

Preface to the Fifth Edition

Much has happened in the medical malpractice field in the 10 years since the last edition of this text. The Supreme Court of Canada has been particularly active. We have seen significant SCC decisions in areas such as medically assisted death (*Carter*, 2015), where the Parliament of Canada has also been active (*Criminal Code*, 2016); withdrawal of life-sustaining treatment (*Cuthbertson*, 2013); the right of children to refuse treatment (*A.C.*, 2009); and causation (*Clements*, 2012). In addition, there have been many other significant developments in areas such as capacity to consent; the concept of implied consent; informed consent and disclosure of adverse events; invasion of privacy and health care records; the standard of care applied to residents; conscientious objection and the duty to refer; and the necessity and requirements of expert evidence in malpractice cases. Also, there is growing concern as to how well the present system is functioning in terms of its rising costs and how so few injured patients actually receive compensation. This new edition captures all of these new developments.

Last year marked the end of my teaching career at the University of Alberta. I am so grateful to the Faculty of Law at the University of Alberta for having been my professional home for almost 35 years and to the many colleagues and friends who travelled with me along the way.

One such colleague and friend is my co-author, Ellen Picard. She has been an inspiration not only to me, but to all health law scholars for so many years. She led the way, and many have followed in the path which she forged.

My wife, Elizabeth, who like me has also recently retired from her career in the legal profession, has helped me in so many ways in preparing this new edition. We will be celebrating our 40th wedding anniversary this year. I dedicate this edition to her with love.

Gerald B. Robertson, Q.C.
July 1, 2017

So much has changed in the health care profession since I wrote the first edition of this book. Procedures, treatment, therapy, drugs have advanced beyond what was foreseeable 40 years ago. And yet what remains constant and critical is the need for communication between doctors, health care givers, and patients. I said in the second edition of the book that failure to realize and utilize opportunities to communicate can result in misunderstandings, hostility, and substandard care. Communicating with the patient shows respect for the patient, supports appropriate care, and is the best defence against litigation.

For over 40 years, I have been very fortunate to have an outstanding doctor. Dr. Harvey Sternberg is a brilliant general practitioner who is a superb communicator. He is proof that high standards can be attained.

Upon my appointment to the bench in 1987, I found I could not devote the time needed to update the book. Professor Gerald Roberston, an outstanding scholar and exceptional writer, took on the challenge. I am very grateful to him and very proud of this edition.

In 2017, I was honoured by an appointment as an Officer of the Order of Canada. This was, in part, because of my contributions to health law. It has been very exciting to have worked in health law for over 50 years.

I dedicate this edition of the book to my dear granddaughters, Rosemary and Lila, and their remarkable parents, my son Andrew and my daughter-in-law Catherine.

Honourable Ellen Picard O.C.

July 1, 2017