



LAW COMMISSION OF ONTARIO  
COMMISSION DU DROIT DE L'ONTARIO

## LAST STAGES OF LIFE

### ISSUE BACKGROUNDER #7 – SUPPORTS FOR PROFESSIONALS

#### What is the Last Stages of Life Project?

The [Law Commission of Ontario](#) (LCO) is Ontario's leading law reform agency. The goal of our [Improving the Last Stages of Life](#) project is to identify and recommend law reforms in the "last stages of life." This is a broad and inclusive term that allows us to look at rights and legal issues in end-of-life planning, palliative care, medical assistance in dying, and other issues. An important aspect of this is the **supports available for professionals**, the subject of this backgrounder. This backgrounder is one of a [series of consultation documents](#) the LCO has developed for this project.

*This document is a brief overview intended to raise issues and stimulate discussion for the purposes of LCO's consultations. This document should not be relied on as a source of law.*

#### What kinds of supports do professionals need in caring for people in the last stages of life?

The LCO's project examines how work-related challenges can be minimized for two types of professionals that play an essential role in this domain: health care providers and legal professionals. The health care providers we address mainly offer services to patients, SDMs, family and friends, while legal professionals advise these persons as well as health care providers, facilities, government and organizations such as regulatory colleges.

#### What are the support needs of health care providers?

The serious mental and moral stress that health care providers experience when working continuously with persons nearing death was a recurring theme during the LCO's preliminary consultations.

The existing literature confirms that persons working as health care providers experience a higher incidence of stress and "burnout" than employees in other sectors. Specific stressors for palliative care providers include "absorption of negative emotional responses, breaking bad news, challenges to personal beliefs, coping with inability to cure, immersion in emotional clashes, poorly defined roles, recurrent exposure to death, working in an area of uncertainty, patient suffering, and secondary trauma." Nurses and PSWs in long-term care homes also face stressors connected to caring for persons with declining health and dementia, and to their regular exposure to death. At the same time, there is a lack of systemic education and supports for providers' mental wellness.

#### What legislative workplace protections exist for health care providers?

Several pieces of legislation touch on these issues, but are often limited in some way. For example:

- the **Occupational Health and Safety Act** protects employees from health and safety “hazards” in the workplace that could potentially result in harm, but doesn’t specifically include workplace environments that may negatively impact employees’ mental health
- the **Workplace Safety and Insurance Act** was amended in 2016 to better account for the prevalence of post-traumatic stress disorder (PTSD) in first responders, including paramedics and emergency medical attendants. The Workplace Safety and Insurance Board (WSIB) must also now presume that PTSD is work-related, unless the contrary is proven. Still, many health care providers are not covered who might experience workplace distress, such as nurses, social workers and PSWs.
- there may also arise **competing rights** between health care providers and their patients. For instance, a patient of a particular creed may request that care be provided by professional of particular sex or sexual orientation (raising potential discrimination issues), or request that a service provider remove footwear in the home or certain areas of the home (conflicting with health and safety requirements).

## What are the support needs of legal professionals?

When individuals become ill or transition into their older years, they often go to lawyers to assist with drafting a will or POA, or to seek out advice about their rights. Legal professionals are usually advocates: they represent clients in disputes and offer supports to help them navigate through the complexity of Ontario’s health, social and legal systems. In addition to individuals, their clients may be counsel for government, regulatory colleges, health care providers and facilities. Legal professionals may also be educators and adjudicators in administrative tribunals or the courts.

Ambiguities in Ontario’s legal system pose significant problems for them. Without clarity in law, it can be stressful to advise clients with confidence and certainty about their options. Lawyers may also inadvertently perpetuate misinformation in the community as a result.

Across these issues, lawyers have told the LCO they face several issues:

- **Duties to third parties.** The reach of a lawyer’s responsibilities might be revised to include other vulnerable persons when essential health care issues are at stake. Some lawyers questioned whether, for example, a lawyer representing a health care provider treating a patient should have obligations toward the patient, given that the client itself (the health care provider) owes duties to the patient
- **The lawyer’s role in assessing capacity.** Lawyers expressed a need for greater practical guidance on the standard for capacity to instruct counsel and how to conduct such an assessment. Greater guidance was also desired on the practical and ethical issues associated with representing clients who may be legally incapable with respect to treatment.
- **Managing family dynamics.** Capable patients may defer to their family members to make treatment decisions for them. The *Rules of Professional Conduct* advise lawyers on managing conflicts of interest and confidentiality; however, legal professionals expressed a desire for more practical and specific guidance on these issues.

- **Representing children nearing the end-of-life.** The LCO heard that children’s voices can sometimes be subsumed or influenced by that of their parents in the process, and health care providers may not assess a child’s capacity for decision-making and children may not be informed about their rights. Questions about whether to represent a child or involve child protection or other independent counsel are ones that lawyers find hard to answer.
- **Disclosing information regarding medical assistance in dying.** Lawyers identified two potential gaps in confidentiality provisions: rules on lawyers’ conscientious objections and the obligation to provide referrals; and rules that permit lawyers to disclose information if the lawyer believes there is an imminent risk of the client’s death – which could lead to the disclosure of sensitive information to, for example, friends or family members.

## Where can I get more detailed information on this topic?

The LCO’s [Improving the Last Stages of Life Discussion Paper](#) (May 2017) discusses the law and practices around supports for professionals in greater depth. Specifically, see the discussion at chapter 6.F, “Understanding the Experiences of Supporting Professionals.”

## What kinds of questions is the LCO asking?

The LCO’s project is considering the following issues respecting supports for professionals:

- What strategies would be effective to improve health care worker protections, such as improvements incorporated into employment health and safety legislation, into sectoral frameworks such as long-term care homes legislation or the mandate of the local health integration networks, or in Ontario’s developing provincial palliative care strategy?
- How can strategies for addressing the needs of health care providers assist with mental and moral stress?
- Do legal professionals require specific education and guidance on matters relating to the last stages of life, and what form might this best take?

## How can I share my views on this issue?

A fuller examination of these issues is available in our [Executive Summary](#) and [Discussion Paper](#). We’ve also summarized other issues in a [Consultation Issues Map](#) and [Issue Backgrounders](#).

LCO’s formal consultation period runs from May – September 2017. The LCO invites your participation through:

- The project website at <http://www.lco-cdo.org/laststages>
- Written submissions at any time to [lawcommission@lco-cdo.org](mailto:lawcommission@lco-cdo.org)
- Watch live and archived [webcast consultation](#) sessions
- Complete the [consultation survey](#) on your mobile, tablet, or computer
- Propose an in-person focus group for your community

- Contacting Project Research Lawyer Ryan Fritsch through the contact information below

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Written submissions will be accepted until **September 29, 2017**