
CULTIVATING GARDENS AND CULTIVATING GENERATIONS: PURPOSEFUL LIVING AS STANDARD OF CARE FOR ELDER LAW ATTORNEYS

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Elder law attorneys should understand the medical importance that sense of purpose and meaning plays in the lives of older people. A growing body of medical research supports the thesis that older adults who feel that their lives have purpose live longer and have a higher quality of life than older adults who do not feel that way. Attorneys who represent older adults can and should incorporate questions about the ability of their clients to pursue activities that give their lives meaning and purpose into their law practices. This focus can occur in individual representation or in larger policy-making, especially surrounding care of the most vulnerable. Rather than focusing solely on procedural protections for clients, attorneys should also focus on whether clients can pursue goals that give their lives meaning or, by contrast, are prevented from doing so. Similarly, policy-makers should look for ways to incorporate the attainment of purposeful goals into programs for older adults, especially residence-care homes. Meaning and purpose have strong cultural roots for many older adults, and programs that foster opportunities for them to achieve meaningful goals must be culturally specific. One such program, to create a Maori care home that incorporates the well-being of the whare, is an example of how one might incorporate purpose in a culturally-specific manner.

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I. Elder Law Attorneys Should Have a Heightened Awareness of Purpose and Meaning in the Lives of their Clients

As the field of elder law matures, attorneys have recognized that those who cultivate an older client base should become familiar with certain concepts, protocols, and “red flags” that tend to affect older adults more than the general population. In the last twenty years, elder law attorneys have come to develop expertise in some or all of the following:

- Estate planning
- Independence planning¹
- Governmental benefits that affect older adults²
- Red flags for elder abuse³
- Red flags for financial exploitation⁴
- Health care access and long-term care planning⁵
- Pension rights⁶
- Special ethics considerations⁷
- Self-determination and safety concerns, sometimes posed as being in conflict⁸
- Medical conditions such as dementia, hearing loss, vision loss, and other conditions⁹
- Issues affecting older adults in special populations¹⁰

1. See generally Richard L. Kaplan, *Elder Law as Proactive Planning and Informed Empowerment During Extended Life*, 40 STETSON L. REV. 15 (2010).

2. *Id.* at 20–24.

3. See, e.g., Cynthia H. Shott, *Exploitation: The Sometimes Invisible Abuse of Our Elderly*, 38 MONT. L. 12, 12–13 (2013); see generally Lisa Hostetler & David Ziegler, *Elder Law Red Flags Every Practitioner Should Know*, 28 S.C. LAW. 34 (2016).

4. See, e.g., Matthew N. Andres, *Making Elder Financial Exploitation Cases Part of a Sustainable Practice: Tips from the Experiences of the University of Illinois College of Law's Elder Financial Justice Clinic*, 23 ELDER L. J. 297 (2016) [hereinafter Andres].

5. See, e.g., James H. Pietsch, *Teaching Elder Law at the University of Hawaii—Integrating Health Law and Cultural Issues into the Curriculum*, 40 STETSON L. REV. 263 (2010) [hereinafter Pietsch].

6. See, e.g., Joanna Lyn Grama, *The ‘New’ Newlyweds: Marriage Among the Elderly, Suggestions to the Elder Law Practitioner*, 7 ELDER L.J. 379, 386–87 (1999).

7. See, e.g., ROBERTA K. FLOWERS & REBECCA C. MORGAN, *ETHICS IN THE PRACTICE OF ELDER LAW* (2013).

8. See, e.g., Nina A. Kohn, *Outliving Civil Rights*, 86 WASH. U. L. REV. 1053 (2009).

9. See, e.g., Mary Helen McNeal, *Slow Lawyering: Representing Seniors in Light of Cognitive Changes Accompanying Aging*, 117 PENN ST. L. REV. 1081 (2013); Mary Helen McNeal, *Say What? The Affordable Care Act, Medicare, and Hearing Aids*, 53 HARV. J. ON LEGIS. 621 (2016).

Elder law attorneys attend training events designed to identify and explain these and other concepts to create more sophisticated standards of appropriate care in the representation of older adults. Not all of these concepts are, strictly speaking, legal in nature, but most of them touch upon the legal work attorneys do for clients. For example, an understanding of the “red flags” of elder financial exploitation has affected how easily attorneys agree to appoint home caregivers as attorneys in-fact with control over the finances of an isolated older adult.¹¹ While responses among attorneys may vary, most lawyers who practice in the field will at least ask additional questions when such a scenario arises. Just as lawyers who represent disabled adults need to understand something about cognitive impairment, lawyers who represent older adults will need to understand a variety of conditions common among those older adults.

This Article makes the case that elder law attorneys must have a heightened understanding of the importance of meaning and purpose in the lives of elderly people.¹² Just as there are “red flags” indicating the possibility of abuse or exploitation, there are “red flags” indicating that impediments may exist to the client’s ability to engage in activities that give her life meaning and purpose. There are many medical studies that demonstrate a high correlation between the absence of meaning or purpose and adverse medical events, including fatal ones.¹³ Attending to the client’s ability to engage in meaningful, purposeful activities should be part of the standard of care for clients. A focus on access to activities and resources that assist the client’s ability to attain purpose and meaning should be part of an individual client’s representation and also part of policy and program design for older adults. Elder law attorneys should pay the most attention to vulnerable adults—those who live in residential care facilities—and

10. See, e.g., Nancy J. Knauer, *LGBT Elder Law: Toward Equity in Aging*, 32 Harv. J. L. & GENDER (2009); see also Pietsch, *supra* note 5, at 295–98; Ethnogeriatrics, STANFORD SCHOOL OF MEDICINE, <http://geriatrics.stanford.edu/> (last visited Oct. 2, 2017) (showing the Stanford University School of Medicine has posted booklets about aging in the cultural context of 13 different special populations).

11. Andres, *supra* note 4.

12. When we use the term “purpose” or “meaning,” we look to inspiration from our own grandmothers, who lived lives full of purpose and meaning. While these are only two stories, they illustrate for us what purposeful lives can look like in older age in different cultures across the world. We have detailed those stories in the Appendix. See *App.* at 261.

13. *Id.*

design programs to allow those clients to make and achieve meaningful goals.

As lawyers and law professors, we have been inspired by senior adults who have lived purposeful lives to the end of their days, even when seriously ill and infirm.¹⁴ Our own grandmothers found meaning in many labors, including cultivating gardens and fostering the development of grandchildren. By contrast, we have seen other senior adults warehoused in meaningless, routinized settings and watched them waiting to die. One of us (Professor Were), worked in a care home where residents were carted from one activity to the next, whether they wanted to go or not. Most lawyers would advocate passionately to prevent older adults from being physically neglected. We need to advocate just as passionately for programs and doctrines that encourage and enable purposeful living.

In the next section, we describe the medical benefits to older adults who engage in meaningful, purposeful activities. Then, we discuss current scholarship about legal standards that relate to meaning and purpose, with an emphasis on how lawyers working with individuals can look for ways to help improve these opportunities. In the final section, we look at how elder law attorneys who develop programs, write policy, or work with clients affected by programs or policies—especially in residential-care facilities—can incorporate achievement of purpose into those arenas. In that context, we describe how opportunities must be culturally-specific to the lives of older adults, and how one such program might be instituted in the context of care homes for the elderly. In our conclusion, we call for more training on this issue.

II. Medical Benefits for Older Adults Who Engage in Meaningful, Purposeful Activities, and Existing Care Programs that Incorporate Meaning and Purpose

Numerous studies exist from medical research showing strong correlations between adverse medical incidents and a lack of purposes in an elderly individual's life. For example, in their article, *Purpose in Life and Cerebral Infarcts in Community Dwelling Older Adults*, a group of doctors and neurological scientists discuss a body of medical

14. Two such examples are described in the Appendix. See *App.* at 263 and 265.

literature documenting the psychological and physical benefits to older adults who have a strong feeling of purpose in their lives.¹⁵ They write:

Purpose in life, a psychosocial construct, which involves having meaning and goal-directedness in life, is a key component of psychological well-being. Older people with a greater sense of purpose are less likely to develop adverse health outcomes, including mortality, decline in physical function, frailty, disability, Alzheimer's disease (AD), and clinical stroke.¹⁶

The authors further describe their own five-year study, showing an association between greater sense of purpose and about a 50% reduction of cerebral infarcts (stroke).¹⁷ Many other studies have demonstrated that higher levels of purpose in life allow older adults to adapt to the negative aspects of older age, resulting in both higher quality of life and longer life.¹⁸ Researchers have controlled for other factors and the results indicated that a greater sense of purpose highly correlates with longer life and better quality of life as a factor on its own.¹⁹

With these kinds of studies in mind, models for care of older adults have been developed that involve contributing to their own personal-care plan or enhancing overall well-being. For example, some facilities introduce animals, plants, and children into the older adults' care environments.²⁰ The models also show real opportunities for

15. Lei Yu et al., *Purpose in Life and Cerebral Infarcts in Community-Dwelling Older People*, 46 *STROKE* 1071 (2015) [hereinafter Yu].

16. *Id.* at 1071 (citations omitted).

17. *Id.* at 1072.

