

to determine its conformity with the *Canadian Charter of Rights and Freedoms*; its effectiveness in achieving its stated purpose; and its impact on older Canadians.

C. Guardianship Legislation

Guardianship legislation has usually applied to situations where there is a perceived long-term need for providing assistance to an elderly person. The guardian provides substitute decision making and assistance in either personal care decisions or property and financial matters or both. All provinces legislate separately and reform in Alberta (1978), Saskatchewan (1989), Quebec (1991) and Ontario (1993) gave greater recognition to individual needs and the reality that some people require total guardianship while others only require assistance for a limited time. New legislation planned by Ontario to address substitute decision-making, guardianship and advocacy was deemed to be of potential assistance to seniors who might be victims of abuse.

Wahl acknowledged that some seniors need greater protection but that this should come in the form of guardianship legislation for those seniors who are judged to be incapable of making decisions. As she told the Committee, "if the agencies are concerned that the senior who is incapable can't reach out for help, then what we are really looking at are issues related to mental incapacity, the inability to decide, the inability to choose options. Then we need guardianship reform..."¹⁰⁰

She does not see this as an easy thing to sort out: "I would support that there is a difficult balance we have to strike between people's independence, seniors' independence, adults' independence, with the duty of the state to protect and provide for people who are incapable of caring for themselves. How do we strike that balance? I would argue the balance rests on competency. If you are competent to decide, you should be supported in your decision-making. If you are incompetent to decide, then it justifies a greater intervention."¹⁰¹

¹⁰⁰ Wahl, 5:25.

¹⁰¹ Wahl, 5:25.