



LAW COMMISSION OF ONTARIO  
COMMISSION DU DROIT DE L'ONTARIO

**RESEARCH CONTRACT OPPORTUNITIES**  
**Call for Papers**  
**The Law as it Affects Persons with Disabilities**

The Law Commission of Ontario (LCO) has initiated a project to develop a systematic framework for the law as it affects persons with disabilities. The focus of this Project is not on reform of any one specific issue related to persons with disabilities, although specific case studies and issues will be examined as examples. Rather, this Project aims to develop a coherent approach to this area of the law, which can be used a template, or set of principles, in developing law reform proposals related to persons with disabilities, and in ensuring that new laws take into account the needs and circumstances of such persons.

The Project began with a Preliminary Consultation aimed at considering initial issues arising from the various approaches to, and definitions of, disability. The Preliminary Consultation Paper was released in June 2009. The LCO has also drafted a Background Paper, to be released in January 2010, which provides background to the project and clarifies the scope of the issues the Final Report aims to address. All applicants for the Call for Papers are asked to read the Background Document to provide the context for their proposals. Both papers are available online at [www.lco-cdo.org](http://www.lco-cdo.org).

Based on initial research, the LCO has adopted the following six principles for this project on a preliminary basis:

1. Respect for the dignity and worth of persons with disabilities,
2. Autonomy and independence,
3. Inclusion and participation,
4. Equality and non-discrimination,
5. Recognition that humans vary infinitely along a spectrum of abilities and that society must accommodate these variances into its mainstream, and
6. Respect for the diversity among persons with disabilities and in the experience of disability.

The LCO is now commencing the second stage of the Project, with this Call for Research Proposals. The LCO intends to fund relevant research that explores themes, principles and central issues that frequently arise in law as it affects persons with disabilities, with a view to identifying appropriate application and implications of the principles and various approaches to this complex area of law. Completed papers will be posted on the LCO's website, will form the basis of a Dialogue in early fall 2010 and will be considered in the drafting of the Interim Final Report on a framework for the law as it affects persons with disabilities.

## **I. PAPERS TO BE FUNDED**

### **Objectives**

The LCO has identified some principles and starting approaches to develop the framework for the law as it affects persons with disabilities. The objective of this Call for Papers is to obtain expert input on the meaning and application of principles to such a framework. This Call for Papers also aims to create critical debate about law reform and promote scholarly research in the area of the law as it affects persons with disabilities.

The LCO has identified five papers to deal with the application of the identified principles through the use of case studies (Case Study Papers) and four papers that examine in-depth practical issues of implementation (Implementation Papers).

The LCO is particularly interested in papers that take an intersectional approach, that address the lived experiences of persons with disabilities, that address the diverse experiences of persons across disabilities and that address the experiences of persons with disabilities across their life course. The LCO will select proposals on the various topics with a view to including different theoretical approaches and exploring issues across the various social areas. The LCO takes a holistic approach to law reform and encourages multi-disciplinary research and applications from interdisciplinary research teams. The LCO invites applicants not only with legal backgrounds but also with expertise in other disciplines to make proposals on the topics identified below.

### **General Criteria**

Proposals for both the Case Study and Implementation Papers should consider, as applicable:

1. The impact of the *Charter*, the ICRPD and the *Ontario Human Rights Code*;
2. The application and interaction of the principles of (a) respect for the dignity and worth of persons with disabilities; (b) autonomy and independence; (c) inclusion and participation; (d) equality and non-discrimination; (e) recognition that humans vary infinitely along a spectrum of abilities and that society must accommodate these variances into its mainstream; and (f) respect for the diversity among persons with disabilities and in the experience of disability;
3. Best practices and initiatives in other jurisdictions.

### **Case Study Papers**

These Papers will address a central issue related to the law as it affects persons with disabilities by approaching the issue through the use of a particular case study. The Case Study Papers may be used within several chapters of the LCO's Final Report to provide concrete examples around which the theoretical discussions of various principles may be framed. The focus of these Papers should be on how the principles identified above might be applied in the context of the particular question listed below.

The LCO invites proposals that consider the questions dealing with the following areas:

1. *Evaluation of the Convention on the Rights of Persons with Disabilities (ICRPD) as a Basis for a Canadian Framework*

The ICRPD forms a fundamental international disability rights document and embodies various principles agreed to by the international community. Canadian disability organizations played a central role in participating in negotiations to finalize the ICRPD. Canada has signed the ICRPD and indicated that it will ratify the Convention but has not yet done so. The LCO is considering the benefits and risks of using the ICRPD as a framework in its development of the project.

**What potential benefits are there to using the ICRPD as a framework for developing an approach to the law as it affects persons with disabilities within the Canadian context? What are the risks and downsides of doing so within the Canadian context? Are there gaps that must be addressed?**

2. *Ableism and the Law*

As discussed in the background paper, law, like government policies and programs, may be subtly influenced by ableism. One way in which ableism might manifest through law is that legislation may reflect unwanted stereotypes, attitudes and assumptions about persons with disabilities. Another way in which ableism might manifest is in the form of a neutral law, which may be administered in an ableist fashion. Finally, ableism might manifest in the failure to take persons with disabilities into account, to fail to acknowledge their capacities, needs and contributions or to fail to consider their very existence.