18. See, e.g., Randy Cohen et al., *Purpose in Life and its Relationship to All-Cause Mortality and Cardiovascular Events: A Meta-Analysis*, 78 *PSYCHOSOMATIC MED.* 122 (2016); Gorju Haugan, et al., *Intrapersonal Self-Transcendence, Meaning-in-Life and Nurse-Patient Interaction: Powerful Assets for Quality of Life in Cognitively Intact Nursing-Home Patients*, 30 *SCANDINAVIAN J. CARING SCI.* 790 (2016); N.A. Lewis, et al., *Purpose in Life and Cognitive Functioning in Adulthood*, *AGING, NEUROPSYCHOLOGY & COGNITION* 1 (2016) [hereinafter Lewis et al.]; Natalie P. Mota, et al., *Purpose in Life is Associated with a Reduced Risk of Incident Physical Disability in Aging U.S. Military Veterans*, *AM. J. GERIATRIC PSYCHIATRY* 706 (2016); Chen-Chun Niu et al., *A Study of Interpersonal Intimacy and Meaning of Life Among Elderly Institutionalized Veterans*, 24 *J. NURS. RES.* 311 (2016); Carol D. Ryff et al., *Purposeful Engagement, Health Aging, and the Brain*, 3 *CURRENT BEHAV. NEUROSCIENCE REP.* 318 (2016); Kimiko Tomioka, et al., *Relationship of Having Hobbies and a Purpose in Life with Mortality, Activities of Daily Living, and Instrumental Activities of Daily Living Among Community-Dwelling Elderly Adults*, 26 *J. EPIDEMIOLOGY* 361 (2016).

19. Lewis, et al., *supra* note 18, at 2.

20. Kavan Peterson, *Personal Pets in Long-Term Care*, *EDEN ALTERNATIVE* (July 3, 2014), <http://www.edenalt.org/dogs-make-lifeworthliving>.

older adults to engage in meaningful and purposeful lives and activities.

The Abbeyfield Model²¹

There are four main areas throughout the United Kingdom where Abbeyfield homes are situated, the overall mission being "to enhance the quality of life for older people."²² The services offered include sheltered houses, residential homes, or domiciliary homes.²³ The sheltered houses are interesting as older adults live in large bedsitter rooms with en-suites, which they can furnish with their own furniture and accessories.²⁴ With support also available, the older adults can choose to live as independently as they want or ask for help. This gives them the opportunity to plan their daily activities and, with support, they are able to carry out their plan.

Resident Empowerment and Control Model

A.T. Shiu's ethnographic study²⁵ investigated both staff and residents in a home for older people in England and found a facility where residents (1) experienced a high level of well-being; (2) were involved in decision making; and (3) felt they were in control of their own lives.

A further study²⁶ proposed that elders should take care of a plant, deciding when to water and care for it, as part of their daily activities. This activity of caring was intended to help the elder become more mindful and engaged, leading to fuller lives.

21. See, ABBEYFIELD WEST SUSSEX, <http://www.abbeyfieldwestsussex.co.uk/> (last visited Oct. 2, 2017) [hereinafter ABBEYFIELD].

22. *Id.*

23. *Id.*

24. *Id.*

25. Ann Tak-Ying Shiu, *The Significance of Empowerment for Perceptions of Control: A Case Study of a Home for Older People*, 10 J. CLINICAL NURSING 152, 152–53 (2001).

26. See Melanie H. Mallers et al., *The Perceived Control in the Lives of Older Adults: The Influence of Langer and Rodin's Work on Gerontological Theory, Policy, and Practice*, 54 GERONTOLOGIST 67 (2013).

Eden Alternative Model²⁷

The Eden Alternative model is dedicated to transforming care environments into habitats for human beings that promote quality of life for all involved.²⁸ There are ten principles, the first being the three plagues of loneliness, helplessness, and boredom.²⁹ According to the Eden Alternative philosophy, these plagues account for the bulk of suffering among older adults.³⁰ This model introduces animals, plants, and children into the residential living environment which creates a sense of "home."

Providence Mount St. Vincent (PMSV) Model³¹

This model is unique as it includes an intergenerational day care center for pre-school children within the PMSV care facility.³² Residents would enter the facility at certain times each day and interact with the children; reading stories, playing games, teaching, listening (even if hard-of-hearing).³³ The children had enormous patience to repeat as often as necessary what they were saying.³⁴ The interaction encouraged the maintaining of wellness so children could visit, and the human contact brought the elderly into a community rather than keeping them in isolation.³⁵

The Hogeweyk Village Model³⁶

This model was designed for residents with dementia to live in a village set up in seven lifestyles that suited the residents.³⁷ Staff are

27. See EDEN ALTERNATIVE, <http://www.edenalt.org/> (last visited Oct. 2, 2017).

28. *Mission, Vision, Values, Principals*, EDEN ALTERNATIVE, <http://www.edenalt.org/about-the-eden-alternative/mission-vision-values/> (last visited Oct. 2, 2017).

29. *Id.*

30. *Id.*

31. See *Providence Mount St. Vincent*, PROVIDENCE HEALTH & SERVS., <http://washington.providence.org/senior-care/mount-st-vincent/> (last visited Oct. 2, 2017).

32. *Id.*

33. See *Child Care: The Intergenerational Learning Center*, PROVIDENCE HEALTH & SERVS., <http://washington.providence.org/senior-care/mount-StVincent/services/child-care> (last visited Oct. 2, 2017).

34. Tiffany R. Jansen, *The Preschool Inside a Nursing Home*, THE ATLANTIC (Jan. 20, 2016), <https://www.theatlantic.com/education/archive/2016/01/the-preschool-inside-a-nursing-home/424827/>.

35. *Id.*

36. See Josh Planos, *The Dutch Village Where Everyone Has Dementia*, THE ATLANTIC (Nov. 14, 2014), <https://www.theatlantic.com/health/archive/2014/11/the-dutch-village-where-everyone-has-dementia/382195/> [hereinafter Planos].

disguised as people of that community, e.g. the postman or storekeeper.³⁸ Keage and Loetcher's study shows that people with advanced dementia revert to their childhood years and remember quite clearly what that looked like.³⁹ The Village had familiar surroundings, which helped the resident live and interact with others rather than being placed in isolation both physically and mentally.

The Purpose Prize Model⁴⁰

In addition to care facilities, there is growing recognition among gerontological scholars that social structures have not caught up with the realities of an aging demographic.⁴¹ All over the world, people are living longer lives.⁴² Policies related to education, work, family, and volunteering have not kept up with a population consisting of large numbers of older adults living far longer than in previous periods in history.⁴³ Scholars call this phenomenon "structural lag," and it is contributing to a large number of older adults having difficulty fulfilling a sense of purpose.⁴⁴ One private program designed to address this type of problem is the Purpose Prize, which offers monetary grants to adults sixty years of age and older who have transformed their wealth of knowledge and experience to help resolve social issues in communities.⁴⁵ This includes feeding children living in "food insecure homes" and setting up art classes for combat soldiers who had difficulties reintegrating after returning from war.⁴⁶ The

37. Hogeweyl, *Living in Lifestyles. A Mirror Image of Recognizable Lifestyles in Our Society*, HOGWEYK, <https://hogeweyk.dementiavillage.com/er/> (last visited Oct. 2, 2017) [hereinafter Hogeweyl].

38. See Planos, *supra* note 36; see also Ben Tinker, 'Dementia Village' Inspires New Care, CNN (Dec. 27, 2013), <http://www.cnn.com/2013/07/11/world/europe/wos-holland-dentia-village/>.

39. See generally Hannah Keage and Tobias Loetscher, *Passage of Time: Why People with Dementia Switch Back to the Past*, THE CONVERSATION (Nov. 29, 2011, 12:33 AM), <http://theconversation.com/passage-of-time-why-people-with-dementia-switch-back-to-the-past-4515>. At this website, the authors cite other studies that indicate a reversion to familiar memories from patients' childhoods.

40. See *About the Purpose Prize*, ENCORE.ORG, <http://encore.org/prize/about/> (last visited Oct. 2, 2017) [hereinafter ENCORE.ORG].

41. *Id.*

42. See *Encore.org and the Encore Vision*, ENCORE.ORG, <https://encore.org/who-we-are/encore-org-vision/> (last visited Oct. 2, 2017) [hereinafter ENCORE.ORG].

43. AGE AND STRUCTURAL LAG: SOCIETY'S FAILURE TO PROVIDE MEANINGFUL OPPORTUNITIES IN WORK, FAMILY AND LEISURE (Matilda White Riley et al., eds.) (1994).

44. *Id.*

45. ENCORE.ORG, *supra* note 40.

46. See generally *id.*

Purpose Prize was created by Mark Freedman in 2006 for people who set up innovative purpose projects that address social problems.⁴⁷

These successful models show that there are ways to create structures that encourage and support older adults living meaningful and purposeful lives to their benefit. The programs contribute to older adults maintaining their health, wanting to interact with plants, animals, and children, and, in doing so, interacting with each other. The Purpose Prize contributes financial support to older adults who want to benefit society and, in so doing, benefit their own health.⁴⁸

III. Legal Standards that Relate to Meaning and Purpose - How Lawyers Working with Individuals Can Incorporate Purpose into Practice

A number of emerging trends in elder law focus on meaningful participation by older adults in decision-making that affects them. These trends explore ways to counteract a tendency for often well-meaning family members, caregivers, medical providers, attorneys, and others to decide what is best for older adults without meaningful participation by those older adults.⁴⁹ As the practice of elder law matures, frameworks have been proposed to offer meaningful participation.

