



November 16, 2011

**Law Commission of Ontario**

Osgoode Hall Law School, York University  
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To the Law Commission of Ontario:

**RE: Consultation Paper on the Law as it Affects Older Adults:  
Developing an Anti-Ageist Approach**

As part of its ongoing commitment to the positive growth and development of the law, the Toronto Lawyers Association (“TLA”) is pleased to provide its comments on the Consultation Paper published by the Law Commission of Ontario (“LCO”) on the law as it affects older adults (“Consultation Paper”). The TLA is grateful for the opportunity to participate in the LCO’s project on older adults and the anti-ageist approach and would like to offer the following comments in response to the issues raised in the Consultation Paper.

The TLA would like to emphasize its endorsement for this initiative. As noted in the Consultation Paper, older adults are a group who in some respect have different needs and experiences than younger persons, while at the same time can differ in their individual needs given their different circumstances. As a group, older adults are quite often marginalized or stereotyped mainly due to the use of age as a way of categorizing people. Accordingly, the development of a comprehensive document to assist law and policy makers in recognizing ageism and in developing an anti-ageism approach is a positive step towards addressing the challenges facing older adults.

**Identifying Ageism and Paternalism in the Operation of the Law**

As a general comment, the TLA supports the extensive work done in the Consultation Paper in identifying the important concept of ageism and the resulting paternalism in the operation of not only statutes, but regulations, the policies to which they are applied, and the strategies through which they are implemented. The use of age as a way of categorizing people is so common a practice as to almost be unnoticeable. Age is commonly used as a category on the basis of which distinctions may be made, such as pensions or income support. However, while age is regularly used as a marker, on the other hand it leads to ageist thinking.

The practice of ageism is one that is not considered enough in society, and particularly in the application of the law as it applies to older adults. Ageism commonly manifests as paternalism, and the tendency to remove decision-making opportunities for older persons under the guise of protecting their “best interests”. It also manifests as invisibility, such that older adults are systematically excluded from the social and public sphere.

By highlighting the existence of ageism and paternalism, the Consultation Paper brings the problem to the forefront and hopefully will create a catalyst for change and direction as to the steps that should be taken by law makers and policy makers.

### **The Principles-Based Approach**

The TLA supports the principles-based approach adopted by the LCO. Principles can provide a normative framework for the law and identify the goals which law and policies ought to seek to achieve with respect to older adults. A Framework that is based on principles can provide guidance while remaining flexible in changing circumstances. Accordingly, the principles-based approach adopted by the LCO in this regard is much applauded. Hopefully the principles set out in the paper promoting respect for dignity and worth, and promotion of independence and autonomy will be applied across many different contexts contributing to a more consistent approach to laws when dealing with older adults.

The TLA shares the concerns of the LCO in that identification of principles, while important, is a starting point rather than an end point. The difficult task is to develop a nuanced understanding of what these principles could and should mean in the context of the lives of older adults, and provide a practical guide to their implementation in a legal setting.

### **Recognizing Systemic Barriers**

The TLA shares the concerns highlighted in the Consultation Paper that equal attention must be paid to both the substance of laws and how they are implemented. While the laws on their face may seem positive with respect to older adults, they may in practice be ineffective due to inadequate implementation and poor enforcement. A number of older adults face systemic barriers to access the law. When older adults encounter the law, it will frequently be in the context of their domestic lives and in their personal relationships. Some older adults will be dependant upon those who are providing care, and this may have implications for how the older adult may access the law in order to protect themselves. The TLA applauds the Consultation Paper’s review of how older adults access the law and the barriers they face in doing so, and on how the law as a whole may be made more effective, fair and accessible for older adults.

The TLA wishes to stress that a first principle for ensuring access to the law for older adults is to make certain that legal rights and protection for older adults are accompanied by clear and effective mechanisms for accessing those rights and protections.

### **Including the Perspective of Older Adults**

The TLA strongly agrees with the findings in the Consultation Paper that the most effective means of improving this area of the law is through meaningful and regular engagement with older adults. The TLA is pleased to see that the LCO is committed to consulting directly with older adults in developing the final Framework to ensure that the voices and perspectives of older adults are reflected in the outcome of the project. The TLA believes that consultations with older adults should become a prominent part of the proposed Framework. A framework that emphasizes the importance of engagement would be a valuable tool to facilitate meaningful progress in this area of the law.

### **Interaction Between Principles and Lived Experience**

The TLA shares the concerns expressed in the Consultation Paper that there are different needs amongst the older adult population, and this coupled with the diversity of the law as it effects older adults inhibits the Framework from offering definitive answers to the questions that arise in crafting law and policy effecting older adults. It is understood that the aim of the Consultation Paper is to assist law and policy makers in insuring that a principled and consistent approach is taken when forming policies and laws that will impact older adults. However, as the LCO's case review of how one would apply the Framework to access to homecare reveals, many older adults are in a vulnerable situation and may not have the tools necessary to further their own interests or protect themselves. The Consultation Paper also reveals some inconsistency in the experiences of older adults dealing with homecare in some communities versus other communities. Accordingly, the TLA supports the objective of improving coordination between communities and the implementation of laws, policies and programs. The proposed Framework may need to address ways to reconcile the inconsistencies between services rendered by various organizations in the aged care industry and propose ways to overcome the current lack of transparency in the provision of those services. The effectiveness of future reform will depend in a large measure to the ability of the various levels of government to work together in addressing the reality of the difficulties in effectively implementing principles of anti-ageism into everyday circumstances.

### **Conclusion**

The TLA appreciates the opportunity to contribute to the LCO consultation process and would like to reiterate its support for this initiative and the principles contained in the Consultation Report.

Yours very truly,

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Trustee for the Toronto Lawyers' Association