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**2011 National Health Law Summit:
Critical Issues in Health Law
May 26-27
Fairmont Queen Elizabeth, Montreal, Quebec**

THURSDAY, MAY 26

12:00 | 12:30 Registration

12:30 | 12:45 Opening address – Kimberly Jakeman and Annette Lefebvre

12:45 | 14:45 Disruptive Behaviour in Health Care - Legal and Practical Strategies

Disruptive behaviour by professionals in the health care setting can have significant legal, ethical and practical implications. This panel will provide attendees with ideas on how to approach the challenges posed by disruptive behaviour. Through discussion and interactive fact pattern analysis, panelists will share their informed perspectives on disruptive behaviour causes, prevention strategies, support resources, the role of facilitation/mediation, legal obligations, and how to achieve accountability. Some recent Canadian jurisprudence involving disruptive behaviour allegations, and the difficulty of delineating between individual and hospital responsibilities in this context, will be presented.

Co-Chairs:

Julie Gibson, Harper Grey LLP, Vancouver, BC
Kimberly Jakeman, Harper Grey LLP, Vancouver, BC

Speakers:

Dr. James Sproule, Managing Director, Physician Services, The Canadian Medical Protective Association, Ottawa, ON
Dr. Michael Kaufmann, Medical Director, Ontario Medical Association Physician Health Program
Dr. Marguerite Dupré, Collège des Médecins du Québec, Montréal, QC
William S. Clark, Harper Grey LLP, Vancouver, BC
Paul J. Pape, Pape Barristers, Toronto, ON
Kate Dewhirst, Dykeman Dewhirst O'Brien LLP, Toronto, ON

14:45 | 15:00 Refreshment Break

15:00 | 17:00 Damages, New Trends and Directions

Awards of damages, either by judgment or out-of-court settlements can vary widely in the multiple jurisdictions across Canada. This panel will address some of the new trends and review recent decisions of national interest. Despite relatively low awards for pecuniary damages did you know that Quebec judges grant among the highest awards for the head of non-pecuniary damages? Will other jurisdictions follow the trend in Québec to actualize non-pecuniary damages? In 2011, what are the arguments for re-visiting the Supreme Court trilogy which established a ceiling non-pecuniary damages? What strategies can we learn about the assessment of economic and inter-dependencies losses in medical malpractice and personal injury cases? What do the top litigators see as the main trends for damage pecuniary and non-pecuniary awards in these cases?

Chair:

Justice Chantal Corriveau

Speakers:

Prof. Daniel Gardner, University of Laval, Quebec, QC
Luc Rivest, IDML, Montréal, QC
John McLeish, McLeish Orlando LLP, Toronto, ON
Errol Soriano, Campbell Valuation Partners Limited, Toronto, ON

Topics and timing are subject to change

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18:00 | 19:30 Reception and tours at the Quebec Court of Appeal
Welcome and opening remarks by The Honourable Allan R. Hilton

20:00 Dinner – venue TBC

FRIDAY, MAY 27

8:30 | 9:00 Registration

9:00 | 10:30 Mental Health Advocacy

Advocacy efforts on behalf of individuals with mental illness pose many challenges, from assessing a client's ability to retain counsel, provide instructions, and understand advice given, to issues related to types of legal arguments that may be made before various tribunals. As well, limited resources for individuals directed into the mental health system raise unique barriers that may require advocacy on behalf of clients and/or the system in general.

This panel will be comprised of a psychiatrist with forensic experience, legal counsel for individuals, legal counsel for a major Canadian mental health institution, and a mental health patient advocate appointed by the Lieutenant Governor –in-Council. Together, they will canvas such topics as the solicitor-client relationship, the latest word from the Supreme Court of Canada on Charter arguments, and the role of mental health patient advocates to address issues of consent and capacity, and provide rights advice for persons committed formally or under community treatment orders under provincial mental health legislation, or for those in the criminal justice system. This session will provide thoughtful reflection and practical advice on these and related issues.

Co-Chairs:

David Christie, Neighbourhood Law Centre, Whitehorse, YT

Tracey Bailey, Executive Director, Health Law Institute, University of Alberta, Edmonton, AB

Speakers:

Allan Lefever, Deputy Chief Judge, Provincial Court of Alberta, Edmonton, AB

Fay Orr, Mental Health Patient Advocate, Alberta Mental Health Patient Advocate Office, Edmonton, AB

Dr. Alexander (Sandy) Simpson MBChB, BMedSci, FRANZCP, Assoc Professor, Clinical Director, Law and Mental Health Program, Centre for Addiction and Mental Health, Head, Law and Mental Health Program, University of Toronto, Toronto, ON

Anita Szigeti, Hiltz Szigeti, Toronto, ON

Nyranne Martin, Legal Council, Centre for Addiction and Mental Health, Toronto, ON

10:30 | 10:45 Refreshment Break

10:45 | 12:15 Concurrent Sessions

Session A: Patient Safety

Patient safety has been high on the national legal and health care agenda for the last few years following research out of the U.S. and Canada noting disturbing rates of adverse events in the health care system. While a number of initiatives have been undertaken to address this issue, including work on guidelines regarding disclosure and apology of adverse events, further changes to law and policy are still needed. Some have questioned whether current disclosure guidelines actually live up to legal obligations.

