

LAW 531:A2 - LAW & MEDICINE (ROBERTSON)

COURSE OUTLINE

<u>DATE</u>	<u>TOPIC</u>
September 10	Introduction
September 17	Efficacy of the Medical Malpractice System
September 24	Medical Negligence
October 1	Consent to Health Care
October 8	Thanksgiving Holiday (No Class)
October 15	Duty of Disclosure (Informed Consent)
October 22	Duty to Disclose Medical Mistakes
October 29	Wrongful Birth/Wrongful Life
November 5	Genetics and the Law: Guest Speaker, Professor Tim Caulfield
November 12	Remembrance Day Holiday (No Class)
November 19	Confidentiality and Access to Health Records
November 26	No Class
December 3	Mental Health: Civil Committal under the Mental Health Act

COURSE ASSESSMENT

This is a paper course. You are required to submit a paper on a topic within the health law field. The topic must be approved by me in advance. The paper should not exceed 25 pages, double spaced. It must be submitted no later than 12 noon on Wednesday, December 5, 2001. Marks may be deducted for late submission.

G.B. Robertson
September 2001

EFFICACY OF THE MEDICAL MALPRACTICE SYSTEM

1. E.I. Picard & G.B. Robertson, *Legal Liability of Doctors and Hospitals in Canada*, 3rd ed. (Toronto: Carswell, 1996), chapter 13
2. Federal/Provincial/Territorial Review on Liability and Compensation Issues in Health Care (Prichard Commission), *Final Report: Liability and Compensation in Health Care* (Toronto: University of Toronto Press, 1990)
3. Limitations Act, S.A. 1996, c. L-15.1, s. 3(1) [proclaimed in force March 1, 1999]

MEDICAL NEGLIGENCE

1. E.I. Picard & G.B. Robertson, *Legal Liability of Doctors and Hospitals in Canada*, 3rd ed. (Toronto: Carswell, 1996), chapters 4-6, 11
2. *Woods v. Lowns* (1995), 36 N.S.W.L.R. (S.C.)
3. *Egedebo v. Windermere District Hospital Association*, [1991] B.C.J. No. 2381 (S.C.), *aff'd* (1993), 78 B.C.L.R. (2d) 63 (C.A.), *leave to appeal to S.C.C. refused* 80 B.C.L.R. (2d) xxvi (S.C.C)
4. *MacPhail v. Desrosiers*, [1998] N.S.J. No. 353 (C.A.)
5. *Crits v. Sylvester*, [1956] O.R. 132 (C.A.), *aff'd* [1956] S.C.R. 991
6. *ter Neuzen v. Korn* (1995), 127 D.L.R. (4th) 577 (S.C.C.)
7. *Tailleur v. Grande Prairie General & Auxiliary Hospital & Nursing Home District No. 14* (1996), 36 Alta. L.R. (3d) 393 (Q.B.) *rev'd* [1999] A.J. No. 1 (C.A.)
8. *Lapointe v. Hôpital Le Gardeur* (1992), 90 D.L.R. (4th) 27 (S.C.C.)
9. *Bergen v. Sturgeon General Hospital* (1984), 52 A.R. 161 (Q.B.)
10. *Kelly v. Lundgard*, [2001] A.J. No. 906 (C.A.)
11. *Law Estate v. Simice* (1994), 21 C.C.L.T. (2d) 228 (B.C.S.C.)
12. *Bateman v. Doiron* (1991), 8 C.C.L.T. (2d) 284 at 290 (N.B.Q.B.), *aff'd* (1993), 18 C.C.L.T. (2d) 1 (C.A.), *leave to appeal to S.C.C. refused* (1994), 20 C.C.L.T. (2d) 320 (S.C.C.)
13. *Decock v. Alberta*, [2000] A.J. No. 419 (C.A.)
14. *Snell v. Farrell*, [1990] 2 S.C.R. 311
15. *de la Giroday v. Brough* [1997] 6 W.W.R. 585 (B.C.C.A.)
16. *McInerney v. MacDonald* (1992), 93 D.L.R. (4th) 415 (S.C.C.)
17. *Dumais v. Hamilton*, [1998] A.J. No. 761 (C.A.)

