



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

LAST STAGES OF LIFE

ISSUE BACKGROUNDER #8 – IMPROVING PRACTICE TOOLS

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 **improving the practice tools 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 is the role for practice tools in the last stages of life?

We refer to the various policies, toolkits and forms for informed health care consent and advance care planning that are being used in Ontario care settings as “**practice tools**” because they are used to put the law of consent and advance care planning into practice.

Both in this project and LCO's project on [Legal Capacity, Decision-making and Guardianship](#), the LCO has heard concerns about misunderstandings of the law, and shortcomings in its implementation. In response to implementation challenges, many practice tools have been created to help individuals, SDMs and health care providers implement the existing law consistently and accurately.

The LCO's project seeks to clarify grey areas of the law that are unsettled or contested, such as these. In addition, our project looks at the challenges of effectively implementing the current legislative framework, and what measures could be taken to improve or standardize practice tools.

What kinds of practice tools are being used in Ontario care settings?

During the LCO's background consultations, stakeholders described practice tools as belonging to several groups, including the following:

- **Levels of care forms:** standardized tick-box style forms regularly used on admission to long-term care homes to record preferences for interventions nearing the end of life
- **DNR Confirmation Form:** official form created by the MOHLTC to instruct emergency responders not to resuscitate a person residing in the community, long-term care, or in other settings like retirement homes, when they are called into the situation. This form is limited to use in these specific situations.

- **DNR and No-CPR orders:** recorded in a patient’s hospital chart to document that consent has been given to withhold resuscitation (see below for disputes about legal authority to make these orders).
- **Health care consent and advance care planning policies, guides, forms and kits:** documents that may be available online and used across all care settings, often having a great deal of variation in their format, approach, and legal interpretation
- **Goals of care forms:** forms relating to documenting goals of care that are often used in any form or care setting, including in relation to palliative care.
- **Packaged tools:** usually containing discussion guides, policies, system pathways, and forms on overlapping areas, such as consent and advance care planning, and goals of care.

There is no single practice tool being used for consent and/or advance care planning in Ontario. A study commissioned by the LCO found and reviewed some 100 different sets of forms and policies from different health facilities.

What kinds of issues arise in the use of practice tools?

The widespread use of practice tools demonstrates the intention or desire of health care professionals to improve care and planning, and to achieve patient-centred and legally compliant health care. These can be effective means to obtain and record patients’ consent, and for discussing patients’ wishes, values and beliefs regarding end-of-life care.

At the same time, the LCO heard that, in Ontario, “Do-Not-Resuscitate”, “levels of care,” “goals of care” and other such forms are inconsistent across care settings, often misstate the law, use legal terms incorrectly, and are disregarded by some health care providers. This inconsistency can result in confusion among health care providers, drive inappropriate habits, infringe rights to consent, and create difficulties in carrying out the decisions of individuals.

The LCO also heard that many practice tools used in Ontario are adopted from other jurisdictions but have no basis on Ontario health care consent legislation. Such concepts as “advance directives” may not align or reflect Ontario’s health care consent and decision-making legislation, and encourage a health care provider to overlook their duty to always obtain consent from a capable patient or SDM.

Finally, the LCO heard that while ethicists and health care providers may be asked to review documents or are retained to manage projects to develop tools, lawyers are not regularly retained or included as part of the teams.

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 professional practice tools in greater detail. Specifically, see the discussion at chapter 6.B. See also the expert paper commissioned by the Law Commission for this project, “[Health Care Consent, Advance Care Planning, and Goals of Care Practice Tools: The Challenge to Get it Right.](#)” LCO’s [Issue Backgrounder #1, Consent and Advance Care Planning](#), also raises relevant questions.

What kinds of questions is the LCO asking?

The LCO was asked to consider strategies to address the kinds of concerns outlined above as they impact upon the last stages of life. We are therefore interested in learning more about the following:

- How can practice tools achieve the goal of providing accurate, consistent and meaningful information about consent and advance care planning? Is it desirable or possible to create standardized practice tools across Ontario?
- How can legal information or education about the law be made more relevant, timely, and effective for professionals working in the last stages of life? Should there be a systemic approach that better supports the consistent use of legally compliant terminology, education and enforcement?
- How can practice tools do a better job of educating the public, and obtaining legally compliant consent to health care in the last stages of life?

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
- 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**