside the home. This shorter period of work with lower wages could have significant negative consequences that are worsened by mandatory retirement; for example, fewer savings and lesser pensions from C/QPP because of lower contributions for a shorter period of time.

Recent immigrants may face similar problems. From the time of their arrival in Canada to a date at which they are mandatorily retired, they may have a relatively short amount of time to contribute to a pension plan. It can also take immigrants longer to build a sufficient pension fund, since many of them face lower wages than their Canadian counterparts. This would also be the case for other groups that do not earn equal wages for the same work.

From an intergenerational perspective, mandatory retirement can reinforce negative stereotypes of older workers and can eliminate a potential role for mentorship in an organization. Forcing older adults out of the workforce can also shift the balance of interdependent family relationships through the creation of a greater need for financial support.

“Recently arrived in Canada, a woman obtained her Ph.D. at the age of 58 and obtained a teaching position at a university. She succeeded in having a book published that received rave reviews and made her a recognized expert in her field. At the peak of her career, at 65, she was enjoying the accolades when the university administration informed her that she would have to retire. She was devastated. She had so much more to contribute as a teacher and as a scholar.”

Translation – Nathalie, Participant, Law Commission of Canada consultations

Discrimination on the basis of age is not simply a matter of mandatory retirement at age 65 but extends to the structure of incentives influencing the retirement decision. Gunderson identifies a wide range of institutional and legal constraints that encourage individuals to retire prior to the age of 65 and disincentives for those remaining in the labour force beyond 65.³ First, the CPP and QPP, like most private employment-based pension plans, include incentives for early retirement and penalties for delayed retirement. Benefits can be received as early as age 60 and the reduction in monthly benefits is small relative to the longer period of entitlement; in contrast, delayed receipt of benefits until the age of 70 provides no increase in monthly payments to offset the shorter duration of benefits. Second, both forms of government income support for the elderly – the universal OAS and income-tested GIS – include “claw-backs” that reduce the size of benefits above a particular income threshold. These claw-backs create a monetary disincentive to work, since any

(continued on next page)

³ M. Gunderson, “Flexible Retirement as an Alternative to 65 and Out.” (1998) 106 C.D. Howe Institute Commentary (Toronto: C.D. Howe Institute).



(continued from previous page)

employment income reduces one's OAS and GIS benefits, in some instances on a dollar-for-dollar basis. Third, rules governing RRSPs do not permit contributions after age 69 and also require that accumulated funds must be converted to an annuity by that age. Both of these rules discourage work to the extent that they increase an individual's marginal rate of taxation.

Hugh M.K. Grant and Gretta Wong Grant, *Age Discrimination and the Employment Rights of Elderly Canadian Immigrants* (Ottawa: Law Commission of Canada, September 2002) at 51-52.

Even when mandatory retirement is abolished, few individuals choose to continue to work beyond the mandated retirement age, usually 65. This is partially due to the fact that older workers were encouraged to take early retirement as a way to downsize governments and businesses. Some people may stop working because of the ageism they face in the workplace. It could also reflect the choice of workers to have more flexibility in their lives, to pursue other activities such as volunteering, caregiving, education, arts, socializing or travel. Employers who now need older adults to continue working beyond 65 should be prepared to meet the need for more flexibility in providing for more flex-time and part-time positions.

The important factor is having a real choice and real opportunities to work or not.

DISCUSSION POINTS

- *How are relationships between generations lived at the workplace?*
- *Are there special jobs where age should continue to be a factor? Who should decide what age restrictions are appropriate?*
- *Is the possibility of more flex-time a good solution to allow more workers of different age groups to participate in the workforce?*

B. Economic Security

Our society strives to provide all its members minimum resources to survive. Government programs for economic security usually aim at ensuring that people have access to resources to obtain



housing, food and clothing. Laws and policies on economic security are structured on notions of age and generations.

Three types of government programs that have age implications or frame relationships between generations will be reviewed. The issue of social assistance is reviewed first. Second, we examine educational assistance or student loans. Finally, the programs for retirement income are discussed.

Youth face particular difficulties in securing access to welfare since many provinces have age-based criteria for eligibility. Governments have often felt that their parents should support youth under a certain age and that youth may have smaller financial needs than older individuals. Youth have had more difficulty in securing access to welfare and have received smaller payments. While in the ideal model of the Canadian family one might expect that parents with sufficient means would support their children, in many families the reality of the parent child relationship precludes this. Further, it is widely accepted that as youth become adults, even the moral obligation of parents to support their children begins to wane. This suggests that age based criteria for eligibility to welfare may in some situations be subject to successful Charter challenge.

Nicolas Bala, "Access to Welfare by Youth" in Canadian Youth Foundation, *Youth and the Canadian Charter of Rights and Freedoms: An Analysis of the Implications* (Ottawa: Canadian Youth Foundation, 1988) at 38.

Youth under 16 years of age have the right to support under child protection legislation where provinces are required by statute to provide benefits to children at risk. People over 18 years of age can apply for income assistance and will be entitled to it based on a means test. Those youth who are 16, 17 or 18 years of age are subject to provisions that allow provincial authorities to exercise their discretion to provide benefits. This gap in income support often impacts on groups of youth already significantly disadvantaged from poverty and lack of adult support. Many of these young people are then forced to depend financially on other non-related adults.

