

## Mental Health Law

### SUMMARY

Our Healthcare Law Group is uniquely positioned to understand how the current complex legislative framework for mental health care affects our clients in the health care setting. We work regularly with psychiatric care providers and represent their interests before administrative tribunals, all levels of courts and at Coroner's Inquests.

Our team includes lawyers who are highly experienced in mental health and consent and capacity law. We appear frequently before mental health tribunals and courts on matters dealing with consent to treatment, substitute decision making, involuntary admissions, transfers between psychiatric facilities, community treatment orders, secure treatment orders for youth, and admission to Long Term Care. In addition to frequent appearances before the Consent and Capacity Board (CCB), our lawyers also appear regularly before the Ontario Review Board (ORB), at hearings relating to the detention and treatment of criminally accused persons who are ordered to be detained at or, to report to specially designated forensic psychiatric facilities.

We provide advice to several psychiatric facilities, community hospitals and children's mental health centres on treatment capacity, involuntary admissions, the privacy of mental health records and other mental health law policy issues.

We acted for an intervener (the Schizophrenia Society of Canada), in its intervention before the Supreme Court of Canada in *Starson v. Swayze*, which is the leading case on the legal test for capacity to consent to treatment in psychiatric care under Ontario's *Health Care Consent Act*.

In addition to published articles and presentations on various mental health law subjects, members of our team authored the Ontario Hospital Association Toolkit: *A Practical Guide to Mental Health and the Law in Ontario* and the chapter on Mental Health Law in the *Canadian Health Law Practice Manual* (LexisNexis). Our advice is pro-active, anticipating common situations and flagging problem areas. While we frequently represent health care providers at mental health tribunals, we recognize that health care providers may be called upon to represent themselves. In that circumstance, we believe that the right education, support and assistance in preparation is essential to the health care provider's success. We are leaders in the provision of education to those working in the frontlines of mental health care.

### PUBLICATIONS

#### Publications:

- Barbara Walker-Renshaw, "[Interim Treatment Orders: Facilitating Treatment Pending Final Disposition of Treatment Capacity Appeals](#)," *Health Law in Canada*, Volume 35 No. 3, February 2015.
- Barbara Walker-Renshaw was quoted in the Lawyers Weekly article, "[Community Access Granted for NCR Man Who Killed Cop](#)," April 25, 2014.
- Barbara Walker-Renshaw was quoted in the Lawyers Weekly article, "[Incapacity Finding Unreasonable, Appeal Court Rules](#)," September 6, 2013.
- Maria Gergin, "New mental health safety standard may impact employers' duties related to employee mental health," HospitalNews.com, May 30, 2013.
- Walker-Renshaw & Byrick, *Ontario Hospital Association Toolkit: A Practical Guide to Mental Health and the Law in Ontario*, Ontario Hospital Association (OHA), October 2012.

- Barbara Walker-Renshaw, *Canadian Health Law Practice Manual - Chapter on Mental Health Law*, LexisNexis/Butterworths.
- Barbara Walker-Renshaw, "Assessing Capacity to Consent to Sexual Activity: Legal Considerations," *Journal of Ethics in Mental Health*, January 2012.
- Barbara Walker-Renshaw, "Restraint to Facilitate Treatment: Is it compatible with least restraint principles?" *Journal of Ethics in Mental Health*, April 2009.
- Daphne Jarvis, "The Right to Refuse Recommended Psychiatric Treatment," *Risk Management in Canadian Health Care*, Volume 4. No. 8.
- Daphne Jarvis, "The Ontario experience of involuntary treatment of pediatric patients with eating disorders," *International Journal of Law and Psychiatry* 33(2010) 138, (with Dr. Pier Bryden and Dr. Cathleen Steinegger of the Hospital for Sick Children).

#### **Recent Bulletins:**

- "[A Practical Guide to Mental Health and the Law in Ontario](#)," September 2016.

## **REPRESENTATIVE WORK**

- 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.
- Routinely represent the interests of forensic psychiatric facilities and health care providers before the Ontario Review Board and the Consent and Capacity Board.
- Provide general legal advice to the senior team and Board of Directors on patient care issues relating to the psychiatric patient population. As examples: hospital policies relating to the duties of the officer or person in charge, compliance with the legislation governing mental health care, privacy legislation, the use of restraints and seclusion, risk management, documentation, quality of care reviews, physician privilege issues and corporate governance.
- Represent psychiatric facilities and children's mental health centres and their staff at Coroner's Inquests and other public inquiries, and in civil litigation defending against claims in relation to suicide attempts, completed suicides, wrongful detention, adverse outcomes after elopements and other psychiatric issues.
- Routinely advise some of the leading providers of mental health services to children and youth, enabling the provision of treatment even in the face of oppositional behaviours, dysfunctional family relationships and scarce resources.