



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

LAST STAGES OF LIFE

ISSUE BACKGROUNDER #10 – PLANNED DEATHS AT HOME

What is the Last Stages of Life Project?

The [Law Commission of Ontario](#) (LCO) is Ontario's leading law reform agency. The goal of our [Improving the Last Stages of Life](#) project is to identify and recommend law reforms in the "last stages of life." This is a broad and inclusive term that allows us to look at rights and legal issues in end-of-life planning, palliative care, medical assistance in dying, and other issues. An important aspect of this is **planned deaths at home**, the subject of this backgrounder. This backgrounder is one of a [series of consultation documents](#) the LCO has developed for this project.

This document is a brief overview intended to raise issues and stimulate discussion for the purposes of LCO's consultations. This document should not be relied on as a source of law.

The last stages of life and planning for death at home

A majority of Canadians would prefer to die at home. "Home" in this context denotes a range of settings, including but not limited to a private home, residential hospices, retirement home and long term care homes. "Home" is distinguishable from hospital settings for acute care, such as the ICU.

Despite this preference, several studies demonstrate that hospitals are a common place of death in Canada. A report commissioned by the LCO found that 41.2% of Ontario residents who died in 2014-2015, died in hospital.

Wishes to die at home can also face practical challenges. It is not always possible for a substitute decision-maker or family member to honor such wishes.

In light of these matters, LCO's background consultation identified two approaches that might better facilitate planned deaths at home: the process of considering and planning for deaths at home, including obtaining informed consent and advanced care planning; and the accessibility of processes to certify that a person has died in the home.

What difficulties do family and friends encounter when a person dies at home?

When a person dies at home, surrounding family and friends are not always well-informed about what to do to. Some people may not know about options like the "Do-Not-Resuscitate Confirmation Form." This is a formal mechanism developed by the Ministry of Health and Long-term care which directs that a paramedic or firefighter will not initiate basic or advanced CPR and will provide necessary comfort measures.

Once 911 is called, emergency responders become involved – such as the police, ambulance and firefighters – as well as the Coroner’s office. This can lead to distressing and confusing administrative complications that disrupt the natural bereavement process.

In the alternative, a funeral home may be contacted directly, rather than calling 911. The LCO has heard that funeral services routinely ask family members to obtain a death certificate before they will transport the deceased, but frequent delays in obtaining such certificates can cause suffering for grieving families.

What legal frameworks deal with planned deaths at home?

The coroner or police must be notified under the *Coroners Act* where there is reason to believe that the death was suspicious or requires investigation (e.g., violence, negligence, suddenly and unexpectedly). As mentioned above, family and friends are otherwise not required to initiate a police or coroner’s investigation when death occurs.

The *Vital Statistics Act (VSA)* creates some restrictions on how the deceased can be treated. For instance, burial, cremation, funeral services and transportation outside a municipality cannot take place until required documentation has been obtained. In Ontario, death certificates can only be issued by one of three professionals: a physician, nurse practitioner or the coroner. This can again introduce delay. If the deceased remains within the municipality the VSA does not require a death certificate before transporting the deceased. However, the LCO heard that funeral services commonly insist on first obtaining a death certificate, often out of fears for liability where the death was actually suspicious.

Ontario also recently introduced legislation that, if passed, will clarify the operation of the VSA in circumstances involving MAID-related deaths (more information on MAID is available in Issue Backgrounder #12, “[Medical Assistance in Dying](#)”).

There are two improvised tools that have been created in Ontario to aid expected deaths at home: Expected Death in the Home (EDITH) Protocols and Guidelines from the Office of the Chief Coroner for Ontario.

EDITH protocols evolved as a grassroots response to a perceived gap and are overwhelmingly favored in the palliative care community across Ontario. The protocols provide funeral homes with the reassurance that they may transport the deceased after death upon a so-called “pronouncement” of death, before a death certificate is provided, thus reducing delay. There is not a single EDITH Protocol for Ontario, and several jurisdictions (including Toronto) do not use them. Several EDITH Protocols have been developed, and they share many common features:

- enable nurses, beyond nurse practitioners, to make a pronouncement and states that a physician will provide the funeral home with a death certificate within 24 hours
- confirm that CPR is not included in the treatment plan, including use of the DNR Confirmation form
- identifies the primary health care provider and an alternate with their afterhours contact information, along with information on alternative courses of action should problems arise

The Guidelines of the Office of the Chief Coroner simplify the process of obtaining a death certificate in cases where they have already been called in, and help employees to manage the situation in a timely manner and to avoid investigatory proceedings.

What are the opportunities to improve planned deaths at home?

Because EDITH Protocols are working well, a significant number of stakeholders suggested the LCO recommend law reform measures to standardize this approach. Ensuring that health care providers broach conversations about planning for at home deaths would be an important part of this strategy. Other jurisdictions, like British Columbia, take a more proactive approach. A provincial protocol and companion legislation allows the patient's physician to complete a form and send it to the funeral home before the death, along with an agreement to complete the death certificate within 48 hours after the death (and thus goes further than Ontario's DNR Confirmation form). In these situations, family and friends can themselves contact the funeral home directly to arrange for transportation without the involvement of a health care provider at all.

The LCO was also told that it can be difficult for family and friends to arrange for a physician or nurse practitioner to visit their home to issue a death certificate, as many professionals are not habituated to making home visits after hours or on weekends. In context of a MAID death, a physician may be present or not as people have the option to self-administer. Consequently, family and friends may end up contacting the police or coroner's office in the event of either a natural or MAID death to reduce any delay associated with the burdensome process of arranging the attendance of a physician or nurse practitioner.

Where can I get more detailed information on this topic?

The LCO's [Improving the Last Stages of Life Discussion Paper](#) (May 2017) discusses the law and practices around planned deaths at home in greater depth. Specifically, see the discussion at chapter 6.E. For more information also see Issue Backgrounder #1, "[Consent and Advance Care Planning](#)".

What kinds of questions is the LCO asking?

The LCO is interested in hearing what you think:

- Would it be beneficial to have a government initiative or formal regulation standardize approaches across Ontario, such as any or all the various aspects of the EDITH protocols?
- Are more formal or proactive approaches, like those used in other jurisdictions, needed to help surrounding family and friends reduce any delay in arranging the attendance of a physician or nurse practitioner after death?
- If you have been involved in a planned death at home, what approaches would have made the process easier on you and your loved ones?

How can I share my views on this issue?

A fuller examination of these issues is available in our [Executive Summary](#) and [Discussion Paper](#). We've also summarized other issues in a [Consultation Issues Map](#) and [Issue Backgrounders](#).

LCO's formal consultation period runs from May – September 2017. The LCO invites your participation through:

- The project website at <http://www.lco-cdo.org/laststages>
- Written submissions at any time to lawcommission@lco-cdo.org
- Watch live and archived [webcast consultation](#) sessions
- Complete the [consultation survey](#) on your mobile, tablet, or computer
- Propose an in-person focus group for your community
- Contacting Project Research Lawyer Ryan Fritsch through the contact information below

Law Commission of Ontario	Toronto	(416) 650-8406
Project on Improving the Last Stages of Life	Toll-Free	(866) 950-8406
2032 Ignat Kaneff Building	TTY	(416) 650-8082
Osgoode Hall Law School, York University	Fax	(416) 650-8418
4700 Keele Street, Toronto, ON M3J 1P3	E-mail:	lawcommission@lco-cdo.org

Written submissions will be accepted until **September 29, 2017**