

Health Law Section Report 2010-2011

On February 9, 2011, the MBA Health Law Section hosted a meeting of its members on the topic of “Critical Incidents”, focusing on *The Regional Health Authorities Act* sections creating them and the applicable *Manitoba Evidence Act* statutory privilege. The guest speakers were from the Winnipeg Regional Health Authority, Dr. Rob Robson, Healthcare System Safety Advisor, and Ms. Kaaren Neufeld, Chief Quality Officer. The session focussed on the practical application of the legislation and how critical incidents are reported and investigated. It was explained that these critical incident reviews are “Safety Investigations” that focus on how to improve the healthcare system. They are not intended to be reviews for the purpose of “legal causation”. Often it is not possible to determine what in fact caused the adverse event, but by examining the systems and practices related to the event, it may be possible to make changes that may help prevent a similar incident occurring in the future. The session was very well attended and the evaluations were very positive with expressions of interest for future sessions on this same topic.

April 12, 2011 was the inaugural “National Advance Care Planning Day” - a day for individuals to reflect on and begin a conversation with a loved one about their respective wishes for their end of life care. The Canadian Bar Association Health Law Section has been represented on the National Advance Care Planning Task Group and participated in the development of “Advance Care Planning in Canada: A National Framework and Implementation”. An Advance Care Plan involves the communication and preparation of a written document of an individual’s personal care preferences in the event that person becomes incapable of consenting to or refusing treatment or other care. Our national CBA Section is also part of the “Speak Up: Start the Conversation about End of Life Care Campaign” to raise awareness of advance care planning and it includes a website with tools to assist people to begin these often difficult conversations, as well as advance care planning resources such as workbooks and wallet cards. The website is also a valuable resource for lawyers and other professionals in assisting their clients with advance care planning.

On June 6, 2011 there will be a joint meeting of the Elder Law, Health Law and General Practitioners’ Sections on the very timely subject of “End of Life Decisions”. After a video presentation of a recent debate on the legal issues arising out of the Golubchuk Case, a panel of diverse legal practitioners will then comment and answer questions on those issues including Health Care Directives, Committeeships, and Powers of Attorney in situations where the patient cannot speak for his/herself, as well as the perspectives of the Public Trustee and the Winnipeg Regional Health Authority with respect to end of life decision making.

This past year numerous new legislation and bills amending existing legislation were presented in the Manitoba Legislature and distributed to the members of the Health Law Section for their interest and input. Summarized below is a sampling of some of the proposed legislation:

Vulnerable Persons Living with a Mental Disability Act

Proposed amendments to protect Manitobans with intellectual disabilities would establish Canada's first “Adult Abuse Registry” which would include the names of those who abuse or neglect vulnerable adults and would be used by employers to screen potential employees or volunteers. The proposed changes

would also create new offences, tough penalties, and require mandatory reporting of any abuse and/or neglect.

Caregiver Recognition Act

The proposed legislation would establish a legislative framework to increase awareness and recognition of informal or family caregivers, and acknowledge their valuable contribution to society.

The Liquor Control Act and Regulations

Amendments of particular significance to the Health Law Section related to the initiatives to raise awareness about fetal alcohol syndrome and underage drinking, as well as requiring the MLCC to conduct an impact analysis on the use of energy drinks as a mix with alcohol.

Regional Health Authorities Act

Proposed amendments would set limits on corporate spending in the authorities, enhance accountability and transparency, and support quality patient care.

Workers Compensation Act

Proposed amendments extend the firefighter cancer and heart-injury presumptions to individuals of the Office of the Fire Commissioner who investigate fires or those who train firefighters and fire investigators and their families, recognizing that like firefighters, they also are exposed to the threat of dangerous, health-threatening and life-threatening conditions. In 2002, Manitoba became the first jurisdiction in Canada to have a firefighter presumption.

Defibrillator Public Access Act

The proposed legislation would require defibrillators to be installed and maintained in designated high-traffic public places such as public schools, airports and recreation centres, signage for the defibrillator locations, and a central registry shared with 911 dispatchers to provide emergency assistance as to the location and proper usage of the defibrillators.

Prescription Drugs Cost Assistance Act

Proposed amendments to the Act would strengthen the monitoring of the prescribing of narcotics and other controlled drugs, permit the retroactive review of drugs already on the formulary to improve their effective use through education and determine eligible drug benefits available to Manitobans through government programs.

Respectfully submitted,
Corrine Deegan and Catherine Tolton, Co-Chairs