

Health Law

SUMMARY

Health care operators in hospitals, long-term care facilities, retirement homes and other health institutions face an intimidating legal environment. We understand that your day-to-day operations are increasingly complicated. That is why we are committed to partnering with you to help you provide sustainable, high-quality health care for your patients, residents and clients.

Our Healthcare Law Group is national in scope and is the most comprehensive health law resource in Canada. No other firm has our depth and breadth of experience in serving health care organizations. Health care providers are the focal point of everything we do.

We act as the legal counsel to over 250 hospitals, health service providers and health sector associations nationally. Our clients include a wide range of health care providers and care coordinators, including hospitals, long-term care facilities, retirement homes, medical and health associations, regulated health professionals, regulatory colleges, laboratories, pharmacies, medical clinics, private health clinics and emergency centres. Our clients include the Ontario Hospital Association, Local Health Integration Networks (LHIN's) and Community Care Access Centres (CCAC's) in Ontario, des Centres de Santé et de Services Sociaux (CSSS's) in Québec, Alberta Health Services, and several Health and Social Services Authorities (HSS's) in the North West Territories.

The key to our success is teamwork. We realize it is critical to providing you with the best solutions. Like a hive, there is constant communication, sharing of experience and collaboration amongst the various lawyers in our healthcare law group.

And while each of our lawyers offers a diverse set of experience, we all work toward the same goal: developing the most practical, effective solutions for our healthcare clients.

PUBLICATIONS

(PDF, 1.8 Mo)

Bulletins

- "[Ontario Superior Court Filters Out Proposed Medical Implant Device Class Action](#)," December 2018.
- "[Appellate Court Upholds Decision Not to Certify Proposed Motherisk Class Action](#)," December 2018.
- "[Reporting PHIPA Breaches to Affected Individuals and the Information and Privacy Commissioner: A Primer](#)," December 2018.
- "[Proposed New Regulations Under the Assisted Human Reproduction Act](#)," December 2018.
- "[Increased Media Coverage on Medical Devices](#)," November 2018.
- "[Possible Changes to Long-term Care Home Regulations Regarding Cannabis](#)," November 2018.
- "[Managing Transitions: A Guidance Document](#)," November 2018.
- "[Form 1 Assessments Under the Mental Health Act – Frequently Asked Questions](#)," November 2018.

- ["The Role of Community Treatment Plans in Community Treatment Orders,"](#) November 2018.
- ["Impaired Driving and Bodily Fluid Samples: What Hospitals and Health-Care Providers Should Know,"](#) November 2018.
- ["Class Action Settlement Administrators Need Not Go "Above and Beyond" Terms of Settlement Agreement: Court of Appeal of Alberta,"](#) October 2018.
- ["Managing Transitions - A Guidance Document,"](#) October 2018.
- ["Court of Appeal Reinforces Evidentiary Principles of Causation,"](#) October 2018.
- ["Who is Fit to Drive? Amended Legislation Expands and Clarifies Medical Reporting Requirements Under the Highway Traffic Act,"](#) September 2018.
- ["Lessons Learned from Recent Cases: The Importance of Documenting Maintenance Activities,"](#) September 2018.
- ["Doctoring the Complaints Process? Procedural Fairness and Professional Discipline Legislation,"](#) August 2018.
- ["Executive Compensation Freeze Returns to the Broader Public Sector,"](#) August 2018.
- ["BLG Podcast,"](#) July 2018.
- ["Ten Things to Know Now That Recreational Cannabis Will Be Legal in Canada,"](#) July 2018.
- ["Ontario Court Confirms Intensive Care of a Brain Dead Patient Can Be Discontinued Despite Family's Objections,"](#) June 2018.
- ["Life Signs — Life Sciences Legal Trends in Canada,"](#) June 2018.
- ["BLG Releases Fifth Life Sciences Legal Trends Report,"](#) June 2018.
- ["Recent Amendment to Corporations Act \(Ontario\) Provides More Flexibility for Public Hospitals to Borrow,"](#) May 2018.
- ["Nurse Disciplined for Unprofessional Posts on Social Media Loses Appeal,"](#) May 2018.
- ["Ontario Police Record Checks Reform Act, 2015 to Come into Force on November 1, 2018,"](#) May 2018.
- ["Conflict of Interest Revisited,"](#) April 2018.
- ["Divisional Court Upholds Hospital Board Decision to Revoke Physician Privileges for Disruptive Conduct,"](#) April 2018.
- ["New Provisions to Protect Patients from Sexual Abuse in Force on May 1, 2018,"](#) April 2018.
- ["Hospital Protected by Public Hospitals Act in Physicians' Wrongful Dismissal Claim,"](#) March 2018.
- ["Good Faith/Bad Faith — Varying Privileges Could Result in Significant Civil Liability,"](#) March 2018.
- ["Impact of the All Families are Equal Act, 2016 for Surrogate Births,"](#) March 2018.
- ["Ontario Proposes Regulations to Further Protect Patients from Sexual Abuse,"](#) March 2018.
- ["Recent Media Spotlight Puts Long-Term Care on Centre Stage,"](#) February 2018.
- ["Addressing Sexual Harassment in the Workplace,"](#) February 2018.