In this discussion, we will hear from the Canadian Patient Safety Institute on recent initiatives regarding disclosure and adverse event reporting. We will also have an update from the CMPA as to how to communicate harm from adverse events to patients, how to establish a just culture of safety in healthcare so that disclosure occurs and quality improvement advances, and next steps. The panel will be rounded out by Plaintiff's counsel specializing in health law to address Québec legal requirements, whether current disclosure, apology and reporting practices serve patients, and barriers to the safer delivery of health care that remain in the system.

Chair:

Tracey Bailey, Executive Director, Health Law Institute, University of Alberta, Edmonton, AB

Speakers:

Paula Beard, Director of Operations, Canadian Patient Safety Institute, Edmonton, AB

Jean-Pierre Ménard, Ménard & Martin, Montréal, QC

Dr. Gordon Wallace, Director of Education, Risk Management Services, Canadian Medical Protective Association, Ottawa, ON

Don Cranston, Q.C., Bennett Jones LLP, Edmonton, AB

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Session B: The Evolving Role of Experts in Legal Actions

Courts have experimented recently with a variety of initiatives to address perceived issues concerning the impartiality and reliability of experts giving opinion evidence in legal proceedings. Limits have been proposed on the retainer of experts in the interest of improving access to justice and proportionality of litigation costs. Leading members of the bar and bench will discuss various initiatives being considered to encourage parties to reduce the number of experts and the costs associated with retaining experts in legal proceedings, including court-appointed and jointly-retained experts. The panel is also expected to discuss other initiatives aimed at controlling costs and improving impartiality and reliability, including having experts testify as a panel (otherwise known as "hot tubbing") and requiring experts from both sides to meet prior to trial to clarify the basis for any disagreement. Are these proposals, generally speaking, in keeping with the principles of natural justice? Is it reasonable or effective for professional organizations or associations to censure their members for acting as an advocate in court or endorsing so-called "junk science"?

Chair:

Robert Sheahan, Partner, *Gowling Lafleur Henderson LLP*, Ottawa, ON

Speakers:

The Honourable André Wery, Associate Chief Justice, *Superior Court of Québec*

The Honourable Coulter A. A. Osborne, Former Chair - *Civil Justice Reform Project (Ontario)*

Robert-Jean Chenier, Partner, *McCarthy Tétrault*, Montréal, QC

Annette Lefebvre, *Annette Lefebvre Avocats*, Montréal, QC

Tom Curry, *Lenczner Slaght Royce Smith Griffin LLP*, Toronto, ON

12:15 | 13:30 Lunch

13:30 | 15:30 Critical Health Law Update: Coast to Coast

Hear from lawyers across Canada about critical developments in health law. Learn about leading cases such as *Leering v. College of Chiropractors of Ontario (Court of Appeal)* which held that treatment of a spouse by a health professional is sexual abuse and therefore professional misconduct and the Supreme Court of Canada's 2010 decision regarding unconstitutional provisions of the *Assisted Human Reproduction Act*. You will be updated on new legislation and policy directions across Canada, including: steps for a Patient Charter in Alberta, broad legislation regarding distracted driving, a National Framework for Advance Care Planning, update on excited delirium syndrome and the recommendations in the Report of the Panel of Mental Health and Medical Experts Review of Excited Delirium and more.

Co-Chairs:

Martina Munden, Partner, *Patterson Law*, Truro, NS

Simon Potter, *McCarthy Tétrault*, Montreal, QC

Speakers:

British Columbia – Stacey Grubb, Lawyer, *Guild Yuld and Company LLP*

The Territories – David J. Christie, *Yukon Legal Services Society*

The Prairies – Tracey M. Bailey, *Health Law Institute, University of Alberta*

Ontario – Neil M. Abramson, *Torkin Manes LLP*

Quebec – Mylène Beaupré, *Beaupré Medical Ethics and Law*

Nova Scotia, New Brunswick & Newfoundland – L. Martina Munden, Partner, *Patterson Law*

PEI - Thomas Laughlin, Partner, *Stewart McKelvey*

Federal Government – Glenn Rivard, *General Counsel, Justice Canada*

15:30 Closing Remarks: **Kimberly Jakeman** and **Annette Lefebvre**