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Media Release

BCLI & CCEL Begin Health Care Consent and Capacity Assessment Tribunals Project

for immediate release

Vancouver, 19 November 2019 – The British Columbia Law Institute (BCLI) and the Canadian Centre for Elder Law (CCEL) have begun a research project on tribunals that review assessments of mental incapability to give or refuse consent to health care or admission to a hospital or other care facility, and that resolve disputes related to substitute decision making for persons who are assessed as mentally incapable of consenting on their own.

The Health Care Consent and Capacity Assessment Tribunals project was sparked by a finding and recommendation in a CCEL report issued in 2019, *Conversations About Care: The Law and Practice of Health Care Consent for People Living with Dementia in British Columbia*. That report found that an *accessible* mechanism was lacking for persons to challenge assessments of mental incapability to give or refuse consent to health care or admission to a care facility, and care decisions made for them by others. Although resort to the courts is technically available, concerns of cost, delay, and privacy often present barriers to obtaining court remedies, and discourage people from seeking them in these situations. *Conversations About Care* contained a recommendation that the provincial government should look at creating a non-court mechanism, such as an expert tribunal, to deal with challenges to

- Findings of incapability to consent to health care treatment;
- Choice (by third party care providers and care facilities) of temporary substitute decision makers;
- Care facility admission decisions;
- Decisions made by substitute decision makers with respect to a person's health care, including the use of restraints.

Ontario and Yukon have functioning expert review tribunals of this kind, and there are numerous international examples as well of health care, guardianship, and capacity tribunals. The project will involve consultation and comparative research into the structure, powers, and operation of these bodies, and will culminate with the publication of a study paper. The purpose of the project

is to lay an informational foundation for policymakers and legislators to consider the relative merits of creating a review tribunal appropriate for British Columbia.

The Health Care Consent and Capacity Assessment Tribunals Project is funded by the Law Foundation of British Columbia.

BCLI is an independent, not-for-profit society dedicated to modernization and improvement of the law. CCEL is a division of BCLI. The mandate of CCEL includes research, law reform, and outreach relating to legal issues of concern to older adults.

More information about the Health Care Consent and Capacity Assessment Tribunals Project may be found at: <https://www.bcli.org/new-project-announced-health-care-consent-and-capacity-assessment-tribunals-project>.

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