



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

PROJECT SCOPE STATEMENT

I. Background

On September 18, 2014, the Law Commission of Ontario's (LCO) Board of Governors approved a project to consider improving the last stages of people's lives as they approach death. This project considers the identities, rights and values of persons who are transitioning through the last stages of life as well as those of their caregivers, families, friends and health care providers. It reviews a wide range of issues that impact the quality of services and supports in these circumstances, including meaningful decision-making, ethical responsibilities of health care providers, legally recognized conduct that results in death, and access to faith and cultural entitlements, among others listed below. The LCO's focus is on issues that are beyond or complementary to the Ontario government's ongoing initiatives on palliative care and physician-assisted dying and we are fostering an effective working relationship with government to achieve that purpose.

In April 2015, we began conducting initial research in order to define the project parameters. Over the course of the following summer we held preliminary consultations with approximately 60 individuals and organizations representing the private bar, legal clinics, health care providers, bioethicists, regulatory colleges, professional associations, community and advocacy organizations, government ministries, regulated agencies and administrative tribunals. In September 2015, we convened an Advisory Group for the project.

The project will result in the public dissemination of several reports, including a discussion paper, interim report and final report. The LCO will undertake consultations throughout and will proactively solicit feedback from members of the public during a dedicated period, following the release of the discussion paper.

II. Issues to Be Addressed in the Project

The results of our research and consultations to date have yielded the following key issues, which the LCO will consider to varying degrees:

1. The growing need for care in the last stages of life in Ontario due to demographic changes, innovations in medicine and evolving values.
2. Foundational rights and principles underlying care in the last stages of life pursuant to the *Canadian Charter of Rights and Freedoms*, jurisprudence and other sources.
3. Theoretical and applied models for advancing care in the last stages of life, including definitions of palliative care and the public health approach.

4. Services and supports for persons who are approaching death as well as their caregivers and families in all care settings and communities.
5. Developments surrounding institutional coordination in the health care sector, including a presentation of ongoing government initiatives.
6. Specific issues regarding access to care in the last stages of life, including
 - a. withholding and withdrawal of potentially lifesaving and life-sustaining practices;
 - b. palliative sedation;
 - c. discrete aspects of physician-assisted dying, depending on government legislation;
 - d. informed consent, advance care planning and substitute decision-making;
 - e. expected death at home protocols;
 - f. supports for faith and cultural practices;
 - g. tensions between laws in this area; and
 - h. health care providers' interests.
7. Dispute resolution mechanisms, such as simplified procedures to facilitate early access to alternative dispute resolution.
8. Compliance standards, performance measurements and quality improvement requirements.

III. Coincidence with Past and Ongoing Initiatives

This project will be informed by the principles established in the LCO's completed projects on *A Framework for the Law as It Affects Older Adults* and *A Framework for the Law as It Affects Persons with Disabilities* as well as by our project on *Legal Capacity, Decision-Making and Guardianship*. Additionally, the project will respect ongoing government activities in this area being led by the Ministry of Health and Long-Term Care, Ministry of the Attorney General and the provincial palliative care network through the selection of issues for review and the creation of procedural mechanisms to facilitate cooperation.

IV. Limitations on the Project Scope

Taking into account the ongoing developments, referred to above, and stakeholder comments, the LCO has determined the following limitations for the project scope:

1. The LCO will not comment on clinical best practices.
2. Economic pressures in Ontario within and beyond the health care system will be taken into account.
3. Sensitivity to ongoing initiatives will be maintained and cooperative relationships with relevant actors will be fostered in order to minimize duplicative efforts.