

## **LORIAN HARDCASTLE**

University of Calgary  
Faculty of Law and Cumming School of Medicine  
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### **CURRENT POSITION**

#### **University of Calgary, Calgary, Alberta, 2017-present**

- Assistant Professor, Faculty of Law
- Cross-appointed to the Department of Community Health Sciences, Cumming School of Medicine
- Member of the O'Brien Institute for Public Health
- Member of the University of Calgary Conjoint Health Research Ethics Board

### **EDUCATION**

#### **University of Toronto, Faculty of Law, Toronto, Ontario**

S.J.D. (doctorate), 2014

- Supervisor: Professor Colleen Flood
- Dissertation Title: "The Role of Tort Law in Improving Governmental Accountability in the Health Sector"
- Canadian Institutes of Health Research Training Program in Health Law, Ethics and Policy Fellowship

LL.M. (masters), 2006

- Supervisor: Professor Colleen Flood
- Canadian Institutes of Health Research Training Program in Health Law, Ethics and Policy Fellowship
- Lucille Norris Graduate Scholarship

#### **Dalhousie University, Schulich School of Law, Halifax, Nova Scotia**

J.D. with Health Law and Policy Specialization Certificate, 2004

- Dean's List
- Weir Foulds Student Paper Competition Winner, National Health Law Conference, 2004

Alistair Fraser Scholarship

Howard Pye Memorial Scholarship

## **University of Saskatchewan, Saskatoon, Saskatchewan**

Two years of undergraduate studies in the Faculty of Arts

- Dean's List

## **ACADEMIC WORK EXPERIENCE**

### **University of Ottawa, Faculty of Law, Ottawa, Ontario**

Assistant Professor, 2014-2017

Courses taught: Torts; Medical-Legal Problems; Patient Safety, Quality of Care and the Law

Associate Director, Centre for Health Law, Policy and Ethics, 2014-2017

### **European Research Council**

Fellow, Proportionality and Public Policy Project, 2013-2015

### **University of Toronto, Faculty of Law, Toronto, Ontario**

Visiting Scholar, 2012-2013

Adjunct Professor, Health Law, 2013

### **Western University, Faculty of Law, London, Ontario**

Adjunct Professor, Healthcare Law and Policy, 2014

Adjunct Professor, Tort Law and Legal Research, Writing and Advocacy, 2012-2013

### **York University, Faculty of Health, Toronto, Ontario**

Course Director, Health Care Law, 2007-2009, 2012-2015

Course Director, Health and Human Rights, 2012

### **Georgetown University Law Center, Washington, DC**

O'Neill Institute for National and Global Health Law

Fellow, 2010-2012

## **PUBLICATIONS**

### ***Books***

Lorian Hardcastle, *Introduction to Health Law* (Toronto: Emond Montgomery, 2018)  
(forthcoming)

Nicholas Leger-Riopel & Lorian Hardcastle, *Legal Liability of Health Facilities in Canada*  
(Toronto: LexisNexis, 2018)(forthcoming)

### ***Journal Articles***

Lorian Hardcastle, "Legal Mechanisms to Improve Quality of Care in Canadian Hospitals" (2017) 54:3 Alberta Law Review 681

Lorian Hardcastle, "Recovering Damages Against Governmental Defendants: Trends in Canadian Jurisprudence" (2015) 69 Supreme Court Law Review 77

Lorian Hardcastle, "*Douglas v Independent Living Center*: Litigating Access to Health Care Services" (2013) 7 McGill Journal of Law and Health 67

Lorian Hardcastle, "A Critique of the Governmental Health Sector Tort Jurisprudence" (2012) 37 Queen's Law Journal 525

Lorian Hardcastle, Katherine Record, Lawrence Gostin & Peter Jacobson, "Improving the Population's Health: The *Affordable Care Act* and the Importance of Integration" (2011) 39 Journal of Law, Medicine and Ethics 317

Lawrence Gostin, Peter Jacobson, Katherine Record & Lorian Hardcastle, "Restoring Health to Health Reform: Integrating Medicine and Public Health to Advance the Population's Well-Being" (2011) 159 University of Pennsylvania Law Review 1777

Lorian Hardcastle, "Have We Reached the Tipping Point? Hospital Vicarious Liability for Physician Negligence" (2010) 23 Healthcare Management Forum 106

Lorian Hardcastle, "Systemic Accountability Through Tort Claims Against Health Regions" (2010) 18 Health Law Review 30

Colleen Flood & Lorian Hardcastle, "Tough Choices: The Private Sale of Drugs in Public Hospitals" (2010) 182 Canadian Medical Association Journal 374

Colleen Flood & Lorian Hardcastle, "Selling Uninsured Cancer Drugs in Public Hospitals: Tough Issues at the Public/Private Interface in Health Care" (2007) 1 McGill Health Law Publication 5 (now renamed the McGill Journal of Law and Health)