**How has ableism manifested in Ontario's laws affecting persons with disabilities (including concrete examples)? How do we recognize ableism in the law? What would an anti-ableist approach to the law look like? These questions could be examined through the exploration of two or three laws in-depth and by suggesting alternative approaches.**

3. *Diversity within Disability*

The Background Paper highlights the various ways in which diversity manifests within and across the disability community. Although many persons with disabilities experience exclusion and marginalization, their experiences may vary depending on the type of impairment they have and the way in which society is or is not organized to accommodate their impairment. For example, the experiences of an Aboriginal woman with a disability in a remote community might differ in many ways from a similarly impaired man in an urban community. As needs, experiences and circumstances range widely across the disability community, multiple strategies or approaches may be necessary to achieve equality, dignity, inclusion and other objectives. This may pose a challenge for the development of a principled framework. In proposals dealing with the following questions, please consider the various ways in which diversity exists within the disability community and potential intersections with other identities that may compound disadvantage as it relates to your proposed case study.

**How can or should a principled framework take into account the various forms of diversity existing within the disability community? How can the different**

**needs and approaches for achieving equality and access to justice be reconciled in a principled manner?**

#### ***4. Independence and Autonomy***

The principles of independence and autonomy have long been considered central to advancing the rights of persons with disabilities. However, in some cases limiting the choices or enabling others to make choices on behalf of persons with disabilities has been seen as justified in order to achieve other ends, including the safety and security of person with disabilities or of others in society. Some examples include guardianship laws, consent and capacity laws and laws relating to involuntary treatment. Many laws also are put in place in recognition of the particular vulnerability that persons with disabilities might experience due to lack of appropriate supports. On the other hand, human rights case law has recognized that persons with disabilities should be entitled to assume a health and safety risk in appropriate circumstances in order to participate in society or access particular opportunities. The principles of independence and autonomy, including the idea of dignity of risk, may conflict with the argument that there are legitimate circumstances when law should intervene to enable others to make choices for or limit the choices of persons with disabilities.

**Considering the importance of independence and autonomy, the history of paternalism as well as the real vulnerability that some persons with disabilities experience as a result of lack of appropriate social supports and marginalization, what principles and considerations should be applied when considering placing limitations on the ability of persons with disabilities to make their own choices?**

#### ***5. Equality***

One approach to achieving equality for persons with disabilities is to collapse the notion of disability so that there is an explicit recognition of the infinite human variation in capacities and abilities. This approach removes the dichotomy between ability and disability. In this view, disability is actually the “norm” and a matter of degree. One outcome of this approach is a focus on universal design as a means of including and accommodating difference and an emphasis on the benefits to all citizens of design elements that benefit “persons with disabilities”. On the other hand, it has been pointed out that this approach may risk a reduction in the supports available for persons with disabilities with the greatest needs. Further, some argue that it may be necessary to focus resources and programs on certain segments of the population in order to ensure that those with the greatest needs are supported and resources are allocated in the most effective manner. This debate has implications for how policies, programs and laws are designed and implemented.

**Consider the benefits, limitations and risks of adopting this approach in order to achieving equality for persons with disabilities in laws and policies. What are the practical implications of such an approach? Are there particular circumstances or social areas where a universalizing approach may or may not be appropriate?**

## **Implementation Papers**

The Implementation Papers focus on the practical challenges of implementing laws, policies and programs that both respect the principles and are effective yet practicable. They are centered on the particular issues raised with respect to Ontario's current framework for the law as it affects persons with disabilities. These Papers will also inform the development of principles, approaches and best practices in the LCO's project. The theoretical framework of these Papers may be developed in the context of particular disability-related programs or policies.

### **1. Rights to Supports**

There is a link between lack of supports and economic resources and the lower socio-economic status and participation of persons with disabilities. In order to achieve equality, some have argued that rights to economic and social supports for persons with disabilities need to be recognized within Canadian law. The legal landscape is complex with respect to legal recognition of rights to economic and social support in Canadian law. The Supreme Court of Canada has not ruled out the possibility that section 7 of the *Charter* might be interpreted to include rights to material assistance and support but it has yet to definitively affirm such rights. The question of whether and how legal rights to economic and social supports for persons with disabilities can be articulated in a Canadian context is central to determining a path towards equality for persons with disabilities. In light of the principles set out in the Background Paper, please consider the following question:

**Considering the international context, the Canadian jurisprudence on equality rights and the current legal framework for persons with disabilities in Ontario, what are the obstacles and potential pathways to establishing secure access for persons with disabilities to necessary disability-related supports?**

### **2. Eligibility Criteria**

As the Background Paper outlines, eligibility criteria to access disability-related supports are often contested and processes to determine eligibility can often be experienced by persons with disabilities as demeaning. Further, the determination of eligibility is often left in the hands of specialists who hold considerable power over persons with disabilities in determining whether they can access programs or benefits. With this in mind, please consider the following question:

**Who has access to disability-related supports in Ontario and who is excluded? What is a principled basis for determining who should receive supports? What is a dignified approach to adjudicating eligibility criteria?**

### **3. Evaluation of laws**

After laws and policies are enacted, generally there are few evaluation mechanisms put in place to determine whether the laws are actually working in practice. With respect to laws that affect persons with disabilities, effective monitoring mechanisms are necessary to evaluate whether measures put in place have in fact improved access to supports and benefits and furthered participation within society. The

current evaluation of the AODA is one example of an evaluation scheme that is being developed.