18. *Ostby v. Bondar*, [1998] A.J. No. 584 (Q.B.)

CONSENT TO HEALTH CARE

1. E.I. Picard & G.B. Robertson, *Legal Liability of Doctors and Hospitals in Canada*, 3rd ed. (Toronto: Carswell, 1996), chapter 2
2. *Allan v. New Mount Sinai Hospital* (1980), 11 C.C.L.T. 299 (Ont. H.C.), *rev'd on procedural grounds* (1981), 19 C.C.L.T. 76 (C.A.)
3. *Malette v. Shulman* (1990), 67 D.L.R. (4th) 321 (Ont. C.A.)
4. *Nancy B. v. Hôtel-Dieu de Québec* (1992), 86 D.L.R. (4th) 385 (Que. S.C.)
5. *Fleming v. Reid* (1991), 82 D.L.R. (4th) 298 (Ont. C.A.)
6. *Murray v. McMurchy*, [1949] 2 D.L.R. 442 (B.C.S.C.)
7. *Brushett v. Cowan* (1990), 3 C.C.L.T. (2d) 195 (Nfld. C.A.)
8. *Ciarlariello Estate v. Schacter*, [1993] 2 S.C.R. 119
9. *Mitchell v. McDonald* (1987), 80 A.R. 16 (Q.B.)
10. *Nightingale v. Kaplovitch*, [1989] O.J. No. 585 (H.C.)
11. *C. (J.S.) v. Wren*, [1987] 2 W.W.R. 669 (Alta. C.A.)
12. *Walker v. Region 2 Hospital Corp.* (1994), 116 D.L.R. (4th) 477 (N.B.C.A.)
13. *Re. T.D.D.*, [1999] S.J. No. 143 (Q.B.)
14. *Institut Philippe Pinel de Montréal v. Dion* (1983), 2 D.L.R. (4th) 234 (Que. S.C.)
15. *Khan v. St. Thomas Psychiatric Hospital* (1992), 87 D.L.R. (4th) 289 (Ont. C.A.)
16. *Winnipeg Child and Family Services v. G. (D.F.)* (1997), 152 D.L.R. (4th) 193 (S.C.C.)
17. *Norberg v. Wynrib*, [1992] 2 S.C.R. 226
18. *Kita v. Braig* (1992), 71 B.C.L.R. (2d) 135 (C.A.), *leave to appeal to S.C.C. refused* (1993), 74 B.C.L.R. (2d) xxx (S.C.C.)

19. *Gerula v. Flores* (1995), 126 D.L.R. (4th) 506 (Ont. C.A.)

DUTY OF DISCLOSURE (INFORMED CONSENT)

1. E.I. Picard & G.B. Robertson, *Legal Liability of Doctors and Hospitals in Canada*, 3rd ed. (Toronto: Carswell, 1996), chapter 3
2. *Reibl v. Hughes*, [1980] 2 S.C.R. 880
3. *Haughian v. Paine*, [1987] 4 W.W.R. 97 (Sask. C.A.), leave to appeal to S.C.C. refused [1987] 6 W.W.R. lix (S.C.C.)
4. *Rolof v. Morris* (1990), 109 A.R. 128 (Q.B.)
5. *Rayner v. Knickle* (1991), 274 A.P.R. 214 (P.E.I.C.A.)
6. *Ciarlariello Estate v. Schacter*, [1993] 2 S.C.R. 119
7. Caulfield & Ginn, "The High Price of Full Disclosure: Informed Consent and Cost Containment in Health Care" (1994) 22 *Manitoba Law Journal* 328
8. *Halkyard v. Mathew*, [2001] A.J. No. 293 (C.A.)
9. *Smith v. Tweedale* (1995), 4 B.C.L.R. (3d) 324 (C.A.)
10. *Finch v. Carpenter*, [1993] B.C.J. No. 1918 (S.C.)
11. *Adan v. Davis*, [1998] O.J. No. 3030 (Gen. Div.)
12. *Mang v. Moscovitz* (1982), 37 A.R. 221 (Q.B.)
13. *Meyer Estate v. Rogers* (1991), 78 D.L.R. (4th) 307 (Ont. Gen Div.)
14. *Pittman Estate v. Bain* (1994), 112 D.L.R. (4th) 257 (Ont. Gen. Div.)
15. *Hollis v. Dow Corning Corp.* (1995), 129 D.L.R. (4th) 609 at 620 (S.C.C.)
16. *Arndt v. Smith*, [1997] 2 S.C.R. 539

