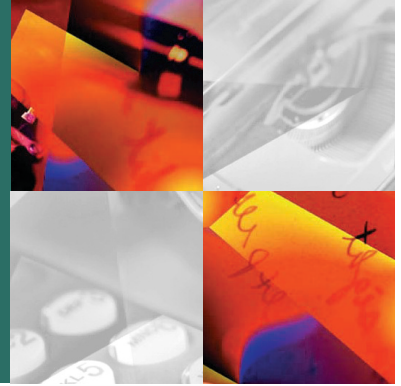




THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

CRITICAL ISSUES IN HEALTH LAW: A NATIONAL SUMMIT



Presented by the National Health Law
Section and the Continuing Legal Education
Committee of the Canadian Bar Association

MAY 21-22, 2009

**Morris J. Wosk Centre for
Dialogue, Simon Fraser
University and the Delta Hotel
Vancouver, British Columbia**

**MILLER
THOMSON** LLP

Harper Grey LLP

SUGDEN, McFEE & ROOS LLP
BARRISTERS & SOLICITORS

BRANCH MACMASTER
BARRISTERS & SOLICITORS

**BH
& T** Bull, Housser
& Tupper LLP

SB STIEBER
BERLACH LLP



Don't miss out on the second biennial "Critical Issues in Health Law: A National Summit," designed to bring together health law practitioners from across Canada for an update on a variety of critical health law issues. This exciting program will concentrate on the following topics of national importance and relevance to health law practitioners, legal academics, and government lawyers:

- Electronic Health Records and Privacy Issues
- Medical Malpractice Litigation: Duty of care in the "wrongful life" context, and the relationship between (1) causation of injury, (2) apportionment of fault among concurrent or successive wrongdoers, and (3) causation and apportionment of damages;
- Medical Ethics: End of life and critical care decisions.
- Changes in the Scope and Practice of Health Care.

Conference Co-Chairs:

Lonny J. Rosen, Partner, C.S., Gardiner Roberts LLP (Chair, National Health Law Section)

Kimberly Jakeman, Partner, Harper Grey LLP (Vice-Chair, National Health Law Section)

ENJEUX IMPORTANTS LIÉS AU DROIT DE LA SANTÉ : SOMMET NATIONAL

Ne manquez pas le deuxième « Sommet national sur les questions critiques en matière de droit de la santé », une conférence biennale dont le but est de réunir les praticiens en droit de la santé de partout au Canada, pour une mise à jour sur divers points importants en la matière. Le très intéressant programme de ce sommet est essentiellement axé sur les sujets suivants, qui sont d'importance nationale et qui intéressent particulièrement les praticiens en droit de la santé, les professeurs de droit et les avocats du gouvernement :

- les dossiers médicaux informatisés et les questions de protection des renseignements personnels
- les litiges portant sur la faute professionnelle médicale : le devoir de diligence dans le contexte de cas de « vie préjudiciable » et la relation entre (i) le lien de causalité entre le geste posé et le préjudice, (ii) l'imputation de la responsabilité du préjudice aux auteurs de ce préjudice lorsque les gestes posés sont soit concomitants, soit successifs, et (iii) la causalité et l'imputation de la responsabilité du paiement des dommages-intérêts;
- déontologie médicale : décisions de fin de vie et décisions portant sur les soins intensifs
- modifications quant à la portée des soins de santé et à la pratique dans le domaine

Ce programme est offert uniquement en anglais

GR
GARDINER ROBERTS LLP
Lawyers

LERNERS
HEALTH LAW GROUP

BLG
BORDEN
LADNER
GERVAIS

SW STONES CARBERT WAITE LLP
Barristers & Solicitors

GOWLINGS

Program

Thursday, May 21, 2009

12:30 **Registration**

1:00 – 1:10 **Opening address – Lonny Rosen and Kim Jakeman**

Session I **Latest Developments on Privacy Protection in an E-Health Environment**

1:10 – 4:45 **Session Co-Chairs: Ryan Morasiewicz,** Associate, Miller Thomson LLP **and Sarah Harbottle,** Associate, Bull Houser & Tupper, LLP

Canadian (and global) consumers are openly sharing intimate, personal health information in ways that were unimaginable just two years ago. This trend will grow dramatically, no matter what privacy legislation says, or how it gets interpreted by lawyers. Consumers – especially those touched by chronic illness – are leading a health 2.0 revolution that is unstoppable and offers enormous benefits to health-care decision making. As this revolution continues new “brands of trust” are emerging organically for personal health records and for interactive “social networking” health sites. In light of these realities, the Canadian legal community needs to consider how privacy laws can be in the service of innovation and consumer empowerment.

