

# Elder and Guardianship Mediation Canadian and Australian Models



**Research Study:  
National and International Issues**

# What do we mean by mediation?

- Different things in different jurisdictions
- Models
- Countries
- Client Group
- Professionals

# How Does Mediation Play a Role?

- Australia
- Canada
- Aboriginal Models

# EGM Study



- 2 year project – Canada + Commonwealth
- Literature review, expert interviews, review of models, working committee, advisory committee
- Development of ethical framework for Canada
- For BC – practical guidelines – new guardianship provisions for mandatory mediation (s.62)

# Why This Research on Elder Mediation in Canada Now?

- Strong Demographic Shift
- “All Mediation will soon be elder mediation”
- Modernization of Adult Guardianship and personal planning statutes in Canada
- Increased awareness of elder abuse and neglect
- Increased difficulties accessing justice – lack of legal aid and services for seniors



# ORIENTATION

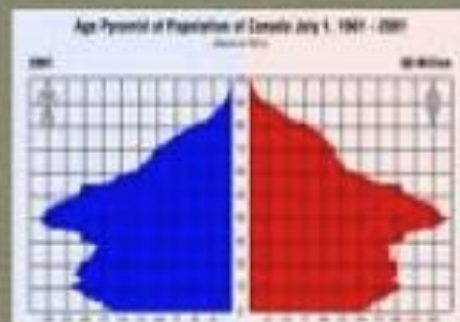


**33 MILLION POP**

**1:8 OVER 65 NOW**

**1:4 BY 2041**

**CANADIAN  
SERVICES NOT  
PREPARED**



# OLDER CANADIANS' VALUES

- Are these yours?

## KEY SOCIAL AND CULTURAL VALUES OF SENIORS (1998)

- INDEPENDENCE
- REQUIRES SOMEONE  
TO HELP DEFEND  
AND ENFORCE



DIGNITY	FAIRNESS
PARTICIPATION	SECURITY

# Why This Research on Elder Mediation in BC Now?



- Changes in law in BC – passed but not enforced yet
- Adult Guardianship Act – new provisions
- Mandatory mediation for some issues
- Can't mediate capacity but guardianship plans
- Little expertise in field about aging issues
- Little expertise in field about guardianship issues



# What Kind of Cases Might Be Mediated Under AGA?

- Where capacity of an adult to make certain decisions may be challenged, mediation will now play a role
- Mediation cannot ever determine capacity
- Mediation is mandatory to develop a guardianship plan including who is the guardian
- Reviewing of guardianship plan annually



# Li and Kaylen



- Li is an 89 year old man with fluctuating capacity
- Kaylen, his daughter, believes that he needs a guardian for financial decisions and support with personal care needs
- Kaylen starts a guardianship action pursuant to new Adult Guardianship Act
- Li disagrees that he needs a guardian and is angry with Kaylen
- Option 1 – they seek voluntary elder mediation
- Option 2 – they have mandatory AGA mediation

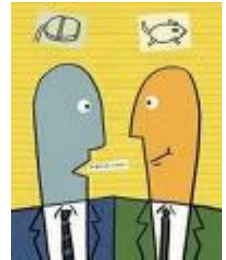
# Existing Literature – Language and Meaning

- Mediation is a multi-disciplinary practice area and words may mean different things to different professions.

- Examples:

Law & Health - Capability / capacity

Health & Social Work – “Elder Care”





# Existing Literature Differences *Canada v. US*



**Canadian Health Care**

**Mandatory Reporting**

**US Adult Protective Services Systems**

**Older Americans Act & Americans with Disabilities Act**

**Lack of a Public Guardian and Trustee system as part of a social safety net**





# Scope of Project

- ✓ Court mandated mediation that deals with substitute decisions / capacity
- ✓ Community-based elder mediation
- ✓ Lawyer facilitated elder mediation

# Current Stage of Research

- ✓ Case law and literature review
- ✓ Statutory review
- ✓ Surveys
- ✓ Consultation Paper / Final Report
- ✓ Working / Advisory Committee



# Key Questions

- Who does it?
- What topics are “mediate-able”?
- Credentials?
- Who is at the table?
- Where is the table?
- What frameworks?



# Problems – Literature Review

- ❑ Lack of lawyers with “appropriate” elder mediation training
- ❑ Lack of social workers / mediators with legal training
- ❑ “Mediating capacity”
- ❑ Abuse and Neglect dynamics
- ❑ Lack of gerontology / aging knowledge
- ❑ Power dynamics / Family issues





# Project is Reviewing...

- ✓ Models
- ✓ Best Practices
- ✓ Competencies

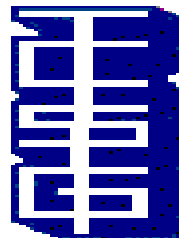
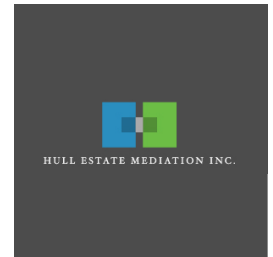


# What Model or Models?



# Existing Models

- Mandatory Mediation – Substitute Decisions and Guardianship Litigation – Ontario, BC
- “Enterprising Lawyer”
- Community-based mediation model



# Professional Competency - Considerations

- Is specialized training needed for Elder Mediation?
- What competencies should be included in specialized training?
- What general mediation competencies are needed?
- Type of training
- Type of credentialing.



# Best Practice Considerations



- Dealing with third party issues
- Respecting the self determination of capable adults
- Determining who the client is
- Protecting the safety and rights of vulnerable adults
- Ethical approaches
- Anti-ageist practice
- Inclusion of key stakeholders (determining who they are)

# Initial Findings



- Broad national and international agreement about need for specialized “elder” issues training
- Broad national and international agreement about need for specialized “guardianship”, substitute decisions, elder abuse and neglect and capacity issues
- Significant area of expansion
- International experiences suggest a cautious approach before moving into this area

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