

**Medical Legal Problems  
Fall 2002  
Prof. Sanda Rodgers**

**Text:** Prof. S. Rodgers, Casebook: Medical-Legal Problems, 2002

**Method of Evaluation:** 100%, 2 hour final exam, open book **or** research paper and mandatory attendance with advance permission of instructor.

Students may wish to consult the following basic texts available in the library:

Ellen Picard, Legal Liability of Doctors and Hospitals in Canada, Carswell, 1984.

Gilbert Sharpe, The Law and Medicine in Canada, Butterworths, 1987.

Sneiderman, Irvine and Osborne, Canadian Medical Law, 2<sup>nd</sup> ed., Carswell, 1995.

Jocelyn Downie and Timothy Caulfield, Canadian Health Law and Policy, Butterworths, 1999.

**Course Objectives:** Students are expected to obtain an understanding of the history of the Canadian health care system and its primary legislative instruments at the federal and provincial level and be familiar with the governing legislation, to understand how the health care system is structured, the criminal, professional and private law controls upon health care providers, the obligations imposed and remedies provided for their breach and the policy implications of health care regulation.

I. History of the Canadian Health Care System

Origins of the public health care system

Impact of the history of the system on the current structure of hospital and doctor's services.

## II. Structure of the Canadian Health Care System

Originating and implementing legislation for the Canadian health care system  
shared federal and provincial responsibility  
single tier and two tiered systems  
alternative service delivery systems  
possible future directions for a reconfigured health care system

Canada Health Care Act, R.S.C. 1985, c. C.6 10

Health Care Accessibility Act, R.S.O. 1990, c. H.3 15

Eldridge v. British Columbia (A.G.), [1997] SCJ No. 86 16

Cameron v. Nova Scotia [1999] N.S.J.

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## III. Regulation of the Health Care Professions

How are the quality and professionalism of health care service providers controlled and assured?

Code of Ethics, Canadian Medical Association, 1996 40

Regulated Health Professions Act, S.O. 1991, 46  
C. 18.; s. 3, 27 (2), 29 (1), 30 (1), 35, 36,  
Sched. I

Health Professions Procedural Code, s. 1(3), 1.1, 53  
2 (3), 10, 23 (1,2,3), 25074, 84-85.7, 95 (1)

Revised Regulations of Ontario 93

Health Protection and Promotion Act R.S.O. 1990,  
c. H-7,s.25, 26

Bain (Discipline Committee CPSO) 94

<u>Norberg v. Wynrib</u> , (1992) 92 D.L.R. (4 <sup>th</sup> ) 449	102
<u>Korn v. Potter</u> , (1996) 134 D.L.R. (4 <sup>th</sup> ) 437	127

#### **IV. The Doctor - Patient Relationship**

Sources of the doctor's obligations towards the patient  
 Code of Ethics  
 Acts and Regulations  
 Professionalism organizations  
 Other sources: medical literature, manufacturers information  
 The manufacturer's obligations to the patient

##### **a. Duty, Breach and Causation**

###### **1. Duty and the Standard of Care**

Can a physician be found negligent even if he complied with standard medical practice?

Can the prevailing standard of practice be found negligent?

Pittman Estate v. Bain, (1994) 112 D.L.R. (4<sup>th</sup>) 135

ter Neuzen v. Korn: HIV-T Group (Blood Transfused) et al., Interveners, (1995), 127 D.L.R. (4<sup>th</sup>) 577

Walker Estate v. York Finch General Hospital, [2001] 1 S.C.R. 647 168

###### **2. The Problem of Causation**

How can the plaintiff go about proving that the damage that she has suffered is caused by the defendant's negligence where generally all of the information is controlled by the defendant?

What is the difference between the medical notion of a causal connection and a legal notion of causal connection?

Farrell v. Snell, (1990) 72 D.L.R. (4<sup>th</sup>) 289 180

Course Outline

### **3. Manufacturers Obligations**

Dow Corning Corp. v. Hollis et al., (1995) 129 D.L.R. (4<sup>th</sup>) 609 188

Pitman v. Bain, supra.

### **b. Obtaining Consent**

Health Care Consent Act 210

#### **1. Adults**

Arndt et al. v. Smith, [1997] 148 D.L.R. (4<sup>th</sup>) 48 218

Ciarlariello Estate v. Schacter, (1991) O.J. 229  
Jan 11 1991

Dow, supra.

Muir v. The Queen in Right of Alberta, (1996) 241  
132 D.L.R. (4<sup>th</sup>) 697

#### **2. Right to Refuse Treatment - Right to an Assisted Death**

B. v. Hotel Dieu de Quebec, (1992) 69 CCC 260  
(3d) 450

Rodriguez v. British Columbia (Attorney General) 267 [1993] S.C.R.

### 3. Minors

#### c. Maintaining Confidentiality

McInerney v. MacDonald, (1992) 93 D.L.R. (4<sup>th</sup>) 416 301

A.M. v. Ryan, [1997] 1 S.C.R. 157 312

Smith v. Jones, [1999] 1 S.C.R. 455 333

Course Outline

#### d. Duty to Warn

Bain v. Pittman, supra.

## V. Hospital Liability

#### a. Hospital Privileges

Sheppard v. Colchester Regional Hospital Commission 352 (1995) 137 N.S.R. 181

#### b. Hospital Liability

Yepremian v. Scarborough General Hospital 370

(1980) 13 C.C.L.T. 109

Bain v. Pittman, supra.

## VI. Abortion

Tremblay v. Daigle, (1989) 62 D.L.R. (4<sup>th</sup>) 634 396

R. v. Morgentaler, (1993) 107 D.L.R. (4<sup>th</sup>) 537 411

Dobson v. Dobson, [1999] 2 S.C.R. 753 425

## **VII. Wrongful Life - Wrongful Birth**

Arndt v. Smith, supra.

Cherry v. Borsman, (1992) 16 B.C.C.A. 93 434

Kealey v. Berezowski (Ontario General Division, 438  
Lax, J.)

## **VIII. Foetal Rights - Maternal Rights**

Winnipeg Child Family Services (Northwest Area) 453  
v. D.F.G., [1997] S.C.J. No. 96