



LAW COMMISSION OF ONTARIO  
COMMISSION DU DROIT DE L'ONTARIO

## The Law as it Affects Persons with Disabilities - Background

**Persons with Disabilities:** Persons with disabilities make up a very significant proportion of the Canadian population – 14.3 per cent, according to 2006 Statistics Canada figures - and the number and proportion of Canadians with disabilities has been steadily increasing in recent years.

Persons with disabilities continue to experience significant and wide-ranging disadvantage when compared to their non-disabled peers. For example:

- Persons with disabilities experience barriers in obtaining education that may result in compromised educational attainment. In a Statistics Canada survey, approximately one-quarter of Ontario parents of children with a disability indicated that their children were not receiving the necessary special education supports. Parents of children with unmet accommodation needs were significantly more likely to report that their child was struggling academically.
- They are less likely to be employed, and when employed, are likely to earn less and to be employed in precarious work. 2006 data indicated that 51 per cent of Canadians with disabilities were employed at the time of the survey, as compared to 75 per cent of their non-disabled peers. Persons with disabilities were also more likely to be employed in part-time or precarious work.
- Overall, persons with disabilities are significantly more likely to live with a low-income. The average income for an Ontarian with a disability in 2006 was \$25,304, as compared to \$38,358 for an Ontarian without a disability.
- Persons with disabilities are also significantly more likely to be the victims of violent crime and domestic violence.

**Disability and the Law:** There is a complex and extensive network of laws relating to persons with disabilities. These include laws, such as the Ontario *Human Rights Code* and the *Accessibility for Ontarians with Disabilities Act*, that are intended to promote equality and participation for persons with disabilities. There are also laws that restrict the activities of persons with disabilities, such as those governing decision-making and participation by persons who are found to lack legal capacity. Finally, there is a complicated web of laws providing various types of supports to persons with disabilities, including laws related to special education, social assistance, disabled parking permits, services for persons with developmental disabilities and tax reductions for assistive devices.

**Approaches to Disability:** There is an ongoing division in approaches to disability issues. Some see disability as primarily a matter of physical, mental, sensory or intellectual impairments which have the effect of excluding persons with disabilities from important social roles and obligations, leaving them dependent on family members and society. Others see disability as resulting primarily from social, legal, attitudinal and physical barriers which prevent persons with disabilities from fully participating in society.

**The LCO's Project:** The intent of this Project is to develop a coherent approach to this area of the law. It will not focus on reform of any one specific issue; rather, its purpose is to develop a principled analytical framework for this area of the law that can be used as a tool for shaping legislative initiatives that affect persons with disabilities or reforming current law. Current laws, policies and programs may be used as examples in developing and illustrating the framework.

**This Consultation:** This Consultation marks the first step in this Project, and will assist in defining the scope of the Project. In order to understand the law as it affects persons with disabilities, it is essential to first understand what is meant by the term "person with a disability". This is by no means as simple a question as it may appear. The answer has varied over time in the popular understanding, as well as among scholars, advocates and policy makers. The legal frameworks currently applied in Ontario with respect to disability adopt a multiplicity of approaches and definitions.

The answer is important, however, as it determines whose needs are recognized and addressed. Legislative definitions of disability frequently serve to determine entitlement to government benefits and programs, and access to rights. As well, the answer we give to this question reflects how we think about the issues associated with disability, and will shape the types of programs and policy responses to disability that are considered appropriate.

**Next Steps:** The LCO is currently preparing a second comprehensive Discussion Paper which is slated for release in the early fall of 2009. The Discussion Paper will provide an overview and analysis of the current framework for disability law and will identify principles that might be applied to analyze the effectiveness and appropriateness of the current framework. It will raise key questions for consideration related to the development of a principled approach to the law as it affects persons with disabilities.

The Discussion Paper will provide the basis for broad public consultation during the fall of 2009 and the winter of 2010. The LCO expects to release its final report on this Project in late 2010.

**Share Your Thoughts With Us:** The LCO welcomes questions or comments with respect to this Paper or the Project. Comments may be posted online at our website at <http://projects.lco-cdo.org/disabilitiesconsultation/>. Questions and comments may also be shared through mail, fax, e-mail, or telephone, as outlined below. The deadline for comments is **Friday, August 28, 2009**.

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