

## The Osgoode National Symposium on Mental Health Law

Hear from an interdisciplinary faculty from across Canada on:

- The latest on capacity assessments
- Resolving conflicts between substitute decision-makers
- Creating a safe environment for patients and staff
- Protecting the suicidal patient
- The latest on the use of restraints
- Advocacy for persons with a mental illness: overcoming the challenges
- Search and seizure in a mental health unit: tips and tools
- Community treatment orders and the role of the rights advisor
- Children and adolescents' mental health law issues
- Interactions between the police and the mental health services
- Risk management in a mental health facility
- Assessing the risk of violence: what's the standard of care?

### Plus! Optional Post-Conference Workshops

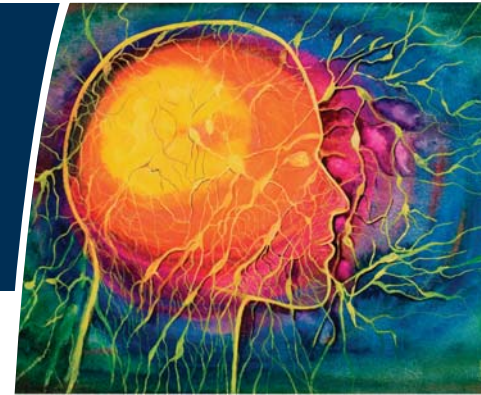
A: *Preparing for a Consent and Capacity Board Hearing: What You Need to Know*

B: *Ontario Review Board Practice and Procedure: An Essential Guide*

### Chairs

Janice E. Blackburn, Bersenas Jacobsen Chouest Thomson Blackburn LLP

Michael Newman, Vice Chair, Senior Lawyer Member, Consent and Capacity Board



### DATE & TIME

Wednesday, November 25, 2009  
9:00 a.m. - 5:30 p.m. EDT/EST

### OPTIONAL WORKSHOPS

Thursday, November 26, 2009  
A. 9:00 a.m. - 12:00 p.m.  
B. 1:00 p.m. - 4:00 p.m.

### LOCATION

Osgoode Professional  
Development Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON

Conference  
Webcast  
Available



# The Osgoode National Symposium on Mental Health Law

**The legal issues are numerous, and the law is complex. Are you prepared?**

**M**ental health issues are now finally getting some much needed public profile. The Ontario government's recent discussion paper "*Every Door is the Right Door*" and the recent series of articles in the *Globe and Mail* are just some of the many examples of initiatives that have helped put this long neglected issue on the provincial and national agenda. There's no better time to also shine the spotlight on the legal rights and responsibilities in the area of mental health.

*Osgoode's National Symposium on Mental Health Law* was developed to bring together lawyers and mental health professionals for a comprehensive one day update of current and emerging legal issues, together with practical legal advice on how to deal with them. Topics covered include: the latest on capacity assessments; community treatment orders; protecting the suicidal patient; search and seizure in mental health units; best practices for the use of restraints; the developing role of the police in fostering constructive relationships with health care institutions; children and adolescents' mental health issues; and, assessing the risk of violence and risk management in a mental health facility.

Whether you are a healthcare professional, a lawyer advising a health care institution or a patient, a social worker or a police or corrections officer, don't miss this opportunity to have your questions answered by some of Canada's foremost experts in mental health law. You will walk away from this event with the knowledge, tools, strategies and tactics that will help tackle the complex legal issues you face in your day-to-day working life.

**Register by visiting [www.osgoodepd.ca](http://www.osgoodepd.ca), calling 416.597.9725 or 1.888.923.3394, emailing [opd-registration@osgoode.yorku.ca](mailto:opd-registration@osgoode.yorku.ca) or faxing 416.597.9736.**

## Chairs

**Janice E. Blackburn**, Bersenas Jacobsen Chouest Thomson Blackburn LLP

**Michael Newman**, Vice Chair, Senior Lawyer Member, Consent and Capacity Board, Toronto, Ontario

## Faculty

**Dr. Howard Barbaree**, Professor and Clinical Director, Law and Mental Health Program, Centre for Addiction and Mental Health (CAMH), Toronto Ontario

**Michael Bay**, Barrister & Solicitor  
North York, Ontario

**Dr. Mary Ann Campbell**, Director of the Centre for Criminal Justice Studies, University of New Brunswick, Saint John, New Brunswick