Using the examples of eHealth Ontario and Telus Health Solutions’ solutions to health care providers and patients, panellists will examine the following issues from the perspectives of patients, consumers, health care providers and vendors:

- British Columbia’s Bill 24 – *E-Health (Personal Health Information Access and Protection of Privacy) Act*.
- “Need to know access” for providers.
- Practical challenges of developing an access model framework and audit programs.
- Patient consent and consumer- driven health care

- Convergence and its impacts on privacy in eHealth
- Privacy challenges affecting eHealth progress
- And the debate between efficiency and privacy in e-health, including
 - Reasonable control of health information through disclosure directives/masking/lockboxes
 - The need for a robust access model
 - The need for adequate audits
 - Latest developments in privacy protection.
- eHealth initiatives in Ontario, including
 - how eHealth initiatives in Ontario support the “Privacy by Design” concept;
 - Compliance with relevant privacy legislation; Patient privacy concerns in eHealth in Ontario; and
 - eHealth privacy operations and strategy in a changing legal and regulatory environment

Panellists:

David Loukidelis

*Information and Privacy Commissioner
British Columbia*

Frank J. Work Q.C.

*Information and Privacy Commissioner
Alberta*

Neil Seeman

Director Health Strategy Innovation Cell, Massey College, University of Toronto, and adjunct professor, School of Health Services Management, Ryerson University

Andrew Matthews

Senior Director, Telus Health Solutions Group

Jill Scott

In House Counsel, Vancouver Coastal Health Authority

Penny Washington

Partner, Bull, Houser & Tupper LLP

Maureen Murphy
Partner, Gowlings, LLP

Senior Management Representative
E-Health Ontario

3:15 – 3:30 Refreshment Break

4:45 Closing Remarks – Lonny Rosen and Kim Jakeman

6:30 - 10:30 Dinner at the top of Grouse Mountain

Escape to the mountains located only 30 minutes from downtown Vancouver and experience another side of the city. Take a gondola ride to the top of Grouse Mountain to network and socialize with colleagues while enjoying dinner and the spectacular views of the mountains, the city and the ocean below.

*Courtesy of our sponsors for conference delegates
Please RSVP on registration form.*



Optional - For those adventurers in the group, experience zip lining high above the alpine rainforest, careening through the air at speeds of more than 50 km/hour, prior to enjoying dinner.

Discounted Zip lining cost:
\$97/person

- *Note closed toe shoes are mandatory and shorts/pants are recommended. There is a change room available to change prior to dinner.*

Please RSVP on registration form Contact Stacey E. Grubb for any questions: sgrubb@guildyule.com

Friday, May 22, 2009

8:30 Registration

**Session
II**

Ethics and Health Care: End of Life and Critical Care Decisions: Legal and Ethical Considerations

9:00 – 10:30 Session Co-Chairs: Tracey M. Bailey, Executive Director, Health Law Institute and **Laurie J. Soloway,** Barrister & Solicitor, Ministry of Attorney General – Health and Social Services

End of life decision-making occurs every day in our health care system. In many cases, consensus is reached between the individual and those speaking on his or her behalf, and the health care team entrusted with providing competent and compassionate care. Where agreement is not reached, a host of ethical and legal issues arise for all involved, and for those advising them. A number of these cases have received national media attention, and have been heard by courts across the country, often resulting in conflicting decisions. This panel will provide attendees with the latest word on case law, legislation, policy and practical approaches for lawyers involved in cases such as these.

Speakers:

Jay Chalke

Public Guardian and Trustee of British Columbia

Nina Preto

Doctoral trainee in the CIHR Ethics of Health Research and Policy Training program, UBC

Helga Van Iderstine

Partner, Aikins MacAulay & Thorvaldson

Michael A. Waite, LL.M.

