

Medical Malpractice Review

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AVOIDING CASE DISMISSAL IN MEDICAL MALPRACTICE LAWSUITS

A search of Ontario medical malpractice cases decided in the last 6 months shows that Plaintiffs risk having their cases dismissed if they do not have an experienced malpractice lawyer. Plaintiffs' claims are often dismissed because they have not commenced their action within 2 years.

Of approximately 14 medical negligence rulings in the last 6 months, 6 cases were dismissed on motions. Of the 6 cases that were dismissed, 4 were dismissed as a result of the Plaintiff's failure to commence an action within the 2-year limitation period provided for in the Limitations Act, 2002.

In **Liu v Wong**, the Plaintiff was injured when his physician removed surgical staples. The action was commenced more than 3 years after the removal. The action was dismissed as statute barred because Mr. Liu knew there were problems with his knee as soon as the staples were removed.

Cont'd.

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In **Colin v. Tan**, the Plaintiff underwent spinal surgery in 2006 and was rendered an incomplete quadriplegic. The Plaintiff attempted to add the surgeon to an existing action in 2013. The claim against the surgeon was held to be statute barred.

In **Novello v. Glick**, the Plaintiff brought an action for dental negligence in May of 2014. The dental treatment occurred in March of 2012. The action was dismissed.

In **Szanati v. Melynychuk**, the Plaintiff received medical treatment in 2008. The Plaintiff commenced an action against the hospital in 2010 and attempted to add the emergency physician in October, 2014. The claim against the doctor was held to be statute barred.

Determining when a limitation period starts to run in a malpractice action can be difficult; particularly when a patient is receiving ongoing treatment and hopes that his or her condition will be improved with further treatment. Therefore, patients who are concerned about medical negligence should always consult with experienced legal counsel as soon as possible to investigate whether their medical negligence case has merit. Early investigation is essential because the law is clear that, "a cause of action arises for purposes of a limitation period when the material facts on which it is based have been discovered by the Plaintiff by the exercise of reasonable diligence."

Keeping these limitation period challenges in mind, victims of medical malpractice should not delay in looking for diligent and competent medical negligence lawyers who are able to: (1) identify the relevant medical issues; (2) retain qualified medical experts; (3) develop a clear theory of liability; and, most importantly, (4) sue all of the necessary Defendants within 2 years. ■■■



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Kate graduated from Queen's University with a Bachelor of Arts degree in 1997 and obtained her LLB in 2004 from the University of Ottawa.

Kate is a member of the Ontario Trial Lawyers Association, the Advocates' Society, the Toronto Lawyers Association and the Ontario Bar Association.

Kate's practice is exclusively Plaintiff personal injury with a particular focus on medical malpractice.

¹ R.S.O. 2002, c.24, Sched. B, s.4

² Liu v Wong, 2016 ONCA 366.

³ Colin v Tan, 2016 ONSC 1187.

⁴ Novello v Glick, 2016 ONSC 975.

⁵ Szanati v Melynychuk, 2016 ONSC 1293.

⁶ Ferrara v. Lorenzetti, Wolfe Barristers and Solicitors, 2012 ONCA 851, at para 32.

THE 2016 AWARDS OF EXCELLENCE IN BRAIN INJURY REHABILITATION



The Ontario Brain Injury Association along with the Personal Injury Alliance (PIA Law) are pleased to present the 2016 Awards of Excellence in Brain Injury Rehabilitation.

These awards are meant to recognize exceptional service to the brain injury community in the following categories: Hospital Social Worker, Case Management, Health Care Provider, Community Brain Injury Association, Rehabilitation Company.

Voting for the selected nominees will take place online between August 8th and September 2nd, 2016. Awards of Excellence will be presented to recipients at the Awards Ceremony on September 15th, and formally announced at the **Back to School Conference** on September 16th at the Shangri-La Hotel.

For more information about the Awards of Excellence, visit: OBIA.ca.

UPCOMING EVENTS 2016



1. **September 16 Back to School Conference with PIA Law and Ontario Brain Injury Association** at the Shangri-La Hotel. [Click here to register.](#)
2. **October 27 Brain Injury Association of Niagara Conference 2016** David Payne and Adam Tanel will be presenting on behalf of Thomson, Rogers.
3. **November 10 -11 Toronto ABI Network Conference** Thomson, Rogers is proud to be the Diamond Sponsor.

**FOR MORE INFORMATION
ON THE EVENTS LISTED ABOVE,
PLEASE VISIT:**

thomsonrogers.com/news/upcoming-events

**For further information on this article,
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Gender Challenges in Rehabilitation

Friday, September 16, 2016

Shangri-La Hotel

188 University Ave., Toronto

Keynote Speaker:

Dr. Angela Colantonio Associate Professor, University of Toronto
Dept. of Occupational Science and Therapy

Featured Speakers:

Barbara Baptiste President, Rehabilitation Management Inc.
Dr. David Rosenbloom Professor, McMaster University Medical Centre
Dr. Tina Trudell CEO/Principal, Northeast Evaluation Specialist
(New Hampshire, USA)

Register online at OBIA.ca

Cost \$150



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All proceeds will be donated to Ontario Brain Injury Association