LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

LEGAL CAPACITY, DECISION-MAKING AND GUARDIANSHIP

SUMMARY OF ISSUES FOR CONSULTATION

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A. The Law Commission of Ontario's Project on Legal Capacity, Decision-Making and Guardianship

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER,* CH I

Background

The Law Commission of Ontario (LCO) has undertaken a project to examine and recommend reforms to Ontario's legal capacity, decision-making and guardianship laws, and in particular the *Substitute Decisions Act* (SDA) and the *Health Care Consent Act* (HCCA).

In doing so, the LCO will apply the principles and considerations identified in its *Framework for the Law as It Affects Older Adults* and *Framework for the Law as it Affects Persons with Disabilities.* These are available on the LCO's website at http://www.lco-cdo.org/en/older-adults-final-report-framework and http://www.lco-cdo.org/en/disabilities-final-report.

This *Summary of Consultation Issues* is part of the LCO's broad public consultations aimed at identifying reforms to this area of the law that will advance equality for older adults and persons with disabilities, and that will be practical and implementable. It is important for the LCO to hear from all those affected by this area of the law, including experts, government, service providers, advocates, individuals and families. This *Summary of Consultation Issues* is accompanied by a thorough *Discussion Paper*, which reviews the current state of the law, examines issues and identifies some options for reform. Those seeking more information about the issues and options raised in this *Summary of Consultation Issues* are encouraged to refer to that document. Through these consultations, the LCO will develop an *Interim Report* containing draft recommendations for changes to the law, policy and practice in this area. This will be circulated for comment prior to the development of a *Final Report.*

Issues

This *Summary of Consultation Issues* and the *Discussion Paper* were developed through extensive preliminary consultations and research. Through this process, the LCO identified six key issues:

1. **"Legal capacity":** This concept is fundamental to this area of the law, and the project will consider how the standard for legal capacity should be defined and assessed.
2. **Alternatives to substitute decision-making:** Currently, where individuals are found to lack legal capacity to make a particular type of decision, those decisions are made by "substitute decision-makers". The project will consider whether other approaches, such as co-decision-making or supported-decision-making should be formally included in legislation, and if so, what approaches should be adopted, and how they should be structured in the legislation.
3. **Processes for appointment and termination of substitute decision-makers:** The project will consider whether the processes through which substitute decision-makers (or potentially

supporters or co-decision-makers) are appointed or terminated can be made more efficient, accessible, transparent or accountable.

4. **Roles and responsibilities of those acting for persons who require assistance with decision-making:** The project will re-examine the roles and responsibilities of those who act for those who require assistance with decision-making, such as guardians and those acting under powers of attorney, as well as the scope of individuals or organizations who should be able to take on these roles and responsibilities.
5. **Addressing abuse:** The project will consider improvements in law, policy and practice to prevent, identify and address abuse or inappropriate activity by substitute decision-makers, or potentially supporters or co-decision-makers (however appointed), as well as misuse of the law by third-party service providers.
6. **Dispute resolution and rights enforcement:** The project will examine potential improvements to dispute resolution and rights enforcement for this area of the law.

Please share your thoughts on any or all of these questions:

1. **Within the identified scope of this Project, are there additional issues or themes that should be considered?**

2. **What constraints and opportunities should the LCO be aware of to ensure that law reform proposals in this area will be practical and implementable?**

B. The Context for Reform of Ontario's Legal Capacity, Decision-Making and Guardianship Laws

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER,* PART ONE, CH I

Background

The SDA and HCCA are the result of extensive and thorough law reform efforts in the late 1980s and early 1990s. These reforms marked a profound shift in this area of the law. While many of the fundamental underpinnings of the current law remain sound, there are concerns that implementation of the SDA and HCCA has been flawed in some key areas, so that the law has never achieved its full intended effect. As well, there have been some significant changes since the reforms, including demographic shifts and a deeper understanding of the rights of persons with disabilities and older adults. This is therefore an appropriate time to re-evaluate the SDA and HCCA.

Issues

The SDA and HCCA touch on many areas of life, including finances and the management of property, decisions about where to live, treatment decisions and others. A very wide range of individuals are affected or potentially affected by the SDA and HCCA, including older persons who develop dementia or other cognitive disabilities as they age, persons with mental health disabilities, those living with acquired brain injuries, persons with intellectual or developmental disabilities, and those for whom acute illness temporarily affects their ability to make decisions. Thus there is considerable diversity in how individuals experience this area of the law, and in the needs and aspirations that they bring to it. A key challenge for the law is to meaningfully address this diversity of needs and circumstances.

The SDA and HCCA have been seen as performing a number of important roles, including:

1. Facilitating, where necessary, decision-making for persons who have been determined to lack legal capacity;
2. Preventing undue interference in the lives and decisions of persons who have legal capacity;
3. Recognizing and promoting the role of supportive family and friends in the lives of persons who have been determined to lack legal capacity, as well as providing last resort decision-making assistance for those who do not have supportive family or friends;
4. Supporting individuals in planning for the possibility that they may need assistance with decision-making at some point in the future;
5. Providing safeguards against abuse of persons who require assistance with decision-making;
6. Providing rules and principles for substitute decision-making that are clear and that promote both the autonomy and the basic security of persons who have been determined to lack legal capacity;
7. Ensuring basic procedural protections for persons whose legal capacity is in question or has been determined to be lacking.

It will be important to this project to consider, in light of current needs and approaches, what the core purpose or purposes of this area of the law should be.

Commentators have identified a number of principles that underlie or should underlie the purposes of the law, including the promotion of autonomy and independence; respect for dignity and worth; recognition of a right to basic safety and security; and promotion of participation and inclusion in the broader community. These are in keeping with the principles identified in the LCO's *Framework* projects. In developing and interpreting this area of the law, consideration should be given to such

fundamental legal documents as the *Charter of Rights and Freedoms*, the *Convention on the Rights of Persons with Disabilities* (CRPD), the Ontario *Human Rights Code*, and the *Accessibility for Ontarians with Disabilities Act* (AODA).

The SDA and HCCA must be understood as part of a larger web of laws affecting persons with disabilities and older adults, including the *Mental Health Act* (MHA), income support laws, laws relating to social supports, privacy laws and others. There are complex relationships between these laws, and some have suggested that these could be better coordinated.

