Elder Law Comes of Age

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Elder Law

- Why Elder Law?
- What is Elder Law?
- Who is an Elder?
“It is likely that lawyers who practice in estates and trusts or family law will be the first to experience these new client demands. “Over time, however, the banking, financial and insurance industries will increasingly call for legal advice on issues that arise in dealing with older Canadians.”

Arthur Fish, Partner, Borden Ladner Gervais LLP
Elder Law is Distinctive

- Holistic
- Multidisciplinary
- Lawyer Works Within the Context of the Family and/or with Caregivers
Elder Lawyers are Distinctive

- Role of Counselor
- Special Ethical Issues Apply
- Familiarity with Aging Process
- Knowledge of Network of Aging Services
Elder Law Encompasses a Broad Range of Issues

- General Planning for Aging;
- Age Discrimination;
- Abuse and Exploitation;
- Undue Influence;
Elder Law Issues

- Housing Options and Care Facility Regulation;
- Care Agreements;
- Assisting-Living Contracts;
- Fair Housing Practices;
- Mental Capacity and Consent;
Elder Law Issues

- Guardianship;
- HealthCare Decision-Making and Advance Directives;
- Powers of Attorney/ Mandates;
- Elder Marriage and Divorce;
- Intergenerational Issues;
- Ethical Issues.
Advocacy and Law Reform

- Access to Justice;
- Adult Protective Legislation;
- Ethics of Health Care;
- End of Life Care and Right to Die Issues;
- Human Rights;
Immigration;
Elder Incarceration;
Income Security;
Income Tax Benefits;
Pensions; and
Motor Vehicle Testing.
National Elder Law Section, CBA

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- Advancement of the Law
- Education of the Public, Lawyers and the Judiciary
- Fostering Professionalism
Practice Tips

Wills, Powers of Attorney and the Older Client

- Who’s the client?
- Meet with the client in private
- Beware the client who has a script
- Do not confuse social skills with capacity
- Do not confuse diagnosis with incapacity
- Ask open-ended questions
- Know the definitions of capacity
- Don’t get drawn into the drama
- Seek out a value-added expert opinion on capacity
- It’s not a simple process
So you’ve been appointed attorney: here are 13 Do’s and 3 Don’ts

Administering Financial Affairs

- Do read the power of attorney document
- Do make an inventory
- Do keep careful records because you will be called to account
- Do provide an annual account
Do keep the best interests of the principal in mind at all times
Don’t have any personal financial dealings
Do invest prudently and productively
Don’t fly solo
Do remember and foster the residual abilities of the mentally impaired principal
Health Care Decision-Making

- Do advocate, inform and support
- Do let the person decide if he/she can
- Do follow the previously expressed competent wishes of the person you represent
If not known, do consider values and lifestyle

If these are not known, do what the reasonable person in similar circumstances would do

Do consider other family members’ concerns

Don’t let your personal preferences govern
Go behind the POA:

Does the client approve?

Does the client have capacity?

Are the terms of the POA respected?

- Reverse Mortgages
- Long-Term Care Insurance
- Joint Accounts
- Access to Statements
- How to Signal/ Prevent Exploitation
- Bill Payment through Bank/Accountant
- Meeting/Brochure on Attorney’s Duties
- Reporting Requirements for Attorneys
Empowering and Enhancing Quality of Life
So, what is the conclusion?

"My question is: Are we making an impact?"

YES!
Thank You

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