- "[Amendments to the Long-Term Care Homes Act Proclaimed Into Force](#)," February 2018.
- "[Validity of Physician Duty to Provide Effective Referrals to Patients Upheld](#)," February 2018.
- "[To his health! William Carter retires from BLG's Health Law Group](#)," January 2018.
- "[Preparing for Consent and Capacity Board Hearings](#)," January 2018.
- "[Governance: Corporations Act Updated](#)," January 2018.
- "[Court of Appeal for Ontario Provides Guidance on the Dismissal of Frivolous Claims](#)," January 2018.
- "[Ministry Focuses on Transparency in the Ontario Health Care Sector](#)," December 2017.
- "[Recent Court of Appeal Decisions Highlight Importance of Evidence on 'Significant Threat'](#)," December 2017.
- "[Quality of Care Information Protection Act, 2016](#)," November 2017.
- "[New PHIPA Mandatory Reporting Requirement](#)," November 2017.
- "[All Families Are Equal Act](#)," November 2017.
- "[Bill 160 Proposes Numerous Amendments to Health Care Legislation in Ontario](#)," November 2017.
- "[Ontario Superior Court Released its Decision in Green v. The Hospital for Sick Children et al.](#)," November 2017.
- "[BLG Congratulates Bloom Burton Award Winner](#)," September 2017.
- "[Mandatory Reporting of Privacy Breaches to the Information and Privacy Commissioner now required under the Personal Health Information Protection Act, 2004](#)," July 2017.
- "[Physician with privileges unsuccessful in allegations that Hospital breached Ontario Human Rights Code](#)," July 2017.
- "[Proving Mental Injury — The Supreme Court Strikes Lower Courts' Requirement for a Recognized Psychiatric Illness but Confirms Injury Must Be Serious and Prolonged](#)," June 2017.
- "[Ontario Government Passes Legislation to Protect Patients from Sexual Abuse and Improve the Regulation of Health Professionals](#)," June 2017.
- "[New QCIPA and Hospital Management Regulations Changes — Coming into Force July 1, 2017](#)," January 2017.
- "[Top 10 Legal Risks for Business in 2017](#)," January 2017.
- "[Proposed Changes to the Regulated Health Professions Act Furthering Patient Protection and Accountability](#)," December 2016.
- "[Update — Ontario Passes the Patients First Act to Implement Health Sector Reform](#)," December 2016.
- "[CCB Rules No Jurisdiction Where Patient Declared Brain Dead](#)," November 2016.
- "[Ontario Reintroduces Patients First Act, 2016 with Important Changes](#)," October 2016.
- "[IPC Releases Guidance on Communicating PHI by Email](#)," September 2016.
- "[New Legislation Coming to Protect Patients from Sexual Abuse](#)," September 2016.

- "A Practical Guide to Mental Health and the Law in Ontario," September 2016.
- "New Expanded Duty to Notify the College of Physicians and Surgeons of Ontario," August 2016.
- "Guidance for Health Care Organizations on the new Cannabis Regulations," August 2016.
- "Decisions by Hospital Committees can be Reviewed by the Courts," April 2016.

