



## Barbara Walker-Renshaw

### Senior Counsel

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Barbara represents health care organizations in patient care disputes generally, with a focus on mental health law disputes.

She regularly represents psychiatric facilities and health care providers before the Ontario Review Board and the Consent and Capacity Board, and appears frequently on appeals of those matters, before the Superior Court of Justice and the Court of Appeal for Ontario.

In 2017, Barbara was seconded to a multi-site, academic health sciences centre in the GTA as Interim General Counsel, assisting the hospital with the diverse and complex legal issues facing large healthcare organizations.

She also represents clients in medical malpractice litigation, Coroner's inquests and Commissions of Inquiry. She has appeared at all levels of Court in Ontario, and has appeared before the Supreme Court of Canada.

Barbara provides general counsel advice on statutory compliance issues and policy matters for specialty psychiatric facilities, acute care hospitals and community hospitals.

She also advises health sector clients on:

- privacy of personal health information
- clinical trial agreements and Research Ethics Board matters
- hospital and medical staff bylaws, including physician privilege matters

Barbara completed her articles serving as a law clerk to the Hon. Louise Arbour at the Supreme Court of Canada (1999-2000).

Prior to becoming a lawyer, Barbara worked in corporate communications and in the not-for-profit sector, where she was involved in the delivery of social service programs to women disadvantaged by poverty, sexual assault and domestic violence.

## Experience

- Representing the person in charge of forensic psychiatric facilities before the Ontario Review Board (ORB) and on appeals of those decisions at the Court of Appeal for Ontario (ONCA).
- Representing the Officer in Charge and psychiatric healthcare providers before the Consent and Capacity Board (CCB) and on appeals of those decisions, including reviews of findings of incapacity, involuntary and informal admissions, substitute decision-making, Community Treatment Orders and admissions to long-term care facilities.
- Recent cases include:
- ***Campbell (Re)***, 2018 ONCA 140 – acted for the respondent, the person in charge of the Royal Ottawa Mental Health Centre, in an appeal that considered the legal test for what constitutes a significant increase in restrictions imposed by the person in charge on an NCR accused, thus triggering a required notice to the ORB for a mandatory review. The appeal was dismissed in its entirety.
- ***Ohenhen (Re) and Kalra (Re)***, 2018 ONCA 65 – acted for the respondent, the person in charge of the Royal Ottawa Mental Health Centre, in an appeal that considered whether an accused who has been found not criminally responsible on account of mental disorder and incapable of consenting to his own treatment under the [Health Care Consent Act, 1996](#), can fulfill the consent requirement for the condition regarding psychiatric or other treatment under [s. 672.55\(1\)](#) of the [Criminal Code](#). Argued before a five-panel member of the Court of Appeal for Ontario, due to conflicting decisions of the Court on this issue, the Court clarified the law and allowed the companion appeals, sending both matters back to the ORB for new hearings.
- ***D.P. v. Pittman***, 2018 ONSC 1577 – acted for the respondent, Dr. Pittman, in an appeal to the Superior Court of Justice of a decision of the CCB that found D.P. incapable of consenting to treatment. The appeal was dismissed.
- ***Flowers (Re)***, 2017 ONCA 710 – acted for the respondent, the person in charge of Ontario Shores Centre for Mental Health Sciences, in appeal of an ORB disposition arising from a placement hearing for a dual status offender. Appeal dismissed in its entirety.
- ***JL (Re)***, 2017 CanLII 69972 (ON CCB) – acted for the applicant physician in a multi-day proceeding before the CCB to determine whether or not the patient, JL's substitute decision-makers (the SDMs) had complied with the principles for giving or refusing consent set out in [s. 21](#) the *HCCA*. The Board allowed Dr. Shammi's Form G application and issued directions to the SDMs to consent to treatment within a certain time period, failing which they would no longer meet the criteria to be SDMs for the patient.
- ***M.R. v. Wong***, 2016 ONCA 540 – acted for the respondent physician in a treatment capacity appeal before the Superior Court of Justice and subsequently, the Court of Appeal. At the initial appeal before the Superior Court, the respondent's motion to admit fresh evidence was allowed, resulting in the appeal

being quashed as moot. The Court of Appeal confirmed that decision and dismissed the further appeal in its entirety.

- **Starson v. Swayze**, [2003] 1 SCR 722, acted as co-counsel for the Intervenor, the Schizophrenia Society of Canada, in an appeal of a decision of the CCB. The Supreme Court's decision remains the leading case on the interpretation of the legal test for capacity to consent to treatment.
- Defending hospitals and hospital staff in civil litigation at all levels of court in Ontario, including allegations of *Charter of Rights* violations.
- Representing healthcare professionals before College Complaints Committees and the Health Professions Appeal and Review Board.
- Representing hospital clients, non-profit corporations and healthcare professionals before Coroner's Inquests and public inquiries.
- Providing general advice to hospitals on hospital protocols and policies dealing with a wide variety of medico-legal and governance issues.