One such example is person-centered planning. This idea, borrowed from the field of persons who work with cognitively disabled adults, requires a focus on "personal choice and autonomy" when making health care and lifestyle choices for another adult.⁵⁰ Person-centered planning evolved from the 1957 person-centered approach developed by psychologist Carl Rogers, who proposed new humanistic ideas for counseling.⁵¹ These ideas moved away from the old model of the professional as an expert figure who knew everything and focused on providing a safe psychological environment and thus facilitated psychological growth.⁵² In 1997, T. Kitwood developed a broader

47. *Id.*

48. *Id.*

49. Nina A. Kohn et al., *Supported Decision-Making: A Viable Alternative to Guardianship?*, 117 PENN ST. L. REV. 1111 (2013) [hereinafter Kohn et al.].

50. Alexis C. Kogan et al., *Person-Centered Care for Older Adults with Chronic Conditions and Functional Impairment: A Systematic Literature Review*, 64 J. AM. GERIATRICS SOC'Y (2016) [hereinafter Kogan et al.].

51. *See generally* PEGGY NATIELLO, *THE PERSON-CENTERED APPROACH: A PASSIONATE PRESENCE*. (Tony Merry ed., 2001).

52. *Id.*

concept of "personhood" that included and supported the consideration of each person's needs and preferences from a holistic perspective.⁵³ Over time, several studies focused on how this counseling approach could be extended to a person-centered care approach, including what health care resources were required to ensure that person-centered care is achievable.⁵⁴ According to a literature review on person-centered care, while seventeen central principles have been identified, six are discussed most frequently: "holistic or whole-person care, respect and value, choice, dignity, self-determination, and *purposeful living* (emphasis supplied)."⁵⁵

As lawyers, we tend to focus on the autonomy and personal choice aspects of person-centered planning, and less on the "purposeful living" aspects. Our schooling in the importance of due process, and autonomous decision-making leads us naturally to focusing on the *process* rather than the *content* of the decision-making. Kogan, Wilber, and Mosqueda in their article, *Person-Centered Care for Older Adults with Chronic Conditions and Functional Impairment: A Systematic Literature Review*,⁵⁶ critique the absence of consensus-based definitions of the components of person-centered planning, which would include "purposeful living." Neal Krause, in his article *Meaning in Life and Mortality*, agreed that there is no clear definition of meaning in life, but offers a definition proposed by G.T. Recker in 2000: "He [Recker] defines a sense of meaning as 'a cognizance of order, coherence, and purpose in one's existence, the pursuit and attainment of worthwhile goals, and an accompanying sense of fulfillment.'"⁵⁷ Krause goes on to point out that psychologists generally look to a subjective, rather than objective, sense of meaning—in other words, the important factor is whether an individual *believes* herself to have a meaningful life.⁵⁸ Krause divides

53. TOM KITWOOD, *DEMENTIA RECONSIDERED: THE PERSON COMES FIRST* (Open Univ. Press 1998).

54. See generally Barbara J. Lutz & Barbara J. Bowers, *Patient-centered care: Understanding Its Interpretation and Implementation in Health Care*, 14 SCHOLARLY INQUIRY FOR NURSING PRAC. 165 (2000); Diane R. Lauver, et al., *Patient-Centered Interventions*, 25 RES. IN NURSING & HEALTH 246 (2002); Mike Nolan, *Successful Ageing: Keeping the 'Person' in Person-Centered Care*, 10 BRIT. J. OF NURSING, 450 (2001); Jan Pincombe et al., *Critical Aspects of Nursing in Aged and Extended Care*, 23 J. OF ADVANCED NURSING, 672 (1996).

55. Kogan et al., *supra* note 50, at E1.

56. *Id.*

57. Neal Krause, *Meaning in Life and Mortality*, 64 J. OF GERONTOLOGY: SOC. SCI. 517 (2009).

58. *Id.*

meaning into four factors: "having values, a sense of purpose, goals, and the ability to reconcile things that have happened in the past."⁵⁹ His studies indicate that adults who have a sense of purpose correlate most strongly, of the four factors, with longer life.⁶⁰ Krause states:

Although clearly linked to values, a sense of purpose is conceptually distinct. It has to do with believing that one's actions have a set place in the larger order of things and that one's behavior fits appropriately into a larger, more important social whole. Values are codes or standards that define thoughts and actions that are desirable, whereas a sense of purpose arises from seeing the reasons or intent behind the values and understanding how these codes or standards integrate the individual into the larger currents of social life. A sense of meaning also involves expectations for the future and arises from having goals for which to strive.⁶¹

These definitions are consistent with the theories of Abraham Maslow, who published studies related to hierarchies of needs which posited that people need to reach five levels of motivation to maintain psychological health, and the inability to meet the "lower" needs can lead to psychopathy.⁶² The five levels of motivation include biological and physical needs, safety needs, belongingness and love needs, esteem needs, and self-actualization needs.⁶³ For many years, standards of care for older adults have focused more on the first two types of needs.⁶⁴ Researchers are now devoting increasing attention to the latter three types of needs, which are closely related to sense of purpose.⁶⁵ These definitions are also consistent with the work of Viktor Frankl, who developed a psychological theory he called *logotherapy*, and wrote that the primary motivator in life is the pursuit of meaning, and of Carl Jung, who developed psychological theories based on peoples' differentiation of the self, which he called *individuation*.⁶⁶ The

59. *Id.* at 519.

60. *Id.* at 524.

61. *Id.* at 520.

62. See generally Abraham H. Maslow, *A Theory of Human Motivation*, 50 PSYCHOL. REV. 370, 370–96 (1943).

63. *Id.*

64. See *id.*

65. See *id.*

66. See generally VIKTOR E. FRANKL, MAN'S SEARCH FOR MEANING (Pocket Books 1st ed. 1946); CARL JUNG, MODERN MAN IN SEARCH OF A SOUL (W. S. Dell & Cary F. Baynes trans., 8th ed. 1936); James J. Seeber, *Meaning in Long Term Care Settings: Victor Frankl's Contribution to Gerontology*, 11 J. OF RELIGIOUS GERONTOLOGY 141, 145 (2000) (noting that meaning is discovered in three ways: "what we produce, what we experience and what attitude we take . . .") [hereinafter Seeber]; see also James J. Seeber, *Spiritual Maturity in the Later Years*, 7 J. of Religious Gerontology 111 (1991).

recent burst of medical research takes psychological health one step further, demonstrating a firm link between pursuit of meaning and a better quantity and quality of life.⁶⁷

Definitions of meaning give an elder law attorney a place to begin to explore what types of opportunities are important for their clients. More than the *process* of person-centered planning, these studies suggest that older adults should have *discussions* about their goals and *opportunities* to actually practice behaviors that will give them this sense of purpose.⁶⁸ Such opportunities will widely differ depending upon the values and goals of the older adult and will be, as described in the following section, culturally-specific. Such opportunities might be as different as participating in governance, painting or sculpting, wood-carving or working on an automobile, sitting on a community board of directors, helping with childcare, participating in a book club, leading a faith group, or gardening. While it is the job of social service professionals to help at-risk older adults articulate their goals and interests, it should be the job of the lawyer to make sure facilities, caregivers, and others who work with their older adult clients are asking the right questions and providing the appropriate opportunities.⁶⁹ Elder law attorneys should be mindful of these issues when counseling clients about a range of issues, including estate planning, independence planning, and choice of agents to assist them. For example, in addition to exploring the financial savvy of a proposed attorney-in-fact, a lawyer might help a client explore to what extent a proposed agent will have the interest and ability to help the client achieve meaningful goals. When counseling an elderly client in a divorce, the attorney should consider not only maximization of assets, but also which assets will help the client achieve meaningful goals. Consideration of purpose and meaning should become one additional factor in every client interaction.

67. See Seeber, *supra* note 66, at 144–49.

68. Sandra Dowling et al., *Person-Centered Planning in Social Care*, JOSEPH ROUNDTREE FOUND. (2006), <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/9781859354803.pdf>.

69. Joshua M. Wiener, et al., *Nursing Home Care Quality Twenty Years After The Omnibus Budget Reconciliation Act of 1987*, KAISER FAM. FOUND., <https://kaiserfamilyfoundation.files.wordpress.com/2013/01/7717.pdf> (last visited Mar. 9, 2017) (noting that in the United States, federal “patient rights” provisions exist that require “sufficient” staff and services to help residents attain or maintain the highest possible level of physical, mental, and psychosocial well-being”) [hereinafter Wiener et al.].

