



The Growing Importance of Elder Law

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As the population ages, so does the legal demands of the elderly. To address these unique challenges, a few law firms have built a specialized team dedicated to Elder Law practice.

In light of Hong Kong's ageing population, new legal issues emerge on a daily basis. Elderly clients and those around them often face a range of legal concerns, including estate planning, healthcare decisions, long-term care arrangements, guardianship matters, and protection

against financial exploitation. It is crucial to recognize the importance of understanding the specific challenges surrounding the elderly. Moreover, lawyers with experience in Elder Law understand the importance of building relationships with clients, taking the time to listen, empathize and provide bespoke legal solutions to their concerns.

Common Issues

- [Mental Capacity](#)

Legal services for families and elderly individuals who are facing cognitive

impairments or mental health conditions are crucial in ensuring the protection, decision-making, and overall well-being of these older adults. Loss of mental capacity is often a gradual process, and those who are suffering from it are often neither aware of it nor be able to admit it.

By providing expert advice, support, and legal instruments such as enduring powers of attorney and advance directives, we help safeguard the rights and interests of the elderly. Thus, promoting their autonomy and dignity in matters of



mental capacity by allowing their wishes to be heard and observed when they can no longer speak for themselves. We also advise carers and family members with the management of financial matters of elderly persons who are losing their mental capacity.

- Estate and Care Planning

One of the primary areas of focus is estate planning, which includes the drafting of wills and trusts as well as enduring powers of attorney. These legal instruments ensure that the wishes of the elderly are respected, and their assets are distributed according to their desires. These documents also ensure financial needs are taken care of without putting pressure on the families. Needs of the elderly are, in most cases, different than other adults or minors - hence legal advice needs to be tailored.

Moreover, we assist with healthcare-related matters, including advance healthcare directives and medical decision-making. We help clients navigate complex healthcare systems, ensuring that their wishes regarding medical treatment are known and respected.

- Protection for vulnerable clients

Another vital service we provide is protection against financial exploitation. Elderly individuals are often targeted by scams and financial abuse, and the perpetrators can (unfortunately) be family members. Dedicated lawyers, in this field, work diligently to safeguard the assets of their elderly clients - offering advice on financial management, prevention of fraud, and assistance with guardianship matters when necessary.

Other Key Professionals Focusing on Elder Law

It is key to understand the importance of collaboration with other professionals, such as doctors, psychiatrists, social workers and financial advisors. By working together, these professionals can provide a holistic approach to address the diverse needs of the elderly population.

Solicitors specialising in Elder law work with third parties to advocate for the rights and well-being of the elderly in Hong Kong. Society needs to stay informed about changes in legislation affecting the elderly and should have access to expert Elder Law. By raising awareness and promoting legal protections, everyone can contribute to a more inclusive and supportive society for older adults.

Personal Path

I became interested in Elder Law due to personal experiences with my own elderly family members and witnessing the challenges that they faced. As a Probate & Trust-focused solicitor, the transition into this practice area has grown organically over the years.

I would describe Hong Kong as an elderly-unfriendly place due to the limited amount of living space, lack of resources and the fact that most elderly homes leave more to be desired. I have met a lot of clients whose goal is to avoid ending up in an elderly home. This is particularly the case when they are spouseless or children-less. However, the issues that they may face are real, who will look after them when they cannot look after themselves? Thankfully, we are witnessing a growing trend toward people

more willingly talking about these issues and seeking proper advice.

A Few Examples of Challenging Cases

- Case 1

Elder A, a bachelor throughout his life, was looked after by full time carers on shift after he was hospitalised by a fall and not able to be discharged without a carer. He had no family members residing in Hong Kong and many had passed away. Most of his remaining family members had not kept in touch with him, but he did have some nieces and nephews.

The full-time carers would accompany Elder A to the bank to withdraw cash for their salaries. At first, they would assist Elder A to withdraw the amount equivalent to their salaries, but the amount of such withdrawals gradually increased with time to cover his other "needs". The tellers could not tell if he was being abused financially because they were not trained to identify such abuse.