Another economic security measure is the assistance through governmental loans such as the Canada Student Loan Program. The program provides loans to Canadians enrolled in full- or part-time post-secondary educational studies through a collaborative relationship between the provincial/territorial and federal governments. Participating provinces and territories determine eligibility and assess students' financial needs based on federal criteria, award the aid by issuing a loan certificate, and designate

Welfare is not a "purely economic interest." One's bodily well-being requires at least a minimal level of material sustenance. As the Law Reform Commission of Canada states: "the right to security of the person means not only protection of one's physical integrity, but the provision of necessities for its support"...welfare falls within the scope of "security of the person" because it is integral to basic survival and because it relates to one's ability to function as an autonomous human being. It is an aspect of "personhood" in that it provides the means to act as a responsible agent. By granting constitutional protection to welfare benefits, recipients have the message that they are socially recognized as responsible agents, worthy of respect.

Ian Johnstone, "Section 7 of the *Charter* and Constitutionally Protected Welfare" (1988) 46(1) U.T. Fac. L. Rev. 1 at 26-27.



[Chauvel] put forth the hypothesis that intergenerational issues became political since they were at the heart of the transformation of social classes and the future of the welfare state [...] He determined that the economic situation that exists when a person, upon reaching adulthood, begins his or her working career, seems to have an impact on that person's level of income for the rest of his or her life. Chauvel's study therefore indicates that, as with gender and social class, belonging to a particular cohort or generation can impact on one's ability to successfully participate in society. And the difficulties encountered by certain cohorts can be linked to intergenerational issues [...] Orphan clauses served to lower the salaries of casual, temporary or future employees in order to benefit more senior employees [...] Since the recession in the early 1980s, we noted that more companies used orphan clauses aimed at new employees, who are generally, but not exclusively, young people [...] The fact that these clauses were used in that particular socio-economic and demographic context illustrates how such realities can lead to a renegotiation of an implicit social contract between the generations.

Translation – Solange Lefebvre, "Responsabilité et équité intergénérationnelles : débats actuels", *Lien social et Politiques – RIAC*, 46, automne 2001, *La responsabilité : au-delà des engagements et des obligations* 141 at 146-147.

eligible educational institutions. According to the policy used to determine students' needs, 'Parents of single dependent students are expected to contribute to their child(ren)'s education, based on their financial ability. A parental contribution table is based on a portion of parents' discretionary income after deducting taxes and a moderate standard of living reflecting regional variation and family size. Parental contributions vary by family income and size.'

Even if parents fund their children's tuition, the rising rates have caused parents to use more of their savings and investments that may impact on their ability to support themselves following withdrawal from the labour force. These policies often shift the balance of interdependency between generations.

There are three principal ways in which governments provide financial benefits to older adults. The first level of the system is the publicly funded Old Age Security (OAS). The OAS provides a basic pension (adjusted for inflation) to almost everyone over 65 who has lived in Canada for a required length of time. For those who otherwise have high incomes, all or part of the OAS may be "clawed back" through the tax system. Included in the OAS is the income-tested Guaranteed Income Supplement (GIS). The GIS provides extra money to OAS recipients who have little or no other income; about 35 percent of those receiving the OAS also receive the GIS, in whole or in part.

The second level of the pension system is the earnings-based Canada and Quebec Pension Plans (C/QPP). These plans provide a retirement pension, generally at age 65, to those individuals who have contributed to the C/QPP. Individuals may choose to take the pension as early as 60 or later than 65 with adjusted benefits.

The third level is comprised of private plans: occupational or employer sponsored pension plans (RPPs); registered retirement savings plans (RRSPs); and, deferred profit-sharing plans (DPSPs). The federal government provides tax assistance on savings in these plans up to specified limits and subject to certain constraints based on age.

The pension system uses age as a "marker" in several ways. For instance, 65 is the triggering age, generally, for entitlement to the Old Age Security, the Guaranteed Income Supplement, and the Canada and Quebec Pension Plans. Age is also used in combination with need, as a criterion, to determine eligibility to GIS, in whole or in part, and to determine whether the "claw back" provisions of the tax system will apply to the OAS. At the same time, the C/QPP departs from the rigidity of 65 as the "magic" age of entitlement by allowing



recipients to access lower payments at anytime after 60 or to have higher payments by deferring the pension to sometime after 65. Using age as a “marker” in these plans may be justified. Nevertheless, a certain arbitrariness does result. A 59 year-old individual, dependent on the welfare schemes of a province, may have a lower income than a 66 year-old, in the same province who is otherwise in similar conditions.

RRSPs are available to everyone with eligible income. They tend to be used by those with higher incomes who have the means to make the contributions and to obtain the deduction. There has been a shift in Canada towards greater incentives to build and rely on private systems of income. An emphasis on private pensions excludes older adults who have had short careers or jobs without private pensions and who tend to belong to certain groups such as women, immigrants, Aboriginal peoples and people with disabilities. An emphasis on RRSPs excludes people who have very low wages and live in poverty. Despite overall gains in financial well-being, poverty among older adults remains a serious problem. Unattached, older adults, particularly women, are more likely to have a low income than those in families. This poverty is attributable to the fact that women have, generally, had less involvement in the labour force and, when involved, have had lower wages than men.

Insufficient income for older adults can change the balance of interdependency with their families and friends. On an economic level, reducing the public sources of income for older people may be seen to respond to the shortage of resources that some analysts maintain will result from the aging population. However, much of the needed support will be shifted to younger generations within the families and communities of older adults.