A second, and related, trend focuses on supported decision-making.⁷⁰ Supported decision-making is increasingly advocated as a way to empower cognitively disabled and older adults with compromised capacity by using teams of supporters to help the adult make decisions.⁷¹ In its PRACTICAL tool, the American Bar Association lists steps attorneys should use to help a client avoid or limit guardianship.⁷² The PRACTICAL tool was developed in 2016 as a way to encourage lawyers to help their clients avoid guardianship by incorporating principles of supported decision-making.⁷³ The tool offers important guidance to help older adults maintain autonomy when they are most at risk of losing it.⁷⁴ In addition to suggesting the attorney look for a team of supporters when possible, the tool suggests exploring a client's abilities to care for herself and an inquiry about the client's ability to work or make decisions.⁷⁵ While the idea of purposeful living is implicit in some of the sections, it could be more explicit. For example, when identifying abilities, the lawyer could be encouraged to identify passions, skills, and knowledges. When identifying challenges, the lawyer could be encouraged to identify limits to the client's ability to engage in meaningful activities. When identifying community support, the lawyer could be asked to identify people in the community who could help the client find activities and resources that would assist in her ability to find and participate in meaningful acts. Once again, a shift is required from focusing primarily on *process* and additionally on *substance*.

Elder law attorneys have not explicitly looked to incorporate the concepts of meaning and purpose when consulting with their clients. When counseling clients, conducting reviews of guardianships, serving as ombudsman, and working with care-givers, attorneys should

70. Nina A. Kohn et al., *Supported Decision-Making: A Viable Alternative to Guardianship?*, 117 PENN. ST. L. REV. 1111, 1139 (2013) (arguing that there is insufficient data to know whether supported decision-making empowers or disempowers the people it is trying to help, and for enhanced research on the effects of supported decision-making).

71. *Id.* at 1121–24 (providing a comprehensive description of supported decision-making can be found in the Kohn, Blumenthal & Campbell article); information and resources related to supported decision-making. NAT'L RES. CTR. FOR SUPPORTED DECISION-MAKING, <http://www.supporteddecisionmaking.org/> (last visited Oct. 2, 2017).

72. *PRACTICAL Tool for Lawyers: Steps in Supported Decision-Making*, A.B.A., www.ambar.org/practicaltool (last visited Oct. 2, 2017).

73. *Id.* at 1.

74. *Id.*

75. *Id.*

consider the availability of purposeful activities and resources to make those activities possible for their clients.

IV. The Importance of Culturally-Specific Opportunities, and a Proposal for Tikanga Māori⁷⁶ Practices for the Care of Kaumātua⁷⁷

One of the features of the care-home models discussed in Section II is attention to settings and activities older adult residents find meaningful. While each person's concept of purpose is individual, many people are greatly influenced by culture and custom.⁷⁸ Language and culture can greatly affect the habits and activities older adults choose to engage in. In many parts of the world where cultures co-exist, older adults look for care settings where the language and culture are comfortable for them.⁷⁹ When an older adult is part of an ethnic minority, the homecare experience can be very difficult.⁸⁰ Common problems include language barriers (both languages foreign to care staff and idiomatic use of language not understood by care staff), differences in attitudes about health care and choices, religious practices and holidays, food, and different customs related to family access and decision-making.⁸¹ Research is demonstrating that a "one-size fits all" institutional approach to community care of older adults reduces the quality of care and, by extension, the quality of life for the

76. See generally Hirini Moko Mead & Sidney M. Mead, *Tikanga Māori: Living by Māori Values*, (2003). "Tikanga Maori" means the Maori way of doing things, or customary practice. It is derived from the Māori word 'tika' meaning 'right' or 'correct'. In New Zealand law, "tikanga Maori" is incorporated into a variety of legal concepts.

77. See generally RAWINIA HIGGINS & PAUL MEREDITH, STORY: KAUMATA-MAORI ELDERS, <https://www.tpk.govt.nz/maori/population/kaumata.pdf> (last visited Oct. 2, 2017) (defining "Kaumatua" is the Maori word for "elder").

78. Shipla Srinivasan & Kenneth Sakauye, *Cultural Influences in the Clinician-Elderly Nursing Home Resident Relationship*, 13 ANNALS OF LONG-TERM CARE (2005) [hereinafter Srinivasan & Sakauye].

79. M.T. Westbrook & V. Legge, *Ethno-Specific and Mainstream Nursing Homes: A Survey of Residents from Non-English Speaking Backgrounds*, 11 AUSTL. J. ON AGEING 13 (1992) [hereinafter Westbrook & Legge].

80. *Id.*

81. Srinivasan & Sakauye, *supra* note 78; see also EUN-HI KONG, THE LIVED EXPERIENCES OF KOREAN IMMIGRANT CAREGIVERS AFTER NURSING HOME PLACEMENT OF THEIR NON-ENGLISH-LANGUAGE SPEAKING (NELS) ELDERLY RELATIVES WITH DEMENTIA (2006).

adult.⁸² Instead, care homes should base practices on culture and values of their residents.⁸³

One of the authors of this paper (Professor Were), offers a model for development of a Māori Kaumātua whare (Māori elder home). We believe this type of model demonstrates the way in which elder law policy-makers can weave together purpose and culture to create programs that will enhance the quality and quantity of life for older adults.

The example we propose is an Aotearoa New Zealand-specific concept,⁸⁴ but the kind of thinking that created this example can be applied in any setting. Aotearoa New Zealand is considered a bi-cultural society.⁸⁵ New Zealand citizens of European descent constitute about 69% of the population, and the indigenous Māori population constitutes about 14.6 % of the population.⁸⁶ While there are other ethnicities (primarily Asian and non-Māori Pacific Islanders), Māori customs are integrated into many aspects of New Zealand law and culture. Māori have a separate language and culture.⁸⁷ A brief survey of current elder care facilities (ECFs) in Aotearoa, New Zealand, will help explain how a Māori Kaumātua whare (Maori Elder Home) can offer a specific cultural setting that will enhance the ability of its Māori residents to lead lives of purpose. This example will highlight key features, such as the ownership and operation, the care staff, and the service standards for certification as a health care provider, in ECFs in Aotearoa, New Zealand.⁸⁸ The United States is also a multi-cultural

82. See, e.g., Sigrid Nakrem, *Understanding Organizational and Cultural Premises for Quality of Care in Nursing Homes: An Ethnographic Study*, 15 BMC HEALTH SERVS. RESEARCH 508, 518 (2015) (finding that nursing home residents' views of quality of care depended upon whether the nursing homes practices were responsive to the residents' values, and did not correspond to a more corporate consistent set of policies).

83. *Id.*; Westbrook & Legge, *supra* note 79, at 18–19.

84. "Aotearoa" is the Maori name for New Zealand. See generally Te Ara-The Encyclopedia of New Zealand, <https://teara.govt.nz/en/light/page-1> (last visited Nov. 16, 2017).

85. Janine Hayward, *Biculturalism*, TE ARA-THE ENCYCLOPEDIA OF NEW ZEALAND (Jan. 20, 2012), <http://www.kara.govt.nz/en/biculturalism>; see also *Auteara: Multiculturalism or Bicultural?*, KAWEPURONGO-NEWS (Mar. 26 2015), <http://www.kiamaia.org.nz/kawepurongo/auteara-multiculturalor-bicultural>.

86. *2013 Census Quickstats About Culture and Identity Statistics New Zealand*, STATS NZ (Apr. 15, 2014), www.stats.govt.nz/census/2013-census/profile-and-summary-reports/quickstats-culture-identity/ethnic-groups-NZ.uspx.

87. *Māori Culture*, 100% PURE NEW ZEALAND, <https://www.newzealand.com/us/maori-culture/> (last visited Oct. 2, 2017).

88. Lynne Russell et al., *Improving Māori Health and Reducing Inequalities Between Māori and Non-Māori: Has the Primary Health Care Strategy Worked for*

society. Attention to the importance of culture and custom in addressing the ability of older adults to pursue meaningful goals is a critical attribute of policies and programs for them in any multi-cultural society.

Ownership and Operation

The future of older adult communities in Aotearoa, New Zealand is dependent on who or what entity owns and operates the ECFs there. To this end, Lethbridge's study (2011)⁸⁹ found that the national public health system of different countries were owned and operated by multinational companies. In 2016, Aotearoa, New Zealand had five major owner operators.⁹⁰ One company, Bupa Care, does not have shareholders and its profits are advertised as being invested back into the healthcare services it provided.⁹¹ Lethbridge⁹² noted, however, that "although it remained a non-profit company, it had sold 25 acute hospitals to Cinven, an international private equity investor, for £1.44 billion in 2007, in order to pay off debt and focus on the long term development of the company, both internationally and in the care sector."⁹³ Although it did not have shareholders, the company would pay its staff (many whom are offshore).⁹⁴ This is money that does not go back into the business. The future implications for New Zealand may see these multinational companies gaining a higher share of the health care market than New Zealand government agencies through the provision of available beds for older adults in New Zealand. That share will, in turn, possibly give multinational companies dominant bargaining power for the health budget, allowing them to gain a higher government subsidy for those entering their ECFs, or to claim

Māori?, HEALTH SERVS. RES. CTR. AT VICTORIA UNIV. OF WELLINGTON (2013), <https://www.victoria.ac.nz/health/centrus/health-service-research-centre/our-publication/reports/phisc-maori-report>.

89. Jane Lethbridge, *Understanding Multinational Companies in Public Health Systems, Using a Competitive Advantage Framework*, GLOBALIZATION AND HEALTH (2011), <http://www.globalizationandhealth.com/content/7/1/19> [hereinafter Lethbridge].

