



THE CANADIAN  
BAR ASSOCIATION

# CBA HEALTH LAW SUMMIT

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April 11 – 12, 2019 | WINNIPEG, MB

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APRIL 11 - 12, 2019 | FAIRMONT WINNIPEG, WINNIPEG, MB

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## WEDNESDAY, APRIL 10, 2019

18:00 – 19:30 **WELCOME RECEPTION** | Velvet Glove Restaurant

Sponsored by:



**Bennett Jones**

## THURSDAY, APRIL 11, 2019

8:00 – 8:30 **REGISTRATION AND BREAKFAST** | Wellington Ballroom Foyer

Breakfast  
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8:30 – 8:45 **OPENING REMARKS** | Wellington Ballroom

8:45 – 10:00 **AGE DISCRIMINATION AND HEALTH CARE** | Wellington Ballroom  
*(1.25 hours – substantive content)*

Studies show that one out of five older adults experience ageism in healthcare settings. Does a patient's advanced age affect the level or quality of health care services provided? Discrimination of the elderly in health care manifests in a variety of ways, from the attitude of health care providers to presumptions that health problems are normal for a person of advanced age. It is one of the most tolerated prejudices in today's society. In this panel, we will explore issues involving ageism in health care, including the following:

- Do misconceptions about the elderly lead to misdiagnoses or substandard treatment? Do clinicians mischaracterize medical conditions as normal aging? Do they ignore or over-treat conditions and characterize them as unavoidable?
- How is the lack of appropriate accommodation, services and funding in health care facilities impacting the elderly?
- How do stereotypes, attitudes and misconceptions amongst health care providers discriminate against the elderly?
- What barriers faced by some groups of older persons in health care facilities?

**Moderators:** **Lisa Corrente**, Torkin Manes (*Toronto, ON*)  
**Melissa Rico**, Carbert Waite LLP (*Calgary, AB*)

**Speakers:** **Candace Chartier**, Ontario Long Term Care Association (*Toronto, ON*)  
**Heather Palmer, PhD**, Amica Senior Lifestyles (*Toronto, ON*)  
**Dr. Samir K. Sinha**, Sinai Health System and the University Health Network (*Toronto, ON*)

10:00 – 10:15    **REFRESHMENT BREAK** | Wellington Ballroom Foyer



10:15 – 11:30    **THINK BEFORE YOU SPIT: DNA TESTING AND THE NEW GENETIC NON-DISCRIMINATION ACT** | Wellington Ballroom

*(1.25 hours – substantive content)*

From an unlikely legislative history in the Senate to a federal law that received royal assent in May 2017, the *Genetic Non-Discrimination Act* could impact health consumers, health care providers, employers and employees, insurers and others. At the same time, DIY DNA testing kits are being widely marketed to consumers who are intrigued by the prospect of discovering a missing relative but may, in the process, discover a genetic propensity to an unanticipated health condition. Recently, a Reference Case was decided by the Quebec Court of Appeal who determined that the *Genetic Non-Discrimination Act* is *ultra vires* the jurisdiction of the Parliament of Canada and not an appropriate use of the criminal law power.

Topics will include:

- Genetic testing for medical reasons versus DIY genetic testing
- Unexpected consequences of genetic testing and medical research
- Division of powers and constitutional implications
- Insurance impacts
- Privacy impacts
- Employment impacts

**Moderators:**    **Sheila Caston**, McKercher LLP (*Saskatoon, SK*)  
                         **Stacey E. Grubb**, Alberta Health (*Edmonton, AB*)  
                         **Alex Wilbee**, WeirFoulds LLP (*Toronto, ON*)

**Speakers:**        **Bailey Harris**, Thomas Dorfman Sweatman LLP (*Winnipeg, MB*)  
                         **Charles Murray**, Manitoba Justice (*Winnipeg, MB*)  
                         **Dr. Cheryl Rockman-Greenberg**, University of Manitoba (*Winnipeg, MB*)

11:30 – 13:00    **LUNCH AND KEYNOTE ADDRESS** | Lombard Room  
*(0.5 hours – substantive content)*

**REFLECTIONS ON LAW AND HUMAN RIGHTS AT THE CANADIAN MUSEUM FOR HUMAN RIGHTS**

**Speaker:**        **John Young, Ph.D.**, President and CEO, Canadian Museum for Human Rights (*Winnipeg, MB*)



**13:15 – 14:30 MEDICAL ASSISTANCE IN DYING: BALANCING RIGHTS OF PATIENTS AND PROVIDERS | Wellington Ballroom**  
*(1.25 hours – substantive content)*

With the passage of changes to the Criminal Code, Canadians can now access medical assistance in dying (MAiD). The amendments set out the criteria for a person to qualify for medical assistance in dying. According to Health Canada, across Canada, there were 1961 reported MAiD cases between January 1 and December 31, 2017.