## Insights & Events

- Author, "Ontario hospital visitor restrictions during the COVID-19 pandemic: December 2020 update", BLG Article, December 2020
- Author, "Court defers to hospital's decision-making during pandemic", BLG Article, April 2020
- COVID-19 Legal Perspectives
- Author, "Contractual risks amid the COVID-19 outbreak", BLG Article, March 2020
- Author, "Novel Coronavirus outbreak: Legal and practical insights and perspectives", BLG Article, January 2020
- Author, "A Primer on Disclosing Personal Health Information to Police", BLG Article, December 2019
- Program Director and Co-Chair, Osgoode Certificate in Mental Health Law, Osgoode Hall Law School Professional Development Program, October 2, 10, 16, 23 & 30, 2019.
- Author, "The Consent and Capacity Board's Jurisdiction to Make Section 41.1 Orders", BLG Article, July 2019
- Author, "The Consent and Capacity Board's Jurisdiction to Make Section 41.1 Orders", BLG Article, June 2019
- Speaker, "Recent Canadian Appellate Court Decisions regarding Review Board Matters: Implications for Clinical Forensic Psychiatrists and Specialty Psychiatric Hospitals", Pre-Conference Workshop, Canadian Academy of Psychiatry and the Law Annual Conference, April 28 2019
- Court of Appeal: Effect of Sex Offender Registries Legislation on Mentally Ill Accused is Unconstitutional
- Speaker, "Consent and Capacity Issues across the Healthcare Continuum", Peterborough Regional Health Centre, January 22, 2019
- Speaker, "Mental Health Care and the Law: a Medico-Legal Overview", Health Insurance Reciprocal of Canada, January 19, 2019.
- Speaker, "Preparing for a Consent and Capacity Board Hearing: Tips for Healthcare Providers and Capacity Evaluators", Osgoode Hall Law School's Centre for Professional Development, December 11, 2018
- Speaker, "Challenging Issues in Mental Healthcare: A legal perspective on common issues that can impact patient care", Centre for Clinical Ethics, Annual Fall Conference, November 2, 2018
- Author, "The Role of Community Treatment Plans in Community Treatment Orders", BLG Article, November 2018
- Speaker, "Capacity Assessments across the Mental Healthcare Continuum", Grand Rounds, Ontario Shores Centre for Mental Health Sciences, October 30, 2018

- Panel Member, “Recent Court of Appeal Decisions on ‘Significant Threat’ and Their Implications”, Ontario Review Board Alternate Chair – Legal Members Meeting, October 12, 2018
- Speaker, “Practical Implications of the Court of Appeal’s Renewed Emphasis on ‘Significant Threat’ in Appeals of Ontario Review Board Dispositions”, Grand Rounds, Ontario Shores Centre for Mental Health Sciences, June 7, 2018
- Speaker, “Assessing and Documenting Capacity: Clinical and Legal Considerations”, Grand Rounds, Halton Healthcare Services, June 2, 2018
- Panel Member, “Mental Illness and the Law: A Practitioner’s Introduction”, Ontario Bar Association’s Criminal Justice Law Program, April 12 2018
- Speaker, “Major Legal Decisions: Update and Review for the Practising Forensic Psychiatrist”, Pre-conference Workshop, Canadian Academy of Psychiatry and the Law, Annual Conference, February 27 2018
- Author, "Preparing for Consent and Capacity Board Hearings", BLG Article, January 2018
- Speaker, “Medical Assistance in Dying in the Context of Mental Health Law: An Overview of Legal Issues and Ethical Challenges”, Osgoode Hal Law School’s Certificate in Mental Health Law, September 25, 2017
- Speaker, “Laying Down the Law: Medico-legal Issues in Psychiatry”, Ground Rounds, Department of Psychiatry, Queen’s University, February 25, 2017

## Beyond our Walls

### Professional Involvement

- Member, Ontario Bar Association Health Law and Administrative Law Sections
- Member, Medico-Legal Society of Toronto
- Member, Consent and Capacity Board and Bar Committee
- Member, Estates Users List Committee, Superior Court of Justice
- Member, Mental Health Appeals Program Committee, Court of Appeal for Ontario

## Awards & Recognitions

- Recognized in the 2022 edition (and the 2013-2018 and 2021 editions) of The Canadian Legal Lexpert Directory (Medical Negligence).
- Selected by peers for inclusion in the 2022 edition (and since 2015) of *The Best Lawyers in Canada*® (Health Care Law, Administrative and Public Law) and in the 2022 edition (since 2021) (Personal Injury Litigation).

## Bar Admission & Education

- Ontario, 2001
- LLB, Osgoode Hall Law School, 1999
- MA in English Literature, University of Toronto, 1978
- BA (Hons.) in English, University of Western Ontario, 1977



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