**Chief Terry Coleman** (ret'd) Moose Jaw Police Service, Moose Jaw, Saskatchewan

**Robert E. Cunningham**, President & CEO  
Northeast Mental Health Centre (NEMHC)  
Sudbury and North Bay, Ontario

**Kate Dewhirst**, Dykeman Dewhirst O'Brien LLP  
Toronto, Ontario

**Mary Jane Dykeman**, Dykeman Dewhirst O'Brien LLP, Toronto, Ontario

**Daphne G. Jarvis**, Borden Ladner Gervais LLP  
Toronto, Ontario

**Professor H. Archibald Kaiser**  
Dalhousie Law School, Halifax, Nova Scotia

**Joanna Noble**, Supervisor  
Risk Management, HIROC

**Dr. Marnie E. Rice**, Director of Research Emerita  
Mental Health Centre Penetanguishene

**Diana S. Schell**, Counsel, Legal Services Branch  
Ontario Ministry of Health & Long-Term Care

**Dr. Derryck H. Smith**, Department of Psychiatry  
Faculty of Medicine, University of British Columbia  
Vancouver, British Columbia

**Anita Szigeti**, Hiltz Szigeti LLP, Toronto, Ontario

**Dr Scott Woodside**, Centre for Addiction and  
Mental Health (CAMH), Toronto, ON

**Lena Zwicker**, Director, Risk, Quality and  
Employee Health Services, Mental Health Centre  
Penetanguishene, Ontario

# Agenda

Wednesday, November 25, 2009

**8:30 Registration and Continental Breakfast**

**9:00 Welcome and Introduction from the Chairs**

**Janice E. Blackburn**, Bersenas Jacobsen Chouest Thomson Blackburn LLP, Toronto, Ontario

**Michael Newman**, Vice Chair, Senior Lawyer Member Consent and Capacity Board, Toronto, Ontario

**9:05 Involuntary Admission under the Ontario Mental Health Act**

**Anita Szigeti**, Hiltz Szigeti LLP, Toronto, Ontario

**Michael Newman**, Vice Chair, Senior Lawyer Member Consent and Capacity Board, Toronto, Ontario

- The latest on general principles on involuntary admission
- Recent developments
- Capacity assessments – key concerns and conundrums on the frontline
  - what are the key tenets for assessment?
  - avoiding personal bias
  - suspending one's own belief/value systems
- Resolving conflicts with substitute decision-makers
- Case studies

**10:05 Creating a Safe Environment for Patients and Staff: Legal and Ethical Considerations**

**Dr. Howard Barbaree**, Professor and Clinical Director Law and Mental Health Program, Centre for Addiction and Mental Health (CAMH), Toronto, Ontario

**Mary Jane Dykeman**, Dykeman Dewhirst O'Brien LLP Toronto, Ontario

**Diana S. Schell**, Counsel, Legal Services Branch Ontario Ministry of Health & Long-Term Care

- Search and seizure in mental health units
  - dos and don'ts
- Suicide/self-harm: effectively assessing patients at risk of suicide
- Protecting the suicidal patient
- What are the current rules regarding the use of restraints?
- Case studies: the lessons to be learned

**11:05 Refreshment Break**

**11:20 Children and Adolescents' Mental Health Law Issues: What You Need to Know**

**Daphne G. Jarvis**, Borden Ladner Gervais LLP Toronto, Ontario

**Dr. Derryck Smith**, Department of Psychiatry, Faculty of Medicine, University of British Columbia, Vancouver British Columbia

When it comes to dealing with children and adolescents with mental health issues, there are a number of key factors that must be taken into account, including specific rules relating to consent to treatment, refusal of treatment, the role of the substitute decision maker and confidentiality issues. Dr. Derryck Smith and Daphne Jarvis will highlight the unique practical issues in this demanding area.

**12:15 Community Treatment Orders Update**

**Michael Bay**, Barrister & Solicitor, North York, Ontario

- CTO criteria
- Contents of a treatment plan
- Clinical considerations
- The role of the rights advisor
- Ethics and practicality of CTOs

**12:45 Networking Luncheon**

**1:45 Interactions Between Police, People with Mental Illness and the Mental Health Services: Meeting the Challenges**

**Chief Terry Coleman**, (ret'd) Moose Jaw Police Service Moose Jaw, Saskatchewan

In this session, Chief Terry Coleman (ret'd) will look at the developing role of the police services when dealing with persons who have a mental illness, and what is being done to ensure more effective liaison models between the police and mental health services.

- Effective training of police to understand mental health issues – what's happening out there?
- Effective liaison models – what's currently out there, and what is working?
- Developing appropriate guidelines/policies to foster constructive relationships between the police and mental health services – tips and tools

**2:30 Advocacy for Persons With a Mental Illness: Overcoming the Problems**

**Professor H. Archibald Kaiser** Dalhousie Law School, Halifax, Nova Scotia

Effective and timely advocacy support is essential in the provision of mental health services because people who use them can be dis-empowered by the rules, procedures and people providing those services. As a consequence, their legal rights may be infringed. Professor H. Archibald

Kaiser highlights the obstacles facing those who provide advocacy support for individuals with mental illness, and how to overcome them.

