



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

Legal Capacity, Decision-making and Guardianship: Final Report

Backgrounder #5

Protecting Rights Under the *Health Care Consent Act*

1. What Does the LCO's *Legal Capacity, Decision-making and Guardianship: Final Report* Say About Protecting Rights under the *Health Care Consent Act*?

The *Health Care Consent Act, 1996 (HCCA)* is a legislative foundation of capacity and decision-making law in Ontario. Decisions made under this legislation affect thousands of Ontarians.

When individuals are found legally incapable under the *HCCA* of consenting to health treatments or admission to long-term care, they are entitled to receive “rights information” from the health practitioner who found them incapable

The LCO's *Legal Capacity, Decision-making and Guardianship: Final Report* notes widespread reports of shortfalls in procedural rights for persons found legally incapable under the *HCCA*. The LCO's recommendations identify a number of immediate steps which can be employed to strengthen the current rights information regime. The LCO's recommendations represent a practical approach that acknowledges the complexity of the rights information system in Ontario and current restraints. The LCO recommendations would:

- Improve the quality and consistency of rights information in Ontario;
- Enable individuals to access independent and expert rights information; and,
- Promote education and consistency amongst the regulatory health colleges responsible for providing rights information to their patients.

2. What Did the LCO Learn?

Under the *HCCA*, a practitioner, or capacity evaluator must tell a patient that he or she has been found incapable and about the consequences of that finding. A finding of incapacity under the *HCCA* can have significant consequences for an individual and therefore raises important due process rights issues for individuals, families, health practitioners, health institutions, and others.

The LCO learned of widespread and serious concerns about the lack of effective procedural rights for those found incapable under the *HCCA*. In many cases, the information provided to the individual or others is incomplete, provided in inaccessible formats, or not provided at all. Patients may also receive widely different information, even in similar situations.

The LCO learned that standards for providing rights information are not consistent across Ontario. Rights information under the *HCCA* is governed by up to 26 different provincial health regulatory colleges. Training and education available to professionals varies widely. Not surprisingly, the LCO also learned that the lack of standards and training meant that health practitioners themselves often feel uncomfortable providing rights information, or may not be aware of their responsibilities. There is significant interest in improving rights information across Ontario.

3. The LCO's Recommendations

The LCO's *Final Report* includes recommendations that:

- The *HCCA* be amended to include clear and effective common standards for the provision of rights information and that standard forms be developed to assist practitioners with this task;
- The health regulatory colleges strengthen their role of supporting and educating their members about how to meet these minimum standards through guidelines and professional education as appropriate;
- The Government of Ontario develop a strategy to expand and evaluate the provision of independent and expert advice about rights to individuals who have been found to lack legal capacity under the *HCCA*; and
- The Government of Ontario actively monitor, evaluate and report on the success these initiatives, and undertake more significant reforms should improvement not be apparent.

More information about the LCO's *Capacity, Decision-Making and Guardianship: Final Report* is available at <http://www.lco-cdo.org/>.