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Media Release

BCLI & CCEL Issue Study Paper On Health Care Consent and Capacity Assessment Tribunals

for immediate release

Vancouver, 9 June 2021 – The British Columbia Law Institute (BCLI) and the Canadian Centre for Elder Law (CCEL) have issued a study paper that explores options to help patients and care-givers in situations where a person may lack capacity to make decisions about health care and personal needs. The *Study Paper on Health Care Consent and Capacity Assessment Tribunals* takes a close look at the use of informal tribunals elsewhere in Canada and Australia that re-view findings that a person lacks mental capacity to consent to health care or admission to a care facility. It also considers issues related to re-creating a similar decision-making body in BC.

Currently, the only option where someone found incapable of giving informed consent to receive health care or of making a decision about admission to a care facility may challenge that finding is to make an application to the BC Supreme Court. Cost, delay, lack of legal aid and privacy concerns discourage most people from seeking a court remedy in these situations.

“We hope this study paper will advance discussions about better options to resolve disagreements about health care treatment and decision-making rights,” said Krista James, CCEL’s National Director. “We need legal systems that support people with health and disability issues to take action when they disagree with the decisions of family or health care professionals,” she added.

The study paper focuses on realistically accessible options whereby people assessed as mentally incapable of giving informed consent to health care can obtain independent review of that finding, and disputes about substitute decision-making can be efficiently addressed, such as through an expert tribunal. BC had an expert review board to deal with these matters 20 years ago; it was abolished for fiscal reasons after a short time. Today’s study paper reviews this history and the experience with currently functioning tribunals operating elsewhere as models for re-establishing a health care consent and capacity assessment tribunal here.

An earlier CCEL report entitled *Conversations About Care* found that an *accessible* mechanism was lacking in BC 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.

BCLI is an independent, not-for-profit society dedicated to modernization and improvement of the law. CCEL is a division of BCLI focusing on legal issues of concern to older adults.

The *Study Paper on Health Care Consent and Capacity Assessment Tribunals* was completed with the support of the Law Foundation of BC. It is available for download at: <https://www.bcli.org/project/health-care-consent-and-capacity-assessment-tribunals-project-seeking-a-model-for-british-columbia>.

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