

## Health Law Section Report 2014-2015

Doug Ripley had been Chair of the Health Law Section from June 2013 to January 2015. Due to work commitments he stepped down in January. Past Chair, Catherine Tolton, assumed the role of Chair of the Section as of February 2015.

There was a well-attended Section meeting on March 3, 2015 jointly sponsored with the Criminal Law Section on the topic of *"Respect for Autonomy or Elder Abuse? End of Life Treatment Decisions, Criminal and Civil Consequences."* The speakers were Mike Cook, Dr. Aviva Goldberg, Pediatric Nephrologist and Medical Ethicist, Health Sciences Centre/Winnipeg Regional Health Authority and Vivian Rachlis.

Recent high profile cases and the assisted suicide debate have re-ignited the discussion about how far family members can go to carry out the perceived wishes of loved ones while avoiding criminal charges. At the same time, issues of capacity, consent, and the ancient tort of battery continue to challenge substitute decision makers and health care providers who are tasked with carrying out patient and family wishes during a health care crisis or at the end of life. To make matters even more complicated, while Canadian criminal law applies uniformly across the country, legal duties and safeguards in the civil realm differ from province to province. And in Manitoba, new legislation establishing an Adult Abuse Registry could mean a whole new set of employment-related consequences for health care providers determined to have neglected vulnerable people and the elderly.

Speakers at the March 3, 2015 session provided an overview of what you need to understand within this intersection of multiple areas of the law, including: Criminal Code provisions dealing with criminal negligence causing death and failure to provide the necessities of life; a primer on the law of consent, capacity and substitute decision making in Manitoba, and why you need to understand these basics before advising your clients; whether health care providers have a legal duty to provide care even when care has apparently been declined; the impact of the new Adult Abuse Registry in Manitoba on care providers and regulated health professionals; and why it makes more sense than ever to talk about health care directives with your clients.

The bi-annual National Health Law Summit was held in Banff, Alberta on May 21 and 22, 2015. It was very well attended with counsel from across Canada representing diverse areas of health law. There were a number of informative sessions including a look at the impact of provincial regionalization of health organizations, privacy implications, damages awards and assessments.

On June 8, 2015 there will be an MBA Health Law Section meeting, again jointly sponsored with the Criminal Law section. The speakers are Professor Mary Shariff from the University of Manitoba, Dan Ryall and Sharyl Thomas. We will be reviewing the landmark Supreme Court of Canada decision in *Carter v Canada* pertaining to Physician Assisted Death, wherein the Court struck down the Criminal Code prohibition on physician assisted suicide. We will look at the decision, what it means and doesn't mean, and what may be the potential impacts.

The Health Law Section is actively recruiting for candidates willing to assume any of the Executive positions. If you are interested please contact the MBA or the current Section Chair Catherine Tolton at [ctolton@wrha.mb.ca](mailto:ctolton@wrha.mb.ca)

Submitted by,  
Catherine Tolton, Chair, MBA Health Law Section