We were later instructed by one of his nephews to apply for Committee Order (a Court Order to take over the management of financially affairs of Elder A) after he had visited him and realised that his carers had not been entirely honest in the process. Unfortunately, Elder A passed away before the Order was made (they normally take around 6 months). It was only after the grant of letters of administration of Elder A's estate was issued that his nephew realised the extent of financial abuse. The carers had withdrawn several millions from Elder A's bank account over the course of a few years.



- Case 2

Elder B lost her husband around two decades ago. She has two children, both of them have their own families and live abroad, but they would come and visit her regularly. Elder B is looked after by her long-time friend who moved in to look after her due to her age.

During the Covid pandemic Elder B's children could not visit her in Hong Kong, but maintained regular face-time calls with her. However, such calls became less frequent, either the calls were not picked up or the cohabitee said that Elder B was asleep. Even when Elder B picked up the phone, she showed lack of interest in talking to her children (and her grandchildren).

After the Covid pandemic ended, Elder B's children came to visit her only to realise that she was not looked after properly: her home was in a derelict state, her health was in decline, and she barely left the flat. It was to their shock and dismay that they found out that Elder B made a Will, naming the cohabitee as her spouse and leaving everything to him, witnessed by a doctor and a solicitor. The wealth of Elder B was predominately inherited from her deceased husband. Even though the children of Elder B were financially independent, they had concerns over whether such decision represented the genuine wishes of Elder B.

- Case 3

Elder C had always been the homemaker, raising 8 children while her husband was the sole breadwinner of the family. Her husband passed away making a Will leaving his entire estate to his 8 children in equal shares, thinking that it would be the children's role to look after Elder C. She was bedridden requiring fulltime care, and the 8 children could not come to a consensus over who should look after her financially, and whether she should reside in Hong Kong or Canada, the place where some of her children resided.

One of the children attempted to "abduct" Elder C to Canada, and some of the other

children sought a Court Order preventing him from taking her. Prolonged legal proceedings ensued over whether Elder C should remain in a nursing home or back to the matrimonial home to be looked after by a full-time helper. The wishes of Elder C and the appropriate arrangement that would be in her best interest, were hotly disputed among the children.



Common Misconceptions

Many people believe that Elder Law is only relevant to the elderly: while, of course, the focus is primarily on legal issues surrounding the elderly, such issues are extremely important also for their families and the caregivers. Many people do not wish to be involved in the planning of their elderly family members because they don't want to get into trouble later on. An experienced solicitor can help elderly clients carry out their planning so as to avoid misunderstanding and/or dispute among family members down the line.

There is another common misconception that estate planning is only relevant to the wealthy and privileged. However big or small the portion of assets related to an older individual, the crucial issue is making sure that that person's wishes are carried out before and after their passing and protecting them from opportunists.

A greater misconception is that elder abuse is confined to physical abuse. Abuse can take various forms – including physical, emotional, financial and neglect. Recognizing the signs of elder abuse and knowing how to prevent and address it is extremely important. As solicitors, we can help clients identify elder abuse early, providing guidance on establishing

protective measures to safeguard against potential abuse.

Approaching the Unique Needs and Concerns of Elderly Clients

We need to recognize that each elderly client has unique circumstances and concerns. We have to listen to their situations, apply our experience to build bespoke advice to service them. I stay up to date with the latest legal developments, regulations and case precedents. Clients need to be informed and understand their rights and options very clearly. We offer a wide range of services that address the multiple needs of the elderly.

Practical Advice

Dealing with legal matters can be overwhelming, especially for elderly clients who may be facing physical, emotional or cognitive challenges. It may also be embarrassing for family members of the elderly as they do not want to be wrongly perceived as taking advantage by being involved in an elderly individual's estate planning.

It is important to seek advice early, a lot of clients come to us too late. The resulting legal proceedings most often become complicated and costly. Prevention is better than cure. It is important to plan and put things in place to help family members handle the realities of ageing.

As soon as you feel that things are not right with your elderly family members, you should approach a lawyer. One shouldn't be afraid of helping elderly family members with their planning, in fact an experienced solicitor should be able to help plan without implicating assisting family members. ■