Please share your thoughts on any or all of these questions:

1. **What should be the primary purpose or purposes of this area of the law?**

2. **What do the principles and commitments found in the CRPD, *Charter*, *Human Rights Code* and AODA tell us about the key elements of reforms to Ontario's legal capacity, decision-making and guardianship laws? How might they affect the interpretation and application of these laws?**

3. **Are there specific reforms to the SDA or HCCA that would support better coordination with other laws, such as the *Mental Health Act,* privacy laws, income or social support laws, or others?**

4. **How does the experience of this area of the law differ depending on gender, sexual orientation, gender identity, racialization, immigration status, Aboriginal identity, family or marital status, place of residence, geographic location, language, various forms of disability, or other forms of diversity? What reforms to the law in this area are needed to ensure that it takes into account the characteristics of affected older persons and persons with disabilities?**

5. **What do the *Framework* principles tell us about designing effective reform for this area of the law?**

II. LEGAL CAPACITY

A. "Legal Capacity": Setting the Standard

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER,* PART TWO CH I

Background

The concept of "legal capacity" underlies this entire area of the law, and is both complex and contested. Under the SDA and HCCA, where a decision must be made and an individual lacks "legal capacity" to make that decision, a substitute decision-maker is appointed to do so. This means that concepts of legal capacity are closely connected to concerns about autonomy, personhood and security, in that it is tied to the ability to make independent decisions and take responsibility for their consequences.

Ontario has adopted a functional and "cognitive" approach to legal capacity, meaning that capacity is determined by an individual's ability to "understand and appreciate" the information relevant to the decision. Legal capacity does not depend on an individual's medical status or on the wisdom of her or his decisions. The SDA and HCCA set out specifically what information an individual must understand and appreciate in order to have capacity to make different decisions, such as decisions about admission to long-term care, to make decisions about health care treatments, or to make a power of attorney for property, for example. This means that tests for legal capacity are specific to their particular "domain" or issue.

Issues

Some have raised concerns that Ontario's approach to legal capacity is poorly understood and inadequately applied in practice. The multiplicity of specific tests for legal capacity may contribute to confusion around the application of the concept.

As well, because Ontario's approach to legal capacity draws a clear line between those who have legal capacity and those who do not, it has some difficulty in adequately accommodating individuals who fall into the "grey zone" or whose decision-making abilities fluctuate. There are also concerns that in practice the test may be difficult to apply, so that assessment may improperly consider *actual* understanding and appreciation of the information rather than the *ability* to understand and appreciate, or that an assessment of the appreciation of consequences may collapse into an assessment of the wisdom of a decision.

Some raise a more fundamental critique that this cognitive approach to legal capacity is incompatible with the human rights of persons with disabilities, in that the right to make decisions should not be restricted on the basis of capabilities associated with some types of disabilities. Persons with disabilities that affect their ability to "understand and appreciate" can still make decisions, it is argued, through supports offered through close and trusting relationships. These critics advance as an alternative to cognitive tests for legal capacity an approach that is based on the individual's ability to manifest "will and intention" to others who know him or her well.

Please share your thoughts on any or all of these questions:

1. **What are the most important implications of the *Framework* principles for approaches to and standards for legal capacity in Ontario law?**

2. **Are there specific ways in which the current "ability to understand and appreciate" test for legal capacity should be clarified in order to improve its implementation? Or are there other means through which practical guidance on its application could be provided? Are there specific ways in which the legislative test should be amended to better reflect the social and contextual aspects of legal capacity?**

3. **Should a test for legal capacity based on "will and intention" of the individual be adopted for some or all aspects of Ontario's decision-making and guardianship laws? If so, in what circumstances would such a test be appropriate, and how would this standard for capacity be assessed?**

B. Systems for Assessing Legal Capacity

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER*, PART TWO CH II

Background

In keeping with its domain-specific approach to legal capacity, Ontario has several systems for assessing the legal capacity to make particular types of decisions. These differ in terms of who carries out the assessment, the procedural rights of individuals being assessed, information and supports available to those assessed, the costs for assessment and the consequences of a finding of incapacity. The five mechanisms are:

1. Examination by treating physician of capacity to manage property upon admission to and discharge from a psychiatric facility *(*MHA);
2. Assessment by specialized capacity assessor of capacity to manage property or personal care (SDA);
3. Evaluation by health practitioner of capacity to consent to treatment (HCCA);
4. Evaluation by capacity evaluator of capacity to consent to admission to long-term care and of capacity to consent to personal assistive services (HCCA);
5. Assessment of capacity to create a power of attorney for property or personal care (SDA).

Issues

In responding to their particular contexts, each of the capacity assessment systems strikes a different balance in terms of levels of formality, procedural protections and accessibility. There are specific issues with each of the systems. For example, while capacity assessment for property and personal care under the SDA are performed by specialized individuals who must meet standards for training and carrying out the assessment, they are relatively costly, which may pose barriers to accessibility and to reassessment. There are particular concerns about evaluations of capacity to consent to admission to long-term care: while the consequences of such a determination may be dramatic, the procedural protections are relatively minimal compared to those for some other forms of assessment and the standards for capacity evaluators are not as rigorous as for capacity assessors.

While the multiple systems allow for responsiveness to specific contexts, they also create confusion and complexity, both for professionals and for individuals attempting to navigate the system. Particular concerns have been raised regarding the relationship between examination for capacity to manage property under the MHA and assessments for capacity to manage property under the SDA. There are also concerns about the level of information and supports available to individuals and families who are affected by assessments of capacity: without adequate information and supports, these people may be unable to access the services that they need, or to access and enforce their fundamental rights.

Levels of training, standards and oversight for those assessing capacity vary considerably between systems, with that for capacity assessors under the SDA being the most rigorous and thorough. There are general concerns about the level of expertise and monitoring of those who assess capacity, with commentators pointing to pervasive misunderstandings of the nature of and test for legal capacity, inadequate implementation of existing procedural protections, a lack of clear

standards for assessing capacity and inadequate mechanisms for monitoring and overseeing the quality of the assessments that are carried out.

As well, some current mechanisms may not adequately address the fluctuating nature of legal capacity in some populations. This is particularly a concern for assessments of capacity to manage property or personal care under the SDA, which lead to long-term consequences for those assessed through this mechanism.