DISCUSSION POINTS

- *How does the provision of economic security impact on the balance of interdependency between generations? On a societal level? At the level of the family?*
- *Should parents be obliged to support youth or pay for their dependent children’s education? If so, what happens when these relationships do not exist? How should laws and policies respond to those circumstances? What if parents are themselves seeking to retrain and obtain education?*



- *Are there other ways for laws, policies and programs to respond, which could give parents and children more choice to shape their lives and relationships?*
- *What are the government's objectives in providing age-based financial benefits such as the pension? Are these still valid? Would criteria other than age be more appropriate?*
- *How do we sustain the contribution of families, communities, governments and businesses to home care, childcare, education and other supports for those who need it?*



IV Principles for Law Reform

As society progresses, we must ensure that our laws keep pace with social circumstances. This chapter highlights some of the challenges that confront us in revisiting concepts such as age and relationships between generations. As we have seen, the current concept and use of age in our legislation and public policies may be inadequate at a time when people live longer and healthier lives. Law also uses presumptions about relationships between generations that may no longer represent the diversity of the life choices of citizens. A law reform exercise is necessary to create an evolving, dynamic law rather than one that is static and based on outdated assumptions about Canadians. Laws that assign benefits and impose restrictions based on age distinctions, some of which are based on assumptions formulated many years ago must be reviewed.

What are the values needed to support this law reform exercise? The values of equality and justice, which inform our constitutional arrangements, ought to frame the discussion. In addition, laws should avoid contradictions, aim at eliminating unfairness and treatment based on stereotypes, and support good relationships between the generations. Objectives such as coherence and efficiency are also required in developing legislation and public policy. In this chapter, we review the values and principles that should guide our law reform efforts.

A. Values of Equality and Justice

When programs and laws are over-inclusive or under-inclusive, they lead to unfair outcomes. This is often the case in age-based distinctions. Often, it may require more than a simple readjustment of the age limit itself. In other words, it may not be sufficient to simply change the age limit from 65 to 70, or from 18 to 16. Our values of justice and equality may suggest that we should rethink the very instrument or concept that we have used.

Equality commonly refers to our aspirations for a democratic society where everyone participates fully with dignity and respect. In that context, we strive to eliminate barriers to participation, particularly those rooted in stereotypes, obsolete and antiquated notions. We want to offer to our citizens real choices and



opportunities, an equality that is lived and not only imagined. As the employment example demonstrates, the issue of age distinctions in the workplace warrants re-examination.

...[C]hoice tends to be limited by age much more than is really necessary, either through negative expectations or just poor planning. The revolution in longevity puts choice high up the list of priorities.

Tom Kirkwood, 2001 Reith Lecturer, BBC Radio, online:
<http://www.bbc.co.uk/radio4/reith2001/>

The notion of **justice** encompasses a number of different goals, all of which are important to law reform in the area of age distinctions and relationships between generations: protecting individual liberties, ensuring only reasonable controls over human choices and promoting fair distribution of opportunities between citizens. In order to achieve these goals, arbitrary and unpredictable decisions must be eliminated. Incoherent outcomes offend our sense of fairness and rationality. Justice also requires accountability, transparency and participation in decision-making by those who are affected by the laws and policies being considered.

Linking notions of participation, justice and equality allows for a continued dynamic process of making law relevant and just. In other words, because we know that our notions of age and relationships between generations will evolve as new generations will bring their own concerns to bear, we should aim not to define the perfect and just outcomes but work toward ensuring that we create channels for equal participation.

Many of the proposals that come from youth and older adults groups speak to the issue of participation. Indeed, many organizations have sought to obtain the views of young and older Canadians on what is needed to better respond to their needs. These values should be reflected in our public policy.

A number of other principles are subsumed within the concepts of equality and justice and should guide law reform in this area. The principles contained in the textbox were collected from the reports of the National Advisory Council on Aging and from the international *Convention on the Rights of the Child*.

Given that seniors are most familiar with the values of people from their generation and that preventive and corrective means must not be imposed by outside professional groups, it is imperative that the authorities help seniors' groups organize themselves so that they may provide information and support to seniors who have been victims of any form of violence.

Donald Poirier and Norma Poirier, *Why is it so difficult to combat elder abuse and, in particular, financial exploitation of the elderly?* (Ottawa : Law Commission of Canada, July 1999) at 69.

**FAIRNESS**

Being treated equally. Having equitable access to social and economic resources and having needs met so that people feel like full participating members of society.

AUTONOMY

Give people choices and allow them to make decisions. For children and youth, autonomy emerges and evolves as they gain more responsibility.

PARTICIPATION

Everyone has the right to participate in society and in decisions that affect them. This includes associating with others, expressing oneself and receiving information.

DIGNITY

Feeling valued
Accepted
Appreciated for contributions

SECURITY

Support to achieve financial, physical, emotional, psychological and environmental security.

As we seek to reflect these values in our public policy, we are confronted with an implementation challenge: how to achieve these values in a context of efficiency and coherence.

B. Efficiency and Coherence

Decision-makers seek to achieve their objectives in an efficient and coherent manner. The **efficiency** of a law, policy or program may be measured by how well it achieves its objectives without exceeding reasonable costs, both financial and social. At times, administering a perfectly coherent system may demand an intrusive, costly and burdensome regime of testing. It is therefore important to balance the concern for a flexible and adapted regime with the administrative burden that such new methods for the determination of eligibility may bring.

In addition, an efficient law or program is one that provides a measure of clarity for both the administrator and the general public. Again, the objective of clarity and certainty may need to be balanced against a desire for more flexible outcome. Finally, concerns for the privacy of individuals may warrant using criteria that do not invite intrusive questioning in the lives of citizens.

Coherence requires that laws have clear objectives, and that their legislative design corresponds with the achievement of those objectives. Laws, however, use specific ages to provide benefits or

In the case of children and youth, ...values rebound in Canada as a signatory to the *United Nations Convention on the Rights of the Child*. Are these values prominent in the day-to-day lives of children and youth? Does the law reflect these values and respect these principles? Does the actual impact of the law and policy on children and youth promote or depart from these values? What are the assumptions we have made about children that have found legitimacy through legal sanction?