DUTY TO DISCLOSE MEDICAL MISTAKES

1. E.I. Picard & G.B. Robertson, *Legal Liability of Doctors and Hospitals in Canada*, 3rd ed. (Toronto: Carswell, 1996), pp. 170-172
2. *Lee v. South West Thames R.H.A.*, [1985] 2 All E.R. 385 (C.A.)
3. *Stamos v. Davies* (1985), 52 O.R. (2d) 10 (H.C.)
4. *Vasdani v. Sehmi*, [1993] O.J. No. 44 (Gen Div.)
5. *Kiley-Nikkel v. Danais* (1993), 16 C.C.L.T. (2d) 290 (Que. Super. Ct.)
6. *Gerula v. Flores* (1995), 126 D.L.R. (4th) 506 (Ont. C.A.)
7. *Shobridge v. Thomas*, [1999] B.C.J. No. 1747 (S.C.)
8. *Fowler v. Greater Glasgow Health Board*, [1990] Scots Law Times 303 (Ct. Sess.)
9. Robertson, "Fraudulent Concealment and the Duty to Disclose Medical Mistakes" (1987) 25 *Alberta Law Review* 215

WRONGFUL BIRTH/WRONGFUL LIFE

1. E.I. Picard & G.B. Robertson, *Legal Liability of Doctors and Hospitals in Canada*, 3rd ed. (Toronto: Carswell, 1996), pp. 212-218
2. *Grey v. Webster* (1984), 14 D.L.R. (4th) 706 (N.B.Q.B.)
3. *Thake v. Maurice*, [1985] 2 W.L.R. 215 (Q.B.), *rev'd* [1986] 1 All E.R. 497 (C.A.)
4. *Ferguson v. Henshaw*, unreported, 1989, New Westminster Registry No. C852173 (B.C.S.C.)
5. *Fredette v. Wiebe*, [1986] 5 W.W.R. 222 (B.C.S.C.)
6. *Kovacovich v. Ortho Pharmaceutical (Canada) Ltd.* (1995), 9 B.C.L.R. (3d) 14 (S.C.)
7. *Arndt v. Smith*, [1997] 2 S.C.R. 539
8. *Mickle v. Salvation Army Grace Hospital*, [1998] O.J. No. 4683 (Gen Div.)
9. *Joshi v. Woolley* (1995), 4 B.C.L.R. (3d) 208 (S.C.)
10. *Doiron v. Orr* (1978), 86 D.L.R. (3d) 719 (Ont. H.C.)
11. *Suite v. Cooke*, [1995] Q.J. No. 696 (C.A.)
12. *Kealey v. Berezowski* (1996), 30 O.R. (3d) 37 (Gen. Div.)
13. *H.(R.) v. Hunter* (1996), 32 C.C.L.T. (2d) 44 (Ont. Gen. Div.)
14. *Krangle v. Brisco*, [2000] B.C.J. No. 465 (C.A.), *leave to appeal to S.C.C. granted* [2000] S.C.C.A. No. 215
15. *McFarlane v. Tayside Health Board*, [1999] T.N.L.R. No. 856 (H.L.)
16. *Keats v. Pearce* (1984), 48 Nfld. & P.E.I.R. 102 (Nfld. T.D.)
17. *Benarr v. Kettering Health Authority*, unreported, April 27, 1988 (Eng. Q.B.), discussed in (1988) 56 *Medico-Legal Journal* 179
18. *McKay v. Essex A.H.A.*, [1982] 2 W.L.R. 890 (C.A.)
19. *Jones v. Rostvig*, [1999] B.C.J. No. 647 (S.C.)
20. *Cherry v. Borsman* (1991), 75 D.L.R. (4th) 668 (B.C.S.C.), *varied in part* (1992), 94

