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COMMUNIQUÉ
For the Health Industry

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CONSENT AND CAPACITY BOARD ISSUES RULES OF PRACTICE

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After a lengthy consultation period, the Ontario Consent and Capacity Board (CCB), which conducts hearings under the *Mental Health Act*, *Health Care Consent Act, Substitute Decisions Act* and *Long Term Care Act* has promulgated Rules of Practice ("Rules") to govern the hearing process. The Rules come into force on **March 31, 2004**.

The CCB has legislative authority to develop and adopt such Rules under the *Statutory Powers Procedures Act.* The stated purpose of the Rules is to provide "a just, fair, accessible and understandable process for parties to proceedings before the Board". Health professionals and facilities appearing before the CCB will need to familiarize themselves with these procedures.

In reviewing the Rules, there is the appearance of a more legalistic approach to CCB hearings. Having said this, in reviewing decisions of the CCB, the Courts have taken a legalistic approach in ensuring that both the process and substance of these decisions are appropriate. Having the appropriate evidentiary foundation in place is essential in order to support findings of the CCB.

Since the CCB is a creation of statute, its powers and authority may only come from statute, including the ability to make rules of practice. Prior to the adoption of the Rules, there were a number of areas where the CCB's powers were lacking. For example, previously, the CCB did not have the authority to correct or amend its own decisions. Thus, even where the CCB acknowledged making an obvious error, the only recourse for the parties was to appeal the decision to the Ontario Superior Court; a process both time-consuming and expensive. Under the new Rules, the CCB may review all or part of its own decision or order and may confirm, vary, suspend or cancel that decision or order.

The Rules of Practice are available on the CCB website at <<http://www.ccboard.on.ca>>. The CCB has indicated that it will be issuing a Users' Guide to assist individuals in using the Rules.

REASONS FOR DECISION AVAILABLE ONLINE

In addition to the above, selected decisions of the Consent and Capacity Board are now available on the Canadian Legal Information Institute Website at <<http://www.canlii.org/on/cas/onccb/>>. Previously, it was necessary to attend the CCB in person or to request specific decisions directly from their offices.

Our Health Industry Practice Group has expertise in dealing with all aspects of consent and capacity, mental health and substitute decision making and would be pleased to assist you with any of these issues.

Note:

This *Communiqué* is provided as an information service and is a summary of current legal issues of concern to the Health Industry. *Communiqués* are not meant as legal opinions and readers are cautioned not to act on information provided in this *Communiqué* without seeking specific legal advice with respect to their unique circumstances. Your comments and suggestions are most welcome. Please direct them to: healthretainer@millerthomson.ca

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