



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

Legal Capacity, Decision-making and Guardianship: Final Report

Project Backgrounder

Project Purpose

The Law Commission of Ontario's (LCO) *Final Report on Legal Capacity, Decision-making and Guardianship* recommends a comprehensive plan to reform Ontario's laws and policies regarding powers of attorney, guardianship and health care consent.

Ontario's laws for legal capacity, decision-making and guardianship govern how decisions related to property, treatment and personal care are made in situations where individuals' decision-making abilities are in some way impaired, but decisions must nonetheless be made.

These laws have a profound impact on the wellbeing of the individuals addressing both the protection of the autonomy of affected individuals and the risks of abuse and exploitation of individuals who may be vulnerable.

This project responds to public concerns regarding:

- Misuse of powers of attorney;
- Inappropriate interventions in lives of elderly Ontarians and Ontarians with disabilities;
- Complex, lengthy and costly resolution of legal disputes;
- Widespread lack of understanding among individuals, families, health and legal professionals, institutions, community agencies, and others; and,
- Need to update Ontario's laws in light of significant impact of demographic, legal, and social changes since these laws were introduced.

The LCO's report is the most comprehensive analysis of Ontario's framework governing legal capacity, decision-making and guardianship laws in nearly 30 years. Ontario's current legislative

regime for legal capacity, decision-making and guardianship took shape following several provincial reports in the late 1980s – early 1990s.

Key Areas for Reform

The *Final Report's* 58 recommendations include proposals in six broad areas:

- **Improving access to the law**, in particular by greatly streamlining court-based mechanisms under the *Substitute Decisions Act* and promoting greater use of tribunals to reduce cost, complexity and time to resolve issues
- **Promoting understanding of the law** among family members, substitute decision-makers, professionals and service providers, and those whose rights are most immediately impacted by a legal finding or proceeding;
- **Strengthening the rights protected under the *Health Care Consent Act*** by improving the quality of capacity assessments and expanding the provision of rights information to those found incapable;
- **Reducing inappropriate intervention** by providing more options to persons who cannot make decisions independently, and creating more flexible and limited types of substitute decision-making appointments;
- **Increasing accountability and transparency for personal appointments**, so as to address widespread concerns regarding abuse and misuse use of powers of attorney and elder abuse; and,
- **Enabling greater choice of substitute decision-makers**, in response to the needs of the growing number of individuals who prefer families of choice, or who do not have family or close friends who are willing and able to take on this important role.

LCO Process

The *Final Report* was developed through LCO's independent, comprehensive, evidence-based and transparent law reform process. The LCO heard from more than 800 individuals and institutions over the course of this project.

- The LCO's Advisory Group included representatives from government, adjudicative bodies, the legal community, service providers, academics and experts, and several community and advocacy organizations.
- In 2013, the LCO had preliminary consultations with 70+ individuals and institutions;
- The LCO commissioned several expert research papers;
- In 2015, the LCO released a comprehensive *Discussion Paper*;
- In 2015, the LCO conducted extensive public consultations, including 30 focus groups, written submissions, consultation questionnaires, and numerous consultation events with individuals, families, professionals, and community groups;
- In 2016, the LCO released an *Interim Report*, including draft recommendations; and
- In March 2017, the LCO released its *Final Report*.

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