Law Commission Of Ontario ("LCO") Released Its Final Report On Legal Capacity, Decision-Making And Guardianship

March 21, 2017

On March 8, 2017, the Law Commission of Ontario ("LCO") released its Final Report on Legal Capacity, Decision-making and Guardianship (the "Report"). Some of the Report's recommendations, if implemented by the Ontario Government, will invariably impact the manner in which financial institutions serve clients when capacity is at issue.

For instance, the Report recommends that Ontario clarify how the human rights concept of "accommodation" applies to legal capacity issues, which could impose new duties on financial institutions to accommodate their clients with diminished legal capacity (see recommendation 3).

The Report also recommends the following alternative decision making arrangements be put in place to assist persons with reduced capacity:

- Support authorizations, where an individual would be appointed to assist with day-to-day, routine decisions for a person who still has legal capacity (see recommendation 7);
- Networks of decision makers, where multiple individuals would be responsible for care and property decisions (see recommendation 8); or
- Community agencies, who may be expected to provide substitute decision making for day-to-day decisions such as basic budgeting and bill paying (see recommendation 47).

The LCO recognizes that any such alternative decision making arrangements can create complex compliance difficulties for financial institutions, but believes such difficulties can be addressed through legislative clarification. However, these new arrangements may also create opportunities for financial institutions, as financial institutions and their affiliated trust companies may be best suited to provide some of these new forms of assistance to clients with diminished legal capacity.

Other notable LCO recommendations include increased regulation over powers of attorney. For instance, the LCO calls for the development of a mandatory "Statement of Commitment" form, which must be signed by an attorney before they first act on a

grantor's behalf (see recommendation 25). The LCO also recommends the requirement that an attorney must deliver a "Notice of Attorney Acting" to the grantor, other attorneys, the grantor's spouse, if any, and any other parties specified by the grantor before acting (see recommendation 26).

The full report can be found here. For more information, please contact a BLG professional.

By

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