90. *Unwary Residents Caught in Villages' Rules Trap*, N.Z. HERALD (Mar. 16, 2014), http://www.nzherald.co.nz/news/article.cfm?c_id=18objectid211220355.

91. *What If a Business Put Its Profits Back Into Health*, BUPA CARE, <http://www.bupa.com.au/about-us/advancing-health/what-if-a-business-put-its-profits-back-into-health> (last visited Oct. 2, 2017).

92. Lethbridge, *supra* note 89.

93. *Id.* at 5.

94. *Id.*

more money to pay registered nurses in ECFs like those working for the District Health Boards (DHBs).⁹⁵

In summary, the New Zealand older adults will remain marginalized as the multinational companies grow in assets and profits focusing more on their corporate strategy rather than the care element within New Zealand's public health system.

The Care Staff Dilemma

Generally, little notice is given to the staff who care for older adults. The staff are poorly paid, undervalued, and many care assistants have minimal training.⁹⁶ Orientation and training for a care assistant job is done over a one or two-week period without pay leaving most staff having to accept this exploitation just to secure employment.⁹⁷ There are no incentives to upskill on the minimal care training as the cost for that upskilling has to be borne by the staff member.⁹⁸ Achieving the certificate for this training, however, does not mean that care assistants will receive any increase in wages.⁹⁹ Furthermore, mobile-care staff also have to pay for a large proportion of their travel costs to get to older adults and provide their care services.¹⁰⁰

In the *Ministry of Health v Atkinson*¹⁰¹ case (New Zealand's Court of Appeal), a related issue of family members being denied payment for caring for their disabled adult children was highlighted. In fact, it had been government policy not to pay family members, referring to the social contract that families should take care of their own family members and not the State.¹⁰² The government also argued that the state health care budget was not limitless.¹⁰³ The resultant act that

95. Annette Lazonby, *The Changing Face of the Aged Care Sector in New Zealand*, UNIV. OF AUCKLAND RETIREMENT POLICY AND RESEARCH CTR. 1, 6–40, <http://docs.business.auckland.ac.nz/Doc/Working-paper-1-07-PensionDiscussion-The-changing-face-fo-the-Aged-Care-Sector-in-new-Zealand.pdf> (last visited Oct. 2, 2017) [hereinafter Lazonby].

96. *Id.* at 27.

97. Simon Collins & Martin Johnston, *Inside Our Rest Homes: Ages Care's Low-Paid Workforce*, N.Z. HERALD (Nov. 27, 2013).

98. Lazonby, *supra* note 95, at 27.

99. Wiener et al, *supra* note 69, at 7, 20.

100. See *Caring Counts Tautiaki Tika*, May 2012, 37–41, N.Z. HUMAN RIGHTS COMMISSION, https://www.hrc.co.nz/files/1214/2360/8576/Caring_Counts_Report.pdf.

101. *Ministry of Health v. Atkinson* [2012] NZCA 184, [2012] NZLR 456 (N.Z.).

102. *Id.* at ¶ 49.

103. *See id.*

followed this case (the NZ Public Health and Disability Amendment Act 2013)¹⁰⁴ was controversial, leaving the family carers to navigate a complex process to get care money, as well as attempting to deny access to justice through the Court, for their carers.

Further, in 2014, the New Zealand Supreme Court upheld an Employment Court decision for a care worker who claimed that an ECF was in breach of the Equal Pay Act 1972 as she was female.¹⁰⁵ The ensuing debate between ECFs and the government is pushing care workers to the marginal edge with ECFs claiming that the New Zealand government needs to increase its contribution (from the health budget) to care services so ECFs can pay higher wages to the care workers.

While this debate is raging, our older adults are still being cared for by the same low paid careers. Policy-makers must pay attention to the pay and training of staff to develop programs that will offer actual opportunities for vulnerable adults to find purposeful activities in care homes.

Service Standards for ECFs

Healthcare providers (including ECFs) must maintain service standards to be approved as certified healthcare providers under the Health & Disability Services (Safety) Act 2001. Regular audits are carried out to ensure the standards are continually met.¹⁰⁶ Standards relating to Māori Kaumātua (Maori elders) use vague or broad terms such as:

Standard 1.1.4: *Recognition of Māori Values and Beliefs*

Consumers who identify as Māori have their health and disability needs met in a manner that *respects and acknowledges* their individual and cultural, values and beliefs.¹⁰⁷

Standard 1.1.6: *Recognition and Respect of the Individual's Culture, Values, and Beliefs* Consumers receive *culturally safe*

104. New Zealand Public Health and Disability Amendment Act 2013, Part 4A.

105. *Terranova Homes v. Services and Foodworkers Union* [2014] NZSC 196 (N.Z.).

106. See *Bupa Care Services NZ Limited-Ballarnt Care Home*, NEW ZEALAND MINISTRY OF HEALTH (Apr. 20, 2015), <http://www.health.govt.nz/your-health/certified-providers/aged-care/ballarnt-care-home>.

107. *Id.* at 12.

services which recognize and respect their ethnic, cultural, spiritual values, and beliefs.¹⁰⁸

It was noted in an audit¹⁰⁹ that there were no residents who identified as Māori on the day of the audit yet [*c*]ultural training has been completed by staff. This raises the question of whether staff can be culturally trained without Māori Kaumatua residents.

These standards appear to be similar to Māori terms which are incorporated in legislation e.g., the Resource Management Act 1991 (RMA) s 6(e), where decision-makers:¹¹⁰

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall *recognize and provide for* the following matters of national importance: . . . (e) *the relationship of Māori and their culture and traditions* with their ancestral lands, water, sites, waahi tapu, and other taonga . . . ; and . . . Section 8, Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall *take into account* the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). (emphasis supplied).¹¹¹

The RMA does not provide steps on how decision makers can achieve recognition and provision of Māori cultural values and traditions; or, to take into account of the Treaty of Waitangi.¹¹²

Consequently, the vagueness in the RMA leads to lay people placing their own interpretations on the words when dealing with Māori customs and the Treaty.¹¹³

There are similar legislative directives in the United States. For example, Medicare and Medicaid have provisions that require meaningful access to health care in a language the patient can

108. *Id.*

109. *See generally id.*

110. Resource Management Act 1991, cl. 6 (N.Z.) [hereinafter Resource Management Act].

111. *See* Matthew Palmer, *The Treaty in New Zealand's Law and Constitution*, <https://natlib.govt.nz/blog/posts/the-treaty-in-new-zealand-s-law-and-constitution>, (highlighting the Treaty of Waitangi is a treaty between Māori tribes and Great Britain, signed in 1840). Although more often honored in the breach, New Zealand courts began to honor it in earnest in the 1970s. In 1975, New Zealand passed the Treaty of Waitangi Act and the treaty is now incorporated into New Zealand law in many ways. For an interesting history of the treaty, past and present.

112. Resource Management Act, *supra* note 110.

113. *See generally id.*

understand.¹¹⁴ One government guide lists sixty-three languages commonly spoken by U.S. residents across the fifty states.¹¹⁵ Another government website states that all Medicare recipients have the right to “get health care services in a language [they] understand and in a culturally-sensitive way.”¹¹⁶ To provide culturally-specific care, elder law attorneys must therefore understand statutory language that mandates such care and aim to enforce it.

Kaumātua (Old Age)

To understand the cultural context of Māori Kaumātua (elders), one needs to understand how they are regarded, as well as the responsibilities attached to their seniority and standing in Te Ao Māori (the Māori World).

To be a [K]aumātua, you must first wade through life, because that's what the word means: to wade through something. And only when you wade through can you begin to understand life and the context of life. Then you start getting older and older and older, and then you get the standing of a [K]aumātua, when you have walked through the concept of the Māori world.¹¹⁷

The term Kaumātua generally refers to older Māori people who have earned the respect of their whānau (family), hapū (extended family), and iwi (tribe).¹¹⁸ Although a formal process does not exist to appoint elders to Kaumātua roles in their communities, there are unwritten guidelines.¹¹⁹ These include looking for people who have strong leadership skills, the respect of the whānau (family), strong Te Reo Māori (Māori language) skills, in-depth knowledge of the history of tikanga, and its customs.¹²⁰

Kaumātua knowledge of Te Ao Māori (the Māori world) develops over time through life experience and teachings from their Kaumātua.

114. See, e.g., *Guidance and Population Data for Exchanges, Qualified Health Plan Issuers, and Web-Brokers to Ensure Meaningful Access by Limited-English Proficient (LEP) Speakers*, CTRS. FOR MEDICARE AND MEDICAID SERVS. (Mar. 30, 2016), <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Language-access-guidance.pdf>.

115. *Id.*

116. *Rights & Protections for Everyone with Medicare*, MEDICARE, <https://www.medicare.gov/claims-and-appeals/medicare-rights/everyone/rights-for-everyone.html> (last visited Oct. 2, 2017).

117. PAUL MOON, TOHUNGA: HOHEPA KEREOPA (2003).

118. *Kaumātua and Their Role*, TEARA (1999), <http://www.tpk.govt.nz/maori/population/kaumatua.pdf>.

