



THE 2017 LEGAL GUIDE TO CONSENT, CAPACITY & SUBSTITUTE DECISION MAKING

You need an understanding of the current law and best practices to manage your day-to-day risks

Leading consent & capacity experts will use a case study approach to give you the knowledge and tools you need in this complex area including:

- The law that guides your actions: the statutory framework surrounding consent and capacity
- Identifying the correct substitute decision-maker, their role and scope of authority
- Knowing when you need to call the Office of the Public Guardian and Trustee (OPGT) & what to expect
- Managing conflict between family members/substitute decision makers
- Tips on preparing and appearing before the Consent and Capacity Board

Watch a Live Demonstration – What does a CCB hearing look like?

Register today at:

osgoodepd.ca/consent

Program Chairs:

Jane E. Meadus, Staff Lawyer,
Institutional Advocate,
Advocacy Centre for the
Elderly

Shelley M. Hobbs, Counsel,
Intake and Guardianship
Services, Office of the Public
Guardian and Trustee

Program Details:

DATE AND TIME:

March 27, 2017

9:00 a.m. – 4:30 p.m.

In Person or Webcast

Online Replay: May 3, 2017

LOCATION

**Osgoode Professional
Development**

1 Dundas St. West, 26th Floor
Toronto, ON

The 2017 Legal Guide to Consent, Capacity & Substitute Decision Making

In today's environment, **consent, capacity and substitute decision-making** remain fundamental issues for those working in healthcare. Failure to understand these issues and associated risks can lead to significant personal and organizational risk. As a healthcare professional or advisor, you face complex questions on informed consent, powers of attorney, capacity assessments, when to call the OPGT and preparing for a hearing before the Consent and Capacity Board.

Program Topics

Designed with direct feedback from those working on the front lines (nurses, allied health professionals, social workers etc...), this program was developed to provide you with the critical knowledge and practical strategies you need to confidently manage the risks and meet your obligations. You will hear about:

- The role of healthcare providers in obtaining consent, determining capacity & substitute decision-making
- Advance care planning and informed consent under the *Health Care Consent Act*
- The role of the Consent and Capacity Board: what applications can be made and by whom?
- Reaching out to the Office of the Public Guardian and Trustee to determine if there is a property guardian or court-appointed personal care guardian
- The role and scope of authority of substitute decision-makers

Who Should Attend?

- Manager, Administrators and Operators of Long-Term Care operations
- Retirement Home Managers, Administrators and Operators
- Hospital Administrators
- Community Healthcare including Family Health teams
- Directors of Resident Care
- Medical Professionals including nurses and allied health professionals
- Risk Managers
- Social workers
- In-house Counsel in long-term care, retirement & hospitals
- Patient care advocates

Agenda

8:30

Registration and Continental Breakfast

9:00

Welcome from the Chairs

Jane E. Meadus, Staff Lawyer, Institutional Advocate, Advocacy Centre for the Elderly

Shelley M. Hobbs, Counsel, Intake and Guardianship Services, Office of the Public Guardian and Trustee

To open the day, a complex scenario will be presented, designed to elicit thought and discussion about some of the key issues that will be discussed throughout the day. Goals will include:

- Understanding rules of informed consent
- Being able to determine when capacity should be evaluated, by whom, and the rights of the patient
- Identifying the correct substitute decision-maker, their role and scope of authority
- Managing conflict between family members/substitute decision-makers
- Issues related to the release of personal health information
- What is the role of patient wishes?

9:15

Understanding the Statutory Framework: The Law That Guides You and How it Fits Together

Jane E. Meadus, Staff Lawyer, Institutional Advocate, Advocacy Centre for the Elderly

This session will review the legislation in Ontario related to consent, capacity and substitute decision-making and explain how they intersect.

- *Substitute Decisions Act*
- *Health Care Consent Act*
- *Mental Health Act*
- *Personal Health Information Protection Act*
- *Long-Term Care Homes Act*
- *Powers of Attorney Act*
- *Child and Family Services Act*
- *Ontario Disability Support Program Act*
- *Old Age Security Act*
- *Canada Pension Plan*

10:15

Refreshment Break

10:30

Understanding the *Substitute Decisions Act* – From Property Management to Personal Care

Kaylie Handler, Goddard Gamage Stephens LLP

Alexander N. Procope, Perez Bryan Procope LLP

- What is the authority of the *Substitute Decisions Act*?
- When can you give a continuing power of attorney for property or personal care?
- What is the test for capacity for property management under s. 6 of the *Substitute Decisions Act*?
- What is the role for wishes under a power of attorney for personal care?
- Who determines capacity for personal care?
- What happens if there is no power of attorney for personal care?
- When do you need a capacity assessment and what are the rules under the *Substitute Decisions Act*?