Currently, Canadians are engaged in a discussion on conscientious objection. While there seems to be some agreement on the right of health care providers to make a decision to not partake in MAiD due to the conscientious objection, there is significant debate and public opinion on whether this individual right can be relied upon by entire corporations or health care delivery organizations. The discussion is complicated and contentious.

In this panel discussion, we want to explore the various perspectives of conscientious objection, engaging in an open discussion on and exploration of the underlying values of conscientious objection. To assist in the discussion, we have invited a speaker to lay the foundation of the values within the Charter of Rights and Freedoms and how institutional conscientious objection may play out in a charter analysis; a speaker to provide insight on the values and perspective of faith based facilities; and a speaker to explore the perspective of family and patient that are not able to receive MAiD in the facility.

**Moderators:** **Martina Munden**, Nova Scotia Health Authority (*Halifax, NS*)  
**Salimah Walji-Shivji**, AgeCare (*Calgary, AB*)

**Speakers:** **Heather L. Gallant, Ph.D., J.D.**, Covenant Health (*Edmonton, ON*)  
**Daphne Gilbert**, University of Ottawa (*Ottawa, ON*)  
**Al-Noor Nenshi Nathoo**, Alberta Health Services' Clinical Ethics Service (*Calgary, AB*)  
**Helga Van Iderstine**, MLT Aikins LLP (*Winnipeg, MB*)

**14:30 – 14:45 REFRESHMENT BREAK | Wellington Ballroom Foyer**

Sponsored by:



**14:45 – 16:00 HEALTH LITIGATION AND HUMAN RIGHTS: WHERE HEALTH LAW AND HUMAN RIGHTS INTERSECT BEFORE THE COURTS, REGULATORY AUTHORITIES, AND TRIBUNALS | Wellington ballroom**  
*(1.25 hours – substantive content)*

Explore with a panel of experts some of the unique issues that can arise when litigation and human rights intersect in a health law context. Whether the issue is access to medical care, de-listing of medically necessary services, or discrimination in involuntary admissions to a mental health facility, do you know what to do when your case includes a human rights component? A panel of litigation counsel experienced in health law and human rights will discuss the special advocacy and practice considerations, including:

- Advising clients on the appropriate forum to advance a human rights issue (e.g. human rights tribunal, medical regulatory authority and/or civil courts).
- Unique practice issues associated with human rights cases, including evidence required to establish reasonable accommodation and damages.

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- Advocacy tips when advancing and defending human rights cases before a human rights tribunal, medical regulator and court.
- Use of human rights tribunal decisions as evidence in other proceedings.

**Moderators:**     **Robert A. Sheahan**, Gowling WLG (*Ottawa, ON*)  
                         **Michael Waite**, Carbert Waite LLP (*Calgary, AB*)

**Speakers:**       **Katharine Byrick**, Borden Ladner Gervais LLP (*Toronto, ON*)  
                         **Ayse Dalli**, McCarthy Tétrault (*Montreal, QC*)  
                         **Robin Gage**, Arvay Finlay LLP (*Vancouver, BC*)

**NETWORKING RECEPTION & DINNER** (*Open to all attendees*)  
Canadian Museum for Human Rights | 85 Israel Asper Way

17:00     **Museum Tours & Reception** | Manitoba Teachers' Society Classrooms  
*60 minute tours of the Museum will run from 17:30, 17:45 and 18:00 and will be available on a first come first serve basis.*

