

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 around consent to manage your day-to-day risks in this challenging area.

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 Live Demo – What does a CCB hearing look like?

## PROGRAM CHAIR

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

## REGISTRATION OPTIONS

February 27, 2024:  
Online (Live)  
8:45 a.m. – 4:45 p.m. ET

OR

April 2, 2024:  
Online (Replay)  
8:45 a.m. – 4:45 p.m. ET

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# 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 health care. 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 health-care 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 health care (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 health-care 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, what applications can be made and 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 health care
- 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

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## 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 thoughtful 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, including:

- *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 health-care setting, 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**

**Lonny Rosen**  
Rosen Sunshine LLP

- 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:  
Navigating the System**

**Gillian Kafka**  
Senior Legal Counsel, Kate Dewhirst Health Law

- Framework for consent, capacity and substitute decision-making: where do the *Health Care Consent Act* and *Substitute Decisions Act* fit in?
- Access to, correction of and release of health records
  - Who can request?
  - What to ask for?
  - Records of the deceased
- Transitions in care: sharing of information
  - Local health integrated network staff
  - Landlords
  - Options to control the flow of information

**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? 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)**

**Patrick A. Wright**  
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**

**Patrick A. Wright**  
Borden Ladner Gervais LLP

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

**Mercedes Perez**  
Perez Bryan Procope LLP

Watching a mock CCB hearing will provide you with 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 and conducting hearings effectively. 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**

**Crystal Liu**  
Counsel, Ministry of the Attorney General,  
Office of the Public Guardian and Trustee

**Rhonda Kearney**  
Treatment Decisions Consultant, 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

**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

**D'Arcy J. Hiltz**

Barrister & Solicitor

**Gillian Kafka**

Senior Legal Counsel, Kate  
Dewhirst Health Law

**Rhonda Kearney**

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

**Crystal Liu**

Counsel, 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

**Lonny Rosen**

Rosen Sunshine LLP

**Patrick A. Wright**

Borden Ladner Gervais LLP

*"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

## Registration Details

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

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### 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.



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