



THE LEGAL GUIDE TO CONSENT, CAPACITY AND SUBSTITUTE DECISION-MAKING

Now more than ever you need an understanding of the current law and best practices to manage your day-to-day risks.

With COVID-19 as the backdrop, leading consent and capacity experts will use a case study approach to give you the knowledge and tools you need in this complex area, including:

- Complying with the statutory framework surrounding consent and capacity
- Identifying the correct substitute decision maker, their role and scope of authority
- Understanding capacity assessments and evaluations of capacity
- Health privacy: safeguarding patient information
- Managing conflict between family members/substitute decision maker
- Tips on preparing and appearing before the Consent and Capacity Board (CCB)

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

PROGRAM CHAIR

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

REGISTRATION OPTIONS

- **Monday, December 5, 2022:**
9:00 a.m. – 4:45 p.m. ET
Online (Live)
- **Monday, January 23, 2023:**
Online (Replay)

Can't make the date?
Registration includes 120-day
unlimited, online access to the
recorded program.

Register today at:
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consent](https://osgoodepd.ca/consent)



The Legal Guide to Consent, Capacity and Substitute Decision-Making

In today's environment, **consent, capacity and substitute decision making** remain fundamental issues for those working in healthcare. Failure to understand the issues, associated risks and your legal obligations, can lead to significant personal and organizational risk, not to mention impact the care you are providing. As a healthcare professional or advisor, you face complex questions on informed consent, powers of attorney, capacity assessments, when to call the OPGT and how to prepare for a hearing before the Consent and Capacity Board.

Topics Include

Designed with direct feedback from those working on the front lines in healthcare (nurses, allied health professionals, risk managers, social workers etc.) this program will provide you with the critical knowledge and practical strategies you need to confidently manage the risks and meet your obligations. You will gain a clear understanding about:

- The role of healthcare providers in obtaining consent, determining capacity and substitute decision making
- Advance care planning and informed consent under the *Health Care Consent Act*
- The role of the Consent and Capacity Board and what applications can be made by whom.
- Capacity assessors: who they are, what they do, how have they adapted to the COVID reality
- What responsibility does the Office of the Public Guardian and Trustee have in making decisions on behalf of incapable people where medical treatment is proposed?

Who Should Attend

- Managers, Administrators and Operators of Long-Term Care operations
- Retirement Home Managers, Administrators and Operators
- Hospital Administrators
- Community Healthcare
- Family health teams
- Directors of Resident Care
- Medical Professionals
- Risk Managers
- Social Workers
- Patient care advocates
- In-House counsel in long-term care, retirement, hospitals
- Lawyers practicing health and/or elder law

Register today at:

osgoodepd.ca/consent

Agenda

8:30 a.m.

Program Log-in

8:45 a.m.

Welcome from the Chair

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

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 rights of 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?

9:00 a.m.

Understanding the Law That Guides Your Actions and How It All 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*

9:30 a.m.

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

D'Arcy J. Hiltz, Barrister & Solicitor

Alexander Procope, Perez Bryan Procope LLP

Using case studies of common scenarios when substitute decision-making issues arise in a healthcare setting and with COVID-19 as a backdrop, you will learn:

- What is the authority of the *Substitute Decisions Act*?

- When can you give a continuing power of attorney for property or personal care? When do they become effective?
- What is the test for capacity for property management under s. 6 of the *Substitute Decisions Act*?
- Recognizing the different types of substitute decision-makers for property management
- What is the role for wishes under a power of attorney for personal care?
- Who determines capacity for personal care issues?
- 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*?

10:30 a.m.
Wellness Break

10:45 a.m.

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

Judith A. Wahl, Wahl Elder Law

- What is informed consent?
- What is capacity under the *Health Care Consent Act*?
- 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-makers
 - 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

11:45 a.m.

**Health Privacy:
Hidden Issues to Help Navigate the System**

Brendan Gray, Health Law Counsel, Office of the Information and Privacy Commissioner of Ontario

- Consent, capacity and substitute decision-making under the *Personal Health Information Protection Act, 2004*:
 - Substitute decision-making on behalf of capable and incapable individuals
 - Special considerations in relation to children
 - Role of estate trustees for deceased individuals
 - Role of substitute decision-makers under the *Health Care Consent Act, 1996* and *Substitute Decision Act, 1992*
- Substitute decision-making under the *Freedom of Information and Protection of Privacy Act* and its municipal counterpart

12:15 p.m.
Lunch

1:00 p.m.

Capacity Assessments and 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 and 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
- Capacity assessments and evaluations in the time of COVID
- How have capacity assessors adapted to COVID reality?
- What restrictions are being imposed by COVID in LTC settings?

1:45 p.m.