Stones Carbert Waite LLP

**10:30 –
10:45 Refreshment Break**

Program

Session III

Changes in the Scope and Practices of Health Care

10:45 – 12:15 **Session Co-Chairs: Susan Precious**, Barrister & Solicitor, Branch MacMaster and **Mike Thomas**, Barrister & Solicitor, Harper Grey LLP

The increase of competition in health care and recent changes in the scope of practice of various health care professionals have had a tremendous impact on the regulation of health care in a variety of ways:

The Competition Bureau has made health care an investigative priority and has undertaken several studies of various professions in the medical sector and is advocating for the inclusion of competitive principles into health care legislation - an area of the law which has traditionally fallen within the jurisdiction of the Provinces.

Health care, and particularly complimentary medicine, is increasingly being treated as a consumer product, impacting how health care is marketed, provided and even sold, and raising ethical considerations in the process.

While physicians have traditionally had no limitations placed on the scope of their practice, there has been an expansion in the number of professionals that have been authorized to provide health care, and an increase in the scope of care that these professionals may provide, raising questions about who is a health care professional and what is the scope of services that they may provide.

The advent of shared care and collaborative practice has impacted all health professionals and physicians in particular, raising issues about the legal liability they may face in this environment.

This section will consist of brief opening comments by each member of the panel, followed by a controlled discussion on the issues.

Speakers:

William Clark
Partner, Harper Grey LLP

Mary Falconer
Ministry of Attorney General - Legal Services Branch - Health and Social Services

Dr. Heidi M. Oetter
Registrar of the College of Physicians and Surgeons in British Columbia

Bruce Graham
Partner, Gowlings LLP

Dr. Susan Swiggum
Canadian Medical Protective Agency

12:15 - 1:30 Lunch

Session IV

Medical Malpractice and Tort Litigation

1:30 – 4:30 **Session Co-Chairs: Kimberly J. Jakeman**, Partner, Harper Grey LLP, and **Roselle P. Wu**, Associate, Harper Grey LLP

The final session will examine two topics of importance to civil litigators and academics with an interest in tort law.

Duty of Care: Should a child born with birth defects be entitled to successfully assert a negligence claim against a doctor or other health-care provider for harm suffered before birth? Earlier cases had decided that issue based on whether the claim was properly labeled a “wrongful life” claim. If so, the claim was denied. In the recent case of *Ranji v. Paxton*, 2008 ONCA 697, the Ontario Court of Appeal espoused a different analysis. The Court stated that deciding whether the claim is appropriately characterized as one for “wrongful life” is to decide the wrong question because it does not address the duty of care analysis set out in the *Anns* test: (1) reasonable foreseeability of harm;

(2) proximity; and (3) policy factors. Leading counsel from both the plaintiff and defence bar, along with a well-known health law academic, will explore the duty of care analysis as applied to a so-called wrongful life claim.

Causation and Damages: If two wrongdoers have caused one indivisible injury, will their responsibility for damages be apportioned, and if so, how? What if some of the injuries are indivisible, but some are not? What if divisible injuries from successive incidents result in overlapping losses? What if either wrongdoer's actions alone would have resulted in the same losses? What if the Plaintiff had a pre-existing condition that pre-disposed him to the injury? What if the Plaintiff was contributorily negligent in one incident but not the other? Some of the foremost authorities in tort law will clarify and explain the oft-confused relationship between (1) causation of injury, (2) apportionment of fault among concurrent or successive wrongdoers, and (3) causation and apportionment of damages.

Speakers:

The Honourable John C. (Jack) Major, Q.C.
Counsel, Bennett Jones LLP

The Honourable Mr. Justice Christopher Hinkson
Supreme Court of British Columbia

Professor Lewis N. Klar, Q.C.
Faculty of Law, University of Alberta

Professor Gerald Robertson
Faculty of Law, University of Alberta

David Cheifetz
Partner, Bennett Best Burn LLP

Darryl A. Cruz
Partner, McCarthy Tetrault LLP

Thor Hansell
Partner, Aikins, MacAulay & Thorvaldson LLP

Robert Roth
Partner, Sommers & Roth

4:45 Closing Remarks – Lonny Rosen and Kimberly Jakeman

Planning Committee:

Tracey Bailey, Stacey E. Grubb, Sara Harbottle, Kim Jakeman, Suzanne Kennedy, Ryan Morasiewicz, Susan Precious, Lonny J. Rosen, Laurie Soloway, Michael G. Thomas and Roselle P. Wu.



This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification.
Health Law 8.5 hours



This program has been approved for LawPro CLE Premium Credit.

This program has been approved for 8 hours of Continuing Professional Development (CPD) by the Law Society of British Columbia.