**3:15 Refreshment Break**

**3:30 Risk Management in a Mental Health Facility – Panel Discussion**

**Moderator**

**Robert E. Cunningham**, President & CEO, Northeast Mental Health Centre (NEMHC), Sudbury and North Bay Ontario

**Panellists**

**Kate Dewhirst**, Dykeman Dewhirst O'Brien LLP  
Toronto, Ontario

**Lena Zwicker**, Director, Risk, Quality and Employee Health Services, Mental Health Centre Penetanguishene, Ontario

**Joanna Noble**, Supervisor, Risk Management, HIROC

Psychiatric settings provide unique challenges for effective risk management. This experienced panel will examine the core principles of risk management as they apply in such a setting, and highlight those strategies and tactics best suited to managing risk effectively, and in so doing, providing better health outcomes for patients.

**4:20 Assessing the Risk of Violence: Duties and Responsibilities**

**Moderator**

**Janice E. Blackburn**, Bersenas Jacobsen Chouest Thomson Blackburn LLP

**Panellists**

**Dr. Mary Ann Campbell**, Director of the Centre for Criminal Justice Studies, University of New Brunswick Saint John, New Brunswick

**Dr. Scott Woodside**, Centre for Addiction and Mental Health (CAMH), Toronto, Ontario

**Dr. Marnie E. Rice**, Director of Research Emerita Mental Health Centre Penetanguishene

- Three main approaches for assessing the risk of violence
  - clinical approach
  - actuarial approach
  - structured clinical judgment
- Standard of care when assessing risk of violence
- The role of the expert
- Challenging the expert

**5:30 Conference Concludes**

**Workshop A**

***Preparing for a Consent and Capacity Board Hearing: What You Need to Know***

Thursday, November 26, 2009 - 9:00 a.m. - 12:00 p.m.

**Michael Bay**, Barrister & Solicitor, North York, Ontario

**Michael Newman**, Vice Chair, Senior Lawyer Member Consent and Capacity Board, Toronto, Ontario

**Anita Szigeti**, Hiltz Szigeti LLP, Toronto, Ontario

**Jill R. Presser**, Cooper & Sandler, Barristers & Solicitors Toronto, Ontario

Whether you are appearing as a witness or presenting evidence before the Consent and Capacity Board, the experience can be very stressful and challenging. Four acknowledged leaders in the field will explain the rules and procedures of the Board, and they will provide you with the practical knowledge, strategies and guidance that you need. Don't miss this opportunity to gain an invaluable insight into the workings of the Board, and to have your questions answered by the experts.

- The jurisdiction, powers and role of the Board
  - *Health Care Consent Act*
  - *Mental Health Act*
  - *Personal Health Information Protection Act*
  - *Substitute Decisions Act*
- What are the most frequently adjudicated issues?
- An overview of what happens at a CCB hearing
- Where does the hearing take place?
- The nature and extent of the patient's rights
  - to attend the hearing
  - to be represented by counsel
  - present evidence
  - receive advance disclosure
  - make submissions
  - receive decisions promptly
  - exercise statutory appeal rights
- Evidence 101 – understanding the rules and exceptions
- Impact of hearsay evidence
- Accessing medical records: what limitations are there?
- Tips for being an effective witness
- What do you do if you are not represented by counsel?
- The right to request written reasons for the CCB's decision
- What happens after the hearing?
- Appealing the Board's decision: what happens next?
- Case studies

Michael Bay was called to the Bar in 1984. Mr. Bay's professional interests include mental health, consent, substitute decision-making and health information. Mr. Bay is an Associate Professor (PT) in the Department of Psychiatry and Neurosciences at McMaster University, an Adjunct Professor in the Faculty of Nursing at the University

of Toronto and an associate editor of the Journal of Mental Health Ethics. Mr. Bay was the founding Chair of the Consent and Capacity Board.

**Michael Newman** is the Vice-Chair and a Senior Lawyer Member of Consent and Capacity Board. Mr. Newman is the Consent and Capacity Board's Training Panel Co-ordinator, with responsibility for ensuring that new members receive appropriate training in accordance with the Board's Training Protocol.

**Anita Szigeti** is a partner in the Toronto law firm of Hiltz Szigeti LLP. Ms. Szigeti has practised mental health law exclusively since 1995 and in the process has represented thousands of individuals with serious mental health issues before the Consent and Capacity Board and the Ontario Review Board as well as on appeals from both tribunals. She is a prolific author, and is widely published on a range of topics related to mental health and the law.

**Jill R. Presser's** practice is primarily devoted to trial and appellate criminal defence. In 2006, the Minister of Health of Ontario appointed Jill as a lawyer member of the Consent and Capacity Board. In this capacity, she presides over hearings and adjudicates civil mental health issues. She has also prosecuted criminal matters on behalf of the Attorney General for Ontario on a per diem basis since 2001.