Children are born with fundamental freedoms and the inherent rights of all human beings. This is the basic premise of the Convention on the Rights of the Child, an international human rights treaty that is transforming the lives of children and their families around the globe.

People in every country and of every culture and every religion are working to ensure that each of the 2 billion children in the world enjoys the rights to survival, health and education; to a caring family environment, play and culture; to protection from exploitation and abuse of all kinds; and to have his or her voice heard and opinions taken into account on significant issues. (UNICEF)

Dulcie McCallum, *A Discussion Paper for Children and Youth and Older Adults* (December 2002) [unpublished, archived at the Law Commission of Canada].



By having a driver's license, one takes into their hands the lives of others every time they get behind the wheel, and yet they cannot at this age decide what goes into their body. Three years after getting a driver's license, after being given the right to control the fate of others, a person is finally allowed at the age of 19 to determine whether or not they want to consume alcohol. It seems ironic that Canadians are given the right to affect other lives before they can make decisions about their own.

Meg Rawlins, Grade 11
Essex District High School, Ontario
"The Numbers Game"

impose restrictions. A quick look at these laws reveals a lack of uniformity in the ages used. Youth can vote at 18, drive and marry at 16 and take an oath of citizenship at 14. Are these changes rationally connected to differences in youth at these ages over this time period? If not, then they reflect a lack of coherence. However, perfect coherence may not be achievable if the costs of administering a specifically targeted law are prohibitive.

DISCUSSION POINTS

- *Are there other principles that should be considered in the context of the use of age and generations?*
- *Have the concerns over efficiency been overplayed in our society?*
- *Are there ways in which we can better respond to the different values of equality and justice and the principles of coherence and efficiency?*
- *Are our decision-making structures sufficient to allow children, youth and older adults to be heard and to participate?*



V New Conceptualizations of Age and Generations

How can we promote a view of people being in interdependent relationships, both needing support and contributing to society? What would happen if we stopped defining people as belonging to a particular age category? Would a recognition that people are interdependent to different degrees along the way encourage healthier relationships and greater harmony across the generations? Would the elimination of age and the use of other criteria avoid instances in which the law forces greater dependency by one age group on another?

This chapter explores some ways in which we can offer new conceptualizations of age in our laws and enhance relationships between generations.

A. Functions, Abilities and Full Participation: Revisiting the Concept of Age in Public Policy

There is a need for all levels of government to assess laws, policies, and their application to ensure that they overcome the difficulties encountered through using age categories. Some of the considerations set out above include: comparing the law to the lived reality of Canadians, adhering to the values of equality and justice while responding to governmental principles, considering issues of intergenerational relationships and diversity, and enhancing the real participation of youth and older adults in governance.

First, it is necessary to go beyond examining laws one by one at each level of government and consider the overall impact. An audit of all laws surrounding a particular real-life situation, which currently makes a distinction based on age can be useful. It serves to understand how the interactions between laws contribute to the attainment of government objectives in a rational way or compete amongst themselves to defeat some of the positive benefits. For example, by looking at the collection of federal, provincial, territorial and municipal laws which provide income support, governments can ensure that youth between the ages of 16 and 18 do not fall through the cracks.

Recognition of diversity within an age group is essential. For example, women, especially those living on their own, are most at

What Canadian youth need is a message from the government and from society generally, saying "We need you. Your voice, ideas, help, is essential. We cannot get on without you. You are vital for our country to operate effectively." The most effective way to send this message to all teens throughout the country would be to lower the voting age. This would be a beginning at mending the "generational divide," as one sociologist put it, that [is] widening between youth [and] the other age groups.

Dora Capatos, Grade 12
Lethbridge Collegiate Institute, Alberta
"Research Report on Ageism"



risk of being poor in old age. A law based on an assumption that older adults are better off now than they were a number of years ago may hide the desperate situations faced by older women. Allowing a lower minimum wage for youth may have particularly negative impacts for immigrant youth who already have a difficult time finding work and may have to accept such jobs in greater numbers out of desperation. On the other hand, raising minimum wage may eliminate these jobs. These considerations emphasize the importance of assessing laws and policies and their applications not only regarding age but also in terms of the way age may combine with other characteristics to create especially negative consequences.

It may be time to use a more functional analysis of the issues currently defined under age concepts. Changes in people's needs and contributions may have less to do with age and more to do with people moving through periods of transition. People experience a number of transitions in life as they develop the capacity to reason and to accomplish basic tasks of survival, as they attain of higher levels of schooling, obtain work, develop relationships and caregiving responsibilities, withdraw from regular paid work, by choice or because of illness or disability, and aim to have more time to enjoy leisure activities. While some of these activities are associated with certain age groups, these transitions do not occur at fixed chronological ages. People move in and out of these periods throughout their lives. These transition periods are not standardized; not everyone goes through each stage in a set order. Law and policies regarding education, caregiving, retirement, and so forth, frequently present the image of "standard life course". However, that "course" does not correspond to our diverse and evolving society. A more detailed explanation of a life course perspective, as opposed to a standard course, and the elements that define it are contained in the following textbox:

Six Principles of the Life Course Perspective

1. Aging consists of three sets of processes – biological, psychological and social.
2. Human development and aging are life-long processes.
3. Historical time and place: The life course of individuals and cohorts is embedded in and shaped by the historical times and places they experience over their lifetime.
4. Timing: The antecedents and consequences of life transitions and events vary according to their timing in a person's life.

(continued on next page)



(continued from previous page)

5. Linked lives: Lives are lived interdependently and social-historical influences are expressed through this network of relationships.
6. Human agency: Individuals construct their own life course through the choices and actions they take within the opportunities and constraints of history and social circumstances. When many persons in the same cohort behave in concert, they can produce social change.