119. MASON DURIE, MAURI ORA: THE DYNAMICS OF MĀORI HEALTH (2001).

120. *Id.*

Many Kaumātua naturally take on leadership roles in their whanau (family), hapū (extended family), iwi (tribe), and community, and it is important that their contribution is recognized appropriately.¹²¹ There are others, however, who may not be as confident in a Kaumātua role and this could be due to a number of reasons, including isolation from one's own whanau (family), hapū (extended family), iwi (tribe), or diverse lifestyles that have not allowed for their active participation in Te Ao Māori.¹²²

One important pre-requisite, then, in developing policy and programs to care for older adults, is to understand the cultural conceptions of aging that are a part of the culture of proposed residents. Different cultures view aging and elders differently. A failure by policy-makers, staff, and caregivers to appreciate cultural conceptions of aging will impede the ability of the residents to pursue goals meaningful to them.

A New Zealand study by Manukau Institute of Technology in partnership with the New Zealand Nurses Organisation Gerontology section¹²³ explored perceptions of person-centered care of older people and the related satisfaction of their caregivers within the New Zealand context. The study was based on the Davies, Nolan, Brown, and Wilson's framework¹²⁴ of the five senses of security: belonging, continuity, purpose, significance, and achievement, that assist older people to maintain wellbeing. The New Zealand findings showed that "continuity in caring, personal relationships with carers, the sense of love and belonging and finding meaning in their lives were important to both Māori and non-Māori recipients of care."¹²⁵ For Māori recipients of care, their connection to their family, tribe and Marae¹²⁶

121. See generally Mason Durie, *Kaumātuatanga—Reciprocity: Māori Elderly and Whānau*, 28 NEW ZEALAND J. PSYCH. 102 (1999) [hereinafter Durie]; J. Waldon, *Oranga Kaumātua: Perceptions of Health in Older Māori People*, 23 SOC. POL'Y J. N.Z. 167 (2004).

122. Durie, *supra* note 121, at 105.

123. Louise Rummel, *What are the perceptions of person-centred care of older people and the related satisfaction of their caregivers within the New Zealand context?*, NURSING NEW ZEALAND (2003).

124. Sue Davies, *The Care Needs of Older People and Family Caregivers in Continuing Care Settings*, WORKING WITH OLDER PEOPLE AND THEIR FAMILIES (Mike Nolan, Sue Davies & Gordon Grant eds. 2001) [hereinafter Davies].

125. A. Manchester, *Discovering the Essence of Caring*, 9 KAI TIAKI NURSING NEW ZEALAND 14 (2003) [hereinafter Manchester].

126. A marae is a community meeting place of special significance to a hapu (extended family) or iwi (tribe) group of Maori people. Many things may take place on a marae—weddings, funerals, education events, fun events—but entry onto a

was of vital importance. These participants stated that “it was actually more important to be at the Marae when they were unwell than when they were well.”¹²⁷ These findings are important if health care providers are to move towards working in partnership with residents and their families.

In New Zealand, there have been some housing initiatives by Maori healthcare providers to care for Māori Kaumātua. Some of these include the following examples:

TE AHURUTANGA - TE TAIWHENUA O HERETAUNGA (2013)¹²⁸ has opened an 11-bedroom whare (home) in Flaxmere, Hastings, with ensuites in each room and the common areas being shared (kitchen, dining, laundry and lounge). The resident Kaumātua are involved in the running of the home—making their own breakfasts and weekend meals, keeping their rooms tidy, being the decision-makers for the house rules, and tending to the gardens around their home (all with support if required). This was based on the UK Abbeyfield homes which provided ‘sheltered (similar to this whare), residential, domiciliary (at home) services.’¹²⁹

WHARE AROHA CARE (Dec, 2016)¹³⁰ has built homes for residents that suit their previous lifestyles—rural, city, professionals, urban, quiet, traditional, and luxury. This is a move away from the standard units attached to a hostel type care home. Whare Aroha Care has also received funding to build a dementia village based on the Netherland’s Hogeweyk Village.¹³¹

MANGATAWA PAPAMOA BLOCKS INC (in 2012)¹³² in partnership with Housing NZ, and others have built ten kaumatua houses on Nga Potiki tribal land in the western Bay of Plenty. Further, Nga Potiki a Tamapohore (2015) are building six two-bedroom homes for Kaumātua, and four four-bedroom homes in its Papakainga, called Te Ohaaki o Miriama.¹³³

marae is governed by special rules and customs and one must be invited and enter appropriately.

127. Manchester, *supra* note 125, at 14.

128. See *Te Whare Kaumātua*, TE TAIWHENUA O HERETAUNGA, <http://www.ttoh.iwi.nz/news-and-updates/te-ahurutanga> (last visited Oct. 2, 2017).

129. ABBEYFIELD, *supra* note 21.

130. See THE CARE VILLAGE, <http://thecarevillage.nz/> (last visited Oct. 2, 2017).

131. See Hogeweyk, *supra* note 37.

132. See *Papakainga Housing Project*, MANGATAWA PAPAMOA BLOCKS INC., <http://mangatawa.co.nz/content/papakainga> (last visited Oct. 2, 2017).

133. See *Social Housing*, NGA POTIKI AND TAMAPHORE TRUST, <http://www.ngapotiki.org.nz/housing-and-property> (last visited Oct. 2, 2017).

TE RŪNANGA O KIRIKIROA (2013)¹³⁴ have built five new retirement houses in Hamilton which will have services for health and wellbeing being provided by Te Rauawaawa Trust.¹³⁵

These four housing initiatives for Māori Kaumātua are related to opportunities for safe communal living with support at hand when required. Being able to live in homes that are designed for their specific health and well-being leads to a sense of purposeful living that extends beyond the home to activities and interactions with others.¹³⁶

This paper proposes an elder care facility that builds upon these ideas. The core idea is to create an ECF where the residents adhere to a common Tikanga (set of customs and rules) to care for Maori Kaumatua. The common Tikanga would center around the idea of "going to work" to provide for the Whanau (family unit or community), which is an idea that Maori Kaumatua would find familiar and purposeful.] This proposal is detailed below.

Kaumātua Whare (Maori Elder Care Home)

The Kaumātua Whare would incorporate a central purpose and desire to go to work for the wellbeing of the whanau within the Whare. It would extend the link between purpose and both quality and quantity of life (i.e. increased life expectancy)¹³⁷ for older adults and Māori Kaumātua.¹³⁸

The inspiration came from interactions between one of the authors (Professor Were) and her mum who lived independently until her 86th year, but following a serious fall, she moved to an ECF. The ECF was one that she had been attending for some seven years prior, on limited days to start with, then for five days per week as her needs grew. Professor Were and her mum talked a lot about a Kaumātua Whare (Maori Elder Care Home) and how it would be different to the Pākēhā (non-Māori) care home she was attending, which was routinized and separated patients from the organization and practices of the home. She thought there would be difficulties identifying what the actual Tikanga (custom) was to care for Kaumātua, as Māori society

134. See *Kaumātua Village Opens in Hamilton*, MĀORI TELEVISION <http://www.maoritelevision.com/news/regional/kaumatua-village-opens-hamilton> (last visited Oct. 2, 2017).

135. See RAUAWAAWA KAUMĀTUA CHARITABLE FUND, <http://www.rauawaawa.co.nz/> (last visited Oct. 2, 2017).

136. *Id.*

137. See Davies, *supra* note 124; see also Appendix.

138. See Yu, *supra* note 15.

was tribal, each with its own cultural practices and knowledge. From Professor Were's learning as a whāngai (foster child) of her grandparents. Professor Were was taught a lot of the Māori traditional ways and worked hard, like everyone else in their community, to fulfil this strong drive to provide for the whanau's (family's) wellbeing first and foremost; this often took the form of working in large communal gardens.

Tse's study¹³⁹ also explored the effectiveness of an indoor gardening program on older adults within ECFs. It found beneficial improvements in life satisfaction, socialization with other gardeners, as well as a decrease in the participants' perceptions of loneliness after only eight weeks of indoor gardening. If we extend this notion of using gardens and combine it with the common Tikanga (custom) to grow food for the Whanau (family), then we will create a Kaumātua Whare.

Development will see a working home that will become self-sufficient by growing its own food, (vegetables and fruit), sheltering the gardens (glasshouses, covers), using a variety of planting and growing techniques eg. hydroponics or inground), and experimenting with different food plants. Kaumatua residents will each work or supervise work for the benefit of the whare (family, which in this case is the entire care home). The most important aspect is that the Kaumātua workers will be participating in the running of their Whare (family), socialising, and generally have significant life benefits and satisfaction.

A care home organized around the concept of active participation in communal gardening to benefit the Whare (family-community of the care home) is one culturally-specific way a program can be organized to provide opportunities for meaningful labor, even in advanced old age. This type of focus can be applied to any sub-set of older care home residents. As discussed earlier, attention to organization around specific cultural practices greatly enhances the quality of life for residents of care homes.¹⁴⁰ The ability to attain meaningful goals greatly enhances a person's ability to find purpose and meaning. Having a sense of purpose and meaning leads to a longer life, and a higher quality of life.

139. Mimi Mun Yee Tse, *Therapeutic Effects of an Indoor Gardening Programme for Older People Living in Nursing Homes*, 19 J. CLINICAL NURSING 949, 949 (2010).

