

Proof of Age: Incorporating Elder Witnesses within the Confines of the Law

The global population is aging. According to a recent study by the United Nations, within forty years, the number of individuals aged over 60 will more than double from 841 million to 2 billion by 2050. As the population ages, concepts of law and legal definitions must change to reflect this demographic shift. An area of particular concern is the evidence of elder witnesses. Currently, the legal concepts of competency, admissibility, and reliability of witness evidence are foundational to the administration of civil and criminal trials. However, for many older adults falling within these legal definitions is confounded by the process of aging, which introduces factors such as cognitive impairments, physical deterioration, and the increased risk of death before a matter can be heard by a judge. These factors make it difficult for seniors to have their interests advanced through the courts, and even if they are advanced, they make it difficult to succeed at trial. So while the laws of evidence are in place to ensure fairness for those before the court, for seniors they may do just the opposite.

This paper explores this relationship between older adults and the justice system, and examines confines in the law of evidence to see how the current definitions, rules, and practice operate to exclude the participation of older adults in the courts. The laws of evidence are not keeping up with population demographic changes, and as a result, elders are left outside of the narrow confines of the law. To move elders within law's ambit, this paper argues for a new, holistic approach to evidence law and practice. This new approach will be informed by progressive elder justice initiatives in other countries that take into account the individual needs of older adults, in order to ensure access to justice for this growing segment of the population going forward.