Victor W. Marshall and Margaret M. Mueller, *Rethinking Social Policy for an Aging Workforce and Society: Insights from the Life Course Perspective* (Ottawa: Canadian Policy Research Networks, May 2002)

A functional approach promotes a view of people within their reality and within the context of society. For example, people retire when social and personal conditions permit, not when they reach a certain age. Education is not just for the young but continues throughout life. Similarly, work happens at different times in life: young and old have the right to find and obtain work. Caregiving is required by people at different stages of their lives and is not solely restricted to the young and old. A functional approach, sometimes described as a life course perspective, recognizes that in a diverse society, it is futile to define public policy based on rigid models of how people evolve. Life is not that simple: people may abandon their studies earlier than they wish or should for a variety of reasons. They should still have the opportunity to be educated at some other point in their lives. People may start their career later because of relocation from other countries, caregiving responsibilities or illness or disability. They should not be prevented from accumulating sufficient income to retire comfortably at a time of their choosing. Law should support the choices that citizens make and adapt to the pace at which citizens move through various life transitions.

It is crucial that the ability to exercise choice is genuine. This requires measures to be taken to ensure that people of all ages have real choices, and are genuinely able to pursue those choices. This is a potentially radical approach, which requires active measures. Not only should age barriers be removed. In addition, positive provision should be made, including the adjustment of pension schemes, the introduction of flexible working, the adaptation of transport and housing, the appropriate allocation of health care resources and information and the provision of lifelong learning.

Sandra Fredman and Sarah Spencer, "Introduction" in *Age as an Equality Issue* (Oxford: Hart Publishing, 2003) at 3.

To the extent that the health of an applicant is affected by his or her age, the use of a mechanism to re-evaluate a driver at specific ages may be justified. This study suggests, however, that to use age alone as an evaluation marker is not justified on existing medical or legal evidence. A more thoughtful approach is to recognize that age may (but not necessarily will) bring with it medical conditions that affect driving ability, and to explore how best to test those medical conditions in a non-discriminatory and effective, or fair and accurate, manner.

- Public education [...] to focus attention on the medical conditions that may have a serious impact on driving performance at all ages. Knowing what these conditions are, how driving performance may be affected, and how steps can be taken to ensure safe driving may allow individuals and their families and friends to begin addressing concerns.
- The development of efficient, effective screening tools for use in the identification of high risk drivers, methods for providing in depth driving assessment of those thought to be at high risk, and convenient, accessible, affordable alternative modes of transportation for persons no longer able to drive.
- Factors external to the individual that could influence driving performance. For example, it is known that collisions often occur in the context of a left-hand turn.

The additional manpower and human resources required, educational programming, and needed research all contribute to the increased cost. Given this increase in cost in a time of budget restraint, cost sharing (i.e., public funds, insurance companies, individual) and the need for private sector involvement may be worthy of consideration [...] However, it may be that taking at-risk drivers (of any age) off the road



may result in cost savings of sufficient magnitude to warrant implementation of these alternative procedures.

Holly Tuokko and Fiona Hunter, *Using "Age" as a Fitness-to-Drive Criterion for Older Adults* (Ottawa: Law Commission of Canada, January 2002), Excerpts from pp. 76-78.

A functional approach would require a redesign of many of our current age limitations. In essence, it suggests that governments ask themselves the following questions as they re-evaluate legal frameworks that affect age:

- *What are the barriers to, for example, accessibility of jobs for youth, or the economic security of older adults?*
- *What is the role of all related laws, policies and programs, in maintaining or diminishing these barriers?*
- *Is there an age distinction? Is it relevant? Is it based on outdated assumptions?*
- *Do the laws, policies and programs create a disproportionate impact on diverse groups in our society on issues of gender, religion, race, disability? What are the impacts of the laws, policies and programs on relationships between generations?*
- *Are the objectives more related to other criteria, such as ability or vulnerability, than to age? Could the law be eliminated in favour of criteria that would respond to the problem rather than the person?*
- *Could other criteria be used, such as individual testing or individual choice?*
- *Would other criteria entail unjustified negative consequences, such as:*
 - *Breach of privacy;*
 - *Unwarranted expense for testing or otherwise;*
 - *Undue burden on the system?*

DISCUSSION POINTS

- *Should there be an effort to eliminate age as a category where this is possible?*
- *Are there other important considerations not mentioned here?*
- *What do you think of the proposed methodology to reflect on issues of age and generations?*



B. A Society for All Ages: Supporting Just Relationships Between Generations

The UN [United Nations] process extends and adjusts the overall international framework of rights, humanitarianism and development to the new realities of population aging. A growing number of older people face difficulties that were simply not foreseen, in areas related to health, housing, the family, social welfare, income security and employment, education, research and training. The solutions are not special rights for older people, which would have the effect of ghettoizing them. Indeed, aging should be treated as a life-course, society-wide issue as much as an older persons issue. In the early 1990's, the UN slogan focused on older individuals – “to add life to the years that have been added to life”. However, by the end of the 1990's a new slogan focused on society as a whole – “a society for all ages”.

Peter Hicks, “The Policy Implications of Aging: A Transformation of International and National Thinking” (2003) 6:2 *Horizons – Policy Research Initiative* 12.

A society for all ages requires approaches that ensure that people are recognized, accepted, and able to fully participate in society. Removing the barriers faced by some groups, age-based and others, benefits all of society. A participatory approach requires the elimination of obstacles to participation: people with mobility problems need reliable transportation in order to be participating members, irrespective of whether they are young or old. Modifying or redesigning public transportation in such a way that people can move around achieves the goal of participation and, therefore, benefits society. Cuts to educational services have affected children's right to education. Some of these services enabled the participation of children with disabilities and those whose first language is neither French nor English.

