

## Keynote Speaker

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## Special Lectures 2010

**A Medical-Legal Approach to Estate Planning, Decision-Making,  
and Estate Dispute Resolution for the Older Client**



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

**CONTINUING LEGAL EDUCATION**



# Medical-Legal Approach to Estate Planning:

Decision-Making + Estate Dispute  
Resolution for the **Older** Client

A. Mark Clarfield MD FRCPC



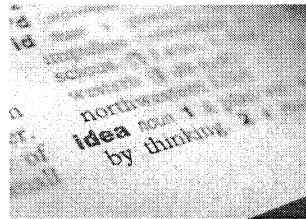
“Older Client”

What is aging ?  
Who are the elderly ?  
How are they different ?

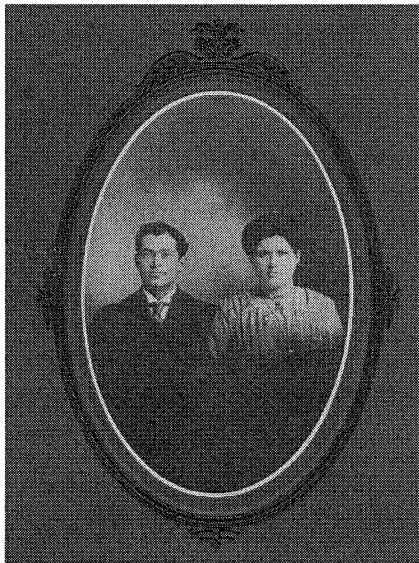
## Definitions of aging:

1) BIOLOGICAL

2) demographic



“Aging” comprises a spectrum



## Definitions of *mammalian* aging: biological

- 1) The gradual changes in the structure and function of cells, tissues and organs...
- 2) that occur with the passage of time (not from disease or trauma)...
- 3) caused by a gradual failure of an otherwise excellent self-regulating repair mechanism...
- 4) which eventually lead to the increased probability of death...

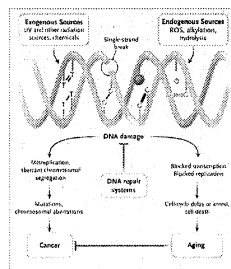


What does Wolverine have that I don't?



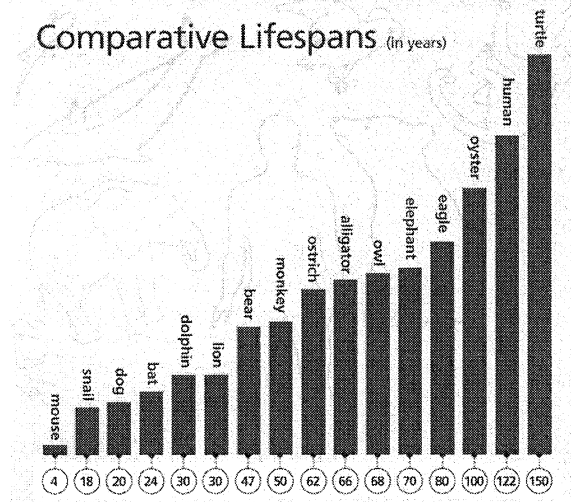
## In other words....

Biological aging comprises the gradual failure (over time) of an otherwise finely tuned self-repair mechanism



## Of mice and men...

Comparative Lifespans (in years)



## Mechanism(s) of aging:

the gradual failure of an excellent self-regulating and self-repairing machine

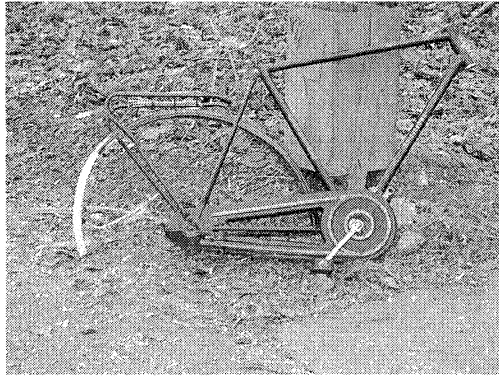


## Mechanism(s) of aging:

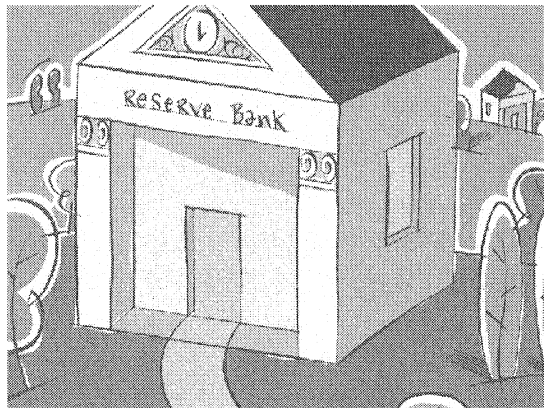
“wear and tear” and “hits”



## Aging: the final chapter

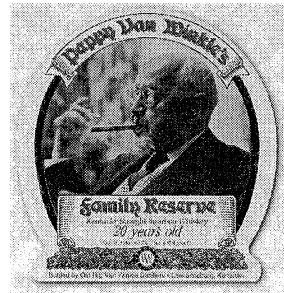


Aging = loss of reserve



## “Reserve”

- biological
- sociological
- economic
- cognitive/psychological



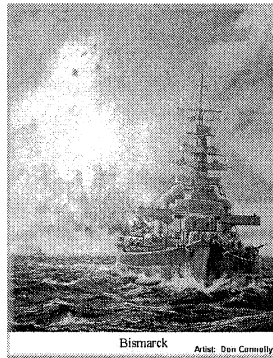
## Definitions of aging:

- 1) biological
- 2) DEMOGRAPHIC



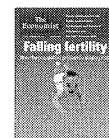
## Definitions of aging: demographic

% 65 +



## % 65 + depends on a combination of:

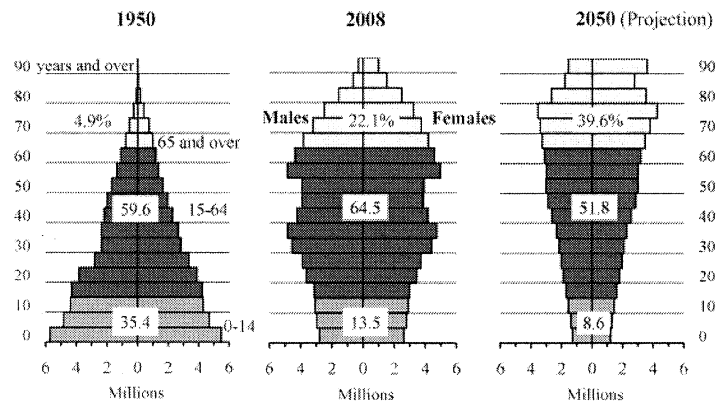
- Mortality
- Fertility
- Migration



Some countries are older than others: eg. Japan 20% 65+



**Figure 2.3**  
Changes in the Population Pyramid



Source: Statistics Bureau, MIC: Ministry of Health, Labour and Welfare.

## And how about Canada?

13.7% 65 + [2006 census]



## Two Key Concepts:

Maximal life span

vs.

Life expectancy



**Maximal life span:  
Madame Jeanne Calment**

(died age 122 years, 5 months [44,724 days])



Life expectancy – at different ages,  
and getting better all the time



## Life expectancy at different ages

Evolution of Life Expectancy by Age and Sex, Canada, 1921-1990

Year	birth		Age 65		Age 85	
	Males	Females	Males	Females	Males	Females
1921*	58.8	60.6	13.0	13.6	4.1	4.3
1931	60.0	62.1	13.0	13.7	4.1	4.4
1941	63.0	66.3	12.8	14.1	4.1	4.4
1951	66.4	70.9	13.3	15.0	4.3	4.7
1961	68.4	74.3	13.6	16.1	4.6	5.0
1971	69.4	76.5	13.8	17.6	5.0	5.9
1981	71.9	79.1	14.6	18.9	5.2	6.6
1990	73.9	80.5	15.4	19.6	5.2	6.7

## Aging versus Disease



- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• <u>Aging</u></li> <li>• universal</li> <li>• can “decelerate” (at best)</li> <li>• always fatal</li> <li>• rate dependant on gestational factors</li> <li>• MDs not too interested</li> </ul> | <ul style="list-style-type: none"> <li>• <u>Disease</u></li> <li>• spotty</li> <li>• usually reversible</li> <li>• often not</li> <li>• no connection</li> <li>• MDs very interested</li> </ul> |
|--|---|

Isn't the issue primarily: Judgment ?

(6 factors)



What can effect an older person's  
judgment?

1) The 3 D's:

Dementia



Depression

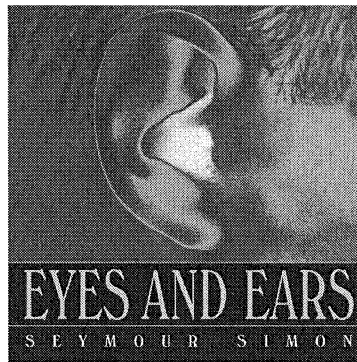


Delirium



## What can affect an older person's judgment ?

1. The 3 D's
2. Eyes + ears



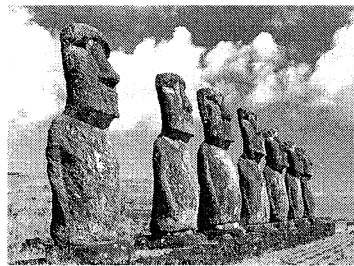
## What can affect an older person's judgment ?

1. The 3 D's
2. Eyes + ears
3. Language



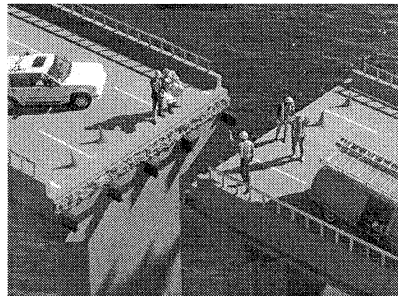
## What can affect an older person's judgment?

1. The 3 D's
2. Eyes + ears
3. Language
4. Culture – role of family



## What can affect an older person's judgment?

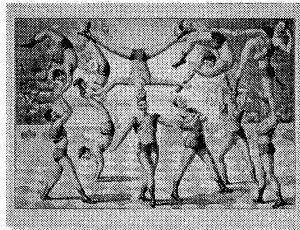
1. The 3 D's
2. Eyes + ears
3. Language
4. Culture – role of family
5. SES gap



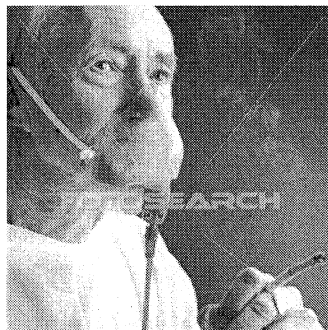


## What can affect an older person's judgment?

1. The 4 D's
2. Eyes + ears
3. Language
4. Culture – role of family
5. SES gap –
6. Hierarchy of values



## Bad Judgment vs. Impaired Judgment



The 3 best words of any lecture:

“And in conclusion....”



And the 2 second best ?