Please share your thoughts on any or all of these questions:

1. **How does the experience of capacity assessment differ depending on gender, sexual orientation, racialization, language, culture, socio-economic status, Aboriginal status, geographic location, various forms of disability or other forms of diversity?**

2. **For each of Ontario's mechanisms for assessing capacity, does it strike the appropriate balance between formality, procedural protections, accessibility and efficiency?**

3. **Who should carry out the various types of capacity assessments required? What type of training and education should they receive? How should this training be delivered?**

4. **Is there sufficient monitoring and oversight of the various types of capacity assessments in Ontario? If not, what are specific suggestions for how the various capacity assessment mechanisms could be improved in this respect?**

5. **Are standards for the assessment of capacity under the various mechanisms sufficiently clear, consistent and stringent? If not, what are specific suggestions for how they might be improved?**

6. **Would Ontario benefit from greater harmonization, coordination or simplification of its various capacity assessment mechanisms? If so, what are specific suggestions for how this might be achieved?**

7. **Do Ontario's capacity assessment mechanisms deal adequately with fluctuating levels of capacity? If not, what are specific suggestions for how they might be improved in this respect?**

8. **Are there barriers to accessing Ontario's capacity assessment mechanisms? If so, what are specific suggestions for how they can be made more accessible?**

III. DECISION-MAKING

A. New Decision-Making Arrangements: Supporters and Co-Decision-Makers

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER*, PART THREE CH I

Background

As is described above, currently in Ontario, where an individual is found to have insufficient ability to "understand and appreciate" the information relevant to a particular decision or type of decision and a decision must be made, a substitute will be appointed to make that decision or kind of decision on behalf of that individual.

With the ratification of the *Convention on the Rights of Persons with Disabilities* and with deepening understandings of the experiences and aspirations of persons with disabilities, there has been a call to move away from paternalistic and best interests approaches to decision-making, toward a fuller recognition of the equality of persons with disabilities and the provision of supports to allow persons who require assistance with decision-making to receive that assistance without the loss of legal capacity. This calls for fundamental shifts in approaches and novel legal structures, and therefore raises significant practical questions.

The term "supported decision-making" refers to a range of models. At its base, this approach is founded on the view that as social creatures, we all naturally make decisions in support or dialogue with those whom we trust, and that these decision-making supports for individuals with disabilities should be recognized in a way that legally affirms that the ultimate decision remains with the individual him or herself and avoids removing legal capacity from these individuals. That is, the role of "supporters" is to assist individuals in making decisions, but the ultimate decision (and responsibility for that decision) rests with the individual. Another approach is "co-decision-making", which mandates joint decision-making between an individual and an appointed co-decision-maker. Decisions made by the individual alone, without the co-decision-maker, are not legally valid.

Issues

While several jurisdictions have included some form of supported decision-making in their capacity and guardianship legislation, it remains a relatively novel approach. There is no generally agreed-upon approach to its practical implementation, and there is little research on its effectiveness in practice. Critics have emphasized concerns about the potential for abuse and exploitation: since the supported individuals retain legal responsibility for decisions that are made and of course also retain the right to make bad and risky decisions for themselves, it may be difficult to effectively hold to account supporters who manipulate individuals to their own benefit. As well, third parties have raised concerns about their responsibilities when interacting with individuals in supported decision-making arrangements, emphasizing the importance of clarity and certainty.

With respect to co-decision-making, there are concerns about the unavoidable legal complexity of such arrangements. As well, because the individual in a co-decision-making arrangement must

obtain the agreement of the appointee, the relationship is inherently unequal and may have a tendency to collapse into substitute decision-making.

Please share your thoughts on any or all of these questions:

1. **What are the advantages and risks of formalizing supported decision-making in Ontario law?**

2. **If formal supported decision-making is incorporated into Ontario law:**
   a) **To whom should it apply?**
   b) **What should be the test for capacity to be part of such an arrangement or to end it?**
   c) **Should this type of decision-making be available for all types of decisions or only for some?**
   d) **Should these arrangements be a presumed default arrangement, as opposed to substitute decision-making arrangements? If so, in what circumstances?**
   e) **Should appointments and terminations of these arrangements be personal (like a power of attorney) or public (like the appointment of a guardian)? What should the appointment and termination processes require?**
   f) **Who should be able to act as a supporter?**
   g) **What should be the responsibilities of supporters?**
   h) **What type of monitoring and oversight mechanisms should operate for these decision-making arrangements?**
   i) **What other mechanisms should be incorporated to guard against abuse through these decision-making arrangements?**
   j) **What should be the obligations of third parties with respect to these arrangements? What legal protections should be in place for third parties when transacting with persons who are in such arrangements?**

3. **What are the advantages and risks of formalizing co-decision-making in Ontario law?**

4. **If co-decision-making is incorporated into Ontario law:**
   a) **To whom should it apply?**
   b) **What should be the test for capacity to be part of such an arrangement or to end it?**
   c) **Should this type of decision-making be available for all types of decisions or only for some?**
   d) **Should these arrangements be a presumed default arrangement, as opposed to substitute decision-making arrangements? If so, in what circumstances?**
   e) **Should appointments and terminations of these arrangements be personal (like a power of attorney) or public (like the appointment of a guardian)? What should the appointment and termination processes require?**
   f) **Who should be able to act as a co-decision-maker?**
   g) **What should be the responsibilities of supporters?**
   h) **What type of monitoring and oversight mechanisms should operate for these decision-making arrangements?**
   i) **What other mechanisms should be incorporated to guard against abuse through these decision-making arrangements?**
   j) **What should be the obligations of third parties with respect to these arrangements? What legal protections should be in place for third parties when transacting with persons who are in such arrangements?**

B. Who May Act in a Substitute Decision-Making Role

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER*, PART THREE CH II

Background

The role of a substitute decision-maker is very demanding one, involving high levels of responsibility and demanding significant skills and dedication. Its proper exercise is crucial to the rights and wellbeing of those for whom the substitute decision-maker acts. Beyond very minimal requirements, persons creating a power of attorney have the freedom to choose whom they like to act as an attorney for property management or personal care. Similarly, "any person" may apply to the Superior Court of Justice to be appointed as a guardian for personal care or for property. In practice, however, the roles of guardian or attorney are most frequently filled by family members or close personal friends, reflecting the intimate and demanding nature of the role. In a similar vein, the HCCA creates a hierarchical list of potential substitutes, which prioritizes family members where no guardianship, power of attorney or appointed representative exists.

Under both the SDA and HCCA, where there is no individual who is willing and able to act as a substitute decision-maker, the Public Guardian and Trustee (PGT) will do so. For court-appointed guardianships, powers of attorney, and decisions under the HCCA, the PGT is decision-maker of last resort. For statutory guardianships for property, the PGT is automatically appointed as decision-maker upon certification of a lack of capacity to manage property unless a valid attorney or guardian is already in place. There is a relatively simple and low-cost process by which family members can apply to replace the PGT as statutory guardians of property.