11:30

Understanding the *Health Care Consent Act*: Informed Consent and Advance Care Planning

Judith A. Wahl, Past Executive Director, Advocacy Centre for the Elderly

Mark Handelman, BA, LLB, MHSC (Bioethics), Firm Counsel, Whaley Estate Litigation

- What is informed consent?
- What is capacity under the *Health Care Consent Act*?
- The role of the health practitioner
- Issues in informed consent and advance care planning under the *Health Care Consent Act*
 - who evaluates capacity and when?
 - identification of the substitute decision-maker
 - dealing with difficult substitute decision makers/situations
 - role of wishes, advance care plans and other documents in consent

- refusal of treatment vs. incapacity
- end of life decisions

12:30

Lunch

1:15

Capacity Assessments & Evaluations of Capacity: When and How?

Dr. Carole Cohen, MDCM, Clinical Director, Community Psychiatric Services for the Elderly, Sunnybrook Health Sciences Centre

- Capacity assessment versus an evaluation of capacity: Which one applies? When?
- Where does the authority for a capacity assessment come from?
- When do you need to call a capacity assessor?
- Capacity assessors: who they are; what they do; when you should call them
- Conducting an evaluation of capacity for treatment decisions: the specifics

2:00

Preparing for a Capacity Hearing Before the Consent and Capacity Board

Katharine L. Byrick, Borden Ladner Gervais LLP

D'Arcy J. Hiltz, Barrister & Solicitor

Michael D. Newman, Vice-Chair, Senior Lawyer Member, Consent & Capacity Board

- When does the CCB become involved?
- What applications can be made to the CCB? By whom?
- What is the jurisdiction of the Board?
- Tips in preparing for a hearing and appearing before the CCB

2:45

Refreshment Break

3:00

What Does a CCB Hearing Look Like?

Dr. Carole Cohen, MDCM, Clinical Director, Community Psychiatric Services for the Elderly, Sunnybrook Health Sciences Centre

Katharine L. Byrick, Borden Ladner Gervais LLP

Michael D. Newman, Vice-Chair, Senior Lawyer Member, Consent & Capacity Board

Live Demonstration

Using the case study that is woven into the day's presentations, you will watch the cross-examination of Dr. Cohen regarding a challenged section 16 capacity assessment. The theme relates to the difference between capable bad choices versus actual incapacity. The parties will include Dr. Cohen (witness/capacity assessor, the alleged incapable person, their lawyer (Katharine Byrick) and a CCB tribunal member (Michael D. Newman).

3:30

Office of the Public Guardian and Trustee: Their Role and What You Can Expect

Shelley M. Hobbs, Counsel, Intake and Guardianship Services, Office of the Public Guardian and Trustee

- Knowing when to call the Office of the Public Guardian and Trustee:
- What can you expect when you call them?
- Steps to take before calling
- How is a referral to the Office of the Public Guardian and Trustee investigations made?
- What information must be provided?

4:00

Case Study Wrap-Up: Putting it All Together

Dr. Carole Cohen, MDCM, Clinical Director, Community Psychiatric Services for the Elderly, Sunnybrook Health Sciences Centre

D'Arcy J. Hiltz, Barrister & Solicitor

Michael D. Newman, Vice-Chair, Senior Lawyer Member, Consent & Capacity Board

In this interactive afternoon session, Jane Meadus and Shelley Hobbs will lead this panel of experts in a discussion of the case study introduced at the beginning of the day. This group discussion is designed to reinforce your understanding of the issues and provide you with the insights of your peers as well as the tools and strategies needed for addressing the complex issues of consent and capacity in a health care environment. There will be plenty of opportunities for questions and debate.

4:30

Program Ends

Chairs

Jane E. Meadus, Staff
Lawyer, Institutional
Advocate, Advocacy Centre
for the Elderly

Shelley M. Hobbs, Counsel,
Intake and Guardianship
Services, Office of the Public
Guardian and Trustee

Faculty Includes

Katharine L. Byrick, Borden
Ladner Gervais LLP

D'Arcy J. Hiltz, Barrister
& Solicitor

Dr. Carole Cohen, MDCM,
Clinical Director, Community
Psychiatric Services for the
Elderly, Sunnybrook Health
Sciences Centre

Michael D. Newman,
Vice-Chair, Senior Lawyer
Member, Consent &
Capacity Board

Mark Handelman, BA,
LLB, MHSC (Bioethics), Firm
Counsel, Whaley Estate
Litigation

Alexander N. Procope,
Perez Bryan Procope LLP
Judith A. Wahl, Past
Executive Director, Advocacy
Centre for the Elderly

Kaylie Handler, Goddard
Gamage Stephens LLP

Our participants say it best:

“Case review was excellent.”

Carole Park, Client Service Manager,
South East Community Care Access Centre

“Well organized. Great topics.”

Jan Reynolds, Social Worker, Georgian Bay General Hospital

Registration Details

Fee per Delegate

\$525 plus HST

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/group-discounts for details. Please inquire about financial assistance.

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.



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CCHL MAINTENANCE OF CERTIFICATION - Attendance at this program entitles certified Canadian College of Health Leaders members (CHE / Fellow) to 3.25 Category II credits towards their maintenance of certification requirement.



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