Social policies, both public and corporate, must shift to respond to the needs of people of all ages. In the past, we have had to adjust our social policies to meet changes in demography. Canada had a large population of children in the fifties and policies, for example in the area of education, had to adjust. We must now develop a framework to better respond to the current needs of people of all ages. Choices must be made.

We know that healthy relationships between generations in families and communities improve well-being. The connections between the young and old are not pre-ordained to be adversarial. The goal of governments should be to forge links between age

The government should concentrate on promoting equality among generations and creating equal opportunity for people of all ages in terms of driving, voting and working opportunities.

Adwoa Asante, Grade 11
Ascension Of Our Lord Secondary School,
Ontario
“Does Age Matter?”



“My mother lives in a nursing home. She has some physical limitations but her level of comprehension is fine and she can make decisions. I was dealing with my Mom’s financial affairs and advocating for her at the home. One day, I received a voicemail at home from a nurse, telling me that one of the other nurses suffered a needlestick injury while taking a sample of my Mom’s blood. Protocol required that my Mom be tested for HIV/AIDS and the home wanted my consent for them to take the blood sample and do the test. I couldn’t believe it. Why were they asking me when my Mom was perfectly capable of understanding and consenting herself?”

Linda, Participant, Law Commission of Canada consultations

groups that are collaborative and mutually beneficial. Many suggestions can be made:

- Forums that invite discussion between age groups about the barriers to their participation are needed.
- An ethic of discussion around issues of relationships between generations may need to be developed to ensure that the perspective of all groups are not forgotten, misrepresented or ignored.
- Consultation policies should invite deliberation by different age groups and among them.
- Increased contact between age groups should be fostered.

DISCUSSION POINTS

- *What other suggestions can be made to promote healthy relationships between the generations?*
- *How can participation of youth and older adults in public policy be enhanced?*
- *What is required to improve children’s participation in society?*



Conclusion

We began this Discussion Paper with a description of our diverse and aging society: a society where people live longer and where the pattern of education-work-retirement is not as linear as it was in the past. We also described relationships between generations that evolve in a context of interdependence, increased mobility of families and segregation along age lines.

We also noted that law often is based on outdated assumptions and is often unresponsive to the changing patterns of our society. The use of age as a marker in our laws must be questioned. Age is often presented as an effective substitute for other statutory objectives: protecting persons from exploitation, ensuring that people have the ability or the maturity to act, or redistributing resources. In this Discussion Paper, we ask whether these objectives are legitimate and whether other concepts could be better deployed. We ask whether we can continue to use age as a marker in a context of changing relationships between generations.

Our thinking about age and its legal consequences must be done in the context of the dynamic relationships between generations, and the importance of ensuring a just and equal society. The Discussion Paper specifically questions whether our current age distinctions are based on stereotypes about young and old, and whether our current age distinctions are outdated or inefficient. It also explores possible alternatives to concepts of age and generations.

The paper aims at engaging in a discussion of what type of society we want and the tools we need to achieve it. “A society for all ages”, as suggests the United Nations, may demand a reevaluation of laws and policies that use age as a marker and that prevent people from participating fully in our society. A society for all ages also requires that relationships between generations be rooted in justice, participation, and exchanges.

The Law Commission of Canada invites Canadians to send their comments on those ideas as it continues its research and engagement work on these issues.



Summary of Discussion Points

I Age and Generations Today

- *Large demographic changes have taken place in the past. Why are people concerned about the current one?*
- *What issues are raised in the context of our changing demographics?*

II Age and Generations in Law

A. The Use of Age Distinctions in Law

- *Are there other problems associated with using age as a category in law?*
- *Have you experienced difficulties in your own life by being categorized into an age group?*
- *In your opinion, what would be the impact of removing chronological age and age categories in laws?*
- *Are there benefits to using age and age groups in law?*
- *Are there some areas of the law where age should be used to award benefits or impose restrictions that don't currently do so? Are there other areas of law in which rights and responsibilities between the generations should be imposed?*

B. Human Rights and Age Distinctions

- *Are there other stereotypes about old and young which continue to exist?*
- *What is the impact of such stereotyping?*
- *What can we as a society do to get rid of stereotypes and incorrect perceptions?*
- *Should human rights legislation provide protection for all age groups?*
- *How should we address the rights of children? Should there be a way for children or others on their behalf to complain about governments not living up to the commitments in the United Nations Convention on the Rights of the Child?*



III Two Examples of Age and Generations in Law

A. Employment

- *How are relationships between generations lived at the workplace?*
- *Are there special jobs where age should continue to be a factor? Who should decide what age restrictions are appropriate?*
- *Is the possibility of more flex-time a good solution to allow more workers of different age groups to participate in the workforce?*

B. Economic Security

- *How does the provision of economic security impact on the balance of interdependency between generations? On a societal level? At the level of the family?*
- *Should parents be obliged to support youth or pay for their dependent children's education? If so, what happens when these relationships do not exist? How should laws and policies respond to those circumstances? What if parents are themselves seeking to retrain and obtain education?*
- *Are there other ways for laws, policies and programs to respond, which could give parents and children more choice to shape their lives and relationships?*
- *What are the government's objectives in providing age-based financial benefits such as the pension? Are these still valid? Would criteria other than age be more appropriate?*
- *How do we sustain the contribution of families, communities, governments and businesses to home care, childcare, education and other supports for those who need it?*

IV Principles for Law Reform

- *Are there other principles that should be considered in the context of the use of age and generations?*
- *Have the concerns over efficiency been overplayed in our society?*