Issues

As a result of changes in economics, family structures and demographics, a growing number of individuals who require assistance with decision-making have no one whom they trust and who is close to them who is also willing and able to act in this role. While the PGT has a statutory role to act as a substitute decision-maker in these circumstances, the PGT cannot of course reproduce the type of intimate personal relationship that is often thought of as an ideal foundation for this role; as well, some are uncomfortable with "the government" playing such a role. Some other jurisdictions provide a broader range of options for who may act for those who require assistance with decision-making.

- Some jurisdictions provide an extensive role for "professional guardians" or "professional fiduciaries" who provide for-profit professional services, generally on a consumer choice basis, with varying levels of requirements for licensing, training and oversight.
- In some jurisdictions, community organizations have an important role, either in directly providing decision-making services and supports, or in recruiting, training and overseeing individuals who fill this role.
- Volunteers have been used to varying degrees to provide supports and decision-making services for those who have no family or close friends to do so.
- Personal support networks, which are already playing important roles in the lives of persons with disabilities, may be in a position to play a more significant role in this area of the law.

As well, as issues related to the range of individuals and organizations that may act for those who need assistance with decision-making, questions have been raised as to how we can better support all individuals who perform this challenging role.

Please share your thoughts on any or all of these questions:

1. **Should Ontario expand the role that specialized professionals may play in acting for persons who have been determined to lack legal capacity for a particular type of decision? If so:**
    a) **For what types of decisions should these professionals be authorized to act?**
    b) **What types of training, licensing or educational requirements should be required of these professionals?**
    c) **What types of oversight and monitoring should be put in place for these professionals? Who should carry out this oversight and monitoring?**
    d) **What should be the responsibilities and liability of these professionals?**
    e) **What additional measures should be put in place to prevent, identify and address neglect, misuse or abuse by these professionals?**

2. **Should Ontario expand the role that volunteers or other community members may play in acting for persons who have been determined to lack legal capacity for a particular type of decision? If so:**
    a) **For what types of decisions and in what types of circumstances should these individuals be authorized to act?**
    b) **Who should be responsible for recruiting, selecting and overseeing these individuals?**
    c) **What types of training or supports should be provided to these individuals?**
    d) **What types of oversight and monitoring should be put in place? Who should carry out this oversight and monitoring?**
    e) **What should be the responsibilities and liability of these individuals?**
    f) **What additional measures should be put in place to prevent, identify and address neglect, misuse or abuse by these professionals?**

3. **What role might community organizations play for individuals who have been determined to lack legal capacity for a particular type of decision? If community agencies were to act as substitute decision-makers, what lessons could be learned from the experiences with informal trusteeships, or with the use of community agencies in this role in other jurisdictions?**

4. **What role might personal support networks play in a reformed Ontario capacity, decision-making and guardianship system? How might this role be formalized in law?**

5. **Where family or friends are acting for a person who has been determined to lack capacity to make a particular decision, are there supports that would enable them to more effectively fulfil this role?**

6. **Are reforms required to strengthen oversight and monitoring of the role of the Public Guardian and Trustee as substitute decision-maker? If so, what specific reforms would be most appropriate and effective?**

C. Appointment and Exit Processes for Substitute Decision-makers

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER*, PART THREE CH III

Background

The processes for appointment of substitute decision-makers must balance a number of goals, including accessibility, efficiency, flexibility, transparency and accountability, and provision of choice to the affected individual. In Ontario, substitute decision-makers may be appointed in three ways:

1. **Personal appointments through a power of attorney (POA) for property management or personal care:** These are extremely powerful legal instruments, which allow the person acting as attorney to do almost anything that the grantor could do, including buying or selling property, cashing out investments, or making decisions about living arrangements. POAs are a flexible and accessible means of appointing a substitute, and allow the grantor to plan ahead and to choose their own substitute. Their powerful nature gives their holders considerable control over the well-being of the grantors, whether for good or for ill. Ontario has designed the requirements for creating a POA in a manner intended to promote their accessibility. While the capacity required to create a POA for property is quite high, that required for a POA for personal care is very low. There is no required form for a POA, although the Ministry of the Attorney General has created a form which is available on its website. Legal assistance is not required.

2. **Automatic appointments:** under the HCCA, where a person who requires assistance for a particular decision does not already have a substitute decision-maker in place, one is appointed automatically from a hierarchical list of family members who meet basic eligibility requirements and who are available and willing to act. The LCO's preliminary consultations did not reveal significant concerns with the statutory requirements related to automatic appointments, although issues do arise as a result of widespread misunderstandings of the hierarchical list.

3. **Public appointments (guardianships):** In some circumstances, a public appointment happens automatically where a lack of capacity has been identified and there is a need for decision-making ("statutory guardianship"). In other circumstances, guardianship will take place through application to the Superior Court of Justice ("court-appointed guardianship"). In these cases, the Court must be satisfied that there is no alternative course of action that would not require a finding of incapacity and would be less restrictive of the individual's decision-making rights. The PGT is a statutory respondent for all such applications, and may raise issues or appear at the hearing to submit evidence or make submissions. The process for court-appointed guardianships is fairly onerous, although there are provisions for streamlined (summary) procedures, but the process for statutory guardianships is simple, low-cost and essentially administrative in nature.

Issues Related to Powers of Attorney

The use of POAs has generally been considered a very positive element of Ontario's legislative scheme, as they allow individuals to plan ahead, to choose for themselves who will assist them should they need decision-making assistance, and to do so in a way that is flexible and accessible. However, stakeholders have identified major concerns regarding abuse of POAs: the private nature of these appointments does tend to reduce scrutiny and increase the risk that abuse may be carried out undetected. The effectiveness of POAs depends on the ability of grantors to make an informed decision as to who is best equipped in terms of skills, availability, commitment and ethics to carry out these responsibilities. Many have expressed concerns that neither grantors nor attorneys sufficiently grasp the nature and gravity of the responsibilities associated with these documents. A number of potential reforms have been identified, such as the imposition of requirements to seek legal advice, the use of a mandatory form that would include information, or requirements to include in POAs notice requirements upon the activation of the document, or obligations on attorneys to account to specified individuals.

Third parties have raised concerns about the difficulty in locating and validating POAs, given the private nature of these documents. As a result of these difficulties, service providers may rely on invalid appointments, overapply limited appointments, or fail to respect valid appointments. Voluntary or mandatory public registration systems for POAs have been suggested as one means of addressing these challenges. Concerns about registry systems include costs, cumbersomeness and privacy implications.

Issues Related to Appointments of Guardians

Guardianship has major implications for the autonomy and well-being of the individuals concerned. It is therefore very important that the processes for appointing and removing guardians reflect the significance of the rights at issue and be able to effectively determine those circumstances where guardianship is necessary and those where it is not.