Lorian Hardcastle, "Governmental and Institutional Tort Liability for Quality of Care in Canada" (2007) 15 Health Law Journal 401

Lorian Hardcastle, "Case Comment: *Cilinger v. Centre Hospitalier de Chicoutimi*" (2006) 14 Health Law Review 44

Lorian Hardcastle, "Governmental Liability for Disease Outbreaks" (2006) 26 Health Law in Canada 70

### **Book Chapters**

Lorian Hardcastle, "Nursing and the Law" in David Gregory, Christy Raymond-Seniuk & Linda Patrick, eds, *Fundamentals: Perspectives on the Art and Science of Canadian Nursing*, 2nd ed (Philadelphia: Wolters Kluwer Health, 2018)(forthcoming)

Lorian Hardcastle, "The Proportionality Analysis in Canada" in Mordechai Kremnitzer, Talya Steiner & Andrej Lang, eds, *Proportionality in Action* (Cambridge: Cambridge University Press, 2018)(forthcoming)

Lorian Hardcastle, "The Legal Response to the Sexual Abuse of Patients" in Lara Khoury & Catherine Regis, eds, *Health Law at the Frontiers* (Montreal: Yvon Blais, 2018)(forthcoming)

Lorian Hardcastle, "Negligence of Health Professionals, Hospitals, and Ministries of Health" in Vanessa Gruben, Joanna Erdman and Erin Nelson, eds, *Canadian Health Law and Policy*, 5th ed (Toronto: LexisNexis, 2017)

Kathy Zeiler & Lorian Hardcastle, "The Relationship Between Damages Caps and Medical Malpractice Insurance Premiums: A Meta-Analysis of Tort Reform Research" in Jennifer Arlen, ed, *Research Handbook on the Economics of Torts* (Northampton: Edward Elgar Press, 2014)

### **Guest Edited Journals**

Colleen Flood & Lorian Hardcastle, guest editors, *McGill Journal of Law and Health*, special edition on The Future of Health Law (forthcoming, 2018)

Lorian Hardcastle, Colleen Flood & Ubaka Ogbogu, "The Future of Health Law and Medicare: The Holy Grail of Access, Quality, and Sustainability" (2017) 54:3 *Alberta Law Review* 583 (authors of this introduction and guest editors of this special issue on The Future of Health Law)

Colleen Flood & Lorian Hardcastle, "The Future of Health Law: Can Law Meet Emerging Challenges?" (2016) 35:2 *Dalhousie Law Journal* (authors of this introduction and guest editors of this special issue on The Future of Health Law)

Lorian Hardcastle & Colleen Flood, "The Future of Health Law: A View Forward from 2016" (2016) 47:2 *Ottawa Law Review* 299 (authors of this introduction and guest editors of this special issue on The Future of Health Law)

### **Commentaries and Op-Eds**

Lorian Hardcastle, "Alberta Must do More to Protect Patients from Abuse" *Edmonton Journal* (4 May 2018)

Lorian Hardcastle, “Court Dismisses Allegations that Long-Term Care Residents Subsidize Their Health Care Costs” ABlawg (University of Calgary Faculty of Law Blog)(5 February 2018)

Lorian Hardcastle, “Is Alberta Doing Enough to Protect Patients from Abuse?” ABlawg (University of Calgary Faculty of Law Blog)(25 October 2017)

Lorian Hardcastle, “Government’s Economic Incentive to Encourage Drinking at Odds with Obligation to Protect Public Health” Ottawa Citizen (24 September 2017)

Lorian Hardcastle, “Is Alberta’s *Mental Health Act* Sufficiently Protecting Patients” ABlawg (University of Calgary Faculty of Law Blog)(18 September 2017)

Lorian Hardcastle, “The exorbitant cost of dentist visits in Alberta cannot be brushed off” Globe and Mail (1 September 2017)

Reprinted by Huffington Post, Medicine Hat News, Lethbridge Herald, and Evidence Network

Lorian Hardcastle, “Squabble Over Alberta Dental Fees Highlights Broader Need to Rethink What is Publicly Insured” ABlawg (University of Calgary Faculty of Law Blog)(5 September 2017)

Lorian Hardcastle, “Ontario must do more about doctors who abuse patients” Toronto Star (5 Jan 2016)

Reprinted by Huffington Post, Policy Options, Hamilton Spectator, and Canadian Healthcare Manager

Colleen Flood & Lorian Hardcastle, “Should we try Kiwi model on no-fault medical error?” Toronto Star (16 October 2006)

Lorian Hardcastle, “Confidentiality of Quality Assurance Records” (2004) Risk Management in Canadian Health Care

## **MEDIA**

Quoted in “The bizarre legal fight between AHS and landlords” 660 News (11 May 2018)