REPRESENTATIVE WORK

- Acted in the leading cases of *Steep v. Kingston General Hospital* and *Hospital for Sick Children v. Leone*, in which the court recognized the importance of quality assurance principles applying to documentation generated in the course of quality assurance initiatives at hospitals.
- Advised on province-wide information technology initiatives involving more than 100 hospitals with regards to critical care, emergency department, surgical efficiency, and eMPI, WTIS and PACS services.
- Manages patent portfolios for therapeutic and nutritional technologies generated at a major research-based Toronto hospital. We work with the hospital's technology transfer officers to assess patentability, draft and file patent applications and assess freedom-to-operate based on competing technologies.
- Acted *pro bono* for an intervener (the Schizophrenia Society of Canada), in its intervention before the Supreme Court of Canada in *Starson v. Swayze* case, which considered the legal test for capacity to consent to treatment in psychiatric care under Ontario's *Health Care Consent Act*. The Court accepted our unique submissions as to the requisite burden of proof on health practitioners, thereby clarifying an important principle of law in a direction favourable to healthcare providers and families.
- Acted as counsel for the successful hospital in the leading Canadian case defining the relationship between the public hospital and an independent practitioner with privileges — *Yepremian v. Scarborough General Hospital*, (1980) 110 D.L.R. (3rd) 513 (Ont. C.A.).
- Advised on responding to adverse events and unexpected outcomes, including investigations and disclosure to patients, residents or family members.
- Represented the Ontario Hospital Association at the Daniel/Dupont Inquest (Windsor, Ontario) and helped ensure a systemic hospital management perspective was brought to the inquest.
- Provided project advice to health care facilities, and project lenders in respect of the financing of major capital projects; an example is The Hospital for Sick Kids Research and Learning Tower.
- *Lakeridge Health Corporation and OPSEU (Koscik Arbitration)*. Labour arbitration before Arbitrator Carrier. Decision issued March 12, 2012. We successfully represented Lakeridge Health Corporation in upholding the discharge of an employee for time theft
- Regularly advise retirement communities and long-term care facilities on the following matters, among others:
 - statutory compliance
 - accreditation regulations and guidelines
 - complaints process and mandatory reporting obligations

- acts that can only be performed by certain categories of health care professionals (“controlled acts”)
- health and safety risks
- *issues pertaining to leases / tenancies*
- privacy issues such as access to a resident’s file by family members
- advertising and promotions

RANKINGS & RECOGNITIONS

The Healthcare Law Group or its members are recognized:

- Recognized in the 2019 edition of *Chambers Canada — Canada's Leading Lawyers for Business*.
- In the 2018 (and since 2017) edition of *The Canadian Legal Expert® Directory*.
- By the 2017 *Benchmark Canada Awards* as Medical/Health Firm of the Year.
- As the top-ranked firm for Health Care Law in the 2016 edition of *The Best Lawyers in Canada®*.

BLG congratulates Healthcare Insurance Reciprocal of Canada (HIROC) on its win at last Thursday's 2014 Innovatio Awards.

Cindy Clarke was recognized as **the overall winner for Canada and the exclusive winner in Ontario of the Healthcare & Life Sciences category** in the *2014 Lexology Client Choice Awards (Canada and USA)*. Lawyers can only be nominated for the Client Choice programme by corporate counsel. Cindy practises civil litigation with a particular expertise in medical malpractice and product liability defence. She is an elected member of the firm’s governing body, National Council, and is a member of the Toronto office management committee. A leading participant in the Firm's Class Actions Group, Cindy appears before all levels of court and various administrative tribunals, including the Consent and Capacity Board, the Health Professions Appeal and Review Board, the Health Services Appeal and Review Board, and the Human Rights Tribunal. Cindy defends hospitals, Community Care Access Centres (CCACs) and other health organizations in many medical malpractice actions on behalf of the Healthcare Insurance Reciprocal of Canada. She also represents health and service organizations in court and before administrative tribunals. In addition, Cindy is involved in defending several product manufacturers in multi-million dollar product liability actions involving pharmaceuticals and other products with health effects. In 2008, Cindy was recognized as one of *Expert®’s* Rising Stars – Leading Lawyers Under 40. She is the co-author of *Law for Canadian Health Care Administrators, 2nd edition*, and is the Program Director of Osgoode Hall Law School's Certificate in Health Law course. She regularly presents to health care professionals and administrators on health law issues.

Mary Lynn Gleason was recognized as the **Toronto Medical Negligence Lawyer of the Year** in the 2014 edition of *The Best Lawyers in Canada*. Mary Lynn’s practice focuses on the defence of hospitals and their staff in medical malpractice claims. She has acted as counsel for hospitals, nurses, physicians and other health practitioners at inquests, civil trials, various levels of courts and administrative tribunals, including the Health Professions Appeal and Review Board. She has extensive experience in the defence of obstetrical brain injury medical malpractice cases. Mary Lynn also serves as general counsel to hospitals on a wide range of issues including privileges, policy and privacy issues.