Two major concerns have been expressed regarding Ontario's current processes for the appointment and removal of guardians. First, while guardianship should be a last resort, it has been argued that Ontario's processes do not sufficiently encourage a rigorous examination of alternatives, so that some individuals may unnecessarily find themselves under guardianship. Secondly, these processes may not be sufficiently responsive to situations of fluctuating capacity. In particular, court-based processes for guardianship are costly, as well as relatively onerous and complex, which discourages review of the need for guardianship. A number of options for reform have been identified, including extending the application of partial guardianships, creating an emphasis on time-limited guardianships or regular reviews of guardianship orders, streamlining or simplifying processes for entering or exiting guardianship, and strengthening mechanisms for ensuring consideration of alternatives to guardianship where needs for decision-making assistance exist.

Please share your thoughts on any or all of these questions:

1. **Are there concerns regarding the appointments process for substitute decision-makers under the *Health Care Consent Act* that should be addressed in reforming this area of the law?**

2. **What practical reforms to law, policy or practice would most effectively provide grantors of powers of attorney for property with more effective means of appropriately triggering the operation of these documents?**

3. **Are there reforms that should be made to the requirements or options for the creation of a power of attorney to improve the understanding or grantors or attorneys or both of the risks, benefits and responsibilities associated with these powerful documents? If so, what would be the most practical and effective reforms?**

4. **Would a registry system for powers of attorney improve the ability to verify and validate these documents, or to prevent and identify abuse? What would be the benefits and disadvantages of a registry system?**

5. **If a registry system for powers of attorney should be created,**
    a) **Should it be voluntary or mandatory?**
    b) **What information should be maintained in the registry?**
    c) **Who should have access to the information in the registry and under what circumstances?**
    d) **Who should operate the registry?**
    e) **What would be required to ensure its compliance with privacy legislation?**

6. **Are there mandatory requirements or options that should be added to the creation or provisions of powers of attorney, such as duties to account, monitors or notices of attorneys acting, to improve monitoring and accountability for attorneys? If so, what would be the most practical and effective reforms?**

7. **Should Ontario consider reforms to create or strengthen options for more limited forms of guardianship, such as partial guardianships or appointments for specific decisions only? If so, what would be the most practical and effective reforms?**

8. **Should Ontario consider reforms to guardianship procedures to ensure regular review of the need for a guardian, such as requirements for time-limited guardianships or mandated regular guardianship reviews? If so, what would be the most practical and effective reforms?**

9. **Are there reforms to law, policy or practice that would result in a better balancing of accessibility and responsiveness of guardianship procedures with the necessity for adequate procedural protections for such a weighty decision? If so, what would be the most practical and effective reforms?**

10. **Are there reforms to law, policy or practice that could more effectively ensure that guardians are appointed for individuals only as a last resort, where no less restrictive alternatives are available? If so, what would be the most practical and effective reforms?**

IV. ACCESS TO THE LAW

A. Preventing, Identifying and Addressing Abuse and Misuse of Powers by Substitutes

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER*, PART FOUR CH I

Background

Substitute decision-makers, whether appointed through POAs, guardianship, or the hierarchical list in the HCCA, have significant statutory obligations, although the exact nature of these obligations differs depending on the decision-making domain (e.g., property, personal care, treatment decisions). For example, substitute decision-makers for property management are fiduciaries, and must carry out their duties diligently, in good faith, with honesty and integrity, for the benefit of the individual. The legislation sets out standards for decisions, as well as procedural duties that include explaining the substitute's powers and duties to the individual; encouraging the individual's participation in decision-making; and fostering regular personal contact between the individual and her or his supportive family members and friends. As well, guardians and persons acting under a power of attorney must maintain records of their decisions.

The LCO has heard widespread concerns that in practice, substitute decision-makers often have a poor understanding of their roles and responsibilities, so that the practice of substitute decision-making may fall far short of the intent of the legislation. As well, some substitutes may use the powers allocated to them under the law to abuse, exploit or neglect the individual whom they are supposed to serve in good faith.

Issues

Problems of misuse and abuse may be the result of a number of short-comings in the legislation itself, as well as in policy and practice.

- **Education and information:** The legislation does not provide any formal mechanisms for ensuring that substitutes are aware of the statutory requirements and understand their roles and responsibilities. While substitute decision-makers are obliged to explain their powers and duties to the individual, there are no mechanisms for ensuring this takes place.
- **Individual monitoring:** while guardians and persons acting under powers of attorney must keep records of their decisions, there is no proactive mechanism for regularly reviewing these accounts, and identifying and addressing potential issues.
- **Investigation of abuse:** The PGT has an obligation to investigate allegations that an individual is lacking legal capacity and that serious adverse effects are occurring as a result. Such investigations may result in the appointment of the PGT as a temporary guardian. While stakeholders support these investigative powers, concerns have been raised that greater resources and scope for investigation may be required for these powers to have their intended effect.
- **Seeking redress:** Available mechanisms for challenging the exercise of powers by a substitute decision-maker and holding substitutes accountable are not practically accessible for many individuals, due to the costs of taking action, the confusing nature of rights enforcement mechanisms, and power imbalances between individuals and their substitutes.

- **Remedies:** Even successful proceedings regarding abuse by substitute decision-makers may be able to provide only limited remedies to the victims. For example, once an individual's assets have been misappropriated and spent, there is little that can be done to restore the victim to their original financial status.

In developing mechanisms for accountability for substitutes, it must be kept in mind that this role is most often undertaken by family members and friends, who do not necessarily have access to many resources or supports in carrying out this role and are not compensated for it. A careful balance is required to ensure that measures to prevent, identify and address abuse and misuse do not make this role unnecessarily difficult for those who are acting in good faith and attempting to comply with the law. Options for reform include mandatory information and education programs for substitute decision-makers; regular reporting requirements for guardians; proactive "visitor" or auditing programs; the provision of supervisory powers to the PGT or some type of monitoring office; expanded complaint and investigation systems; or greater restrictions on financial transactions by substitute decision-makers.