Quoted in “Canada can look to Colorado for guidance on cannabis legalization” 660 News (22 November 2017)

CBC radio interview on the closure of private health clinic (19 September 2017)

Quoted in “Investigation needed into closure of private health clinic, says legal expert” (19 September 2017)

SiriusXM radio interview (Canada Now) on dental fees and insurance in Canada (6 September 2017)

Quoted in “Victims identified in southeast Calgary crash as police investigation continues” Global News (4 August 2017)

Global News TV interview on liability for epileptic driver (2 August 2017)

Quoted in “Covered by the Workers Compensation Board? You too can get an MRI fast” Winnipeg Free Press (19 April 2017)

CBC radio interview (The Current) on sexual abuse of patients (6 April 2017)

Quoted in “Should the wealthy be allowed to buy their way to faster health care at private clinics?” Toronto Star (18 March 2017)

Quoted in “Uncertainty over MAiD likely to continue” Canadian Medical Association Journal (6 December 2016)

CBC radio interview on *Carter v Canada (Attorney General)* (18 June 2015)  
(series of interviews with Kitchener-Waterloo, Ontario AM, Ottawa Morning, Sudbury Morning North, Thunder Bay Superior Morning, Yellowknife The Trailbreaker, Edmonton AM, Victoria On the Island, Kelowna Daybreak South, Saskatoon Morning, Vancouver The Early Edition)

Quoted in “College of Physicians spreads word about doctor misconduct—just not to police” Toronto Star (2 February 2015)

Quoted in “Ontario health minister to review secrecy involving doctors” Toronto Star (10 October 2014)

## **RESEARCH FUNDING**

“Legal Barriers to Quality Improvement Within Hospitals”  
Foundation for Legal Research, \$4000, 2016

Teaching Development Grant  
York University, \$3000, 2014

## **CONFERENCES, WORKSHOPS, PRESENTATIONS**

Public Forum on Cannabis: The Risks and Benefits of Legalization  
Hosted by MLA David Swann

Calgary, Alberta

“Regulation of Long-Term Care in Canada”

University of Ottawa Centre for Health Law, Policy and Ethics Seminar Series  
Ottawa, Ontario, 2018 (forthcoming)

“Ready or Not, Recreational Marijuana is Coming: An Overview of the Legal Landscape and the Regulatory Challenges for Policy-Makers”

University of Calgary, Faculty of Law  
Calgary, Alberta, 2018 (forthcoming)

“Regulation of Long-Term Care in Canada”

Culture Change Learning Forum  
Calgary, Alberta, 2018

"The Characteristics of Physicians Disciplined by Regulatory Colleges and Suggestions for Reform"

Canadian Bar Association Health Law Section Meeting  
Calgary, Alberta, 2017

“Cannabis Legislation: Ready or Not, Here it Comes”

University of Calgary, School of Public Policy  
Calgary, Alberta, 2017

“Regulation of Drugs and Natural Health Products in Canada”

University of Calgary Joint Health Research Ethics Board  
Calgary, Alberta, 2017

“Protecting Patients from Sexual Abuse”

University of Montreal/McGill/Sherbrooke Health Law Academic Seminar  
Montreal, Quebec, 2017

“Provider and Institutional Liability for Medical Assistance in Dying”

Ottawa Conference on Medical Assistance in Dying  
Ottawa, Ontario, 2016

“How Do We Protect Patients From Abuse?”

Centre for Health Law, Policy and Ethics Speaker Series  
Ottawa, Ontario, 2016

“Hospital Liability for Antibiotic Resistance”

Ottawa Law Review Symposium  
Ottawa, Ontario, 2016

“The Future of Hospital Governance”  
National Health Law Conference  
Ottawa, Ontario, 2015

“Evidence and the Proportionality Analysis”  
International Society of Public Law Annual Conference  
New York, New York, 2015

“Evidence and the Proportionality Analysis”  
Proportionality and Public Policy Annual Meeting  
Prague, Czech Republic, 2015

“The Liability of Government for its Response to Ebola”  
Centre for Health Law, Policy and Ethics Speaker Series  
Ottawa, Ontario, 2014

“Litigating Access to Publicly-Funded Health Services in the U.S. and Canada”  
Law and Society Annual Meeting  
Minneapolis, Minnesota, 2014

“The Role of Tort Law in Improving Governmental Accountability in the Health Sector”  
Canadian Bar Association Health Law Section Meeting  
Calgary, Alberta, 2014

“Recovering Damages Against Governmental Defendants: Trends in Canadian Jurisprudence”  
University of Montreal Common Law Colloquium  
Montreal, Quebec, 2014

“The Role of Tort Law in Improving Governmental Accountability in the Health Sector”  
Health Law, Ethics and Policy Seminar Series  
Toronto, Ontario, 2014