- *Are there ways in which we can better respond to the different values of equality and justice and the principles of coherence and efficiency?*
- *Are our decision-making structures sufficient to allow children, youth and older adults to be heard and to participate?*

V New Conceptualizations of Age and Generations

A. Functions, Abilities and Full Participation: Revisiting the Concept of Age in Public Policy

- *Should there be an effort to eliminate age as a category where this is possible?*
- *Are there other important considerations not mentioned here?*
- *What do you think of the proposed methodology to reflect on issues of age and generations?*

B. A Society for All Ages: Supporting Just Relationships Between Generations

- *What other suggestions can be made to promote healthy relationships between the generations?*
- *How can the participation of children, youth and older adults in public policy be enhanced?*
- *What is required to improve children's participation in society?*



Additional Reading

Achenbaum, W.A. *Old Age in the New Land: The American Experience since 1790* (Baltimore: The Johns Hopkins University Press, 1978).

Attias-Donfut, Claudine. *Sociologie des générations. L’empreinte du temps* (Paris: PUF, 1988).

Attias-Donfut, Claudine. *Les solidarités entre générations. Vieillesse, Familles, État* (Paris: Nathan, 1995).

Bala, Nicolas. “Access to Welfare by Youth” in Canadian Youth Foundation, *Youth and the Canadian Charter of Rights and Freedoms: An Analysis of the Implications* (Ottawa: Canadian Youth Foundation, 1988).

Bala, Nicolas and Rebecca Bromwich. “Context and Inclusivity in Canada’s Evolving Definition of the Family” (2002) 16(2) Int’l J.L. Pol’y & Fam. 145.

Bala, Nicholas. *Young Offenders Law* (Toronto: Irwin Law, 1997).

Beaulieu, Marie and Charmaine Spencer. *Older Adults’ Personal Relationships and the Law in Canada: Legal, psycho-social and ethical aspects* (Ottawa: Law Commission of Canada, 1999).

Bibby, Reginald W. *Canada’s Teens: Today, Yesterday and Tomorrow* (Toronto: Stoddart Publishing Co. Limited, 2001).

Bogart, W. A. *Generational Justice and Older Adults, Discussion Paper Draft* (2002) [unpublished, archived at the Law Commission of Canada].

Boulding, Elise. *Children’s Rights and the Wheel of Life* (New Brunswick, N.J.: Transaction Inc., 1979).

British Columbia Human Rights Commission. *Factors Affecting the Economic Status of Older Women in Canada* (Vancouver: British Columbia Human Rights Commission, 2001).



British Columbia Law Institute. *Private Care Agreements Between Older Adults and Friends or Family Members* (Vancouver: British Columbia Law Institute, 2002), online: BCLI Home Page <http://www.bcli.org/pages/projects/elderly/Rep_Care_Agreements.html> (date accessed: 10 May 2002).

Charpentier, Michèle. *The Law and the Relationships of Dependency Experienced by Seniors: the case of privately operated homes for the aged* (Ottawa: Law Commission of Canada, 1999).

Cheal, David. "Aging and Demographic Change" (2000) 26:2 *Canadian Public Policy – Analyse de politiques* S109.

Cheal, David, ed. *Aging and Demographic Change in Canadian Context* (Toronto: University of Toronto Press, 2002).

Cloutier, Esther *et al.* *Enjeux de santé et de sécurité au travail dans la transmission des savoirs professionnels : le cas des usineurs et des cuisiniers*, Montréal, IRSST, Octobre 2002.

Connidis, Ingrid. *Family Ties and Aging* (Thousand Oaks, CA: Sage, 2001).

Corak, M. *Government Finances and Generational Equity* (Ottawa: Statistics Canada, Catalogue No. 68-513-XPB, 1998).

Dorfman, Lori and Vincent Schiraldi. *Off Balance: Youth, Race and Crime in the News* (Washington: Building Blocks for Youth, April 2001).

Fredman, Sandra and Sarah Spencer. "Introduction" in *Age as an Equality Issue* (Oxford: Hart Publishing, 2003).

Gee, Ellen and Gloria Gutman, eds. *The Overselling of Population Aging: Apocalyptic Demography, Intergenerational Challenges and Social Policy* (Toronto: Oxford University Press, 2000).

Gillis, John R. *Youth and History* (New York: Academic Press, Inc. 1974).



Grand'Maison, Jacques, Lise Baroni and Jean-Marc Gauthier, eds. *Le défi des générations* (Montréal : Fides, 1995).

Grant, Hugh M.K. and Gretta Wong Grant. *Age Discrimination and the Employment Rights of Elderly Canadian Immigrants* (Ottawa: Law Commission of Canada, 2002).

Health Canada. *Canada's Aging Population* (Ottawa: Minister of Public Works and Government Services Canada, 2002).

Health Canada. *Principles of the National Framework on Aging: a Policy Guide* (Ottawa: Minister of Public Works and Government Services Canada, 1998).

Hendricks, J. and C. Rosenthal, eds. *The Remainder of Their Days: Domestic Policy and Older Families in the United States and Canada* (New York: Garland, 1993).

Hicks, Peter. "The Policy Implications of Aging: A Transformation of International and National Thinking" (2003) 6:2 *Horizons – Policy Research Initiative* 12.

Hicks, Peter. "New Policy Research on Population Aging and Life-Course Flexibility" (2003) 6:2 *Horizons – Policy Research Initiative* 3.

Human Rights and Equal Opportunity Commission. *Age Matters: a report on age discrimination* (Australia: Human Rights and Equal Opportunity Commission, 2000).

Johnstone, Ian. "Section 7 of the *Charter* and Constitutionally Protected Welfare" (1988) 46(1) U.T. Fac. L. Rev. 1.