Please share your thoughts on any or all of these questions:

1. **Are there ways in which laws, policies or practices for addressing abuse through legal capacity, decision-making and guardianship laws could be better coordinated with general provisions for addressing abuse of those who tend to fall within this area of the law?**

2. **Are there specific information, education or training initiatives that could be integrated into law, policy or practice to ensure that individuals and their substitute decision-makers better understand their rights, roles and responsibilities, and if so, how might these be implemented?**

3. **Are there mechanisms that could be added to law, policy or practice to improve monitoring and oversight of substitutes, such as enhanced duties to report or account, "visitor" programs for persons under substitute decision-making, or other types of supervisory powers? If so, which mechanisms would be most desirable and how might these be practically implemented?**

4. **Are there new mechanisms for complaints or enhancements to the PGT's existing investigatory powers that would be effective and appropriate for addressing concerns regarding abuse or misuse of the powers of substitute decision-makers? If so, which mechanisms would be most desirable and how might these be practically implemented?**

5. **Are there mechanisms that could be put in place to reduce loss or damage to individuals through abuse of substitute powers, such as limits on conflict transactions, provision of authority to financial institutions to freeze accounts where abuse is suspected, or expanded requirements to post bonds or security? If so, which mechanisms would be most desirable, and how might they be practically implemented?**

6. **Are there other reforms to law, policy or practice that should be considered to prevent, identify and address abuse or misuse of the powers of substitute decision-makers?**

B. Supports to Accessing the Law: Navigation, Problem-Solving and Voice

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER,* PART FOUR CH III

Background

As was explored at length in the *Framework* projects, persons with disabilities and older persons often experience barriers in accessing their rights under the law. Challenges include attitudinal barriers on the part of service providers or embedded in service systems; the inherent difficulties in navigating large and complex bureaucracies, especially for individuals who are in any way vulnerable or marginalized; power imbalances between those who provide services and those who receive them; and the inevitably occurring imperatives within large institutions, including resource constraints and conflicting institutional goals. All of these barriers and challenges must be understood in the light of the broader context in which older persons and persons with disabilities are more likely to live in low-income and experience social isolation and lack of opportunities for participation.

The need for supports to ensure effective access to the law was identified during the development of the current legislative framework, and was initially addressed through the *Advocacy Act* and accompanying provisions in legal capacity and decision-making laws. This ambitious scheme was repealed prior to any extensive implementation, as being too costly and bureaucratic, and potential intruding on families and private rights.

Currently, there are a number of formal, professional mechanisms for providing supports and advocacy for those directly affected by this area of the law. This includes the designated rights advisers under the MHA and the Psychiatric Patient Advocate Office; "section 3 counsel" who may be appointed to represent persons whose legal capacity is at issue in a proceeding under the SDA and who does not have legal representation; legal aid services, particularly those provided to individuals in proceedings before the CCB; and specialty legal clinics like the Advocacy Centre for the Elderly and ARCH Disability Law Centre.

Issues

While the current system is not without advocacy and support mechanisms, it is also true to say that many individuals who are vulnerable due to disability, isolation, power imbalances or other factors are navigating a complex legal and service delivery system without access to formal supports. The services and supports that exist are fragmented and limited in scope. Two of the major concerns identified during the LCO's preliminary consultations were the difficulties individuals face in navigating systems and the challenges that service providers face in assisting them in doing so, together with concerns that the system lacks effective mechanisms for ensuring that the rights set out in the legislation are respected. These concerns may be considered as directly linked to the lack of access to independent, knowledgeable information, advice and navigational assistance targeted to those who are directly affected by the law and their supporters.

A review of some of the legal capacity decision-making systems of other jurisdictions, and of supports and advocacy provided to other vulnerable populations in Ontario reveals a wide array of approaches to the provision of supports. These include holistic, independent, institutional public advocacy programs, such as Ontario's Provincial Advocate for Children and Youth; embedded

institutional supports such as the Independent Mental Capacity Advocates that England and Wales employ to assist individuals who lack capacity to make important decisions about serious medical treatment or transition to long-term care and who do not have family or friends to assist them; or agency-provided supports, such as Ontario's Adult Protective Services Workers.

Please share your thoughts on any or all of these questions:

1. **What types of supports are most important for assisting persons falling within this area of the law to understand and assert their rights? Should the focus of supports be on provision of accessible, timely and appropriate information; assistance in navigating complex systems; supporting affected individuals to articulate their values and wishes; support to advocate for their rights; or some other needs?**

2. **What can be learned from the history of the *Advocacy Act* to guide reforms to the provision of supports for persons falling within this area of the law?**

3. **Are there ways to strengthen existing supports for accessing rights under legal capacity, decision-making and guardianship laws, including rights advice, section 3 counsel and legal aid services for persons falling within this area of the law? Are there ways in which these supports could be expanded to reach a broader range of needs?**

4. **What can be learned from supports to accessing the law in other jurisdictions or in other Ontario programs?**

5. **Should supports be provided proactively, or upon the request of the individual? Does this differ at various points in the system?**

6. **Who should deliver supports to accessing the law in this area? For example, should supports be provided through community agencies, a specialized public institution, or embedded institution-specific supports?**

C. Information, Education and Training

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER,* PART FOUR CH IV

Background

The SDA and HCCA are complicated statutes, reflecting the diversity both of the contexts in which they operate and the individuals that they affect, as well as the complexity of the issues they address. The statutes take a nuanced approach to "capacity" and attempt to balance competing needs, such as accessibility with procedural protections, and promotion of autonomy with protection of fundamental security. The result is a system that can be difficult to understand, not only for individuals who are often encountering it in moments of significant stress and difficulty, but for professionals who are expected to apply the law effectively.

The SDA and HCCA currently include some requirements and supports for information, education and training. Capacity assessors under the SDA must meet education and training requirements prior to designation, as well as fulfilling ongoing training requirements. Persons who are identified as legally incapable through a capacity assessment or evaluation may be entitled to rights advice or rights information. Guardians and persons acting under POAs have a duty to explain their powers and responsibilities to the person they are representing. In addition, many organizations have created informational materials about the requirements of the law, and are providing ongoing information and education sessions for professionals, institutions, advocacy organizations and individuals.

Issues

Throughout the LCO's preliminary consultations and research, one of the most frequent concerns raised has been the pervasive lack of understanding of the legislation, including its fundamental principles, the roles and responsibilities of all parties, and the processes for assessing capacity, appointing substitute decision-makers, and seeking redress. This lack of understanding extends to individuals directly affected, families and friends acting as substitute decision-makers, service providers who must apply or implement the legislation, and professionals who regularly interact with it. This misunderstanding and lack of awareness of the law has widespread and significant consequences, particularly given the impact of these laws on fundamental rights.

In considering the provision of information to individuals directly affected and their families, it must be kept in mind that they are often encountering the law at times of crisis or severe stress. As well, persons with disabilities and older adults face a range of barriers to accessing and understanding information arising out of their socio-economic status, living arrangements, the particular nature of their disabilities, or the effect of barriers and discrimination on their life courses.