Preparing for a Hearing at the Consent and Capacity Board (CCB)

John Hunter, Borden Ladner Gervais LLP

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

Mercedes Perez, Perez Bryan Procope LLP

- What is the CCB?
- When does the CCB become involved?
- What applications can be made to the CCB? By whom?
- What is the jurisdiction of the Board?
- Have preparations changes due to COVID?
- The structure of a CCB hearing
- The roles of the various parties
- Before the Hearing: tips on how to prepare
- Appearing before the CCB: what you should know
- How are hearings being conducted during COVID?

2:30 p.m.

Wellness Break

2:45 p.m.

The CCB Hearing: Discussion and Q&A

John Hunter, Borden Ladner Gervais LLP

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

Mercedes Perez, Perez Bryan Procope LLP

In advance of the conference you will receive a recording of a mock CCB hearing to review. The recording will give you insights into what an actual hearing looks like. During this session, our panelists

will open the floor to questions while discussing the hearing, roles of the various parties, conducting hearings effectively and how COVID-19 has impacted the manner in which hearings are being conducted. This is the perfect opportunity for you to ask those pressing questions.

3:45 p.m.

The Office of the Public Guardian and Trustee's Treatment Decisions Unit: Its Role and What You Can Expect

Salvatore Maietta, Treatment Decisions Consultant, Ontario Ministry of the Attorney General, Office of the Public Guardian and Trustee

Sarah Jones, Counsel, Ontario Ministry of the Attorney General, Office of the Public Guardian and Trustee

This session will focus on the OPGT's responsibility to make decisions on behalf of incapable people where medical treatment is proposed and there are no other people, such as a relative, who are available, capable and willing to do so. Specific topics include:

- What is the role of the PGT in treatment decision-making?
- When and how to contact the PGT
- How to get the PGT involved where there are SDMs who don't agree
- What is the "turn around" time?
- Why won't the PGT sign Advance Care Directives?
- Will the PGT make decision around DNRs?
- Will the PGT make decisions around end of life?
- How to get the PGT involved in property issues
 - who's making decision about housing but you pay

4:30 p.m.

Wrap-Up and Q&A Discussion

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

Mercedes Perez, Perez Bryan Procope LLP

Closing out the day will be a dedicated Q&A session giving you the opportunity to ask those burning questions that have arisen from the presentations throughout the day. The interactive format will reinforce your understanding of the issues and provide you with insights from both the presenters and your peers. You'll leave with tools and strategies for addressing the complex issues of consent and capacity in your organization.

4:45 p.m.

Program Ends

Chair

Jane E. Meadus

Staff Lawyer, Institutional Advocate,
Advocacy Centre for the Elderly

Faculty Includes

Dr. Carole Cohen, MDCM

Clinical Director, Community
Psychiatric Services for the Elderly,
Sunnybrook Health Sciences Centre

Brendan Gray

Health Law Counsel, Office of
the Information and Privacy
Commissioner of Ontario

D'Arcy J. Hiltz

Barrister & Solicitor

John Hunter

Borden Ladner Gervais LLP

Sarah Jones

Counsel, Ontario Ministry of the
Attorney General, Office of the
Public Guardian and Trustee

Salvatore Maietta,

Treatment Decisions Consultant,
Ontario Ministry of the Attorney
General, Office of the Public Guardian
and Trustee

Michael D. Newman

Vice-Chair, Senior Lawyer Member,
Consent & Capacity Board

Mercedes Perez

Perez Bryan Procope LLP

Alexander Procope

Perez Bryan Procope LLP

Judith A. Wahl

Wahl Elder Law

“The speakers were all extremely knowledgeable.”

Robert R Sheppard, Medical Director, Psychiatry,
Thunder Bay Regional Health Sciences Centre (2019)

*“Practical and relevant information was provided to
inform my clinical practice as a hospital social worker
in dealing with consent and capacity issues.”*

Gabe Wong, Social Worker, Mount Sinai Hospital

“Excellent.”

Anna Tersigni Phelan, Director, Quality/Risk, Chief Privacy Officer,
Canadian Mental Health Association Waterloo-Wellington

Registration Details

Fee Per Delegate: **\$595 + TAX**

Newly Licensed*: **50% off regular price + TAX**

**This fee applies to newly licensed professionals within the past 2 years*

Fees include online attendance and electronic program materials. Participants will have access to the archived sessions of this program for 120 days from the date of program completion. Visit www.osgoodepd.ca/financial-assistance for details 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 is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



Eligible CPD Hours – LSO (ON): 7h 15m CPD (6h 15m Substantive; 1h Professionalism)



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416.597.9724

1 Dundas Street West, Suite 2600



@OsgoodePD

Toronto, ON Canada M5G 1Z3



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