Registration Form

MEETING VENUE

Morris J. Wosk Centre for Dialogue
580 West Hastings Street
Vancouver (Downtown), BC V6B 5K3
Website: www.sfu.ca/dialogue

HOTEL VENUE AND RESERVATION

Adjacent to the meeting venue
Delta Hotel Vancouver
550 West Hastings Street
Vancouver (Downtown), BC V6B 1L6
Toll Free : 1-888-663-8811
Website: www.deltahotels.com

Please contact the hotel directly and refer to the **2009 Health Law CLE- Critical Issues in Health Law** to obtain the preferred rate. The preferred room rate is available until **April 20, 2009**.

TRAVEL

Air Canada is the official carrier for all our CBA meetings. In order to receive a 10% discount, you must book your flight on-line at www.aircanada.ca and indicate the promotion code **GAKY9781**. **The discount is not available if you call Air Canada directly.**

REGISTRATION

Pay by credit card (Visa MasterCard or Amex), or send cheque or money order made payable to the Canadian Bar Association together with this registration form to:

Sheila Mills
CLE Program Coordinator
Canadian Bar Association
865 Carling Ave., Suite 500
Ottawa, ON, K1S 5S8 or
Fax information to 613-237-0185

PAYMENT MUST BE RECEIVED PRIOR TO THE ACTUAL CONFERENCE TOGETHER WITH YOUR COMPLETED REGISTRATION FORM. ALL RECEIPTS ARE MAILED OUT AFTER THE CONFERENCE.

CANCELLATION POLICY

There will be a 20% administrative charge for any cancellation received in writing prior to **April 20, 2009**. No refund will be given after this date.

There will be no refunds for "no-show" registrants. The program material will be shipped to registrants unable to attend the program within 15 days of the program.

INFORMATION

For further information about this program, please contact **Sheila Mills** at the CBA National Office by telephone at **613-237-2925** or **1-800-267-8860 ext. 107**, or by e-mail at sheilam@cba.org.

PERSONAL INFORMATION CONSENT

CBA's programs are supported by preferred suppliers, sponsors, and exhibitors. Subject to the following paragraph, I understand that the provision of contact information on this form constitutes my consent to such information being disclosed to the preferred suppliers, sponsors, and exhibitors of this program. For further information about the CBA's treatment of personal information, see members' Privacy Policy at www.cba.org.

By checking this box , I do not wish my contact information disclosed to the preferred suppliers, sponsors, and exhibitors of this program. I understand that my name will not appear on the delegates list.

2009 NATIONAL HEALTH LAW CONFERENCE

May 21 - 22, 2009 - Delta Hotel, Vancouver, BC

	FEE	GST (5%)	TOTAL
Members			
<input type="checkbox"/> Full Conference Pass	\$515.00	\$25.75	\$540.75
<input type="checkbox"/> Thursday Only Pass	\$395.00	\$19.75	\$414.75
Students (CBA Members)			
<input type="checkbox"/> Full Conference Pass	\$480.00	\$24.00	\$504.00
<input type="checkbox"/> Thursday Only Pass	\$230.00	\$11.50	\$241.50
Non-Members			
<input type="checkbox"/> Full Conference Pass	\$615.00	\$30.75	\$645.75
<input type="checkbox"/> Thursday Only Pass	\$495.00	\$24.75	\$519.75

* **QUEBEC RESIDENTS**, please add the QST of 7.5% to your total.

- Yes**, I will be attending the dinner at the top of Grouse Mountain (complimentary for all conference delegates). Transportation not provided to Grouse Mountain.
- Yes**, I will be bringing a guest to dinner at \$50.00 plus \$2.50 GST = \$52.50.
- Yes**, I am interested in attending the Thursday night zip line at \$97 plus \$4.85 GST = \$101.85.
- Yes**, I would like to join the CBA now and pay the member fee to attend this program. I understand that a membership representative will be contacting me.
- No**, Materials will be available for sale online following the conference. Please visit www.cba.org/store for prices and other information.

CBA Membership No.

Mr. Ms.

Surname

Given Names

Firm or Organization

Address

City

Province

Postal Code

Office Phone No.

Fax No.

Email

Please indicate special needs (dietary, wheelchair access, etc.)

Method of Payment (payment due with registration application)

Cheque Visa Mastercard Amex

Card No.

Expiry Date

Authorized Signature