During the LCO's preliminary consultations, service providers, community agencies and advocacy organizations that regularly interact with individuals directly affected by these laws indicated that they regularly find themselves attempting to provide informational or navigational assistance to these individuals, or confronted with concerns regarding potential abuse. They spoke about the challenges that they face in addressing these needs, and urged the LCO to identify ways to improve their ability access expertise and advice on the complex issues that arise in their work.

Professionals and service providers responsible for implementing the legislation may face their own barriers to information, including competing demands for their attention, institutional resource shortages, and shortfalls in the available training or resource materials. Lack of adequate understanding of the law and its underlying principles among this group is a key source of the gap in this area between the legislation and its implementation that has raised concerns for many stakeholders.

Please share your thoughts on any or all of these questions:

1. **What are the priorities for reforms to law, policy or practice to ensure that individuals who encounter the capacity, decision-making and guardianship system have meaningful access to the information that they need to preserve their autonomy to the greatest extent possible and to understand and enforce their rights?**

2. **What are the priorities for reforms to law, policy or practice to ensure that persons appointed as substitute decision-makers adequately understand their roles and responsibilities, and have the skills necessary to effectively perform their often challenging roles?**

3. **What are the priorities for reforms to law, policy or practice to ensure that service providers adequately understand their roles and responsibilities under the law, have a meaningful understanding of the circumstances and experiences of the individuals affected by these laws, and have the skills necessary to effectively interpret and apply the law?**

4. **What reforms to law, policy or practice could help to ensure that professionals carrying out core responsibilities under the SDA, MHA and HCCA have the skills and expertise required to perform their roles, and that this skill and expertise is kept current?**

5. **How could information, education and training related to legal capacity, decision-making and guardianship be better coordinated and made more accessible to the general public and all those seeking it?**

D. Dispute Resolution and Rights Enforcement

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER,* PART FOUR, CH II

Background

Mechanisms for raising complaints and resolving disputes are extremely important to the effectiveness of any law. Without effective means to enforce the rights and responsibilities set out in the statutes and to resolve disputes between those falling within the scope of the law, the law may amount to little more than a statement of aspirations. The fundamental nature of the rights at stake in legal capacity, decision-making and guardianship law makes these mechanisms even more important.

Ontario's Consent and Capacity Board (CCB) is a specialized, expert, independent administrative tribunal. It conducts hearings under the HCCA regarding findings of incapacity, the appointment or termination of representatives to make decisions, departure from "prior capable wishes", and review of compliance of substitute decision-makers with the requirements of the statute. It also has jurisdiction to review findings of incapacity to manage property under the SDA and the MHA. Members of the CCB are made up of lawyers, psychiatrists and members of the public. The CCB is mandated to make decisions expeditiously: hearings must commence with seven days of an application, and decisions must be issued within one day of the conclusion of a hearing. Hearings are conducted across the province and in a variety of venues, including hospitals, long-term care homes and private residences. Individuals making application to the CCB have access to special supports such as rights advice or rights information, and representation through legal aid. Some issues related to the HCCA may also be dealt with in other venues. For example, complaints related to capacity assessments or evaluations may be directed to the regulated health college to which the assessor or evaluator belongs.

Most issues arising under the SDA, including disputes regarding the appointment or termination of a guardian, applications for a guardian or person holding a power of attorney to pass accounts, or requests for directions on matters related to a guardianship or a power of attorney, proceed for hearing to the Superior Court of Justice. The Court is the key venue for dispute resolution, through its powers related to appointment and termination of guardianships, and to provide directions. Through these powers, it can also act to enforce the statutory rights of individuals, for example by removing a guardian that has acted inappropriately, or narrowing the scope of a guardian's powers. The provisions of the SDA give the Court broad discretion to address concerns. For example, its powers to "give directions" apply to "*any* question arising in connection with a guardianship or power of attorney". Upon an application for the passing of accounts, the Court has wide remedial powers. It can, for example, order a reassessment of the individual`s capacity, suspend or terminate a power of attorney or guardianship, direct the PGT to bring an application for guardianship, or appoint the PGT or another person to act as guardian pending the determination of the application.

Some issues related to the SDA may also be dealt with in other venues. For example, abuse via power of attorney may in some cases be an appropriate matter for the criminal justice system.

Issues

The preliminary consultations identified rights enforcement and dispute resolution under the SDA as among the most pressing areas for substantial reform in this area of the law. It is important to keep in mind that persons with disabilities and older persons may face a range of barriers in asserting their rights. Their disabilities may make it difficult for them to access and evaluate information in the forms in which it is usually presented. They may be dependent on the institution or individual against whom they wish to raise a complaint. They may not have the financial, physical or psychological resources for lengthy or expensive proceedings. Ontario's capacity, decision-making and guardianship laws and processes are complex, and so individuals may find them hard to navigate.

The use of judicial proceedings for addressing matters under the SDA reflects the gravity of the rights at issue. However, it is also true that court processes tend to be expensive, complicated, intimidating, lengthy and adversarial. They may be an impractical option for many individuals. As well, professionals who work in this area have noted the tendency for disputes to become entangled in dysfunctional family dynamics, which the current processes under the SDA are ill-suited to resolve. Some jurisdictions have created specialized forums for resolving disputes and issues related to legal capacity, decision-making and guardianship. England and Wales, for example, have created a "Court of Protection" with specialized procedures and access tailored supports. The Australian state of Victoria's Civil and Administrative Tribunal has a special "list" for capacity and guardianship matters, providing expert, rapid, relatively informal and low-cost adjudication in this area.

There may be ways of improving current disputes resolution and rights enforcement mechanisms by simplifying procedures, or providing additional supports or services. The province of Alberta, for example, has created a system of Review Officers who review applications for guardians or co-decision-makers, meet with the affected individuals and prepare a written report for the Court. It has also been suggested that as many of the disputes currently arising under the SDA have their roots in complex social and family dynamics, there may benefits in exploring ways to better link litigants and potential litigants to mediation, information and social services.

During the LCO's preliminary consultations, stakeholders emphasized the value of the independent, expert, flexible, relatively non-adversarial and expeditious dispute resolution provided by the CCB.

Concerns have been raised both that the CCB is too adversarial and thereby may undermine the therapeutic relationship (from the physician perspective) and that it is insufficiently adversarial and may pay insufficient attention to procedural protections (from the applicant perspective). Some suggested that while the CCB's tight timelines do constrain opportunities for mediation, there may be creative options for incorporating dispute resolution services into the mandate of the CCB, or for more extensive use of the techniques of active adjudication, in order to better promote responsive resolutions and to respect the particular nature of the rights and issues at stake in this forum.