140. Kohn et al., *supra* note 49.

V. Conclusion

The life-stories of the two authors' grandmothers, which are outlined in the Appendix, offer strong examples of women who lived long lives full of purpose, through their own culturally-specific lenses. There was much in common in how these women on different sides of the world found purpose, but there were also culturally significant differences. Other fulfilled older adults will find meaning in other ways.

In this Article, the authors make the case that elder law attorneys and policy-makers need to pay more attention to the importance of "sense of purpose" to the lives of older adults. Sense of purpose will be both individually and culturally specific to the clients of elder law attorneys. Just as elder law attorneys have received training about physical and cognitive illnesses, abuse and exploitation, financial management, and a host of other issues that affect older adults differently from the general population, elder law attorneys need more training in understanding the importance of meaning and purpose to the health and well-being of their clients. Policy-makers should move away from programs and settings that warehouse people, leaving them waiting to die. Instead, they must understand that creating culturally-specific institutions and programs that foster opportunities for older adults to meet their own goals is as important as good medicine, nutritious food, and trained caregivers.

Appendix: Stories of Purposeful Living

Virginia Hurler Ehrhardt Morton (1909-1996)

She came from the Ohio River Valley, in Louisville, Kentucky. Her people came from England and Holland in the 19th century and they were Hurlers and Ehrhardts. She married into the Mortons, whose people had come to Kentucky from Scotland in the 19th century.

My grandmother lived eighty-seven years, and for almost none of those years did she engage in paid work outside her home. Yet, she exhibited a life of meaning and purpose including all of the years at the end of her life. I believe she found purpose in these things: nurturing family, civic engagement, religious faith, and enjoyment of life. By example, she instilled these qualities in her children and grandchildren.

Nurturing family

Grandmother raised children, grandchildren, and friends of her children, from her early twenties until the end of her life. My brother and I, along with our mother, moved in with her and my grandfather when she was in her early fifties. Her youngest child did not become an adult until Grandmother was in her early sixties. At about that same time, my younger cousin was born, and Grandmother cared for her during the days, while my aunt worked and later attended graduate school. A few years later, my youngest aunt and her husband had a child and Grandmother cared for him while they worked. Generations influenced each other, each learning from the other a rich tapestry of custom, care, values, tradition, and behavior transmitted down and also laterally. Grandmother was the matriarch that glued the generations together.

She modeled for all of us what it meant to live in a family. Grandmother's care did not stop at the strict boundaries of family. After she died, I heard stories from many of her children's friends about how she helped each of them at a critical time in their lives. My mother's best friend from church (now eighty years old) told me how my Grandmother was responsible for her going to college in the 1950s. Because she was a girl, her parents had not intended to send her to college, but my grandmother called her mother to say that my mother's friend could stay with them for free, leaving only her college tuition for her parents to pay. This woman told me that if it had not been for my grandmother, she would not have embarked to Germany

(where she met her husband), extensively traveled the world, or had a 40-year career as a kindergarten teacher. A friend of my uncle told me that he, too, had lived with my grandparents when he was a child. His parents had moved out of the school district, and my grandmother offered to take care of him in her home for the rest of the school year so he did not have to transfer to another school mid-year. Another friend of an aunt said she often visited my grandparents' home, spending time with them, because in her large family she felt a bit lost. She continued to take her children to visit my grandmother for years. This lifelong habit of welcoming children into her home and helping them transform into productive, caring adults taught her children and grandchildren to do the same.

Family lessons were diverse. I learned to help tend my grandmother's vast flower gardens in her small but beautiful yard. I learned the names of flowers, which ones were my grandmother's favorites, and how to help them grow and then how to enjoy their beauty by filling all the vases in the house in mid-summer. I learned to sew and embroider and crochet and knit. I learned tolerance and patience for understanding points of view. When my grandmother disagreed with a major life decision I had made in my late twenties, and I started to cry, she said "I'm just offering you my opinion. You have your own opinion and that is fine." I learned to treat others well, even when I didn't want to. My other grandmother was a difficult, negative woman. My great-aunt (Grandmother's sister-in-law) who lived down the street from my grandmother was not easy to be around. My grandmother would instruct me to visit each of them, even when I didn't feel like it. Also, she would say, "Help your mother, you will be glad you did." I learned by observation, as she helped friends who needed it: visited friends in nursing homes, took clothing to a friend who lived in poverty; always setting another place at the table without question, even though she only had modest means herself. I learned by watching her ask a cousin who was of limited intellectual abilities to set the table every time she came to visit. My cousin would smile a big smile: "Thank you Mrs. Morton! My mom doesn't let me carry dishes because I might break them." My grandmother would reply "They're just dishes." I learned which recipes she loved the most, and how to prepare them. I learned to send written thank-you notes and not take generosity for granted. I learned that a college degree did not make me better than someone without

an education – it just gave me more responsibility to give back. When I was almost forty, and my grandmother (who only had a high school diploma) read my first published law review article, and she said “I have some questions,” I learned that a person doesn’t have to ever stop learning or complimenting or appreciating. I learned that listening is the way you know what others are thinking and doing and feeling, and that you can pass information to others in the family if you listen. I learned that by keeping in touch, you could connect one part of a family to another.

Grandmother would tell me family stories. I learned how different branches of the family perceived each other. I learned that a plain, blue, clay pot that came on the boat from England in the mid-1800s was more valuable to her than her Wedgwood china set or her silver, because it connected her to her grandmother, someone she loved dearly. History became connected to family.

Civic engagement

My grandmother was a community leader. She never held public office or had a title, but she organized events and supported projects she believed in. Her husband and father had served in the Spanish-American war, and she was a tireless volunteer in the veterans organization they belonged to. As the much younger bride of one of the youngest veterans (my grandfather enlisted at the age of fifteen and my grandmother was twenty-four years younger than he), she had energy to sustain the organization past most of the other members. In that role, she traveled with five children and later with grandchildren to conventions in Kentucky and across the country. She helped them get Social Security and Veterans benefits. She visited sick and dying members of the organization, and attended their funerals. When the time came, she retired the organization with dignity.

My grandmother was a champion of women’s rights, in a quiet but forceful way. After her daughter became a minister, she embroidered stoles for her and other ministers. She encouraged her daughters and their friends to attend college and enter the workforce. She supported candidates who promoted women’s rights. She helped work on legal cases that her lawyer-daughters took on to promote equal rights for women and African-Americans.

My grandmother was not the kind of person who marched, but she supported those who did. She promoted racial equality and equal

rights for gay friends by opening her home and welcoming everyone. The only time I ever saw her stand up and disagree with my grandfather, whom she dearly loved and respected, was when he wanted to deny full guest status to an African-American woman who my grandmother had called her friend for decades. My grandmother had employed this woman, who had cared for some of Grandmother's children and grandchildren, but had long since retired and moved. They had corresponded for many years and my grandmother considered her a dear friend. My grandfather, then in his eighties and suffering from dementia, said this woman could not come to a wedding held in their home unless she wore an apron and served the guests, and my grandmother overruled him. She did so firmly, with conviction, without wavering and without ever raising her voice.

She kept informed about social and political issues always, including in her later life. She stood on her front porch to ring in the Bicentennial in 1976 because she believed the democracy was worth celebrating. She always voted, although she kept her vote private. She wrote letters to political leaders advocating for issues she thought were important.

Participating in the social fabric of her community was meaningful to my grandmother throughout her life, and she provided a quiet, firm leadership in our family and among her friends and acquaintances.

Religious faith

Grandmother was deeply religious, but her religious belief was mostly private. She was raised in an Episcopal home, and married a Baptist. They chose to raise their family in a Methodist church. During the years I knew her, she rarely attended church, choosing instead to stay at home and cook a huge meal and host a dozen or more family and friends each week. However, she read the Bible. She attended a bible study group with women from her church, late in her life; she was so loved by those women that they named the group in her honor after she died. She supported her daughter when that daughter blazed trails by entering the ministry, getting a doctorate in religious studies, and taking a job with the national church to support social justice. She supported her son who converted to Judaism, her granddaughter who was first Episcopalian, then Quaker, then Unitarian, then atheist. She did not distinguish based on religious

affiliation—rather, she supported good works, kindness and anti-poverty initiatives whether they came from religious organizing or not. But she gained strength from her own religious belief. After she died, her family found that she had marked all the passages in her Bible that stressed siblings getting along with each other, a not so subtle directive to her children and grandchildren. Her religious faith was devout, but it was open and tolerant and not designed to draw attention to herself.

Enjoyment of life

My grandmother found purpose and meaning in enjoying life and living it to its fullest. She loved to garden, finding ways to cultivate her flowers well past physical fitness. She embroidered beautiful tapestries and pillows that she and her children hung on their walls. She played cards and watched movies. She loved to read—especially mysteries. She was always reading something, and happy to discuss her books. She loved to watch Perry Mason reruns, television shows and movies. She loved to visit her children and grandchildren—to spoil their babies and their pets. She loved to play tunes on the piano, she loved to hear her daughters, her grandchildren, and great-grandchildren play the piano, guitar, violin and cello, and sing in harmony. She loved to go to the opera, also attending late in her life. She loved to listen to her favorite tenors at home.