19:00     **Dinner** | Manitoba Teachers' Society Classrooms

**Sponsored by:**     **MLT AIKINS**  
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## FRIDAY, APRIL 12, 2019

8:00 – 8:30     **REGISTRATION AND BREAKFAST** | West Ballroom Foyer

**Sponsored by:**      **HEALTH LAW**

8:30 – 9:45     **MEDICINE CHEST VERSUS MEDICARE: TREATY RIGHTS, HUMAN RIGHTS, AND THE RIGHT TO HEALTH FOR ALL, HAS THE CANADA HEALTH ACT (1984) HELPED OR HINDERED THE HEALTH STATUS OF FIRST NATION PEOPLES?**  
                         | West Ballroom  
*(1.25 hours –ethics, professional and/or practice management content)*

As Canada celebrates the achievements of Tommy Douglas upon the 50th anniversary of signing Medicare into law (July 1969), First Nations are remembering the full assimilation attempt of Pierre Trudeau's White Paper (1969) and celebrating their national response of bringing it down through Wahbung: Our Tomorrows (1971) also coined the "Red Paper". Or did they? Was Medicare a vehicle for full assimilation into provincial or mainstream systems in an attempt for the federal government to absolve itself from honouring the First Nation Treaty Right to Health? Explore with a panel of Indigenous health experts how Medicare helped or hindered First Nation Health and Rights as evidenced through health outcomes in one living generation and what impacts this has on all Canadians.

You will be tasked to consider what this means for not only future health law, policy, advocacy and practice, but also future generations, in the following domains:

- Implementation of the Truth and Reconciliation Commission's Calls to Action
- Federal enactment of the United Nations Declaration on the Rights of Indigenous Peoples
- Reforming the Indian Act and Legislating Rights Recognized in the Canadian Constitution (1982)
- Operationalizing the Canada Health Act (1984) to its fullest intent
- Understanding and implementation of the Path to Reconciliation Act (Manitoba)

**Moderators:**     **Stacey E. Grubb**, Alberta Health (*Edmonton, AB*)  
                         **Danie Roy**, Danie Roy Avocats Lawyers (*Moncton, NB*)

**Speakers:**       **Dr. Catherine L. Cook, MD, MSc, CCFP, FCFP**, University of Manitoba (*Winnipeg, MB*)  
                         **Melanie MacKinnon, BN**, University of Manitoba (*Winnipeg, MB*)  
                         **Amanda Meawasige**, First Nations Health and Social Secretariat of Manitoba (*Winnipeg, MB*)

9:45 – 10:00     **REFRESHMENT BREAK** | West Ballroom Foyer

10:00 – 11:15     **GENDER IDENTITY AND INCLUSIVE HEALTH CARE** | West Ballroom  
(1.25 hours – ethics, professional and/or practice management content)

In recent years, Trans and non-binary individuals have increasingly turned to the legal system as a tool to combat discrimination and to fight for access to necessary services. In many ways, the health care system plays an important role in promoting the safety, security and well-being of trans and non-binary individuals, yet it can also be a place of discrimination. In this panel we will explore:

- Understanding sex and gender identity, including in law.
- What gender affirming care looks like.
- Systemic barriers to gender-inclusive health care, including government issued identification, insured benefits schemes, family recognition, and informed consent (in particular as it related to mature minors).
- The importance of representation – equity in community engagement, service provision, and policy work.
- Legal strategies to ensure meaningful and inclusive access to care (including opportunities and limitations within the legal system).

**Moderators:**     **Elisabeth A. Olson**, Winnipeg Regional Health Authority (*Winnipeg, MB*)

**Speakers:**       **Allison Fenske**, Public Interest Law Centre (*Winnipeg, MB*)  
                         **Logan Oxenham**, Trans Manitoba / Manitoba Justice (*Winnipeg, MB*)

11:15 – 11:30     **CLOSING REMARKS** | West Ballroom

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## Leaders in today's health law sector

Our **Health Law group** provides assistance with all matters integral to health care institutions and pharmaceutical companies, including outsourcing agreements, research and development agreements and joint ventures. Our Health Group deals with a diverse range of issues pertaining to corporate governance, bylaws, reorganizations, liability, supplier agreements, regulatory compliance, and health infrastructure projects.

Our lawyers have considerable experience advising clients in all aspects of health-related law. This in-depth knowledge enables us to create timely, competitive and comprehensive strategies to help our clients achieve their business objectives. From pharmaceutical companies to telemedicine and e-health, medical practitioners to private sector health, hospitals to hospital foundations and long-term care, our Health Group is able to provide effective and efficient legal counsel to clients facing complicated issues that require a diverse range of legal and technical knowledge.

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