Concerns have been raised regarding appeals from CCB determinations of incapacity. For a variety of reasons, appeals may languish, and where determinations of incapacity are paired with involuntary admission to a psychiatric facility, individuals with mental health disabilities may find themselves "warehoused" for lengthy stretches.

Please share your thoughts on any or all of these questions:

1. **What goals should be the priorities in considering reforms to Ontario's dispute resolution and rights enforcement mechanisms for this area of the law?**

2. **Are there practical reforms to law, policy or practice that would promote more timely resolution of appeals from decisions of the Consent and Capacity Board?**

3. **Are there practical and effective means of further incorporating alternative dispute resolution mechanisms into the processes of the Consent and Capacity Board that would both promote responsive resolutions and respect the particular nature of the rights and disputes at issue?**

4. **Are there practical and effective means of amending the hearing processes of the Consent and Capacity Board, such as for example incorporating active adjudication, that would both promote responsive resolutions and respect the particular nature of the rights and disputes at issue?**

5. **Are there additional powers for the court or specialized supports or services for persons attempting to access their rights or resolve disputes under the *Substitute Decisions Act* that would improve the accessibility or effectiveness of current dispute resolution processes in this area? If so, what reforms would be most appropriate and how could they best be implemented?**

6. **For dispute resolution and rights enforcement under the *Substitute Decisions Act*, are there lessons to be learned from tribunal systems in other jurisdictions?**

V. ADVANCING EFFECTIVE LAW REFORM

A. Ensuring an Effective System: Coordination, System Monitoring and Transparency

FOR MORE INFORMATION ON THIS TOPIC, SEE THE *DISCUSSION PAPER*, PART FIVE CH I

Background

Any law reform may in practice fall short of its intended goals. There may be a flaw in the design of the law: it may be based on a misunderstanding of the issues, or fail to take into account the way in which it may affect some groups, for example. Circumstances or understandings may change, so that a law which was at the time of its inception a significant step forward, may need to be revisited in order to make further progress. It is common for problems to result from flaws in the implementation of the law, arising from shortfalls in policies and practices designed to put the law into effect, or from resource shortages or institutional limitations. For these reasons, when new laws are developed and put into effect, it is important to include mechanisms for monitoring whether they are achieving their intended purposes, and whether they continue to be meaningful and effective.

Issues

It may be difficult to evaluate the effectiveness of a law, policy or practice unless mechanisms for evaluation are built into its design from the outset. For example, many have raised concerns about abuse of older adults through POAs. However, since these are purely private arrangements with no tracking or monitoring systems attached, it is impossible to know how many powers of attorney are in effect in Ontario today, let alone how common it is for them to be misused or used to facilitate abuse or exploitation. There are similar issues in many areas of Ontario's legal capacity, decision-making and guardianship laws.

Means of supporting ongoing evaluation of a law can be incorporated in a variety of ways. These include mechanisms for ongoing data collection or feedback from affected groups, tasking an institutional with responsibility for systemic monitoring or advocacy, public reporting requirements, or regular legislative reviews.

A related concern is the lack of a central, coordinating function or institution for the legal capacity, decision-making and guardianship system as a whole. Education activities, for example, are undertaken voluntarily by many individuals and organizations, but no institution has a statutory mandate to undertake or coordinate these activities. The lack of a coordinating function makes it difficult to determine what aspects of the overall system are working well or poorly, and to address issues which may be identified.

Accountability requirements are one aspect of monitoring mechanisms. For example, both the PGT and the CCB release annual public reports on their programs and activities. Other aspects may include systemic monitoring and advocacy activities, such as regular review of data, stakeholder feedback or complaints.

Please share your thoughts on any or all of these questions:

1. **Are there reforms to law, policy or practice which would increase transparency and accountability for the legal capacity, decision-making and guardianship system as a whole?**

2. **Are there reforms to law, policy or practice, including institutional roles or responsibilities, which would improve the coordination and effectiveness of the system as a whole?**

3. **Are there reforms to law, policy or practice which would improve the ability to identify and address problems with the system as a whole?**

4. **What steps can be taken to support ongoing monitoring and evaluation of any reforms to the law in this area, and to ensure that changes to law, policy and practice have the effect intended?**

B. Participating in the Law Reform Process: The LCO's Public Consultations

FOR MORE INFORMATION ON THIS TOPIC, SEE THE LCO *DISCUSSION PAPER*, PART FIVE, CH II

The law of legal capacity, decision-making and guardianship directly affects a large and growing number of Ontarians. Most Ontarians will at some point encounter this area of the law, whether in a professional role or through their own illness or disability, or that of a loved one. The impact of these laws on the rights and basic quality of life of those directly affected, and on the lives of their families and friends, is profound. For law reform to be effective, it is important to hear from those affected, to understand both how the law currently works in practice and how it can be improved to be more meaningful, accessible, just and effective.

The LCO will be conducting public consultations on the issues raised in this document from **June 25, 2014** until **Friday, October 17, 2014.** There are a number of ways in which you can participate in this consultation.

You can mail, fax or e-mail your comments to:

Law Commission of Ontario
Public Consultation: Legal Capacity, Decision-making and Guardianship
2032 Ignat Kaneff Building, Osgoode Hall Law School, York University
4700 Keele Street
Toronto, ON M3J 1P3
Fax: (416) 650-8418
E-mail: LawCommission@lco-cdo.org

You may also use the LCO website comments form at www.lco-cdo.org. Submissions must be received by **October 17, 2014**.

The LCO has developed two consultation questionnaires: one for persons directly affected by laws related to legal capacity, decision-making and guardianship, and one for families, friends, supporters and substitute decision-makers. These are available online at www.lco-cdo.org, or you may request other formats by telephone or email. You may respond to the questionnaires by mail, online, or by telephone. To respond to by telephone, please call us at:

Toronto : (416) 650-8406
Toll-free : 1 (866) 950-8406
TTY : (416) 650-8082

LCO staff would also be pleased to meet to discuss the issues raised in this discussion paper, by telephone or in person. If you wish to set up a consultation meeting with the LCO, you may contact us to discuss possible arrangements. Meetings can take place in person, by conference call or via other interactive technologies. If you have questions regarding this consultation, please call (416) 650-8406 or e-mail us at lawcommission@lco-cdo.org.

Based on the results of our consultation phase and the LCO's ongoing research, the LCO will prepare an *Interim Report* containing draft analysis and recommendations, which is anticipated to be released in Spring 2015.