



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

Legal Capacity, Decision-making and Guardianship: Final Report

Backgrounder #3

Access to Justice and Dispute Resolution

1. What Does the LCO's *Legal Capacity, Decision-making and Guardianship: Final Report* Say About Access to Justice and Dispute Resolution?

Meaningful access to justice and dispute resolution is essential to the proper implementation of capacity, decision-making and guardianship laws. Meaningful access to justice and dispute resolution ensures that individual's rights are respected and that families, service providers and institutions act within the scope of the law.

The LCO heard many concerns about unequal or inadequate access to justice and dispute resolution in this area. The LCO's *Legal Capacity, Decision-making and Guardianship: Final Report* makes several recommendations to reform and improve access to justice and dispute resolution for capacity, decision-making and guardianship laws in Ontario. The LCO's recommendations would:

- Make it easier for individuals to enforce their rights;
- Make it easier to resolve disputes appropriately, quickly, and efficiently;
- Create an expert, specialized tribunal with broader jurisdiction to address a comprehensive range of legal issues that arise in this area of law;
- Promote alternative dispute resolution models; and,
- Promote dispute resolution processes that respect the ongoing relationships at the core of much litigation in this area.

2. What Did The LCO Learn?

Ontario currently has three systems or processes for resolving disputes in this area of law:

- The Public Guardian and Trustee (PGT) conducts “serious adverse effects” investigations in certain circumstances and may seek temporary guardianship where appropriate;
- The Consent and Capacity Board (CCB), an administrative tribunal, has responsibility for addressing assessments of capacity and disputes under the *Health Care Consent Act*; and,
- The Superior Court of Justice considers the appointments of guardians, applications for passing of accounts of guardians and persons acting pursuant to a powers of attorney, disputes related to guardianships and powers of attorney, and appeals from the CCB.

The CCB is unique in Canada, and stakeholders generally appreciated its accessibility, focus on speedy resolution, and capacity for specialization. The LCO learned, however, that the CCB, as a tribunal whose caseload is dominated by mental health issues, is not as well equipped to address other issues related to consent and capacity. The LCO also learned that demographic changes are pressuring the CCB.

The LCO heard many concerns about access to justice for guardianship and power of attorney issues. The Superior Court provides high quality adjudication in these areas, but court processes can be costly, complex and intimidating. The Superior Court is especially difficult for unrepresented litigants.

Finally, the LCO learned that dispute resolution processes for capacity, decision-making and guardianship issues should be responsive, specialized, and holistic. It is also important that dispute resolution processes respect the ongoing relationships at the core of most disputes in this area.

3. The LCO’s Recommendations

Chapter Seven of the LCO’s *Final Report* includes recommendations that:

- The Government of Ontario work towards the creation of a specialized, expert tribunal with broad jurisdiction in this area of the law, and the ability to provide flexible and holistic approaches to disputes;
- The use of alternative dispute resolution approaches be strengthened;
- Supports for litigants be strengthened, including Section 3 and Legal Aid Ontario supports;
- The mandate of the Public Guardian and Trustee be updated to clarify its powers respecting “serious adverse effects” investigations; and,
- HCCA rights enforcement be improved through allowing a broader range of individuals to bring certain applications to the Consent and Capacity Board.

More information about the LCO's *Capacity, Decision-Making and Guardianship: Final Report* is available at <http://www.lco-cdo.org/>.