My grandmother loved her husband, my grandfather, intensely, and this love was ran ways and it was evident to everyone who knew them. She loved each of her children, grandchildren, and many friends and family members without condition and mostly melodrama-free. She wrote letters to her granddaughters, praising the care and concern of those who helped take care of her in her older age. She loved to travel, especially with family. Mostly, she loved to laugh. She laughed fully and frequently and always with people, never at them.

These passions in life gave her a purpose and a meaning. They were nothing fancy or elaborate. Rather, they were ordinary passions accessible to ordinary people. But, they helped her create an extraordinary life.

Materita Marunui-Poumako (1902-1985)

A cultural perspective of purpose and meaning of life for one Māori Kaumatua (elder) – my grandmother:

My Kuia (grandmother) who I knew as Nanny, was born and raised in a distant part of the expansive Kaingaroa Forest in the central North Island, Aotearoa, New Zealand. Her people are from the hapu (sub-tribe) of Ngati Manawa and the tribes of Tuhoe and Te Arawa. The waka (canoe) on which her tupuna (ancestors) arrived in Aotearoa is called Mataatua. Through oral tradition these kinships and the tupuna (ancestors) are recited as her whakapapa (genealogy).

Nanny lived some eighty-three years at a tumultuous time in a colonised misconception of Aotearoa, at the turn of the 20th century. She witnessed her proud chieftain people, full of mana (authority and prestige), ihi (psychic force) and wehi (respect and reverence), being treated like native savages – like something less than a sub-human. She was forcibly taken from her whanau and sent away to a native boarding school for girls, situated in another town. At that time, it was like being sent to another country. Her 'education' was to learn English (disregarding her first language Te Reo Māori), literacy, numeracy, and domestic work, to be useful in English households and businesses – cooking, cleaning, laundry and caring for children. She was being groomed to be one of the future labourers, and for little pay.

I remember her home. It had three small rooms, one with an open fire, two rooms for sleeping, and a verandah. There was no electricity or running water. Candles were used for light and open fires were our source of heating and cooking, both inside in the winter, and outside during the summer. A brief account of my Nanny's life which was full of purpose and meaning, is given of the way she lived, for the people; her collective focus to survive; her beliefs both religious and cultural; and the happiness she found in her life.

Living for the whanau (extended family)

Nanny cared for her five children, children of other whanau, her grand and great grandchildren, the spouses, and whangai (foster children) from her adult children – within Māoritanga, whangai incorporates a custom where Kaumātua take selected grandchildren, and raised them until they reached adulthood or school age. My mum, three sisters and I had to live with Nanny when our father was away shearing for long periods of time; and she let us use an empty one room hut with an open fire which was near the main house. We all

shared one bed on a kapok mattress. It was a safe dry place to stay and we were grateful.

My aunt (my mother's older sister) had eighteen children and Nanny cared for most of them, with two being whangai. My cousin (to my mum's younger sister) and I were selected as her whangai, we were cared for and trained, and now are the leaders in our respective families. When people came to visit, my Nanny would send them away loaded with produce from her garden, she cared about people having enough to eat. She welcomed everyone to her home and would always serve up a hot drink and food, they would get the best of what she had regardless of who they were. Not many Pakeha (non-Māori) outsiders came to our Papakainga (communal settlement), but when they did, my Nanny would totally shut down, as if she did not understand. Nanny was suspicious of Pakeha because of all that she witnessed with her whanau and their precious land.

Collective caring

Following her schooling Nanny worked in a kitchen tent where meals were prepared, cooked and fed to the forestry workers of whom were mostly young Māori men. She also worked in the forest for a short time. The little money she made was put in the whanau kitty for bulk purchases like flour and milk powder. All other food was grown, hunted, fished, trapped and caught.

Nanny married a Māori man from the hapu Ngai-te-rangi, from Matakana Island, situated off the Tauranga coastline in the North Island of Aotearoa. They met when he came looking for work in the forest and once she started having children, she stayed home and devoted her life to her whanau.

Ensuring that the whanau had food daily, Nanny worked in the Papakainga communal gardens. I remember the gardens were large with long straight rows to plant seeds, tend and harvest. I would follow Nanny with my bag of seeds, and she with a long stake, would make the hole every so often, into which I would drop one seed, cover it up and pat it with my small hands. We did that until all the rows were planted for our allocated part of the gardens. We tended the gardens every day except for Sunday, when Karakia (church) was held. Over time, the children left home and as there were only the aging parents left to tend the gardens, these were left to go to weed.

Nanny planted the garden around her home, she also had chickens and ducks for both eggs and meat, as well as a couple of pigs. There were also a number of stray cats that we fed and looked after, most were sickly, so she built some covered 'huts' as they were not allowed inside. I remember her energy to tend her garden and watched it grow to a massive producing work of art. It was beautiful! Working with Nanny in the home garden was a very delicate process. She had her own way of planting, growing, harvesting, and weaving. My main job was to carry or drag the kete (bag) of seeds, or produce to where she pointed. I collected cow pats from the farmer's paddocks, scooped up the chicken droppings from their fenced enclosure, to be used as manure for the garden. Every job was crucial in our survival.

Religious and cultural beliefs

Nanny's whole life was centred around maintaining her Māoritanga and tikanga (traditional practices). This strict adherence caused some difficulties with her own children, who wanted to experience living in the Pakeha world. Others respected her knowledge of tikanga Māori and, I would add, for the way she lived that traditional life. No running water meant we had to carry water containers from the water spring up a steep hill at least 3 times a day. No electricity meant we had to carry the water, heat it on the fire, to bathe; wash the clothes in a cold stream which was down the same steep hill, on a wash board that had been placed across the stream. For the morning wash, the water from last night's bed warmer was used or you washed in cold water.

She lived next to the Marae which she maintained and looked after for the whanau events that brought the hapu (sub-tribe) together – tangihanga (funerals); land hui (meetings); whanau hui; whanau celebrations (weddings, 21st, anniversaries).

Above all I remember Nanny as a very upfront and honest person. She did not tolerate dishonesty in any shape or form and would consistently challenge anyone who was not doing things right. She is well remembered and admired for this trait, but for some, she was feared and avoided. Her whanau had a lot of land taken, by the Pakeha, by the law (te ture), and, by some whanau members who were dishonestly selling land that they did not solely own, to unsuspecting purchasers. This hardened her resolve to being truthful.

As for her religious belief, Māori believed in many gods that watched over all of the elements and resources in their world; and even had a Māori worldview of the creation of life. Nanny believed these gods should be recited in whakapapa oratory in perpetuity, and acknowledged when one is using those resources. She believed in the god of the Anglican Church and sometimes the Presbyterian Church, and had her whangai tamariki (foster children) attend Sunday School while she was in the main service. She read her bible and prayed a lot in the evenings and early morning before the sun rose. On the other hand, my Koro attended the Catholic Church. Why they attended different churches is still a mystery, they never discussed the teachings of their respective Church, and they both stuck to their religious beliefs until death.

Happiness in life

Nanny was most happy when she was in her garden. It was a peaceful place even though she worked tirelessly in it for most of the day. The joy of growing food became a hobby in later years but she still maintained a very large garden. The harvest had to be given away because there was only her and one or two whangai. Thinking about feeding all those hungry mouths over the years, made her smile.

She was a master harakeke (flax) weaver. The hapu had secret plots to collect the harakeke from, and also the dye that was used to color. It was settled that you did not, without permission, collect harakeke from a plot that was not yours, and there was a certain way to cut the harakeke that had to be observed as well. She made many different sized kete (baskets), potae (hats), plates to eat food from, and whariki (mats). She also made piupiu (harakeke skirts) worn by men and woman in Kapahaka (traditional Māori performing arts). The process of weaving was strange and Nanny followed it strictly. She would collect and prepare the harakeke all at once but the actual weaving was left until she had the time necessary to complete the whole weave, which was in the evening by candle light. This had to do with the mauri (life force) of the harakeke that needed to be respected – cutting it away from the harakeke bunch, it needed to be weaved quickly so it would not ‘weep’ or ‘shrivel up’, and so the weaved product showed the essence of the harakeke

Working with her hands spilled over into knitting, darning and sewing. She had one of the old Singer machines that worked by

pushing a lever with your leg, or by moving your feet up and down and she sewed for the whanau

She loved fishing at the river, using live worms as bait and a makeshift rod. I would sleep in the large flour or potato bags while we waited for a bite. It was exciting because when we saw a bright light coming up river, we had to quickly pack up and walk fast away from the light. Later I heard that she did not have a licence to fish and the light was the rangers checking for hinaki (eel traps) or unlicensed fishers.

Finally, the most wonderful time in my life that I remember Nanny was playing cards. She loved to win and naturally so did her whangai. We would play into the night. This is when I would hear her hearty laugh, without reservation, especially when her hand trumped mine with a royal flush; which really nobody ever gets dealt, except for my Nanny.

The many years of caring for and loving her whanau unconditionally gave her a life of purpose and meaning. She was widely known and respected in the Māori world yet she lived a very humble, unpretentious life, and did not have anything of asset value. Instead, she looked forward to the light of day when she could love and care for her whanau all over again. She created and lived an amazing life!

