



November 25, 2011

Law Commission of Ontario
Osgoode Hall Law School, York University
2032 Ignat Kaneff Building
4700 Keele St.
Toronto ON M3J 1P3

To the Law Commission of Ontario:

Re: Consultation Paper on the Law as it Affects Persons with Disabilities

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 persons with disabilities (“**Consultation Paper**”). The TLA is grateful for the opportunity to participate in the LCO’s project on persons with disabilities and would like to offer the following comments in response to the issues raised in the Consultation Paper.

First, the TLA would like to emphasize its very positive support and endorsement for this initiative. As noted in the Consultation Paper, persons with disabilities are significantly influenced by the law, yet they often lack access to decision-makers and have little influence over public policy. The development of a comprehensive document to assist law and policy-makers in evaluating laws that affect persons with disabilities is a positive step toward addressing this issue.

In light of its broad support for the principles contained in the Consultation Paper, the aim of the following comments is to assist the LCO in transforming these principles into the most effective document possible for evaluating and developing the law in this area. It is the hope of the TLA that a practical and effective framework document (“**Framework**”), as proposed by the LCO, will become a valuable tool for achieving meaningful progress for persons with disabilities. Accordingly, we have attempted to focus on some areas of the Consultation Report that may be worthy of further consideration or reflection, without detracting from the broad endorsement that the TLA gives to the overall approach taken by the LCO in addressing this important issue.

Focusing on Positive Outcomes

As a general comment, the TLA supports the principles-based approach adopted by the LCO. A principles-based Framework would be sufficiently flexible to be applied across many different contexts, contributing to a more consistent and coherent approach to this area of the law. However, the TLA shares the LCO’s concern, addressed in the Consultation Paper, that the final Framework must be sufficiently specific, practical and useful in order to provide meaningful guidance to law and policy-makers. Accordingly, when developing the proposed Framework, the

TLA would like to emphasize the importance of identifying clearly stated goals and outcomes for reforming laws that affect persons with disabilities.

Framing the discussion with reference to positive outcomes has several benefits that may help to create a more effective Framework. In particular, questions that ask whether a proposed law furthers a desirable outcome may provide more guidance and direction to policy-makers than ones that simply ask whether a particular issue has been considered throughout the decision-making process. Emphasizing positive outcomes also creates a catalyst for change and provides meaningful direction as to the steps that should be taken to further the defined objective. In addition, clear objectives help to provide a broad benchmark against which future progress can be measured.

An instructive example of such an approach is the National Disability Strategy (2010-2020) recently adopted by the state and national governments of Australia (“**Australian Disabilities Strategy**”), a copy of which is attached to these submissions. While this document is broader in scope than the proposed LCO Framework, it discusses many issues that are similar to those addressed in the Consultation Paper. In addition to identifying problems facing persons with disabilities, the Australian Disabilities Strategy frames the policy response in terms of desired outcomes and follows this with a list of areas for future action. The outcomes identified in the document provide a clear path that policy-makers can follow, while still remaining broad enough to be applied in different contexts.

The TLA is mindful that the Australian Disabilities Strategy has a different objective than the one being pursued by the LCO. However, the Australian Disabilities Strategy may provide a helpful example of how a focus on positive outcomes can provide a roadmap for future development and reform. By adding a focus on positive outcomes to the already strong principles identified by the LCO in its Consultation Paper, the TLA believes that the proposed Framework will be a more effective document for providing meaningful change for persons with disabilities.

The Importance of Co-Ordination between Jurisdictions

The TLA shares the concerns expressed in the Consultation Paper that persons with disabilities are often faced with a legal system that is complex and overly fragmented. Accordingly, the TLA supports the objective of improving linkages and co-ordination between laws, policies and programs, but would simply add that this requires co-ordination between all levels of government. The proposed Framework may need to address ways to reconcile possible conflicts that may occur between federal, provincial and municipal governments when evaluating and reforming laws that affect persons with disabilities.

Co-ordination between jurisdictions becomes particularly important when attempting to address the needs of persons with disabilities in a holistic manner, rather than through a fragmented approach that deals with an individual’s needs separately. A single individual may rely on the provincial government for income assistance, the federal government for a student loan and the City of Toronto for housing. Ensuring that the various programs and policies across jurisdictions work in harmony is critical for addressing the diverse attributes of persons with disabilities. Inter-jurisdictional issues become even more important when one considers the broader social

context in which persons with disabilities live. Many of the barriers faced by persons with disabilities involve broad systemic factors, such as poverty and socio-economic disadvantage. Broad, systemic issues are not the purview of a single level of government and the effectiveness of future reform will depend in large part on the ability of governments across jurisdictions to improve the circumstances of persons with disabilities in a co-ordinated fashion. Addressing this issue in the proposed Framework would be a useful addition.

Recognizing Different Aspects of “the Law”

The TLA recognizes the importance of developing a Framework that is comprehensive and that can be applied to all of the various interactions that persons with disabilities have with the law. However, it is important to keep in mind that “the law” is not easily dealt with as a whole and it can often affect persons with disabilities in a variety of different ways. The proposed Framework should be mindful of the multi-faceted nature of the law, as different questions may be appropriate depending on the particular aspect of the law that is the subject of further development or reform.

The Consultation Paper acknowledges the wide array of laws that affect persons with disabilities by dividing the law into four major categories: (1) laws of general application; (2) laws promoting the removal of barriers for persons with disabilities; (3) laws that provide access to benefits, supports and accommodation for persons with disabilities; and (4) laws that restrict the roles, activities or decisions of persons with disabilities. Each category presents its own challenges, which may be distinct from those relevant to other categories. Achieving a comprehensive Framework that can be applied to the law as a whole is a worthy objective, but where specific areas of the law require unique solutions, these should be identified. Given the complexity of this process, this may be an issue that is better dealt with in the comprehensive report that will accompany the proposed Framework.

Providing a Voice to Persons with Disabilities

As a final comment, the TLA strongly believes that the most effective means of improving this area of the law is through meaningful and regular engagement with persons with disabilities. The most valuable source of ideas for legal reform often comes from the voices of those who interact with the law on a daily basis. Giving a voice to persons with disabilities ensures that the law can respond effectively to needs and challenges of a group that is too often marginalized.

The LCO’s Consultation Report on persons with disabilities is an important step in this process, but the challenge will be to ensure that the engagement continues beyond the end of this project. The TLA supports the objective of giving persons with disabilities a greater voice and believes that this should become a prominent part of the proposed Framework, as well as the accompanying report. In order for law and policy-makers to take into account the needs and circumstances of persons with disabilities, there must be increased awareness about disability issues in society and further support for organizations that advocate on behalf of the disabled. It is equally important that decision-makers are responsive to the concerns raised by persons with disabilities so that their voices do not fall on deaf ears. A Framework that emphasizes the importance of engagement, awareness and responsiveness would be a valuable tool to facilitate

meaningful progress in this area of the law and is something that the TLA would fully support.

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,

David Lederman

Trustee
Toronto Lawyers Association