## Workshop B

### ***Ontario Review Board Practice and Procedure: The Essential Guide***

Thursday, November 26, 2009 - 1:00 p.m. - 4:00 p.m.

**Janice E. Blackburn, Bersenas Jacobsen Chouest**  
Thomson Blackburn LLP, Toronto, Ontario

**Curt Flanagan, Director Mental Health**  
Criminal Law Division, Ministry of the Attorney General  
Toronto, Ontario

The Ontario Review Board (ORB) holds hearings and makes decisions about people with mental health issues who have been accused of a crime. This workshop is an essential guide to ORB practice and procedure, and is intended for health care professionals and legal advisors who need to better understand the rules and procedures of the Board. Two of the foremost practitioners with experience in this area, Janice E. Blackburn and Curt Flanagan, will highlight what you need to know to be properly prepared in your dealing with the ORB. This highly interactive workshop will give you ample opportunity to ask questions and to discuss key areas of concern.

- Assessments under the *Criminal Code*: Defining "unfit to stand trial" and "not criminally responsible"
- Disposition orders
- Powers and Jurisdiction of the ORB

- Preparing effectively for an ORB hearing: Tips and tools
- What criteria are used by the ORB when reaching their determinations?
- Understanding the rules/standard of evidence at an ORB hearing
- Protected statements
- The burden of proof
- Key tactical considerations when cross-examining experts - attacking psychiatric testimony
  - focus on possible malingering
  - establishing motives
- What happens after the ORB hearing?
- Appealing an ORB decision
- Case studies

**Janice E. Blackburn** regularly appears before administrative tribunals in the health field including the Consent and Capacity Board and the Ontario Review Board and at all levels of appellate courts. A frequent writer and lecturer, Ms. Blackburn teaches post-graduate trainees in forensic psychiatry at McMaster University.

**Curt Flanagan** is presently the Director of Mental Health for the Criminal Law Division, Ministry of Attorney General. He has been Director of the Crown Attorney Mental Disorder Educational Training Program for the past eleven years specializing in the practice of mental health both in criminal court and before the Ontario Review Board.

## Who Should Attend

- Psychiatrists, physicians, nurses and other licensed medical professionals
- Representatives from hospitals, psychiatric facilities, long term care facilities and community care agencies
- Health care risk managers
- Lawyers in private practice specializing in health law and criminal law
- Crown lawyers
- Government and public policy advisors
- Expert witnesses and mental health consultants
- Mental health patient advocates
- Health and social service professionals
- Law enforcement officers
- Corrections and rehabilitation service representatives

# Registration

Register me for:  National Symposium on Mental Health Law  
 Workshop A: Preparing for a Consent and Capacity Board Hearing  
 Workshop B: Ontario Review Board Practice and Procedure

I will attend:  on site  via webcast - single viewer (conference only)

I am unable to attend. Please send me information about ordering program materials.

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## Fee Per Delegate

Conference only: \$495 plus 5% GST for a total of \$519.75.

Conference plus one workshop: \$795 plus 5% GST for a total of \$834.75.

Conference plus two workshops: \$995 plus 5% GST for a total of \$1,044.75.

Workshop only: \$300 plus 5% GST for a total of \$315.

Fees include attendance, program materials, continental breakfast, lunch (conference only) and break refreshments.

Please inquire about financial assistance and CLE credits.

The fee is for a single webcast viewer. For larger groups, please contact us.

## CLE Credits

Approved in accordance with the requirements of the LSUC Certified Specialist program, BC CPD and the NY CLE Board (for transitional and non-transitional lawyers). Note: NY CLE Credits are not available for webcast participants. BC CPD webcast participants must contact us for further information.

## Payment Options

- Cheque enclosed (payable to York University – GST# R119306736)
- Bill my credit card:  VISA  Mastercard

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## 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 and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

## Dates & Times

November 25, 2009 - 9:00 a.m. - 5:30 p.m. EDT/EST

Optional Post-Conference Workshops: November 26, 2006

Workshop A: 9:00 a.m. - 12:00 p.m.; Workshop B: 1:00 p.m. - 4:00 p.m.

Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

## Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

## Location

Osgoode Professional Development  
Downtown Toronto Conference Centre  
1 Dundas Street W., 26th Floor  
Toronto, ON, M5G 1Z3

## Why Osgoode Professional Development?

At Osgoode Professional Development, our mandate is to meet the needs of working lawyers, and other professionals who need legal information. If you need an update on recent developments, to learn or refresh skills, or are considering a graduate degree designed for working professionals, consider Osgoode Professional Development's rich and diverse programs.

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-  2. **ONLINE** at  
[www.osgoodepd.ca](http://www.osgoodepd.ca)
-  3. **FAX** your registration to  
416.597.9736
-  4. **CALL US** at 416.597.9725 or  
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