Kirkwood, Tom. "Making Choices" (Reith Lecture IV, Radio 4 Online, 2001), online: BBC <<http://www.bbc.ca.uk/radio4>>.

Laidlaw Foundation. *Perspectives on Social Inclusion – Summaries* (Toronto: Laidlaw Foundation Working Paper Series, June 2002).



- Lefebvre, Solange. “Après les retraites massives dans deux hôpitaux québécois : Enjeux des rapports entre générations différentes de travailleurs” (May 2000) 2 :1 Pistes (Perspectives interdisciplinaires sur le travail et la santé).
- Lefebvre, Solange. “Responsabilité et équité intergénérationnelles : débats actuels”, Lien social et politiques – RIAC 46 autumn, *La responsabilité : au-delà des engagements et des obligations* 141.
- Marshall, V.W. and M.M. Mueller. *Rethinking Social Policy for an Aging Workforce and Society: Insights from the Life Course Perspective*, CPRN Discussion Paper No. W/18 (Ottawa: Canadian Policy Research Networks Inc., 2002).
- McCallum, Dulcie. *A Discussion Paper for Children and Youth and Older Adults* (2002) [unpublished, archived at the Law Commission of Canada].
- McDaniel, Susan A. “Intergenerational Equity: Policy and Data Implications” in Miles Corak, ed., *Labour markets, social institutions, and the future of Canada’s children* (Ottawa: Statistics Canada, Catalogue No. 89-553-XIB) 171.
- McDaniel, Susan A. “Intergenerational Interlinkages: Public, Family and Work” in Cheal, David (ed.), *Aging and Demographic Change in Canadian Context* (Toronto: University of Toronto Press, 2002) 22.
- McGregor, Gaile. *Unemployment Protection for Older Workers: A Case Study of Systemic Bias in a Statutory Regime* (2002) [unpublished, archived at the Law Commission of Canada].
- McGregor, Gaile. *A Fact Sheet On The Economics Of Aging In Canada* (Ottawa: Law Commission of Canada, September 2002).
- National Advisory Council on Aging 1999 and Beyond. *Challenges of an Aging Canadian Society* (Minister of Public Works and Government Services Canada, 1999).



Newell, Susan, David Robinson and Meredith Wilkie. *Age matters?: A Discussion Paper on Age Discrimination* (Australia, Human Rights and Equal Opportunity Commission, 1999).

Ontario Human Rights Commission. *Time for Action: Advancing Human Rights for Older Ontarians* (Toronto: Ontario Human Rights Commission, June 2001).

Ontario Human Rights Commission. *Policy on Discrimination Against Older Persons Because of Age* (Toronto: Ontario Human Rights Commission, March 2002).

Poirier, D. and N. Poirier. *Why is it so difficult to combat elder abuse and, in particular, financial exploitation of the elderly?* (Ottawa: Law Commission of Canada, 1999).

Prince, M. “Apocalyptic, Opportunistic, and Realistic Demographic Discourse” in E. Gee & G. Gutman (eds.) *The Overselling of Population Aging – Apocalyptic Demography, Intergenerational Challenges, and Social Policy* (Toronto: Oxford University Press, 2000).

Schellenberg, G. *The Road to Retirement: Demographic and Economic Changes in the 90s* (Ottawa: Centre for International Statistics Canadian Council on Social Development, 1994).

Schetagne, S. *Building Bridges Across Generations in the Workplace – A Response to Aging of the Workforce* (Ottawa: Canadian Council on Social Development, 2001).

Snell, J.G. *The Citizen’s Wage: The State and the Elderly in Canada, 1900-1951* (Toronto: University of Toronto Press, 1996).

Special Committee on Aging of the United States Senate, *The Image of Aging in Media and Marketing*, Serial No. 107-35 (Washington: U.S. Government Printing Office, 2003).

Statistics Canada, *Profile of the Canadian population by age and sex: Canada ages, 2001 Census* (2001 Census: analysis series, Catalogue no. 96F0030XIE2001002)



Statistics Canada, *Cohort Flow and the Consequences of Population Ageing [computer file]: An International Analysis and Review* (Ottawa: Statistics Canada, Catalogue No. 89-569-XCB, 1999).

Townson, M. *Pensions Under Attack. What's Behind the Push to Privatize Public Pensions* (Toronto: James Lorimer & Company Ltd., and Canadian Centre for Policy Alternatives, 2001).

Tuokko, Holly and Fiona Hunter. *Using 'Age' as a Fitness-to-Drive Criterion for Older Adults* (Ottawa: Law Commission of Canada, 2002).

Tustin, Lee and Robert E. Lutes. *A Guide to the Youth Criminal Justice Act*, 2003 ed. (Markham: Butterworths Canada Ltd., 2002).

Unicef. *What Young People are Saying About...The Media, Stereotypes and the Need for Role Models* (New York: Unicef, 2002), available online at: <http://www.unicef.org/voy/news/youth-media.2002-11.PDF> (accessed March 2003).

Willms, J. Douglas, ed. *Vulnerable Children* (Edmonton: The University of Alberta Press, 2002).

Wolfson, M.C. *et al.* "Historical Generational Accounting with Heterogeneous Populations" in M. Corak, ed., *Government Finances and Generational Equity* (Ottawa: Statistics Canada, Catalogue No. 68-513-XPB, 1998).

Zagon, Sandra. *Asking Canadian NGOs What Matters on Aging – Final Report on Five Dialogues* (Ottawa: Canadian Policy Research Networks Inc., 2002), online: www.cprn.com/en/doc.cfm?doc=93 (date accessed: 3 May 2002).

