



# THE LEGAL GUIDE TO CONSENT, CAPACITY & SUBSTITUTE DECISION MAKING

You need an understanding of the current law and best practices to manage your day-to-day risks.

Leading consent & capacity experts will use a case study approach to give you the knowledge and tools you need in this complex area including:

- The law that guides your actions: the statutory framework surrounding consent and capacity
- Identifying the correct substitute decision maker, their role and scope of authority
- Health privacy: where do the *Health Care Consent Act* and *Substitute Decisions Act* fit in?
- Managing conflict between family members/substitute decision makers
- Tips on preparing and appearing before the Consent and Capacity Board (CCB)

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

Register today at:

[osgoodepd.ca/consent](http://osgoodepd.ca/consent)

## Program Chairs

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

**Richard Ashok Coutinho, JD,**  
LLM, Client Lawyer, Ontario  
Ministry of the Attorney  
General, Office of the Public  
Guardian and Trustee

## Program Details

DATE AND TIME:

**December 11, 2018**

**9:00 a.m. – 4:45 p.m. EST**

**In Person or Webcast**

**Online Replay: Jan 16, 2019**

LOCATION

**Osgoode Professional  
Development**

1 Dundas St. West, 26th Floor  
Toronto, ON



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# The Legal Guide to Consent, Capacity & 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.

## Program Topics

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 healthcare providers in obtaining consent, determining capacity & 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?
- When you need to call a capacity assessor: who they are, what they do
- What responsibility does the OPGT 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
- Allied Health professionals
- 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.**

Registration

**9:00 a.m.**

Welcome from the Chairs

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

**Richard Ashok Coutinho, JD, LLM**, Client Lawyer, Ontario Ministry of the Attorney General, Office of the Public Guardian and Trustee

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 the 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?

**9:15 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*

**9:45 a.m.**

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

**Heather Mountford**, Goddard Gamage LLP

**Mercedes Perez**, Perez Bryan Procope LLP

Using case studies of common scenarios when substitute decision making issues arise in a healthcare 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 to manage property under s. 6 of the *Substitute Decisions Act*?
- The different types of substitute decision makers for property
- 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*?

**10:45 a.m.**

#### Refreshment Break

**11:00 a.m.**

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

**Judith A. Wahl**, Wahl Elder Law

**Mark Handelman, BA, LLB, MHSC (Bioethics)**, Firm Counsel, Whaley Estate Litigation

- 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

**12:00 p.m.**

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

**Mary Jane Dykeman**, DDO Health Law

- Framework for consent, capacity and substitute decision-making: where does 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

**12:30 p.m.**

#### Lunch

**1:15 p.m.**

#### Capacity Assessments & 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?
- Capacity assessors: who they are; what they do; when you should call them
- Conducting an evaluation of capacity for treatment decisions: the specifics

**2:00 p.m.**

#### Preparing for a Capacity Hearing before the Consent and Capacity Board

**Barbara Walker-Renshaw**, Borden Ladner Gervais LLP

**D'Arcy J. Hiltz**, Barrister & Solicitor

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

- When does the CCB become involved?
- What applications can be made to the CCB? By whom?
- What is the jurisdiction of the CCB?
- Preparing for a hearing
- Tips for appearing before the CCB

**2:45 p.m.**

#### Refreshment Break

**3:00 p.m.**

#### What does a CCB Hearing Look Like?

**Dr. Carole Cohen, MDCM**, Clinical Director, Community Psychiatric Services for the Elderly, Sunnybrook Health Sciences Centre

**Barbara Walker-Renshaw**, Borden Ladner Gervais LLP

**D'Arcy J. Hiltz**, Barrister & Solicitor

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

#### Live Demonstration

This session will provide a unique look into what a CCB hearing looks like. Using the case study that is woven into the day's presentations you will watch the cross-examination of Dr. Cohen regarding a challenged section 16 capacity assessment. The theme relates to the difference between capable bad choices versus actual incapacity. The parties will include Dr. Cohen (witness/capacity assessor), the alleged incapable person, their lawyer (Barbara Walker-Renshaw) and a CCB tribunal member (Michael D. Newman).

The opportunity to witness this mock hearing will reinforce the learning of the prior sessions and give you practical knowledge, best practices and tips.

**3:30 p.m.**

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

**Amy Cappuccitti**, Team Leader, Intake and Treatment Decisions Units, Ontario Ministry of the Attorney General, Office of the Public Guardian and Trustee

**Richard Ashok Coutinho, JD, LLM**, Client Lawyer, Ontario Ministry of the Attorney General, Office of the Public Guardian and Trustee

The OPGT is responsible for making 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. The OPGT provides a similar service when admission to a long-term care facility is proposed and it is not possible to obtain informed consent from another authorized person, such as a relative. In this talk, the following questions and issues will be explored:

- What is the legal basis for the OPGT's role in making substitute health care decisions?
- What is and is not considered "treatment"?
- Who decides if a person is mentally incapable of making treatment decisions?
- The Ranking of Decision makers under the *Health Care Consent Act*.
  - Principles Guiding the OPGT in Making Treatment Decisions.
  - The Process Involved
  - Tough Issues in Treatment Decisions

**4:15 p.m.**

#### Wrap-Up & Q&A Session

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

**Richard Ashok Coutinho, JD, LLM**, Client Lawyer, Ontario Ministry of the Attorney General, Office of the Public Guardian and Trustee

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

## Chairs

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

**Richard Ashok Coutinho, JD, LLM**, Client Lawyer, Ontario Ministry of the Attorney General, Office of the Public Guardian and Trustee

## Faculty Includes

**Dr. Carole Cohen, MDCM**, Clinical Director, Community Psychiatric Services for the Elderly, Sunnybrook Health Sciences Centre

**Mark Handelman, BA, LLB, MHSC (Bioethics)**, Firm Counsel, Whaley Estate Litigation

**D'Arcy J. Hiltz**, Barrister & Solicitor

**Heather Mountford**, Goddard Gamage LLP

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**Mercedes Perez**  
Perez Bryan Procope LLP

**Judith A. Wahl**, Wahl Elder Law

**Barbara Walker-Renshaw**  
Borden Ladner Gervais LLP

## The most valuable things learned at the program...

*I know this area of law and learned much more than I anticipated especially with regard to capacity assessment.*

*I was completely unaware of the Health Care Consent Act before today.*

*There are more laws involved in POA's than I thought.*

*How to get materials together for a CCB hearing to support request and ability to understand and ability to appreciate vs current risks.*

## Registration Details

### Fee per Delegate

**\$525 plus HST**

Fees include attendance, program materials, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca/group-discounts](http://www.osgoodepd.ca/group-discounts) for details. Please inquire 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.



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CCHL MAINTENANCE OF CERTIFICATION - Attendance at this program entitles certified Canadian College of Health Leaders members (CHE / Fellow) to 3.25 Category II credits towards their maintenance of certification requirement.



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