“The Proportionality Analysis in Canada”  
Proportionality and Public Policy Project Annual Meeting  
Berlin, Germany, 2014

“A Comparative Approach to Litigating Access to Health Care Services”  
University of Washington Workshop on International and Comparative Law  
St. Louis, Missouri, 2013

“Public Health Dimensions of Health Reform”  
American Bar Association Administrative Law and Regulatory Practice section conference  
Washington, DC, 2011



“Governmental Health Sector Tort Liability in Canada”  
Georgetown University O’Neill Institute for National and Global Health Law Colloquium  
Washington, DC, 2011

“Breaches of the Canada Health Act”  
Students for Medicare Conference  
Toronto, Ontario, 2010

“What Liability Might Governments Have in the Future for Patient Safety?”  
Canadian Patient Safety Institute, Forum on Patient Safety and Quality Improvement  
Toronto, Ontario, 2010

“Governmental Tort Liability for Patient Safety”  
Canadian Institutes of Health Research  
Training Program in Health Law, Ethics and Policy Annual Colloquium  
Toronto, Ontario, 2010

“Reforming the Test for Governmental Tort Liability”  
Canadian Institutes of Health Research  
Training Program in Health Law, Ethics and Policy Annual Colloquium  
Halifax, Ontario, 2009

“Governmental Accountability for Quality of Care in Canada”  
Canadian Institutes of Health Research  
Training Program in Health Law, Ethics and Policy Annual Colloquium  
Toronto, Ontario, 2008

“Governmental Accountability for Quality of Care in Canada”  
Canadian Institutes of Health Research  
Training Program in Health Law, Ethics and Policy Annual Colloquium  
Halifax, Ontario, 2007

“Governmental Accountability for Quality of Care in Canada”  
Canadian Institutes of Health Research  
Training Program in Health Law, Ethics and Policy Annual Colloquium  
Toronto, Ontario, 2006

“Property, Privacy and Personality in Canadian Law”  
Research Centre for Studies in Intellectual Property and Technology Law  
Edinburgh, Scotland, 2006

“Governmental and Institutional Accountability for Quality of Care in Canada”  
Poster Presentation  
Canadian Healthcare Safety Symposium

Edmonton, Alberta, 2004

“The Legal and Ethical Implications of Clinical Practice Guidelines”

Canadian Bioethics Society Conference

Calgary, Alberta, 2004

“Governmental and Institutional Liability for Quality of Care in Canada”

Canadian National Health Law Conference

Toronto, Ontario, 2004

## **STUDENT SUPERVISION AND GRADUATE EXAMINATIONS**

Rebecca Lang, Master of Science (Community Health Sciences) internal thesis examiner, topic: water fluoridation policy, 2018

Mona Montamedi, J.D. directed research supervisor, topic: self-regulation by physicians, 2018

Jean-Michel Lenihan, LL.M. supervisor, topic: medical assistance in dying, 2016-2017

Steven Ansley, J.D. directed research supervisor, topic: medical assistance in dying, 2017

Dahlia Aetna, J.D. directed research supervisor, topic: access to mental health services, 2016

Komil Joshi, J.D. directed research supervisor, topic: alcohol regulation, 2016

Satnam Dosanjh, J.D. directed research supervisor, topic: legalization of cannabis, 2016

Gill Fruchter, J.D. directed research supervisor, topic: privacy and biobanking, 2016

Alicia Czarnowski, J.D. directed research supervisor, topic: egg donation, 2015

## **OTHER LEGAL AND POLICY WORK EXPERIENCE**

### **Health Canada**

Consultant, 2017-2018

Preparing an overview of the legal governance of federally-funded health organizations

### **Canadian Association of Radiology Oncologists, Toronto, Ontario**

Consultant, 2014-2016

Preparing a patient charter of rights

### **British Columbia Ministry of the Attorney General, Vancouver, British Columbia**

Consultant, 2012-2014

Preparing expert evidence for a constitutional challenge to legislation limiting health system privatization

**Ontario Ministry of Health and Long-Term Care, Toronto, Ontario**

Health Systems Strategy and Policy Division  
Senior Policy Advisor, 2009-2010  
Preparing a review of the *Public Hospitals Act*

**Cancer Care Ontario, Toronto, Ontario**

Consultant, 2006-2007  
Preparing a report on the sale of uninsured cancer medications in public hospitals

**Health Canada, Ottawa, Ontario**

Consultant, 2005-2006  
Preparing a report on the secondary use of health information

**Miller Thomson LLP, Calgary, Alberta**

Associate and Articling Student, 2004-2005  
Member of the litigation practice group, with an emphasis on personal injury and health law

**Calgary Health Region Legal Department, Calgary, Alberta**

Summer Student and Researcher, 2003-2005  
Worked on a variety of health law issues and reviewed hospital policies for regulatory compliance