D.L.R. (4th) 487 (C.A.), *leave to appeal to S.C.C. refused* (1993), 99 D.L.R. (4th) vii (S.C.C.)

CONFIDENTIALITY AND ACCESS TO HEALTH RECORDS

1. E.I. Picard & G.B. Robertson, *Legal Liability of Doctors and Hospitals in Canada*, 3rd ed. (Toronto: Carswell, 1996), pp. 14-35, 406-409
2. Health Information Act, S.A. 1999, c. H-4.8
3. Child Welfare Act, S.A. 1984, c. C-8.1, ss. 1, 3
4. *Tarasoff v. Regents of the University of California*, 551 P. 2d 334 (Cal., 1976)
5. *Wenden v. Trikha* (1991), 116 A.R. 81 (Q.B.), *aff'd* (1993), 14 C.C.L.T. (2d) 225 (C.A.), *leave to appeal to S.C.C. refused* (1993), 17 C.C.L.T. (2d) 285n (S.C.C.)
6. *Brown v. University of Alberta Hospital*, [1997] 4 W.W.R. 645 (Alta. Q.B.)
7. *W. v. Egdell*, [1990] 2 W.L.R. 471 (C.A.)
8. *Smith v. Jones*, [1999] 1 S.C.R. 455
9. *Re Myers* (1986), 57 O.R. (2d) 54 (H.C.)
10. *Lindsay v. D.M.*, [1981] 3 W.W.R. 703 (Alta. C.A.)
11. *Tuck v. Lam* (1988), 91 A.R. 168 (Q.B.)
12. *McInerney v. MacDonald* (1992), 93 D.L.R. (4th) 415 (S.C.C.)
13. *Waugh v. British Railways Board*, [1980] A.C. 521 (H.L.)
14. *Upham v. You* (1986), 73 N.S.R. (2d) 73 (C.A.)
15. *Duras v. Welland General Hospital* (1985), 51 O.R. (2d) 284 (S.C.)
16. *Hay v. University of Alberta Hospital* (1990), 105 A.R. 276 (Q.B.)
17. *M.(A.) v. Ryan*, [1997] 4 W.W.R. 1 (S.C.C.)

MENTAL HEALTH: CIVIL COMMITMENT

1. G.B. Robertson, *Mental Disability and the Law in Canada* (2nd ed., 1994)
2. Mental Health Act, S.A. 1988, c. M-13.1
3. *M. v. Alberta* (1985), 63 A.R. 14 (Q.B.)
4. *Wurfel v. Alberta Hospital (Edmonton)*, [1999] A.J. No. 868 (Q.B.)
5. *Thwaites v. Health Sciences Centre Psychiatric Facility*, [1988] 3 W.W.R. 217 (Man. C.A.)
6. *McCorkell v. Riverview Hospital*, [1993] 8 W.W.R. 169 (B.C.S.C.)
7. *Tychowsky v. Alberta Hospital*, unreported, July 8, 1998, No. 9803-11024 (Alta. Q.B.), *appeal dismissed as moot* June 5, 2000, No. 9803-0358AC (C.A.)
8. *Fleming v. Reid* (1991), 4 O.R. (3d) 74 (C.A.)
9. *B.T. v. Alberta Hospital*, [1997] A.J. No. 894 (Q.B.).
10. *Tarasoff v. Regents of the University of California*, 551 P. 2d 334 (Cal. 1976)