**How do we evaluate the effectiveness of programs and policies intended to benefit persons with disabilities? What does an evaluation framework based on the identified principles look like?**

4. *Access and Enforcement mechanisms*

Persons with disabilities may face a range of barriers to accessing and enforcing their legal rights, including physical, financial, informational and attitudinal barriers. It is important to consider not only how persons with disabilities can be better supported in accessing current systems but also how compliance mechanisms could be better designed to facilitate access for this group.

**What types of enforcement mechanisms will maximize access to the law for persons with disabilities? What roles should proactive and advocacy systems play in the development of enforcement mechanisms? What role should complaints-based systems play? What principles and approaches should be taken into account in designing an enforcement mechanism for a law and policy?**

## **II. SUBMISSION PROCESS**

### **Selection Criteria**

Proposal will be evaluated on the degree to which they:

1. Further the objectives of this Call for Papers;
2. Are coherent with the mission of the LCO;
3. Demonstrate professional qualifications and expertise in the area to be studied;
4. Demonstrate a sound analytic framework and research methodology.

### **Format of Proposals**

Research proposals submitted to the LCO must contain the following materials:

1. A statement outlining the proposed research, how the research would support the objectives of the Project as outlined in this Call for Proposals and the Background Document, and the scope and the type of work envisioned;
2. A workplan that outlines:
  - the proposed research methodology;
  - the steps required to complete the assignment on the dates listed above;
  - an estimate of the resources required to complete the assignment.
3. A cover letter detailing the applicant's qualifications and the reasons why the applicant is interested in undertaking this research;
4. A Curriculum Vitae for each principal researcher.

Incomplete proposals may not be considered.

### **Proposal Deadlines**

Research proposals must be submitted by midnight on **Friday, February 12, 2010**. Proposal received after this date will not be considered. Authors of successful proposals will be notified by **Friday, February 26, 2010**.

### **Contact Information**

Please forward your proposals to:

#### Mail

Lauren Bates  
Staff Lawyer  
Law Commission of Ontario  
276 York Lanes, York University,  
4700 Keele St., Toronto, ON M3J 1P3

#### Fax

(416) 650-8418

#### E-mail

LawCommission@lco-cdo.org

Questions should be addressed to Lauren Bates, Staff Lawyer, at LBates@lco-cdo.org or (416) 650-8100.

### **III. TERMS OF THE CALL FOR PAPERS**

The Terms of the Call will be as follows:

#### **Budget Guidelines**

The selected Applicants for the Case Study Papers will be paid a total of \$10,000 (including GST) for the paper when completed in accordance with the agreement as determined by the LCO. The selected Applicants for the Implementation Papers will be a total of \$15,000 (including GST) for the paper when completed in accordance with the agreement as determined by the LCO.

#### **Deliverables and Timetable**

Applicants who are successful in contracting to provide a research paper set out above will be required to complete a Detailed Outline, an Interim Final Research Paper and a Final Research Paper (the "Deliverables"). The Interim Final Paper must be a substantially complete version of the Final Research Paper and subject only to slight revisions. The Interim Final Paper must be formatted and footnoted in accordance with the LCO's formatting policy. The Interim Final Research Paper and the Final Research Paper must assess and analyze all of the issues described in Part I – "Papers to be Funded".

A selected applicant must provide the LCO with the Deliverables in accordance with the agreement by these dates:

<b>Date Due</b>	<b>Deliverables that the Researcher Must Provide</b>	<b>Case Study Papers</b>	<b>Implementation Papers</b>
April 16, 2010	Detailed Outline	\$2,500	\$3,750
May 28, 2010	Interim Final Research Paper	\$3,500	\$5,250
June 30, 2010	Final Paper	\$4,000	\$6,000

Compliance with the above due dates is of critical importance to the LCO. In the event that a due date is not met, the LCO may choose to terminate the agreement. Where the agreement is terminated, the LCO is not obligated to provide payment for any Deliverable that has not been provided to the LCO at the time of termination.

### **Copyright**

Contract researchers are expected to assign copyright to the LCO, but will retain moral rights to their work. Contract researchers will be given credit for their work when the LCO publishes materials resulting from their work in any format. Contract researchers may write separate materials, such as articles, arising out of their research for the LCO, with acknowledgement that the work was originally carried out for the LCO. Applicants are encouraged to review the LCO's *Policy on Copyright & Attribution*, available on the LCO website.